

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

THIRD SECTION

CASE OF KOVALEVY v. RUSSIA

(Application no. 4397/06)

JUDGMENT

STRASBOURG

7 November 2017

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



In the case of Kovalevy v. Russia,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 4397/06) 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 three Russian nationals, Mr Sergey Nikolayevich Kovalev, Ms Larisa Aleksandrovna Kovaleva and Mr Aleksandr Sergeyevich Kovalev ("the applicants"), on 10 January 2006.

2. The applicants were represented by Ms O. Sadchikova, a lawyer practising in Stavropol. 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 5 May 2010 the first applicant's complaints concerning the alleged ill-treatment by police officers was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1957, 1961 and 1980 respectively and live in Svetlograd, Stavropol Region. The first and second applicants are husband and wife. The third applicant is their son.

A. First applicant's altercation with the police on 8 August 2003

5. According to the first applicant, on 8 August 2003, at approximately 11.30 p.m., a police patrol car approached his car on a dark village road. A police officer, using a loudspeaker, ordered the first applicant to pull over. The first applicant replied that he would stop at the nearest road police post.

The officer repeated his order, noting that he needed to borrow gasoline for the police car. The first applicant kept driving. Near Svetlograd the police officers blocked the road. When the first applicant stopped the car, one of the five policemen pulled him out of the car and hit him in the face. The police officers threw him against the hood of his car, kicked him in the shins and hit him with a butt of a machine gun. The first applicant fell down and fainted. After he regained consciousness and stood up, the police officers claimed that he was drunk and told him to take a breath test which showed that the first applicant was sober. The police officers checked his documents, searched his car and left. The first applicant got into his car and drove away in the same direction. Having driven approximately 500 metres, he saw that the police car had stopped and that the police officers had gathered around it. The first applicant approached the officers. The officer in charge identified himself as Ye. and apologised for the excessive force his subordinates had used towards the first applicant.

6. The first applicant arrived home at approximately 2.30 a.m. on 9 August 2003. On the same day the first and third applicants filed a complaint about the incident with the local police station.

7. At 9 a.m. on the same date the first applicant visited the second applicant who underwent a medical treatment in hospital. According to the second applicant, her husband told her about the altercation with the police. He also had visible bruising on his face. At 10.30 a.m. the first applicant underwent a medical examination at the same hospital. Having been diagnosed with multiple injuries, he was admitted for in-patient treatment. An extract from a medical record drawn up in the hospital indicated that the first applicant had injuries on the right cheek, the left shin and the lower back and the swelling of soft tissues.

8. On 13 August 2003 the first applicant was admitted to the Stavropol Regional Hospital where he was diagnosed with "a multisystem trauma; closed craniocerebral injury; a light brain contusion; an injury of the soft tissues of the right temporal region; a closed uncomplicated stable vertebra medullispinal injury, a compression fracture of the Th. VII vertebra; an intramuscular haematoma of the right side of the lumbar region; a neurologic form of the lumbar plexitis." Ten days later he was released from hospital on conditions of bed rest and subsequent supervision by a neurologist and orthopaedist.

B. Investigation into the first applicant's ill-treatment complaints

1. Initial inquiry

9. On 11 August 2003 investigator G. questioned the police officers who denied the first applicant's allegations. They claimed that they had ordered the first applicant to pull over because they had suspected that he had been

driving under the influence of alcohol. The first applicant had refused to comply and had verbally insulted them demonstrating obscene hand gestures. After having searched the first applicant and his car, they had let him go.

10. On the same date the investigator ordered a forensic medical examination of the first applicant. Having examined the first applicant, the forensic expert documented multiple injuries on the right cheek and the lumbar region, multiple bruises all over the body and swelling of the soft tissues. The expert considered that those injuries could have resulted from the impact of solid blunt objects or from the fall.

11. On 20 August 2003 the investigator refused to institute criminal proceedings against the police officers. It appears that his decision was quashed on a later date.

12. On 9 September 2003 the first applicant underwent another forensic medical examination. The expert documented the first applicant's injuries considering that they might have resulted from the impact of solid blunt objects.

13. According to the first applicant, on 20 September 2003 an investigator of the district prosecutor's office refused to institute criminal proceedings against the police officers. On 3 October 2003 the district prosecutor dismissed the first applicant's complaint against the investigator's decision. Ten days later, the Petrovskiy District Court of the Stavropol Region quashed the prosecutor's decision and authorised a new round of inquiry.

14. On 28 October 2003 the police issued a report on the inquiry conducted in response to the first applicant's complaint. Having examined the forensic medical documents and the statements made by the police officers, the first applicant and the witnesses, the police investigator concluded that the first applicant might have sustained injuries as a result of the force used by the police officers in response to his unlawful actions.

15. On 21 December 2003 investigator G. ordered a new forensic medical examination of the first applicant in order to reconcile inconsistencies in the experts' findings.

16. It appears that the first applicant's complaint about the police brutality was dismissed by the authorities on another six occasions. Each time a superior prosecutor or a court quashed those decisions considering the investigator's findings incomplete and unsubstantiated and ordering further inquiry into the first applicant's allegations.

2. Criminal investigation

17. On 22 July 2005 the district prosecutor opened a criminal investigation into the first applicant's allegations of ill-treatment by unidentified police officers.

18. On 22 December 2005 the investigator V. stayed the criminal proceedings, holding that it was impossible to establish the alleged perpetrators who had assaulted the first applicant.

19. On 2 February 2006 the first deputy of the regional prosecutor quashed decision of 22 December 2005 noting that the investigation had not been completed and reopened the proceedings.

20. On 6 March 2006 the investigator concluded that there was no evidence showing that the first applicant's injuries had been caused by the police officers and that he was unable to establish the real perpetrator. The first applicant appealed.

21. On 3 April 2006 the district prosecutor partly accepted the first applicant's complaint and resumed the investigation. At the same time the prosecutor endorsed the investigator's reasoning that there was no evidence showing that the offence had been committed by the police officers. A week later the proceedings were again stayed because the perpetrator of the offence remained unknown.

22. On 6 June 2006 investigator D. again discontinued the criminal investigation. The investigator established that, when searching the first applicant and his car, one of the police officers had punched him on the right cheek and hit him in the back twice with a blunt solid object. The investigator also accepted that, as of the morning of 9 August 2003, the first applicant had bruises on the right cheek, the back and the left shin. He further noted that the forensic medical experts had not ruled out a possibility that the first applicant might have sustained those injuries as a result of the altercation with the police, as alleged by him. The investigator dismissed the first applicant's allegations referring to his prior criminal record. He also noted that a number of the first applicant's neighbours had not confirmed that the latter had had any injuries on him on 9 August 2003. As regards the statements made to the contrary by the other neighbours, the investigator found them to be unsubstantiated. Lastly, the investigator took into account that all the police officers denied the first applicant's accusations. However, it was impossible for the investigator to establish the alleged perpetrator for lack of relevant evidence.

23. It appears that the decision of 6 June 2006 was quashed and the case was re-opened.

24. On 17 July 2006 investigator D. discontinued the criminal investigation reproducing verbatim his earlier decision of 6 June 2006. He also considered that the first applicant had willfully made false accusations against the police officers and should be held liable for his actions. The investigator forwarded the relevant material to the prosecutor's office.

25. On 14 January 2011 the deputy head of the supervision unit of the Investigative committee considered the decision of 17 July 2006 unlawful and unsubstantiated, quashed it and remitted the matter for further investigation. He noted, *inter alia*, that the investigator had failed (1) to

establish what each of the police officers had done once they had pulled over the first applicant's car; (2) to check whether any of the police officers had had a machine gun as claimed by the first applicant; and (3) to establish the reasons why the witnesses who had initially claimed that they had seen the police officers beating the first applicant had revoked their statements.

26. On 1 March 2011 the senior investigator with the district investigative committee dismissed the first applicant's accusations against the police officers duplicating the findings summed up in the earlier decisions on the matter. Nevertheless, he allowed that the first applicant's injuries could have resulted from the beatings and that a criminal investigation should be opened on charges of battery. He transmitted the materials to the head of the district investigative committee. The parties did not inform about the outcome of the proceedings.

C. Criminal proceedings against the applicants

27. On 30 September 2004, at approximately 11.00 p.m., the applicants, suspecting that their neighbour had committed a number of thefts and intended to steal their property, beat him up, broke into his car, took the documents for the car and refused to return them until the arrival of a police patrol car.

28. On 15 June 2005 the Petrovskiy District Court found the applicants guilty of vigilantism and sentenced each of them to two and half years' imprisonment. The sentence was suspended on eighteen months' probation. On 4 August 2005 the Stavropol Regional Court upheld the applicants' conviction on appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The first applicant complained that he has been beaten up by police officers and that the ensuing investigation had not been effective. 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."

30. Referring to the findings of the domestic investigating authorities, the Government considered that the first applicant's allegations unsubstantiated.

31. The first applicant maintained his complaint.

A. Admissibility

32. 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

33. The principles concerning the prohibition of ill-treatment and the effectiveness of the ensuing investigation are well-developed in the Court's case-law and have been recently summarised in the case of *Bouid* (*see Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, with further references, ECHR 2015).

1. Alleged ill-treatment and establishment of the facts

34. Having examined the criminal case file submitted by the Government and the observations made by the parties, the Court has come to the following conclusions as regards the events of the night from 8 to 9 August 2003.

35. Firstly, the Court observes that the medical documents produced by the parties show that several hours after having been confronted by the police officers, the first applicant underwent a medical examination. The medical practitioners documented bruises and swelling on his face and body. The injuries were serious and required a ten days' in-patient treatment. While in hospital, the first applicant was diagnosed with, *inter alia*, a craniocerebral and vertebrae injuries (see paragraph 8 above). The Court attaches substantial evidential weight to these medical documents.

36. The Court further takes into account that the forensic medical experts did not find those injuries inconsistent with the first applicant's account of the events of the night from 8 to 9 August 2003. The initial police report also confirmed that the first applicant's allegations that his injuries might have resulted from the use of force against him by the policemen (see paragraph 14 above). The fact that one of the police officers punched the first applicant and hit him in the back was established in the course of the criminal investigation (see paragraph 22 above).

37. Lastly, the Court observes that throughout the domestic proceedings the police officers consistently denied having beaten up the first applicant. However, the first applicant claimed the opposite just as consistently. Moreover, given that there were major shortcomings in the investigation (see paragraphs 44-48 below), it is impossible to conclude that the officers' statements were accurate from the mere fact that the investigation failed to provide any evidence to the contrary (compare, *Bouyid*, cited above, § 96).

38. In the light of the foregoing the Court deems it sufficiently established that the injuries described in the medical documents produced by the parties occurred while the first applicant was confronted by the police officers, as claimed by him. It also notes that the Government failed to produce any evidence likely to cast doubt on the first applicant's submissions. Accordingly, the Court finds it established that the first applicant has made a *prima facie* case in support of his complaint of ill-treatment. The burden therefore rests on the Government to provide a plausible explanation of how the injuries were caused.

39. The Court notes that the Government did no more than suggest that the first applicant's allegations were not substantiated. In so far as the Government may be understood to rely on the domestic authorities' findings that the first applicant could have sustained the injuries in the course of the confrontation with the police officers who had had to use force against him to overcome his unruly behaviour, the Court cannot accept the official version of the events as credible. It discerns nothing in the material before it to substantiate the Government's assertion.

40. The first applicant was not a suspect in any crime or subject to an arrest in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation. Even assuming that the first applicant had refused to comply with the police officers' orders, there is no evidence presented in the domestic proceedings or before the Court that the first applicant had been particularly dangerous or had been in possession of a weapon. There were five police officers involved who clearly outnumbered the first applicant. No evidence of any injury to the police officers was adduced. In such circumstances, it is obvious that the treatment the police officers subjected the first applicant to were not conducive to the desired result, that is, facilitating his search and the search of his car. In the Court's view it was merely a form of reprisal or corporal punishment (compare *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 83, 15 May 2008). Accordingly, the Court concludes that the force used by the police against the first applicant was excessive and unjustified.

41. The Court therefore considers that the Government failed to rebut the presumption that they were responsible for the injuries inflicted on the first applicant while he was under the control of the police. They have not satisfactorily established that his injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he was subjected to by the police officers. It follows that responsibility for the ill-treatment lies with the domestic authorities.

42. Lastly, the Court considers that the number and location of the injuries the first applicant had sustained indicate that the beatings the

policemen had subjected him to were sufficiently serious, of a nature amounting to inhuman treatment prohibited by Article 3.

43. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. Effectiveness of investigation

44. The Court is satisfied that the first applicant has raised an arguable claim of ill-treatment by the police and that the authorities were under an obligation to conduct an effective investigation in response to his complaint. The Court notes that the authorities opened and conducted an investigation of the first applicant's allegations of ill-treatment. It is not convinced, however, that the inquiry has been sufficiently thorough and expeditious to meet the requirements of Article 3 of the Convention.

45. Admittedly, the issues to be addressed by the authorities were of a certain complexity and required time on the part of the authorities to look into the veracity of the first applicant's accusations. They questioned the alleged perpetrators and numerous witnesses, commissioned and studied the results of forensic medical examinations, and were under an obligation to reconcile the evidence collected. Nevertheless, having regard to the material in its possession, the Court cannot but note that the efforts of the investigating authorities were focused rather on the dismissal of the first applicant's complaint than on a thorough verification of the substance of his allegations. In the course of over three years, the first applicant's complaint was dismissed on eleven separate occasions. Each time, the investigator's superior or a court quashed the relevant decision noting that the inquiry or the investigation had not been complete and a further inquiry was necessary. The Court considers that such remittals of the case for re-examination disclose a serious deficiency in the criminal investigation which irreparably protracted the proceedings, denying the first applicant an opportunity to have his allegations of ill-treatment investigated effectively.

46. Furthermore, the Court is unable to conclude that the investigator took any steps to remedy the earlier defects in the investigation after his decision to discontinue the criminal investigation was quashed by his superior. The investigator did no more than issued a new discontinuation decision reiterating verbatim the earlier decisions. In particular, following the communication of the first applicant's complaint to the Government, the head of the investigative committee quashed the latest decision discontinuing the investigation and ordered further investigation pointing to the investigator in charge the actions to be taken. However, the investigator again confined his effort to reproducing the earlier decision to dismiss the first applicant's allegations.

47. This conclusion makes it unnecessary for the Court to examine in detail the many rounds of pre-investigation inquiries conducted in the first applicant's case with a view to identifying specific deficiencies and omissions on the part of the investigating authority.

48. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation of the first applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Lastly, the applicants complained under Article 6 of the Convention about the unfairness of the criminal proceedings instituted against them on the charges of vigilantism. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicants claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government submitted that the finding of a violation would constitute a sufficient just satisfaction.

53. The Court considers that the mental and physical suffering the first applicant sustained as a result of ill-treatment at the hands of the police cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, the Court awards the first applicant EUR 19,500 in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicants also claimed EUR 1,200 for the work carried out by his representatives in the proceedings before the Court, which they requested be paid into the bank account of Ms O. Sadchikova.

55. The Government considered that the applicants failed to substantiate their claims.

56. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,200 for costs and expenses for the proceedings before the Court to be paid directly to into the bank account of Ms O. Sadchikova.

C. Default interest

57. 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 alleged ill-treatment of the first applicant and the effectiveness of the ensuing investigation 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;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, to be paid directly into the bank account of Ms O. Sadchikova;
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President