



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MESHENGOV v. RUSSIA

(Application no. 30261/09)

JUDGMENT

STRASBOURG

26 March 2019

This judgment is final but it may be subject to editorial revision.

In the case of Meshengov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 March 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30261/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yevgeniy Valeryevich Meshengov (“the applicant”), on 1 April 2009.

2. The applicant was represented by Mr U. Sommer, a lawyer practising in Cologne. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 29 September 2016 notice of the complaints concerning the applicant’s alleged ill-treatment in police custody and the authorities’ failure to carry out an effective investigation into his complaints were given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1976 and is currently serving a prison sentence.

A. The applicant’s arrest and alleged ill-treatment in police custody

5. On 14 March 2007 criminal proceedings were initiated into the disappearance of A.S. in Irkutsk. The applicant was suspected of having committed aggravated murder against A.S. The applicant was arrested in

Ussuriysk at around 9 a.m. on 8 April 2007 by traffic police officers, taken to the Ussuriysk town police station and held in a temporary detention cell overnight. Next day he was taken to Irkutsk by aeroplane.

6. There are no indications in statements by four traffic police officers who arrested the applicant (made on 16 April 2007 to an investigator of the Ussuriysk town prosecutor's office) that the applicant resisted arrest or that any force or handcuffs were used in the course of his arrest.

7. At around 11 p.m. on 9 April 2007 the applicant was taken to the Sverdlovskiy district police department of Irkutsk.

8. His account of subsequent events is the following. He was placed in a room on the third floor, where seven police officers were waiting. They shackled him to a chair and subjected him to beatings during the night of 9 April 2007. They placed a gas mask over his head and closed off the air flow. He was kicked in the chest, punched in the ears and given electric shocks. He lost consciousness several times. The applicant agreed to sign papers given to him by the police officers on the condition that they stopped physically assaulting him.

9. According to a record of the applicant's arrest for murder signed by the applicant in the absence of a lawyer, it was drawn up at 12.30 a.m. on 10 April 2007 by investigator A.M. from the Sverdlovskiy district prosecutor's office of Irkutsk. It indicates that the applicant was arrested at 10 p.m. on 9 April 2007 at the Sverdlovskiy district police department.

10. Next morning, from 10.30 a.m. to 2.20 p.m., investigator P. from the Sverdlovskiy district prosecutor's office questioned the applicant as a suspect in the presence of a lawyer appointed by investigator P. According to the record of the questioning, the applicant gave statements voluntarily, he had injuries from handcuffs because "he had put up resistance", and he was not subjected to any violence. The applicant gave self-incriminating statements in relation to the crimes against A.S. Later, during his trial, the applicant claimed that the State-appointed lawyer had not been present during his questioning and had only signed the record of his questioning at the end. On an unspecified date (before 6 June 2007) another lawyer started representing the applicant.

11. At 11.20 p.m. on 10 April 2007 the applicant was placed in an Irkutsk temporary detention facility (IVS).

12. On 11 April 2007 the Sverdlovskiy District Court of Irkutsk remanded the applicant in custody. On the same day the applicant was placed in a pre-trial detention facility in Irkutsk (IZ 38/1/2).

B. The applicant's injuries

13. According to a certificate signed by the IVS doctor, the applicant was examined on 11 April 2007 and had bruises in the area of the left collarbone, left shoulder and left lumbar region, and abrasions in the area of

the elbow joints, both hands and wrists. The certificate referred to a home accident without any further details.

14. On 11 April 2007 investigator P. ordered a forensic medical examination of the applicant in connection with the criminal case against him. According to report no. 4046 completed on 11 April 2007 by the Irkutsk Regional Forensic Medical Bureau, he was examined that day. The applicant had the following injuries: (i) ten irregularly shaped bruises measuring between 9 x 7 cm and 3 x 2 cm on his chest, left shoulder, left iliac bone, both forearms, elbows, right of the lower spine and outside of the left ear, which had been caused by hard, blunt objects with a limited surface area; and (ii) eleven abrasions in stripe-like shapes measuring between 3 x 0.2 cm and 1 x 0.2 cm on his right wrist and wrist joints, which had been caused by hard objects with an explicitly limited surface area. All injuries had been caused approximately two days before the examination and were classified as injuries not occasioning actual bodily harm. In reply to the investigator's question whether the injuries could have been self-inflicted by the applicant's own hand, the expert stated that the injuries were not of the kind which could be inflicted by one's own hand.

15. According to records from IZ 38/1/2, on arrival on 11 April 2007 the applicant was examined and had (i) a contusion to soft tissues in the area of the right elbow joint; (ii) abrasions on both wrist joints; and (iii) abrasions on the right wrist.

C. Pre-investigation inquiry and refusals to institute criminal proceedings into the applicant's alleged ill-treatment

16. According to the applicant, soon after his arrival at the pre-trial detention facility he lodged a complaint with the Irkutsk regional prosecutor's office requesting that the police officers be prosecuted for their unlawful conduct.

1. Refusal to institute criminal proceedings by the Ussuriysk police

17. According to a letter of 29 May 2009 from IZ 38/1/2, on 16 April 2007 the material in relation to the applicant's injuries recorded on his arrival at IZ 38/1/2 was forwarded to the Ussuriysk town police department for an inquiry. According to a letter of 10 June 2009 from the Ussuriysk town police department, the applicant's complaint was examined and a refusal to institute criminal proceedings was issued pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure ("CCrP") for lack of the elements of a crime.

2. Refusal to institute criminal proceedings by the investigative committee for the Irkutsk region

18. On 12 March 2008 the investigative committee for the Irkutsk region refused to initiate criminal proceedings based on a pre-investigation inquiry into the applicant's injuries which had been recorded by the forensic medical expert. The investigator noted the applicant's statements that he had had injuries from handcuffs because "he had put up resistance" and that he had not been subjected to any violence. The investigator concluded that the injuries on his wrists had been caused as a result of the justified use of handcuffs because under the domestic law the police had a right to use handcuffs to suppress resistance and escort arrested individuals to a police station safely. The investigator further noted that the applicant's statements had not contained any explanations in relation to the remainder of the applicant's injuries or a request to prosecute those responsible. He stated that an assault not occasioning actual bodily harm (Article 116 § 1 of the Criminal Code) was a case of private prosecution which could not be opened without a relevant complaint against those responsible. He concluded that no criminal proceedings should be initiated pursuant to Article 24 § 1 (5) of the CCrP since no such complaint had been lodged by the applicant.

19. On 28 April 2010 the Irkutsk Regional Court received the applicant's appeal dated 16 April 2010 against the refusal to institute criminal proceedings of 12 March 2008. In his appeal the applicant stated that his complaint about the police ill-treatment dated 5 May 2007 had been dispatched by the pre-trial detention facility on 7 May 2007.

20. On 3 December 2013 the Oktyabrskiy District Court of Irkutsk examined the applicant's complaint that a timely investigation into his ill-treatment by the police officers had not been conducted and that the decision of 12 March 2008 refusing to open a criminal case was unlawful. The court held that the decision of 12 March 2008 was lawful and well-founded and that there had been no inactivity on the part of the investigating authority in dealing with the applicant's complaint.

3. Refusals to institute criminal proceedings by the investigative committee for the Sverdlovskiy district of Irkutsk

21. It appears that on 12 March, 23 April and 17 August 2009 refusals to open a criminal case were issued in relation to the applicant's complaint of ill-treatment by the investigative committee for the Sverdlovsk district of Irkutsk pursuant to Article 24 § 1 (2) of the CCrP, as none of the elements of the crime under Article 116 § 1 of the Criminal Code were present. The former two refusals were annulled on unspecified dates.

22. On 12 April 2011 the acting head of the investigative committee for the Sverdlovsk district of Irkutsk overruled the refusal to open a criminal

case of 17 August 2009 as unsubstantiated and unlawful, and ordered an additional inquiry. She pointed out the need to interview the applicant, identify the police officers he had resisted during his arrest, interview those police officers, assess police officers' alleged misconduct under Articles 286 § 3 (a) and 302 of the Criminal Code (abuse of powers with the use of violence and forced extraction of confession respectively), and carry out other activities in order to ensure a full inquiry.

23. In a letter of 12 October 2011 the Irkutsk regional prosecutor's office informed the applicant that on 22 April 2011 the investigative committee for the Sverdlovskiy district of Irkutsk had refused to open a criminal case in relation to the applicant's complaint of ill-treatment by the police officers from the Sverdlovskiy district police department of Irkutsk pursuant to Article 24 § 1 (2) of the CCrP, as none of the elements of the crime under Article 286 § 3 (a) of the Criminal Code were present.

D. Criminal proceedings against the applicant

24. On 24 June 2008 the Irkutsk Regional Court convicted the applicant of A.S.'s murder, theft and other offences and sentenced him to nineteen years' imprisonment, to run from 9 April 2007. It relied, in particular, on the applicant's self-incriminating statements made during his questioning as a suspect.

25. At his trial, the applicant pleaded guilty in part. He alleged that unlawful investigation techniques and violence had been used to force him to confess to the crimes. In particular, he stated that when he had been taken to the Sverdlovskiy district police station, a gas mask had been placed over his head and he had been given electric shocks to extract a confession. According to the applicant, he had been questioned all night long, had lost consciousness, and had been ready to sign any papers. His hands had been injured by handcuffs.

26. The trial court dismissed the applicant's allegations of ill-treatment, noting that he had not indicated who had allegedly used violence against him, and had not explained why violence had been used against him after he had given his self-incriminating statements about the crimes.

27. On 11 December 2008 the Supreme Court of Russia partly modified this judgment on appeal and sentenced the applicant to eighteen years' and six months' imprisonment. The appellate court relied on the refusal to open a criminal case of 12 March 2008, noting the applicant's statements that the injuries on the wrists had been caused as a result of the use of handcuffs to suppress the applicant's resistance. It fully endorsed the trial court's findings concerning the applicant's alleged ill-treatment and its use of the applicant's self-incriminating statements at the preliminary investigation as evidence.

28. On 24 November 2009 a judge of the Supreme Court of Russia rejected the applicant's request for supervisory review of his case, stating that the decisions of the courts of both instances to dismiss the applicant's complaint that he had been coerced by violence to give his self-incriminating statements were well-founded.

29. On 9 June 2012 the Irkutsk Regional Court ordered that the term of the applicant's imprisonment should run from 8 April 2007, the day when he had actually been arrested.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that he had been subjected to ill-treatment by the police and that the State had failed to conduct an effective investigation into his complaints. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

31. The Government argued that all the applicant's injuries had been inflicted as a result of the lawful use of force by the police during the applicant's arrest in order to overcome the applicant's resistance and prevent his escape. Such force had not attained the threshold for it to be considered inhuman or degrading treatment. According to the Government, the applicant would have sustained more serious injuries as a result of the ill-treatment described by him. However, no evidence of his being subjected to electric shocks had been found. The applicant had not suffered even minor harm to his health and the authorities had rightly decided not to open a criminal case into his groundless allegations of police ill-treatment.

32. According to the Government, had the applicant been subjected to ill-treatment, he would have complained about it without delay. However, no mentioning of the applicant's complaints could be found in the various official records of 10 and 11 April 2007 concerning the applicant's arrest, his questioning as a suspect in the presence of the State-appointed lawyer, his placement in the temporary detention facility, his remand in custody or his forensic medical examination. According to the refusal to open a criminal case of 12 March 2008, not a single complaint about the alleged police ill-treatment had been lodged by the applicant during one year. The Government stated that his first complaint about the police ill-treatment had been lodged with the investigating authority on 14 August 2009 and his complaint before the trial court had been made on 16 June 2008.

33. The Government argued that the applicant had not exhausted domestic remedies because he had not appealed to a court against the refusals to institute criminal proceedings.

34. The applicant submitted that he had been tortured by the police officers to make him confess to the crimes. He noted that the Government had failed to provide a convincing explanation to his injuries.

A. Admissibility

35. As regards the Government's non-exhaustion plea (see paragraph 33 above), the Court notes that on 28 April 2010 the applicant lodged the appeal against the refusal to institute criminal proceedings of 12 March 2008 with the Irkutsk Regional Court, and that his appeal against that refusal was examined by the Oktyabrskiy District Court of Irkutsk on 3 December 2013 (see paragraphs 19-20 above). The Government did not comment on those facts. Furthermore, the applicant's complaint concerning his alleged ill-treatment by the police was examined during his trial (see paragraphs 25-27 above). In view of the foregoing the Government's objection should be dismissed.

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. The Court observes that the applicant was arrested on 8 April 2007. After spending a period of time in police custody, including the night from 9 to 10 April 2007 spent outside the detention facility after his presence had been recorded at the Sverdlovskiy district police department (see paragraphs 7, 9 and 11 above), he was found to have sustained multiple bruises and abrasions by the staff of the detention facilities and the forensic medical expert on 11 April 2007 (see paragraphs 13-15 above). According to the expert, the injuries had been caused by hard objects with a limited surface area approximately two days before the examination and had unlikely been self-inflicted. The Court considers that the injuries could arguably have resulted from handcuffs and blows allegedly delivered to the applicant's body by police officers (see, for example, *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 14, 74, 81 and 96, 12 December 2017, and *Sergey Ryabov v. Russia*, no. 2674/07, §§ 15 and 40, 17 July 2018).

38. The above factors are sufficient to give rise to a presumption in favour of the applicant's account of events and to satisfy the Court that the applicant's allegations of ill-treatment in police custody were credible.

39. As regards the absence of the applicant's complaints in relation to the alleged ill-treatment in the various official records of 10 and 11 April 2007 (see the Government's arguments at paragraph 32 above), in particular, the applicant's denial of the police violence and his explanation that the injuries on his wrists had been caused because "he had put up resistance" in the record of his questioning on 10 April 2007 (on which the refusal to open a criminal case of 12 March 2008 apparently relied), it is entirely conceivable that they could be due to the fact that he was intimidated after the ill-treatment suffered during the preceding night, still under the control of those police officers who had ill-treated him, be it in the presence or absence of the lawyer appointed by the investigator (see paragraph 10 above).

40. In any event, the authorities were alerted to the possibility that violence had been used against the applicant on 11 April 2007, when the applicant's multiple injuries were recorded by the detention facilities and the forensic medical expert. Thus, even without an express complaint from the applicant, a duty to investigate had already arisen at that stage. This is so because Article 3 of the Convention requires an official investigation in cases where there are sufficiently clear indications that ill-treatment might have occurred (see *Velev v. Bulgaria*, no. 43531/08, § 60, 16 April 2013). The pre-trial detention facility in fact communicated the information concerning the applicant's injuries to the investigating authority for an inquiry (see paragraph 17 above).

41. As to the Government's assertion that all the applicant's injuries had been inflicted as a result of the lawful use of force during his arrest, it has no support in the facts. The statements by the police officers who arrested the applicant contain no indication that the applicant resisted arrest or that any force or handcuffs were used in the course of his arrest (see paragraphs 5-6 above). The absence of reports by those who arrested the applicant about any force used, injuries sustained or medical aid provided entirely undermines the credibility of the Government's explanation (see *Davitidze v. Russia*, no. 8810/05, §§ 91 and 95, 30 May 2013; *Ryabtsev v. Russia*, no. 13642/06, § 43, 14 November 2013; *Annenkov and Others v. Russia*, no. 31475/10, §§ 68-69, 25 July 2017; and *Shevtsova v. Russia*, no. 36620/07, §§ 56-57, 3 October 2017).

42. The applicant's allegations of his injuries being the result of ill-treatment by the police officers from the Sverdlovskiy district police department were dismissed by the investigation authorities based on the pre-investigation inquiry, which is the initial stage in dealing with a criminal complaint under Russian law and should normally be followed by the opening of a criminal case and the carrying out of an investigation if the information gathered has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). The mere carrying out of a pre-investigation inquiry under Article 144 of the Code of

Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment in police custody. It is incumbent on the authorities to institute criminal proceedings and conduct a proper criminal investigation in which a full range of investigative measures are carried out (*ibid.*, §§ 129 and 132-36).

43. The Court has no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment. It would note that four years after the alleged ill-treatment the applicant had not been questioned and the police officers had not been identified and interviewed in relation to the applicant's alleged resistance during his arrest (see paragraph 22 above). It finds that the State has failed to carry out an effective investigation into the applicant's allegations of police ill-treatment, as required by Article 3 of the Convention.

44. Given that the Government's explanation to the applicant's injuries was provided as a result of the superficial domestic inquiries' falling short of the requirements of Article 3 of the Convention, the Court holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's account of events, which it therefore finds established insofar as it is supported by evidence (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017, and *Ksenz and Others*, cited above, §§ 102-04).

45. Having regard to the material in the case-file, the Court finds that the applicant was subjected to inhuman and degrading treatment by the police (see *Gorshchuk v. Russia*, no. 31316/09, § 33, 6 October 2015; *Aleksandr Andreyev v. Russia*, no. 2281/06, §§ 56-62, 23 February 2016; and *Leonid Petrov v. Russia*, no. 52783/08, §§ 65-76, 11 October 2016).

46. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant complained that the authorities had failed to carry out an effective investigation into his alleged ill-treatment in police custody in breach of Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

48. The Government contested that argument.

49. The Court notes that this complaint is linked to the issue raised under the procedural aspect of Article 3 of the Convention and must therefore likewise be declared admissible.

50. Having regard to the finding of a violation of Article 3 under its procedural aspect on account of the respondent State's failure to carry out an effective investigation, the Court considers that it is not necessary to examine this complaint separately under Article 13 (see *Olisov and Others*, cited above, § 92).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

52. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage suffered by him as a result of a violation of his rights guaranteed by Article 3 of the Convention.

53. The Government stated that any award of just satisfaction should be made in accordance with the Court's case-law.

54. The Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Default interest

55. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's alleged ill-treatment in police custody and the authorities' failure to carry out an effective investigation into his complaints admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Alena Poláčková
President