

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

THIRD SECTION

CASE OF PORTNYAGIN v. RUSSIA

(Application no. 44071/06)

JUDGMENT

STRASBOURG

19 October 2021

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



In the case of Portnyagin v. Russia,

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

Peeter Roosma, *President,*
Dmitry Dedov,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 44071/06) 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 Andrey Petrovich Portnyagin ("the applicant"), on 13 September 2006;

the decision to give notice to the Russian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 28 September 2021,

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

INTRODUCTION

1. The application concerns the lack of an effective criminal investigation into the assault on the applicant by three individuals wearing police uniform.

THE FACTS

2. The applicant was born in 1979 and lives in Chita.

3. The Government were represented initially by Mr G. Matyushkin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. EVENTS OF 1 NOVEMBER 2002

5. At about 9 p.m. on 1 November 2002 the applicant was beaten up in his flat in Chita by three unknown persons. According to the applicant, they wore police uniforms. He was then taken in the trunk of a car to a nearby lake, where the beatings continued. Some time later, he was thrown out of the car in a street. He was hospitalised in the same evening and diagnosed with multiple serious bruises all over his body and a serious spine injury which resulted in a disability.

II. CRIMINAL PROCEEDINGS CONCERNING THE ASSAULT ON THE APPLICANT

6. On the next day he was questioned by the police and stated that his assailants had been in police uniforms with a stripe on a sleeve bearing an inscription in yellow.

7. On 12 November 2002 an investigator of the Kadalinskoe police station at the Chernovskiy district police department of Chita brought criminal proceedings in connection with these events. On 25 November 2002 the applicant received victim status in the proceedings.

8. Between November 2002 and 2012 the investigation authorities over thirty times terminated and re-opened the investigation in this case.

9. It does not appear that any meaningful attempts were made to try to locate the perpetrators right after the events. Some time in 2003 during an identification parade the applicant recognised two of the assailants who turned out to be officers serving at the same police station that was in charge of the investigation and their car which belonged that station. It appears that the attack was unrelated to the assailants' work in the police and may have had a personal character. As a result of the delays of the investigation and visible lack of initiative the authorities were unable to collect any meaningful evidence to bring criminal charges against anyone.

10. The decisions to suspend the proceedings were annulled on multiple occasions by the investigators' superiors as unlawful in view of incomplete investigation and the investigators' failure to correct the deficiencies previously identified. The Chernovskiy District Prosecutor and the investigators from that office were subject to internal inquiry and disciplinary proceedings.

11. The applicant's appeals under Article 125 of the Code of Criminal Procedure against the suspension of the criminal proceedings were not subject to judicial examination, as the challenged decisions had, by the time of the court hearings, been annulled by the investigators' superiors (the Chita Regional Court's decisions of 26 February and 15 October 2007).

12. The applicant was denied access to the materials of the investigation, other than the decisions to suspend and reopen the proceedings.

13. The outcome of the case is unclear.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The applicant complained that on 1 November 2002 he had been ill-treated by three police officers and that the ensuing investigation into the events had been defective, in breach of Article 3 of the Convention. That Convention provision reads as follows:

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

15. The applicant maintained his complaints.

16. The Government agreed that the investigation of the events of 1 November 2002 had been in breach of the procedural aspect of Article 3 of the Convention, but denied that the three officers allegedly involved in the assault had been acting in their official capacity or otherwise on behalf of the authorities. They considered that, contrary to the applicant's position, there was no proof "beyond reasonable doubt" confirming the applicant's allegations of direct State involvement in the attack.

A. Admissibility

17. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Procedural aspect of Article 3 of the Convention

18. The Court observes that in the present case the Government acknowledged the breach of the procedural aspect of Article 3 of the Convention and, having observed the case file materials and the parties' submissions, it finds no reason to hold otherwise. There were serious shortcomings affecting the effectiveness, promptness and impartiality of the investigation, which despite the ten-year duration of the proceedings were never properly addressed and corrected at the domestic level.

19. There has therefore been a violation of Article 3 of the Convention under its procedural limb.

2. Substantive aspect of Article 3 of the Convention

20. Turning to the applicant's allegations under the substantive aspect of Article 3 of the Convention, the Court reiterates that in assessing the evidence on which to base a decision as to whether there has been a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt". It is true that in certain cases such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

21. In the present case, however, it is not in dispute between the parties that the case file contains no evidence which could confirm that the persons allegedly involved in the assault on the applicant of 1 November 2002 were

acting in their official capacity or within the framework of any official proceedings.

22. Having regard to the parties' submissions and all the materials in its possession, the Court considers that the evidence before it does not enable it to find beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 of the Convention by the police officers, as alleged. In this respect it particularly emphasizes that its inability to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention derives in a considerable part from the failure of the domestic authorities to react effectively to the applicant's complaints at the relevant time (see *Lopata v. Russia*, no. 72250/01, §§ 123-26, 13 July 2010).

23. Consequently, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the applicant's ill-treatment.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. Lastly, the Court has examined the complaints about various events and proceedings in which the applicant was involved between 2006 and 2011 submitted by the applicant and, having regard to all the material in its possession and in so far as it falls within the its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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."

26. The applicant claimed 5,000,000 euros (EUR) in respect of the pecuniary and non-pecuniary damage and made no claims in respect of costs and expenses.

27. The Government considered that the award should be based on the Court's case-law.

28. The Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that sum.

29. 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 about the alleged assault on the applicant by the police officers and the lack of an effective investigation in this connection admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

3. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 12,500 (twelve thousand five hundred euros), 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Olga Chernishova
Deputy Registrar

Peeter Roosma
President