

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

THIRD SECTION

CASE OF DEVYATKIN v. RUSSIA

(Application no. 40384/06)

JUDGMENT

STRASBOURG

24 October 2017

FINAL

24/01/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Devyatkin v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 3 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 40384/06) 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 Nikolay Yevgenyevich Devyatkin ("the applicant"), on 29 August 2006.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had sustained injuries at the hands of the police, and that no effective investigation into his complaints had been carried out.

4. On 5 December 2012 the application was communicated to the Government.

THE FACTS

5. The applicant was born in 1986 and lives in Krasnodar.

A. Events of 4 November 2003

6. On 4 November 2003 the applicant, who was 16 years old at the time, and his brother were stopped by Krasnogvardeyskiy district police officers Ch. and Kh. at a petrol station in the village of Bolshesidorovskoye in the Adygeya Republic. The applicant submitted that the events had taken place

in the context of tense relations between his family and those police officers.

7. He described the events as follows. He and his brother were pushing their broken motorcycle to take it to a friend for repairs. They were verbally insulted by Ch. and Kh. Ch. then sat on the motorcycle and asked them to push it. Following their refusal, the brothers were subjected to physical violence. Kh. seized the applicant by his neck, knocked him down and started strangling him. He hit the applicant's head against the ground several times, dragged the applicant to a police car without releasing his grasp around his neck, hit his head against the car, punched him in the face and pushed him into the car. The applicant's and his brother's requests that their parents be informed or that they be taken home because the applicant felt unwell were disregarded by the police officers. The officers drove to the garage of a local collective farm and then to the Krasnogvardeyskiy district administration, where the applicant's father found the applicant and his brother and took them home.

8. According to an administrative-offence record drawn up by Officer Kh., at 2 p.m. on 4 November 2003 the applicant's brother was apprehended for driving a motorcycle without a driving licence. The applicant's brother noted his disagreement, stating in the record that he had not been driving the motorcycle but had been pushing it.

9. According to an administrative-offence record drawn up by Officer Ch., at 3 p.m. on 4 November 2003 the applicant used obscene language in a public place, namely the petrol station in Bolshesidorovskoye. Therefore, the applicant's father committed an administrative offence by failing to properly bring up the applicant. Relying on the police officer's record, the Committee on Minors at the Krasnogvardeyskiy district administration subsequently found the applicant's father guilty of that administrative offence. The Krasnogvardeyskiy District Court, however, granted the applicant's father's appeal against that decision, finding that the decision, the administrative-offence record and other material lacked any evidence of the applicant's father's failure to properly raise the applicant, and that, on the contrary, all his children had been well cared for, had studied hard at school, and the family was well thought of. The applicant was heard by the court and denied having used obscene language. The court quashed the decision and terminated the administrative proceedings against the applicant's father (judgment of 5 January 2004).

10. At 5.45 p.m. on 4 November 2003 the applicant was examined by a surgeon at the Krasnogvardeyskiy District Hospital, who recorded three abrasions on his neck which were 3 to 10 cm long, and a contusion to his right elbow.

11. On the same day the applicant's mother complained to the Krasnogvardeyskiy district prosecutor's office that the applicant had been subjected to ill-treatment by the police officers.

B. The applicant's injuries

12. On 5 November 2003 a forensic medical expert from the Adygeya Republic Forensic Medical Bureau examined the applicant at the request of an investigator of the prosecutor's office. The expert recorded abrasions on the applicant's neck which were 7 and 12 cm long, a bruise on his right elbow measuring 5 by 4 cm, and a bruise on his lip. The expert concluded that the injuries could have been inflicted on the previous day, by fingernails as regards the abrasions on the neck, and by a hard blunt object as regards the bruises.

13. On 6 November 2003 the applicant was examined by doctors at the Krasnogvardeyskiy District Polyclinic. He complained of a headache, dizziness, pain in his throat and pain when swallowing, pain in his neck area, lips, left eyebrow and right elbow. The doctors recorded oedema of both lips with bruises, oedema in the area of the left eyebrow and right elbow, and oedema, abrasions and bruises in the area of the neck. They diagnosed him with multiple contusions of the face, neck, larynx and laryngeal cartilages. Following an X-ray examination he was further diagnosed with a fracture of both branches of the hyoid bone.

14. In an additional opinion of 2 December 2003 the forensic medical expert stated that the fracture of the branches of the hyoid bone, the oedema and the abrasions on the neck could have been caused on 4 November 2003 by pressure from fingers, and had resulted in harm to the applicant's health lasting up to twenty-one days, that is, minor harm to his health.

C. Pre-investigation inquiry into the applicant's complaint

15. Investigators of the Krasnogvardeyskiy district prosecutor's office refused to institute criminal proceedings against the police officers for lack of the elements of a crime in their actions. The investigators' refusals (dated 13 November 2003, 21 November 2003, 28 December 2003, 7 February 2004, 27 April 2004, 6 June 2005, and 3 November 2005) were annulled by their superiors at the prosecutor's office, because the pre-investigation inquiry, on which the refusals were based, was considered incomplete.

16. In the refusal of 7 February 2004 O., an investigator, found that the applicant's injuries had been the result of the use of physical force by Officers Ch. and Kh. in order to apprehend the applicant, who had "disobeyed their commands and attempted to escape". The investigator held that no criminal proceedings should be brought against the police officers for lack of the elements of a crime in their actions under Article 115 of the Criminal Code (minor harm to health), intent – which was lacking in their actions – being one of those elements. Nor did the investigator consider that there was sufficient information indicating the elements of a crime in the

police officers' actions under Article 286 § 1 of the Criminal Code (abuse of authority).

17. In a decision of 27 February 2004, setting aside the refusal of 7 February 2004, a senior prosecutor from the Adygeya Republic prosecutor's office held that, in the course of an additional inquiry, the investigator should establish exactly what each of the police officers had done when restraining the applicant and placing him in their car, in particular if the injury had been inflicted by seizing the applicant by his neck. The prosecutor also held that it was necessary to give a legal assessment of the question whether there had been any need to apprehend the applicant, who was minor, on account of his swearing. The prosecutor noted that the relevant administrative proceedings had been brought against the applicant's father, and no statements concerning those events had been taken from the applicant.

18. In the most recent refusal of 29 November 2005 the defects identified by the prosecutor were not rectified. O., the investigator, maintained his findings made in the decision of 7 February 2004, stating that the applicant's allegations had not been confirmed by the results of the pre-investigation inquiry.

19. The investigator relied on the police officers' explanations that at 2 p.m. on 4 November 2003 the applicant's brother had disobeyed their command to stop a motorcycle without a registration plate which he had been driving. The applicant had been sitting on the passenger's seat. After the police officers had finally managed to stop the motorcycle at the petrol station, the applicant's brother had refused to produce his driving licence. The police officers had been drawing up an administrative-offence record when the applicant had started walking away, swearing at them. They had "restrained him in order to prevent his escape".

20. The investigator referred to explanations by Sh. that he had seen the police stopping the motorcycle at the petrol station, that he had been invited to act as an attesting witness and sign a record of the motorcycle's seizure which the police had drawn up on the spot, and that the applicant's brother had refused to sign the record and receive a copy of it.

21. The investigator's decision also referred to statements by other third parties, in particular B., who worked at the petrol station and stated that he had seen the applicant falling onto the tarmac himself, resisting the police officers taking him to their car and trying to escape. B. stated that the police officers had not beaten up or strangled the applicant, but had "restrained him". The applicant's mother's complaint that B. had given false statements was dismissed by an investigator of the Krasnogvardeyskiy district prosecutor's office on the grounds that false explanations given in the framework of a pre-investigation inquiry, as opposed to false statements given in the course of a criminal investigation, were not punishable as a criminal offence (decision of 10 January 2004).

D. Application to a court

22. On 23 September 2005 the applicant's mother lodged an application (*жалоба*) with the Krasnogvardeyskiy District Court ("the District Court"). She complained that on 27 April 2004 the Krasnogvardeyskiy district prosecutor's office had refused to institute criminal proceedings against Officers Ch. and Kh. Its decision had been unfounded and on 3 May 2005 it had been set aside by the Prosecutor General's Office. Since then she had not been informed of any new decision. She argued that the police officers' actions, as a result of which the applicant had sustained serious bodily injuries, had been unlawful, and that criminal proceedings should be instituted against them.

23. On 26 September 2005 the District Court decided that the application fell to be examined under the rules of civil procedure, and gave the applicant's mother a time-limit for complying with those rules, in particular in relation to paying a court fee. The applicant's mother requested that her application be examined under the rules of criminal procedure, notably Article 125 of the Code of Criminal Procedure ("the CCrP"). On 7 December 2005 the District Court discontinued the civil proceedings and decided to examine the application under Article 125 of the CCrP.

24. In its decision of 16 December 2005 the District Court examined the investigator's decision of 29 November 2005 and endorsed the investigator's conclusions that the police officers had acted lawfully. It also noted that the applicant, no longer a minor, should have applied to court himself. For those reasons, it rejected the application.

25. The applicant's mother appealed against the decision, seeking, *inter alia*, to declare the refusal to institute criminal proceedings of 29 November 2005 unlawful and unfounded. On 31 January 2006 the Adygeya Republic Supreme Court quashed the decision, noting that the District Court should not have examined the application, as the applicant's mother had lacked authority to act on the applicant's behalf, and should not have examined the lawfulness of the police officers' actions in its review under Article 125 of the CCrP (which concerned the lawfulness of investigators' decisions). Since the District Court had not examined whether the refusal to institute criminal proceedings of 29 November 2005 was lawful and well-founded, the Adygeya Republic Supreme Court could not deal with that issue on appeal.

26. On 8 February 2006 the District Court held that the application did not fall to be examined under Article 125 of the CCrP and discontinued the proceedings. On 21 March 2006 the Adygeya Republic Supreme Court upheld that decision upon an appeal by the applicant's mother, reiterating that she had lacked authority to act on the applicant's behalf and that the lawfulness of the police officers' actions could not be reviewed under Article 125 of the CCrP. It further stated that in her application she had not

formulated a complaint that the refusal to institute criminal proceedings was unlawful or unfounded.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that he had been subjected to physical violence at the hands of the police officers, and that his complaints regarding that incident had not been properly examined by the domestic authorities. He relied on various provisions of the Convention. The Court will examine the applicant's complaints under Article 3, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

28. The Government pleaded non-exhaustion of domestic remedies, arguing that the applicant had not appealed against the investigator's decision of 29 November 2005. They also submitted that the documents relating to the domestic inquiry into the applicant's allegations of police ill-treatment had been destroyed on 25 January 2010, 7 February 2011 and 30 June 2012, owing to the expiration of the time-limit for their storage. Therefore, it was impossible to refute or confirm the applicant's allegations. The available material was insufficient for legal assessment of the police officers' actions and the investigator's inquiry. In any event, there were no grounds to consider that the applicant's rights under Article 3 had been violated. Hence, his complaints should be dismissed as manifestly ill-founded.

29. The applicant maintained his complaints, relying on official documents relating to the inquiry into his alleged ill-treatment which had been served on him by the authorities.

A. Admissibility

30. As regards the Government's plea of non-exhaustion of domestic remedies, the Court notes that between November 2003 and November 2005 the investigator's decisions refusing to institute criminal proceedings into the applicant's alleged ill-treatment were annulled seven times. The investigator's most recent decision of 29 November 2005 maintained the same findings and had the same defects as the earlier decisions, for example those in the decision of 7 February 2004, which had been annulled by the senior prosecutor of the Adygeya Republic prosecutor's office on

27 February 2004. In these circumstances, the Court is not convinced that a proper appeal to a court by the applicant against the investigator's decision of 29 November 2005, which could only have had the same effect, that is the annulment of the decision, would have offered the applicant any redress. It therefore considers that an appeal in the particular circumstances of the present case would have been devoid of any purpose (see, *mutatis mutandis*, *Nechto v. Russia*, no. 24893/05, §§ 80-82, 24 January 2012, and *Mikhail Nikolayev v. Russia*, no. 40192/06, § 76, 6 December 2016). The Court finds that the applicant was not obliged to pursue that remedy, and that the Government's objection should therefore be dismissed.

31. The Court notes that the application 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

32. The Court observes that the alleged ill-treatment resulting in injury took place in the course of the applicant's apprehension by two police officers. The applicant, who was a minor at the time, sustained multiple injuries, including a fracture of the hyoid bone, abrasions on the neck and multiple contusions to the neck, face and elbow. According to the forensic medical expert, the fracture of the branches of the hyoid bone, the oedema and abrasions on the neck could have been caused by pressure from fingers, and the bruises could have been the result of impact from hard blunt objects. The Court considers that those injuries could arguably have resulted from the applicant's alleged ill-treatment by the police officers, in particular as a result of his being knocked down, strangled and punched in the face.

33. The investigator in the domestic inquiry concluded that the applicant's injuries had been the result of the use of physical force by the police officers in order to apprehend the applicant, who had "disobeyed their commands and attempted to escape". The investigator did not establish, despite having been instructed to do so by the supervising prosecutor, any specific acts of the police officers, generally referring to their "restraining" the applicant. Nor did he assess, despite the prosecutor's instructions, whether there had been any need to apprehend the applicant, and therefore to use force at all, let alone the force which had led to the serious injuries sustained by the applicant.

34. The Court next observes that the investigator's findings were based on the results of 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 Court reiterates its finding that merely carrying out 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 the whole range of investigative measures are implemented (ibid., §§ 129 and 132-36). The Court has no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment of which the authorities were promptly made aware. It finds that the investigating authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment by the police, as required by Article 3 of the Convention.

35. The Court further reiterates its established case-law that the use of force by the police in the course of arrest operations will only not be in breach of Article 3 of the Convention if indispensable and not excessive. The burden to prove this rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, §§ 72-78, ECHR 2000-XII, and, among recent authorities, *Boris Kostadinov v. Bulgaria*, no. 61701/11, §§ 52-54, 21 January 2016). As regards the legal classification of treatment proscribed by Article 3, the relevant principles were summarised in the case of *Gäfgen v. Germany* ([GC], no. 22978/05, §§ 89-90, ECHR 2010).

36. The Government have failed to discharge their burden of proof. The assessment of whether the force used by the police officers had been indispensable and not excessive was not part of the superficial domestic inquiry, which fell short of the requirements of Article 3 of the Convention. Accordingly, given the applicant's minor age and the particularly serious nature of his injuries, the force used by the police officer was clearly excessive, unjustified and aimed at intimidating the applicant.

37. Such use of force resulted in injuries which undoubtedly caused severe pain and mental suffering to the applicant, of a nature amounting to torture.

38. Accordingly, there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The Court has examined the remaining complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

40. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government submitted that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant, and that the sum claimed by him was in any event excessive.

44. The Court awards the applicant the amount claimed in respect of non-pecuniary damage.

B. Default interest

45. 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 injuries sustained at the hands of the police admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in that the applicant has been subjected to torture;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the applicant's allegation of torture by the police;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President