



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 21501/02  
by Dmitriy Viktorovich VOROSHILOV  
against Russia

The European Court of Human Rights (First Section), sitting on  
8 December 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 March 2001,

Having regard to the observations submitted by the respondent  
Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dmitriy Viktorovich Voroshilov, is a Russian national who was born in 1967 and lives in the Lugansk Region, Ukraine. He is currently serving his sentence in Penitentiary Facility YaM 401/3 in the Ryazan Region, Russia. The applicant is represented by Mr Sergey Brovchenko, a lawyer practising in Moscow.

The respondent Government are represented by Mr Pavel Laptev, Representative of the Russian Federation at the European Court of Human Rights.

### **A. The circumstances of the case**

The facts of the case, as submitted by the parties, may be summarised as follows.

#### *1. Criminal proceedings against the applicant*

On 30 July 1997 the applicant was arrested on suspicion of murder.

On 21 June 1999 the Samara District Court convicted the applicant of the murder of two persons, the attempted murder of a police officer and the hijacking of a car and sentenced him to 15 years' imprisonment. On 6 March 2000 the Supreme Court of Russia upheld the judgment on appeal.

Applications by the parties for supervisory review of the judgment were dismissed.

#### *2. Alleged ill-treatment by the police and subsequent investigation*

Between 30 July and 8 August 1997 the applicant was allegedly subjected to ill-treatment by police officers while in pre-trial detention.

On 8 August 1997 the applicant lodged a complaint with the Prosecutor's Office concerning the ill-treatment.

Between 15 and 18 August 1997 the applicant was examined by a doctor. According to the findings of the examination, the applicant had graze wounds on his right shoulder joint, right shin, left knee, left lower leg and both wrists, and bruises on his left forearm and his neck. The doctor observed that the injuries had been caused by blows with a hard blunt object between six and ten days before the examination.

On 5 September 1997 the applicant again lodged a complaint with the Prosecutor's Office concerning ill-treatment which allegedly had taken place on 4 September 1997.

Between 5 and 11 September 1997 the applicant was examined by a doctor. The applicant made the following statement to the doctor:

"On 4 September 1997 from 2.30 to 6.30 p.m. in the office ... in the building of the Department of Internal Affairs the police officers [A.], [B.] and [P.] and another unknown officer made me sit down on the floor, put a chair on top of me and [P.] sat on the chair. [They] put a scarf on my face and did not let me breathe. [They] pulled my hair, beat me on the ears, put a plastic bag over my head, and beat me on the back of my neck with their hands, after which I fainted for several seconds ...; [they] beat me ... on the back. Then they put me face down on the table, took off my trousers and thrust the neck of an empty glass bottle of lemonade into my anus, which caused me pain. After that they dressed me and continued beating my head and body. Then they took off my trousers, put me face down on the table and thrust a glass vodka bottle ... into my anus, following which ... bleeding started. After that [A.] and [B.] took me to

the toilet and washed off the blood. Then they took me into [an office], scorched my beard with a lighter and again hit me on the head, chest and back, took me by the hair and banged my forehead against the wall and against a safe, knocked me down on the floor and kicked me.”

The conclusion of the medical report reads as follows:

“Mr Voroshilov has been found to have suffered the following injuries:

Bruises: on the eyelid of his left eye, on ... his right thigh ..., on ... his left lower leg ..., on ... his left thigh ..., on... his neck, on his buttocks around the anus.

Abrasions: on the lower eyelid of his left eye, on his left cheek, on his ... right shin, in the lumbar region ..., on the right and left wrist joints.

Punctated intracutaneous dark red extravasations in ... the right frontal-parietal region.

A wound of the mucous membrane of the ... rectum continuing on to the skin.

Injuries: the abrasions were caused ... by a hard blunt object, the bruises were caused by blows or pressing with a hard blunt object, and the punctated intracutaneous extravasations were caused by direct impact on the hair. ... The wound of the mucous membrane of the ... rectum continuing on to the skin was caused by a stretching effect with a hard blunt object ...”

According to the report, some bruises had been caused not more than three days before the examination and others between three and eight days before the examination; the extravasations had been caused not more than three days before the examination; some abrasions had been caused between one and two days and others between two and four days before the examination; and the injury to the mucous membrane had been caused not more than one day before the examination.

On 2 October 1997 criminal proceedings were instituted against six police officers. They were charged under Article 286 § 3 (a) and (b) of the Criminal Code with abuse of official powers involving the use of violence and of special implements. According to the bill of indictment, between 11 and 15 August 1997 the police officers A., B., F. and K. had threatened to dress the applicant in police uniform and to send him back to his cell in this outfit; beaten the applicant’s chest, back, neck and ears with their hands; on numerous occasions placed a gas mask or a plastic bag on his head, preventing the access of air to his respiratory apparatus; placed the applicant’s handcuffed feet and hands on different chairs, then moved the chairs apart and, when he fell on the floor, kicked him; and put a leather belt around the applicant’s neck and then tried to lift him by it. On 4 September 1997 the police officers A., B., P. and S. had forced the applicant to confess to having committed the offence; beaten him with their palms and fists and, when he fell down, kicked him; and hit his head against a safe. P. had placed a chair on the applicant’s back and sat down on it himself; A. had thrust a glass bottle into the applicant’s anus while others were holding him; and S. had scorched his beard with a lighter.

On 6 July 1998 the case was brought before a court.

On 26 October 1999 the Samara District Court referred the case back to the Samara Prosecutor's Office for additional investigation. The court noted that according to the bill of indictment, the applicant had been subjected to ill-treatment between 11 and 15 August 1997, whereas from the medical report of 15 August 1997 it followed that the injuries at issue could have been caused between 5 and 9 August 1997. The court also noted that the applicant alleged that he had been mistreated within that period of time as well, which the preliminary investigation had failed to take into account.

The applicant appealed against the ruling.

On 19 November 1999 the Samara Regional Court upheld the decision to refer the case back for additional investigation.

On 10 August 2000 the Samara Prosecutor's Office terminated the criminal proceedings against the police officers. The order to terminate the proceedings stated, *inter alia*:

"In the course of the additional investigation [Mr] Voroshilov was subjected to ... a psychiatric examination.

According to the [expert report,] [Mr] Voroshilov has symptoms of a psychiatric disorder of a combined type ... The main psychic peculiarities of the epileptoid component are punctuality, inclination to detailed elaboration, irritability, rancour, inclination to accumulation of affectivity and emotional outbursts, sanctimony and mendacity. The main psychic peculiarities of the paranoid component are a high degree of single-mindedness, rigidity, inclination to dominate and ignore the opinions of others, tendency to rely only on subjective views, critical attitude, emotional callousness, suspiciousness, inclination to perceive the behaviour of others as threatening.

Such peculiarities in the personal reactions of [Mr] Voroshilov as a strong inclination towards defensive behaviour, expressed in self-justification and active accusation of other persons in conjunction with such tendencies as reticence and mendacity, does not exclude the possibility of slander by [Mr] Voroshilov in respect of others.

The [disorder] observed is reflected in his litigious activity (a mass of complaints to various bodies, containing accusations against various persons and agencies). ...

It also follows from the indicated report that: (1) – the character, localisation, number and mechanism of the injuries [Mr] Voroshilov was diagnosed with supports the conclusion that these injuries could have been caused by his own hand ...; (2) – the possibility that the injuries were inflicted by mechanical effects produced by another person (or persons) ... cannot be ruled out.

In the course of the investigation it was established that between 3 and 4 September 1997 [Mr] Voroshilov was held in the cell ... together with [Mr X]. The accused [police officers] and a number of witnesses indicated in their statements that [Mr] Voroshilov's injuries could have been caused either by himself, or by his cellmate [Mr X], with whom he had a dispute during the night of 3 to 4 September 1997. In the course of the investigation it proved impossible to establish the whereabouts of [Mr X] and, consequently, to question him. Therefore, this contradiction between the statements of [Mr] Voroshilov and those of the accused has not been dissipated, and at present it appears impossible to dissipate it.

On the above grounds, [the investigator] ordered the termination of the criminal proceedings against [the police officers] for failure to prove their guilt.”

On 3 November 2000 the applicant’s counsel filed a complaint with the Samara Prosecutor’s Office against the decision to terminate the criminal proceedings. The Prosecutor’s Office dismissed the complaint on 21 December 2000.

On 21 February 2001 the Samara Regional Prosecutor’s Office set aside the order of 10 August 2000 and referred the case back for additional investigation. On 1 April 2001 the Samara Prosecutor’s Office closed the criminal proceedings against the police officers. The order was issued by the same investigator who had issued the order of 10 August 2000. It reproduced the previous order verbatim, with the additional statement that the investigation had again failed to establish the whereabouts of the applicant’s cellmate Mr X.

On 8 August 2001 the Samara Regional Prosecutor’s Office set aside the order of 1 April 2001 and referred the case back for additional investigation. The Samara Prosecutor’s Office again closed the criminal proceedings against the police officers on 14 September 2001.

On 12 October 2001 the Samara Regional Prosecutor’s Office set aside the order of 14 September 2001 and referred the case back for additional investigation.

On 15 November 2001 the Leninskiy District Court of the Samara Region dismissed a complaint by the applicant against the order of 14 September 2001 on the ground that the order had already been set aside by the Samara Regional Prosecutor’s Office, and the preliminary investigation was resumed on 1 November 2001.

On 3 and 9 January 2002 the applicant filed complaints with the Prosecutor General of Russia and the Samara public prosecutor, alleging that the investigation had not been effective, and asked for information about the state of the investigation.

On 16 February 2002 the Samara Prosecutor’s Office closed the criminal proceedings against the police officers.

The applicant submitted that on 14 March 2002 the order had been set aside and the criminal proceedings resumed. On 27 April 2002 the Samara Prosecutor’s Office closed the criminal proceedings against the police officers. It appears that on an unspecified date the order was quashed and the criminal proceedings resumed.

The orders of 14 September 2001, 16 February 2002 and 27 April 2002 to terminate the criminal proceedings reproduced verbatim the order of 1 April 2001.

The applicant submitted that the criminal proceedings had been resumed on 11 June 2002 and subsequently closed on 14 December 2002. That decision was set aside by the Samara Regional Prosecutor’s Office on 15 September 2003 and the case was referred back for additional

investigation. The proceedings were again closed by the Samara Prosecutor's Office on 15 October 2003. However, that decision was also set aside on 28 July 2004 by the Samara Regional Prosecutor's Office, which referred the case back for additional investigation on the ground that the authorities had failed to identify and question a number of witnesses, including the applicant's cellmates and prison officers. Although the duration of the additional investigation was fixed at one month, according to the Government it is still pending. The applicant submitted that he had not been informed about the progress of the investigation and assumed that it must have been closed again.

### *3. Statements in the media*

Before the applicant was convicted there were a number of television broadcasts about the criminal proceedings against him on different channels, including SKAT (the local Samara TV channel) on 28 June and 5 July 1998 and 10 January 1999, RTR on 7 July 1998, NTV on 10 and 16 October 1998.

On an unspecified date the applicant complained to the Prosecutor's Office about the broadcasts on the local TV channel.

On 15 October 1998 the Samara Regional Prosecutor's Office dismissed the complaint on the grounds that the broadcasts in issue had only provided information about the progress of the preliminary investigation and a special notice had been included to the effect that Mr Voroshilov's guilt could only be finally established by a court decision.

On 10 December 1999 the television channel ORT showed a documentary in which the applicant was allegedly portrayed as a serial killer.

On 20 December 1999 the applicant complained, *inter alia*, about the broadcasts and the documentary to the Prosecutor's Office, which on 26 June 2000 dismissed the complaint on the ground that the broadcasts disclosed no violation of the law on mass media.

### *4. Proceedings brought by the applicant against the Prosecutor's Office*

In 2001 the applicant brought civil proceedings against the Samara Prosecutor's Office. He sought damages for the non-pecuniary harm resulting from the failure to inform him about the termination of the criminal proceedings against the police officers and the failure to reply to a number of his other complaints. The applicant also asked the court to order the relevant television channels to retract the allegedly false information they had broadcast about him.

On 14 November 2001 the Samara District Court dismissed the claim. The applicant submits that he received a copy of the decision only on 17 December 2001.

On 18 December 2001 the applicant appealed. As he failed to comply with the time-limit for appealing, the appeal was not considered by an appeal court. The applicant did not apply for restoration of the time-limits for appeal. However, his appeal was considered under the supervisory-review procedure by the President of the Samara Regional Court, who dismissed it on 6 February 2002.

## **B. Relevant domestic law**

### *1. Criminal Code of 1996*

Under Article 78 of the Criminal Code, a person is released from criminal responsibility upon the expiry of a two-year limitation period in respect of a minor offence; a six-year period in respect of an offence of medium gravity; a ten-year period in respect of a grave offence; and a fifteen-year period in respect of a particularly grave offence.

Article 15 provides that a grave offence is an intentional act subject to a maximum penalty of deprivation of liberty for not more than ten years.

Article 286 § 3 provides that the abuse of official powers entailing (a) the use of violence or the threat of violence; (b) the use of arms or special implements; or (c) grave consequences is punishable by deprivation of liberty for a term of between three and ten years, together with deprivation of the right to hold certain posts or to carry out certain activities for a term of three years.

### *2. The Code of Criminal Procedure of 1960, in force until 1 July 2002*

Article 108 of the Code of Criminal Procedure provided that criminal proceedings could be instituted on the basis of applications and letters from citizens, public or private bodies, articles in the press or the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

Under Article 126, a preliminary investigation was obligatory in cases concerning, *inter alia*, charges under Article 286 of the Criminal Code and had to be conducted by an investigator attached to a prosecutor's office.

### *3. The Code of Civil Procedure of 1964, in force until 1 February 2003*

Article 105 provided that a statutory time-limit could be restored if the court found that the claimant had failed to comply with it for a valid reason.

## COMPLAINTS

1. The applicant complained under Article 3 of the Convention that between 30 July and 5 September 1997 he had been subjected to ill-treatment by police officers.

2. The applicant complained under Articles 3 and 13 of the Convention about the lack of an adequate investigation into his allegations of ill-treatment.

3. The applicant complained under Article 6 §§ 1 and 2 of the Convention about the broadcasting by the media of allegedly false information concerning the criminal proceedings against him.

4. The applicant complained under Article 6 § 3 (b) of the Convention that in the criminal proceedings against him he had not been given the opportunity to study the materials of the case, either during the preliminary investigation or in court, and that he had not received a copy of the bill of indictment until the first court hearing.

5. The applicant complained under Article 6 § 3 (d) of the Convention that in the same criminal proceedings against him he had not been given the opportunity to examine the key witness for his defence.

6. The applicant complained under Article 6 § 1 of the Convention about the outcome of the proceedings concerning his claim for damages against the Samara Prosecutor's Office for non-pecuniary harm, and about the failure of the courts to examine his appeal.

## THE LAW

1. The applicant complained under Article 3 of the Convention that he had been ill-treated by police officers between 30 July and 5 September 1997.

Article 3 reads as follows:

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

The Court notes that the facts to which this complaint relates occurred before 5 May 1998, when the Convention entered into force in respect of the Russian Federation.

It follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

2. The applicant complained under Articles 3 and 13 of the Convention that there had not been an adequate investigation into his allegations of ill-treatment.

Article 13 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.”

The Government submitted that since the investigation into the applicant’s allegations of ill-treatment was still pending, his complaint before the Court was premature. They made no submissions on the merits of the complaint.

The applicant contested the Government’s objection. He indicated that after he had first applied to the Court the criminal investigation had been discontinued and then reopened at least eight times. In his view, that demonstrated that the remedy was ineffective and he was therefore dispensed from having to pursue it. He also pointed out that in their observations, apart from pleading non-exhaustion of domestic remedies, the Government did not deny that there had been a violation of Article 3 in the applicant’s case.

The Court must first decide whether it has jurisdiction *ratione temporis* to examine the complaint. The Court reiterates that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention’, requires by implication that there should be an effective official investigation” (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

The Court notes that in the present case the ill-treatment is alleged to have taken place between 30 July and 5 September 1997, before the entry into force of the Convention in respect of the Russian Federation on 5 May 1998. In this respect the Court recalls that in accordance with the generally recognised rules of international law, the Convention only applies in respect of each Contracting Party to facts subsequent to its coming into force for that Party. However, the possible existence of a continuing situation must be determined, if necessary by the Court of its own motion, in the light of the special circumstances of each case (see *X and Y v. Portugal*, nos. 8560/79 and 8613/79 (joined), Commission decision of 3 July 1979, Decisions and Reports 16, p. 209).

The Court observes that the procedural obligation under Article 3 arises where an individual makes “a credible assertion” of having suffered treatment contrary to Article 3 (see *Labita*, cited above). However, since the Court is prevented from examining the applicant’s assertions relating to the events lying outside its jurisdiction *ratione temporis*, it is unable to reach a conclusion as to whether the applicant has made a “credible assertion” as required by the above provision. Accordingly, it cannot examine whether or not the Russian authorities had an obligation under the Convention to conduct an effective investigation in the present case (see *Moldovan v.*

*Romania* (dec.), no. 41138/98, 13 March 2001). Likewise, the alleged failure to conduct the investigation cannot be held to constitute a continuous situation raising an issue under Article 3 in the present case, since the Court is unable to conclude that such an obligation existed.

The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order, where there is an “arguable claim” of a violation of a substantive Convention provision (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The Court refers to its above conclusion that the applicant’s complaint under Article 3 of the Convention is outside its jurisdiction *ratione temporis*. It follows that the Court is not competent to examine whether the applicant had an “arguable claim” of a breach of a substantive Convention right and that his submissions in respect of Article 13 therefore also fall outside the Court’s competence *ratione temporis* (see *Meriakri v. Moldova* (dec.), no. 53487/99, 16 January 2001).

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

3. The applicant complained under Article 6 §§ 1 and 2 of the Convention that the media had broadcast allegedly false information concerning the criminal proceedings against him. Relying on Article 6 § 3 (b) of the Convention, he complained that he had not been provided with the opportunity to study the materials of the case and that he had not received a copy of the bill of indictment until the first court hearing. The applicant also complained under Article 6 § 3 (d) of the Convention that he had not been given the opportunity to examine the key witness for his defence.

Article 6, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ...”

The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter which has been brought to its attention within six months from the decision or incident which constitutes the subject-matter of the complaint.

The Court considers that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 6 as it finds that the complaint was lodged outside the prescribed six-month period. In particular, it notes that the final judgment concerning the criminal charges against the applicant was delivered by the Supreme Court of Russia on 6 March 2000 – the subsequent applications for supervisory review of the judgment not being an effective remedy for the purposes of Article 35 § 1 of the Convention – whereas the application was lodged on 11 March 2001 (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, and *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004).

It follows that this part of the application must be rejected as being introduced outside the six-month time-limit, in accordance with Article 35 §§ 1 and 4 of the Convention.

4. The applicant complained under Article 6 § 1 of the Convention about the outcome of the proceedings concerning his claim for damages against the Samara Prosecutor’s Office for non-pecuniary harm, and of the courts’ failure to examine his appeal.

The Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Contracting Parties to the Convention. In particular, it is not competent to deal with errors of fact or law allegedly committed by domestic courts except where it considers that such errors might have involved a possible violation of any rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In so far as the applicant may be understood to complain that he did not have a fair trial within the meaning of Article 6 § 1 of the Convention, the Court must first examine whether the applicant has complied with the rule of exhaustion of domestic remedies as required by Article 35 § 1 of the Convention.

The Court notes that on 14 November 2001 the Samara District Court dismissed his claim for damages. On 18 December 2001 the applicant appealed. However, the appeal was lodged outside the statutory period and for that reason was not examined by an appeal court, although it was later examined and dismissed under the supervisory-review procedure. The Court observes that the applicant did not furnish any documents to show that he had applied for restoration of the statutory period for lodging an appeal, as

provided for in Article 105 of the Code of Civil Procedure. Accordingly, the Court finds that the applicant failed to exhaust domestic remedies.

In so far as the complaint concerns the appeal court's failure to examine the applicant's appeal, it must also be rejected for non-exhaustion of domestic remedies for the reasons stated above.

Moreover, the Court finds no indication of any infringement of the applicant's other rights guaranteed by the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court

by a majority

*Declares* the applicant's complaint under Article 3 and 13 concerning the investigation into his allegations of ill-treatment inadmissible;

unanimously

*Declares* the remainder of the application inadmissible.

Santiago QUESADA  
Deputy Registrar

Christos ROZAKIS  
President