

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

FIRST SECTION

DECISION

Application no. 30466/08
Eduard MIRONOV and Others
against Russia

The European Court of Human Rights (First Section), sitting on 3 November 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 June 2008,

Having regard to the decision of 4 May 2011 to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicants are:

1) Mr Eduard Mironov, born in 1974;
2) Ms Zamira Yerizhokova, born in 1980, and
3) Ms Maryam Akhmetova, born in 1953.

The applicants are Russian nationals who live in the town of Nalchik, in the Kabardino-Balkariya Republic ("the KBR"). They are represented before the Court by lawyers from the Stichting Russian Justice Initiative

("SRJI"), an NGO based in the Netherlands with a representative office in Russia.

The second applicant is first applicant's wife and the third applicant is his mother.

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

A. The background to the case

1. The Nalchik raid

On 13 October 2005 a group of gunmen launched attacks on several government institutions in Nalchik, including the Federal Security Service ("the FSB"), the "OMON" special police squad, three police stations and also the Nalchik airport. The Russian authorities deployed regular troops and special forces to regain control of the city.

In the ensuing hostilities between government forces and the gunmen, which lasted until the next day, more than 100 people, including about 14 civilians, 90 gunmen and dozens of law enforcement officers, were reported to have been killed and over 200 wounded.

2. Opening of the criminal investigation into the Nalchik raid

On an unspecified date in October 2005 the Russian authorities opened a criminal investigation into the events of 13 October 2005. The investigation was entrusted to a special investigating group of the Prosecutor General's Office of the Russian Federation.

By 9 December 2005 the law-enforcement authorities had arrested some fifty-nine people on suspicion of participation in the events of 13 October 2005.

B. The first and second applicants' alleged ill-treatment and the related investigations

On 12 November 2005 the first and second applicants, their two children, and the second applicant's mother and A.B. were at the second applicant's mother's home at 21-2 Festivalnaya Street in Nalchik.

1. The alleged ill-treatment of the second applicant and her complaints to the domestic authorities

At about 4 p.m. on 12 November 2005 the first applicant was woken up by noises outside the house. Through the window he saw that the house was surrounded by police officers and armed men in camouflage uniforms. Several police vehicles were parked in the street. At some point, without

warning, the law enforcement officers started firing at the house with their submachine and machine guns and throwing grenades inside.

After a while, following police orders, the second applicant went outside the house. Police officers immediately approached her and attempted to undress her. When she resisted, officer K. pressed his pistol against the second applicant's head and grabbed her neck with his other hand, nearly choking her. Shortly thereafter he pushed her out of the yard and into the street. When she attempted to leave, he stopped her, hit her and started to strangle her again. After a while K. left the second applicant alone and she went to a neighbour's house. About five minutes later, K. arrived, dragged her down from the first floor to the ground floor and manhandled her back to Festivalnaya Street. There he grabbed her by her head, hit her head against a window, breaking the glass, and dragged her in the direction from which gunfire could be heard. He then used her as a human shield and made her shout to the first applicant to come outside.

On 15 November 2005 a forensic expert from the Forensic Medical Examination Bureau of the KBR ("the forensic bureau") examined the second applicant. According to forensic report no. 487 of 15 November 2005, the second applicant told the expert that at about 4 p.m. on 12 November 2005 she had been ill-treated by a police officer, who had strangled her and banged her head against a window. The expert noted that the second applicant had a bruise measuring 3×2 cm on the right side of the neck, a 3×3 cm bruise in the left supraclavicular region, a 1×1 cm bruise on the right breast and a 5×6 cm bruise on the inside of the right shoulder. The expert concluded that the bodily injuries had been caused by a "solid blunt object with a limited impact surface", that the second applicant must have sustained them one to three days prior to the examination and that they were not likely to cause health impairment or permanent disablement.

In the second applicant's submission, following her husband's arrest, she complained to the prosecutor's office about her alleged ill-treatment but they never replied to her. The second applicant did not keep a copy of that complaint.

On 19 February 2008 the second applicant lodged a new complaint with the prosecutors of Nalchik and the KBR and the Prosecutor General of the Russian Federation about her alleged ill-treatment on 12 November 2005. She gave a detailed description of the alleged ill-treatment and submitted that she had already complained to the Nalchik town prosecutor's office ("the town prosecutor's office") on several occasions but that that authority had ignored her complaints and failed to reply to them. The second applicant enclosed a copy of forensic report no. 487.

The outcome of the proceedings on the second applicant's complaint is unclear.

2. The alleged ill-treatment of the first applicant and the investigation

(a) The alleged ill-treatment

(i) The first applicant's description

At about 4 p.m. on 12 November 2005, when the police officers stopped shooting at house no. 21-2 Festivalnaya Street, officer K. ordered the first applicant to come out. In reply, the first applicant asked K. to give him some time to persuade his friend A.B. to surrender. Officer K. replied that if he did not come out, federal security forces would arrive and raze everything to the ground. After that the first applicant took A.B.'s pistol, threw it out of the window and came to the door. There a masked police officer ordered the first applicant to undress. The first applicant complied with the order and the police officer took him out into the yard, where several police officers gave him a severe beating. They then handcuffed him and put him inside a vehicle to take him to Police Department no. 6 for the Fight against Organised Crime ("*Управление по борьбе с организованной преступностью номер 6*", hereinafter "the UBOP"). On the way there police officers hit the first applicant on the head and back.

On arrival at the UBOP the first applicant was taken to an office where police officers S., A., T.K., a uniformed special squad officer and an FSB officer were waiting. They seated the first applicant on a chair and started asking him about the events of 13 October 2005. He denied having had any part in the raid, following which the people present in the room proceeded to beat him up. T.K. hit the first applicant with a truncheon on the head and back and choked him with a rope. The FSB officer made the first applicant stand up and hit him on the legs, making him fall to the ground, then he ordered him to stand up again and continued to hit him on the legs. The beating continued for about two hours, after which the first applicant was taken to another office, where there was an investigator from the town prosecutor's office and several plain-clothes police officers. The first applicant was told that if he continued refusing to confess, he would be beaten up again. During the ensuing interrogation the first applicant was hit in the face and fell to the ground several times. He eventually confessed and signed the interrogation record without reading it. The interrogation finished at about midnight, after which the first applicant was taken to another office, where he stayed until the next morning and where the police guards would not let him close his eyes or lower his head.

On the morning of 13 November 2005 the first applicant was taken to another office, where he was alternately questioned and beaten again, various police officers coming to the office to hit him on different parts of his body. One of them, whom the first applicant identified as UBOP officer B.Ch., repeatedly hit him on the bruises he already had on his face.

That evening the first applicant was taken to a temporary detention centre of the local police department, where he was beaten up again.

On 14 November 2005 the first applicant was transferred to Nalchik SIZO no. 1 ("the remand prison"). Upon his arrival there he was undressed, beaten up and ordered to squat down. When he grew too tired to stay in the crouching position he was beaten up again. After a while he was brought before remand prison officer V., who took down his personal information and hit him each time he was dissatisfied with his answers. After that the first applicant was taken to his cell. On his way there his head and body were banged against the walls.

In the first applicant's submission, during the ensuing months police and remand prison officers constantly tormented and hit him, along with other detainees suspected of having taken part in the events of 13 October 2005.

The description of the events above is based on the information contained in the application form and the first applicant's written statement of 13 October 2007.

(ii) Relevant medical documents

According to a record in the first applicant's medical file dated 14 November 2005, on his arrival at the remand prison he had bruises on his back and right shoulder. The document, in so far as relevant, reads as follows:

"...

14.11.05. No complaints upon arrival. The examination established bruises to the back and the right shoulder, with [a bruise] measuring 3×6 cm in the region of the right shoulder.

..."

(b) The investigation into the alleged ill-treatment

On 12 November 2005 investigator K. from the town prosecutor's office ordered the first applicant's forensic medical examination. It is unclear if the examination was carried out and, if so, what its findings were.

On 2 November 2007 the third applicant complained to the KBR prosecutor that her son had been severely ill-treated after his arrest and requested that he be granted protection. She enclosed his statement of 23 October 2007 describing the beatings (see above).

Between 2 and 7 November 2007 the third applicant lodged further similar complaints about the first applicant's ill-treatment with a number of State authorities.

By a letter of 8 November 2007 the Ombudsman of the KBR informed the third applicant that he had forwarded her complaint about the first applicant's ill-treatment, as well as the related documents enclosed by her, to the KBR prosecutor's office for examination.

On 9 and 21 November 2007 the KBR prosecutor's office informed the third applicant that they had forwarded her complaints about her son's ill-treatment to the town prosecutor's office and that she would be informed of any decision taken.

On 26 December 2007 the first applicant complained about his alleged ill-treatment to the town prosecutor's office. In his complaint he gave a detailed description of the alleged ill-treatment, stating, among other things, that during his forensic medical examination he had been too afraid to tell the truth about the origin of his injuries.

By a letter of 29 December 2007 the KBR prosecutor's office informed the third applicant that they had forwarded her complaint about her son's ill-treatment to the town prosecutor's office for examination.

On 3 January 2008 the town prosecutor's office issued a decision refusing to institute criminal proceedings in respect of the alleged ill-treatment of the first applicant and 4 other persons suspected of participation in the Nalchik raid, considering that they had complained about the alleged ill-treatment solely to avoid criminal responsibility.

It appears that on an unspecified date the decision of 3 January 2008 was set aside by a higher-ranking prosecutor.

By a decision of 31 January 2008 the town prosecutor's office refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment for the same reasons as in its decision of 3 January 2008. There is no indication that the applicants were notified of that decision or provided with a copy of it.

On 30 April 2008 the applicants complained about the decision of 3 January 2008 to the Nalchik Town Court ("the town court"). They submitted, in particular, that the investigators had disregarded medical evidence showing that the first applicant had a number of bodily injuries. They also stressed that several neighbours had witnessed police officers beat the first applicant up in the yard on 12 November 2005, after he had surrendered.

By a decision of 5 May 2008 the town court fixed 8 May 2008 as the date of the hearing on the applicants' complaint about the decision of 3 January 2008. It is unclear whether the hearing took place and what the outcome was.

On 9 May 2008 the town prosecutor's office refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment, finding that he had lodged his complaint to avoid criminal responsibility.

The outcome of the investigation into the first applicant's alleged ill-treatment remains unclear.

C. The first applicant's contacts with his representatives M.B. and M.A.

1. As regards M.B.

On an unspecified date the first applicant entrusted his representation in the domestic proceedings concerning his alleged ill-treatment to M.B., a lawyer in the KBR bar association. It appears that, among other things, M.B.'s tasks included advising the first applicant on the preparation of any eventual application to the European Court of Human Rights in connection with those events.

On 20 February 2008 M.B. went to visit the first applicant in the remand prison. Although he produced a mandate issued by the bar association to represent the first applicant's interests (*ордер юридической консультации*, "the mandate"), remand prison officials refused the visit on the ground that M.B.'s name was not on the list of representatives authorised by the Supreme Court of the KBR ("the Supreme Court") to visit their clients in the remand prison.

On 21 February 2008 M.B. complained to the Supreme Court about the remand prison authorities' refusal to authorise him to visit his client. He stressed that he needed to meet the first applicant in connection with the latter's ill-treatment complaint and the related proceedings, including complaints to courts.

By a letter of 27 February 2008 judge M.T. of the Supreme Court informed M.B. that he was not the first applicant's representative in the criminal proceedings and that the first applicant already had an appointed representative for that purpose. The judge further noted that M.B. had failed to prove that he was representing the first applicant in connection with the ill-treatment proceedings because his mandate did not contain any information to that effect. Lastly, he stated that, should M.B. provide properly completed documents, he would be granted access to the first applicant.

On 12 March 2008 police officer L.E. summoned M.B. for an interview.

In the applicants' submission, on 18 March 2008 L.E. interviewed M.B. "on his work in Nalchik". The applicants provided no further details concerning that interview.

2. As regards M.A.

On an unspecified date the third applicant signed an agreement with M.A., a lawyer in the bar association of the Chechen Republic, by which the latter undertook to provide the first applicant with legal advice on the proceedings concerning his alleged ill-treatment and in particular, any complaints he might wish to lodge with courts about the prosecutors' refusals to institute criminal proceedings. It seems that under the terms of

the agreement M.A. was also to advise the first applicant on the preparation of an application to the European Court of Human Rights.

On 21 March 2008 the deputy prosecutor of the KBR issued a formal request to the President of the Bar Association of the Chechen Republic to rectify breaches of a federal law ("*представление о нарушении федерального закона*"). The document stated, in particular, that although M.A. was not the first applicant's representative in the criminal proceedings against him, he had visited the first applicant in the remand prison. It further noted that the Federal Detention Act did not regulate the procedure for visits to detained suspects or accused persons by lawyers providing them with legal assistance outside the framework of the criminal proceedings against them. At the same time, under Article 18 § 3 of the Act, parents and other persons were allowed to visit a suspect or an accused only on the basis of a written decision issued by the State body examining the criminal case against him. The letter stressed that M.A.'s visits to the first applicant had been possible owing to his "dishonest attitude to his professional duties", and that his conduct was "undermining the authority of the lawyer's profession". The president was requested to rectify the aforesaid shortcomings, to consider the possibility of calling M.A. to order and to inform the Prosecutor's Office of the KBR, within a month, of the measures taken.

On 21 and 24 March 2008 the third applicant wrote to the Prosecutor of the KBR and the Supreme Court explaining that she had concluded an agreement with M.A. to provide the first applicant with legal assistance in respect of his ill-treatment complaints. She stressed that in the criminal proceedings her son had a State-appointed representative who was not interested in assisting him in respect of the ill-treatment proceedings because he was not paid for that work. Moreover, unlike M.A. the State-appointed lawyer was not a specialist in helping applicants to prepare applications to the Strasbourg Court. She requested that the remand prison authorities be instructed not to prevent M.A. from visiting her son.

On 27 March 2008 judge T. of the Supreme Court replied to the third applicant that, should M.A. present properly completed documents certifying his authority to provide the first applicant with legal assistance outside the criminal proceedings against him, he would be allowed to visit his client.

By a letter of 8 April 2008 the KBR Prosecutor's Office replied to the third applicant that under Article 18 § 3 of the Detention Act, a lawyer who was representing the first applicant outside the criminal proceedings could be authorised to visit him only on the basis of a properly completed mandate or authority form and written permission from a judge examining his criminal case.

D. The events of March 2011

On 3 March 2011 Mr P. became the new head of SIZO no.1 remand prison. In the applicants' submission, after his arrival the authorities started a massive crackdown on the inmates and, in particular, detainees standing trial on charges of participation in the Nalchik raid. Since 3 March 2011 an OMON unit has been permanently stationed at the remand prison and its officers have constantly beaten up detainees and insulted their religious beliefs.

In the applicants' submission, the inmates were also repeatedly beaten up by convoy officers during their transfer to the Supreme Court for hearings in their criminal cases. The detainees' complaints to the trial judge about the alleged ill-treatment were disregarded and their complaints to other authorities were stopped by remand prison officials.

According to the applicants the first applicant was subjected to ill-treatment, like the other detainees.

E. Information concerning criminal proceedings against the first applicant

Criminal proceedings against the first applicant have been pending since October 2005.

It appears that on an unspecified date in 2007 the criminal case against the first applicant and his fifty-eight co-accused was transferred for examination at first instance to the Supreme Court. It seems that proceedings at first instance are still pending.

COMPLAINTS

The applicants complained under Article 3 of the Convention that the first and second applicants had been subjected to ill-treatment and that the authorities had failed to investigate their related complaints.

The applicants further complained, under Article 6 of the Convention, about the use in the criminal proceedings against the first applicant of his confession allegedly obtained under torture.

Relying on Article 13 of the Convention, the applicants submitted that the first and second applicants had not had effective remedies in respect of their complaints under Article 3.

Lastly, the applicants complained that the authorities' refusal to authorise the first applicant's lawyers M.A. and M.B. to visit him in the remand centre, the questioning of the first applicant's lawyer M.B. and the issuing

of a warning in respect of M.A. were in breach of Article 34 of the Convention.

THE LAW

A. As regards the third applicant

The Court notes at the outset that the third applicant complains about a number of alleged violations of the Convention in respect of the first and second applicants. However, it does not consider that, in respect of any of the complaints enumerated above, the third applicant may claim to be a victim of the alleged violations (see, for example, *O'Brien v. the United Kingdom* (dec.), no. 61391/00, 8 October 2002).

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. As regards the second applicant

1. Complaints about the alleged ill-treatment and the investigation

The second applicant complained, with reference to Article 3 of the Convention, that she had been ill-treated during her husband's arrest and that the authorities had failed to properly investigate the alleged ill-treatment. Article 3 reads as follows:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. Complaints about lack of effective remedies

The second applicant complained that she did not have effective remedies with regard to her aforementioned complaints under Article 3, in breach of Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in

accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The remainder of the second applicant's submissions

In so far as the second applicant may be understood to complain about the alleged breaches of her husband's rights, the Court considers that she cannot claim to be a victim of the alleged violations. Accordingly, this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. As regards the first applicant

1. Complaints about the alleged ill-treatment, the related investigation and the authorities' alleged interference with the first applicant's lawyers in the ill-treatment proceedings

The first applicant complained under Article 3 of the Convention, the text of which has been cited above, that he had been repeatedly ill-treated after his arrest and that the authorities had failed to properly investigate his alleged ill-treatment He also complained that the authorities' alleged pressure on his lawyers was in breach of Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. Complaint about the use at trial of the first applicant's confession allegedly obtained under torture

The first applicant further complained under Article 6 of the Convention about the use in the criminal proceedings against him of his confession allegedly obtained under torture. The Court considers that this complaint should be examined under Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, reads:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ...

> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

The Court notes that the criminal proceedings against the first applicant are currently pending before the domestic courts. This complaint under Article 6 is, therefore, premature. Accordingly, this part of the application must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies (see, for example, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008).

3. Complaint about the lack of effective remedies

The first applicant complained that he did not have effective remedies with regard to his aforementioned complaints under Article 3, in breach of Article 13 of the Convention, the text of which has been cited above.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the first and second applicants' complaints under Articles 3, 13 and 34 concerning their alleged ill-treatment, the related investigations, the lack of effective remedies and the State's non-compliance with their obligation not to hinder the exercise by the first applicant of his right of individual petition;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President