

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

THIRD SECTION

CASE OF LAVRENTYEV v. RUSSIA

(Application no. 71333/10)

JUDGMENT

STRASBOURG

21 June 2022

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



In the case of Lavrentyev v. Russia,

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

Georgios A. Serghides, *President,*
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 71333/10) 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, as indicated in the Appendix;

the decision to give notice of the complaints under Articles 3 and 8 of the Convention to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT-MATTER OF THE CASE

1. In 2008 the applicant was arrested, in the course of an operation planned by special police forces on suspicion of having committed a robbery. Shortly after his arrest he complained that injuries recorded during his medical examination were caused as a result of the use of excessive force during his arrest. His complaints were repeatedly dismissed by the investigative authorities on the ground that the use of force by the police against the applicant was lawful and justified. The decisions referred to the circumstances of the arrest as described by the police officers, namely the resistance mounted by the applicant, as well as to his background of a former police officer with a firearms training and a criminal record. The applicant disagreed, arguing that he did not resist the arrest or the search. These decisions were quashed by higher investigating authorities as being incomplete. The applicant's appeals were rejected by courts on the grounds that the decisions complained of had been quashed and new inquiries were under way (see details in the Appendix). Relying on Article 3 of the Convention, the applicant complained about the use of excessive force against him and lack of an effective investigation thereof.

2. In 2010 the applicant was convicted of robbery and sentenced to nine years' imprisonment. The trial court relied, among other things, on audio recordings of his telephone conversations and on information obtained

through the monitoring of his communications data. The applicant made unsuccessful attempts to exclude this evidence. Relying on Article 8 of the Convention, he complained about an interference with his right to respect for his private life.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

3. The Government raised a non-exhaustion plea, arguing that the applicant failed to appeal to a court, under Article 125 of the Russian Code of Criminal Procedure, against refusals to open an investigation into his allegations of ill-treatment. The Court has already rejected similar arguments in cases where such appeal would be devoid of any purpose (see *Chumakov v. Russia*, no. 41794/04, §§ 90-91, 24 April 2012, with further references). It does not have any reason to reach a different conclusion here. These complaints are thus not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

4. The general principles concerning the obligation of the High Contracting Parties under Article 3 of the Convention not to submit persons under their jurisdiction to inhuman or degrading treatment or torture in the course of encounters with the police have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015), and *Boris Kostadinov v. Bulgaria* (no. 61701/11, § 53, 21 January 2016).

5. It results from the case file and submissions of the parties that the injuries sustained by the applicant (numerous bruises and abrasions on his right leg, his back and the back of his head, see Appendix) were well-documented and could arguably have resulted from the violence allegedly suffered by him at the hands of State officials. 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 his allegations of having been ill-treated by the law-enforcement authorities were credible.

6. Yet, these credible allegations were dismissed by the investigating authorities as unfounded, on the basis of the statements of the law-enforcement officers implicated in the incident. The decisions were each time quashed by a higher investigating authority as being incomplete. The Court finds it particularly striking that in the presence of two conflicting versions of the circumstances of the arrest, there was not even an attempt to order a forensic medical examination in order to test the consistency of these two versions with the applicant's injuries (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X, and *Maksimov v. Russia*, no. 43233/02, § 88, 18 March 2010). That is even more so considering that

the applicant's injuries were caused in the course of a planned police operation where the police officers largely outnumbered the applicant.

7. The Court reiterates its finding that 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 (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014).

8. In the absence of a real attempt to find out the facts, the Court considers that the Government failed to provide a detailed and convincing explanation on the necessity and the proportionality of the force used by the police as well as to discharge their burden of proof and produce evidence capable of casting doubts on the applicant's account of the events (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017).

9. Having regard to the level of violence involved and the type of injuries that the applicant had, the Court finds that the police subjected him to inhuman and degrading treatment and that the Government failed to provide an effective investigation of the latter. There has accordingly been a violation of Article 3 of the Convention in its substantive and procedural limbs.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

10. The applicant raised a complaint under Article 8 concerning the interception of his telephone communications (see paragraph 2 above). The alleged irregularities are covered by the well-established case-law of the Court. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it discloses a violation of Article 8 of the Convention in the light of its findings in *Bykov v. Russia* ([GC], no. 4378/02, §§ 72-80, 10 March 2009); *Akhlyustin v. Russia* (no. 21200/05, §§ 24-29 and §§ 36-46, 7 November 2017); and *Zubkov and Others v. Russia* (nos. 29431/05 and 2 others, §§ 120-33, 17 November 2017).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,335 in respect of costs and expenses incurred before the Court.

12. The Government challenged the amounts claimed.

13. Having regard to the documents in its possession, the Court awards EUR 26,000 in respect of non-pecuniary damage and EUR 3,335 for costs and expenses, plus any tax that may be chargeable to the applicant.

14. 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 application 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 has been a violation of Article 8 of the Convention as regards the complaint of interception of telephone communications;

4. *Holds*
   (a) that the respondent State is to pay the 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 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,335 (three thousand three hundred and thirty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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.

Done in English, and notified in writing on 21 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President

Appendix

Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality Representative's name Location	Circumstances of the arrest	Medical evidence	Investigation	Judicial review under Art. 125 of the Code of Criminal Procedure	Conviction
71333/10 Lavrentyev v. Russia 31/10/2010	**Ivan Nikolayevich LAVRENTYEV** **1978** **Sheksna** **Russian** Aleksandr Vladimirovich KUKHAREV Moscow	Arrested in the morning next to his home by special police forces (up to five police officers present accompanied by two investigators) on 13/10/2008	Medical examination report of 14/10/2008: numerous bruises and abrasions on his right leg, his back and the back of his head	Since 21/10/2008 numerous complaints Several refusals to open a criminal investigation (at least on 20/07/2009, 03/08/2009, 21/04/2010, 11/05/2010) Quashing of the refusals by higher prosecutors with an order to carry out a fresh investigation (at least on 23/07/2009, 09/04/2010)	Cherepovetskiy Town Court 24/07/2009 Sheksnenskiy District Court 13/04/2010	Vologda Town Court 09/03/2010 Vologda Regional Court 06/05/2010