

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

THIRD SECTION

CASE OF NIKONOROV v. RUSSIA

(Application no. 71889/11)

JUDGMENT

STRASBOURG

1 December 2022

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



In the case of Nikonorov v. Russia,

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

Darian Pavli, President,
Ioannis Ktistakis,
Andreas Zünd*, judges*,

and Viktoriya Maradudina, Acting Deputy Section Registrar,

Having deliberated in private on 10 November 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 October 2011.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained of inhuman and degrading treatment, the authorities' failure to investigate it properly and the lack of effective domestic remedies against the violation alleged.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

5. The Government submitted a unilateral declaration, whereby they acknowledged a violation of Article 3 of the Convention in respect of the applicant and requested to strike the application out.

6. The applicant rejected the Government's proposal.

7. Considering the circumstances of the case at hand, the Court rejects the Government's request to strike the application out and will accordingly pursue its examination (see *Tahsin Acar v. Turkey* (preliminary issue)[GC], no. 26307/95, § 75, ECHR 2003-VI).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

8. The applicant complained of inhuman and degrading treatment by the police and the lack of investigation thereof. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

9. The Court has found in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015), that presumptions of fact was in favour of applicants claiming to be victims of a violation of Article 3 of the Convention, if they demonstrate that the alleged ill-treatment was inflicted when they were under the control of the police or a similar authority. Moreover, in the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being and that any recourse to physical force which has not been made strictly necessary by the applicant's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006). The burden of proof rests on the Government to demonstrate that the use of force, which resulted in the applicant's injuries, was not excessive (see, for example, *Dzwonkowski v. Poland*, no. 46702/99, § 51, 12 April 2007, and compare to *Kursish and Others v. Russia* [Committee], no. 62003/08 and 5 others, § 84, 5 July 2022).

10. Furthermore, in the cases of *Lyapin v. Russia*, no. 46956/09, §§ 128-40, 24 July 2014 and *Samesov v. Russia*, no. 57269/14, §§ 54-63, 20 November 2018 the Court has already found, in particular, that the authorities' refusal to institute a fully-fledged criminal investigation into the credible allegations of ill-treatment, as well as the lack of assessment of the necessity and proportionality of the use of lawful force by the police were indicative of the State's failure to comply with its procedural obligation under Article 3 of the Convention.

11. Taking into account the case-law referred to above and having examined all the material submitted to it, the Court considers that the complaints are admissible and observes that there has been a breach of the substantive and procedural limbs of Article 3 of the Convention.

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

12. The applicant also complained under Article 13 of the Convention. However, in the light of the findings under Article 3 of the Convention, the

Court considers that it is not necessary to examine it separately (see, for a similar situation, *Melnik and Others v. Russia* [CTE], nos. 66619/10 et al., § 49, 31 May 2022).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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."

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Zagaynov and Others v. Russia* [Committee], nos. 5666/07 and 4 others, 15 June 2021), the Court considers it reasonable to award the sum indicated in the appended table.

15. The Court further 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. *Rejects* the Government's request to strike the application out of its list of cases under Article 37 § 1 of the Convention on the basis of the unilateral declaration which they submitted;

2. *Declares* the complaints under Article 3 of the Convention admissible and *holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

3. *Holds* that this application discloses a breach of the substantive and procedural limbs of Article 3 of the Convention related to the applicant's complaints of ill-treatment and ineffective investigation into those allegations;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, 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 1 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 of the Convention (torture or inhuman or degrading treatment)

Application no. Date of introduction	Applicant's name Year of birth	Factual information relating to arrest	Medical evidence of ill-treatment	Date of first complaint Decision issued in response to complaint of ill-treatment	Decision under Article 125 of the CCrP Appeal decision	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
71889/11 01/10/2011	**Dmitriy Aleksandrovich NIKONOROV** 1974	03/06/2008 at 7.30 am in the train No. 409 Kislovodsk-St Petersburg, station 'Rossosh' / unknown police officers; Ill-treated on the same day by the police officers of the Kominternovskiy district police department in Voronezh	Report on the injuries (*акт о наличии телесных повреждений у подозреваемого, обвиняемого*) of 04/06/2008 from the IVS officer on duty, Mr Sh.: bruises on the right hand, on the right side of the torso, on the right leg. Letter of 17/03/2011 from the Medical Emergency Station in Voronezh (N.B. - the ambulance was called on 03/06/2008, its records were destroyed due to the expiration of storage time limits): injury to the chest Letter of 02/08/2011 from the medical unit of the IZ-3 in Voronezh Region (extracts from the applicant's medical record drafted upon his arrival to the remand prison on 10/06/2008): an injury to the right underarm, 2 x1.5 cm, surrounded by a bruise of 8cm in radius. A bruise on the right side of the torso, 5x3 cm. A bruise under the right knee, 5x5 cm. A bruise on the right thigh, 10x5 cm	First complaint to the Kominternovskiy district prosecutor's office in Voronezh 16/06/2008 / Ten refusals to initiate criminal proceedings (first refusal - 14/08/2008, last - 19/10/2010)	Kominternovskiy District Court in Voronezh, 14/02/2011 / Voronezh Regional Court, 05/04/2011	26,000

[1] Plus any tax that may be chargeable to the applicant.