



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

THIRD SECTION

CASE OF KURSISH AND OTHERS v. RUSSIA

*(Applications nos. 62003/08 and 5 others –
see appended list)*

JUDGMENT

STRASBOURG

5 July 2022

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

In the case of Kursish and Others v. Russia,

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

Darian Pavli, *President*,

Andreas Zünd,

Mikhail Lobov, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 62003/08 and 5 others) 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 six Russian nationals (“the applicants”) indicated in Appendix I;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning Articles 3 and 13 of the Convention and to declare inadmissible the remainder of the applications;

the decision not to disclose the applicant’s identity in application no. 35015/18 (Rule 47 § 4 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 14 June 2022,

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

THE FACTS

1. The applicants are Russian nationals who live in various regions in Russia. The applicants’ details and information about their representatives are set out in Appendix I.

2. The Government were initially represented by Mr G. Matyushkin and Mr M. Galperin, former Representatives of the Russian Federation to the European Court of Human Rights, and later by their successor in this office, Mr M. Vinogradov.

3. The applicants alleged that between 2007 and 2016 they had been ill-treated by State officials and that there had been no effective investigation into the matter.

4. The relevant facts in respect of each application are set out below.

I. KURSISH v. RUSSIA, No. 62003/08

A. The events of 25 and 26 July 2007

5. At about 11.30 p.m. on 25 July 2007 traffic police officers arrested the applicant in Lermontov, the Stavropol Region, on suspicion of drunk driving. Two police officers twisted his arms behind his back, threw him on his car, used a chokehold on him, and beat him on his back.

6. Later the applicant was taken to a police station. At about 4 a.m. on 26 July 2007 he was released.

7. At 4.35 a.m. on 26 July 2007 the applicant underwent a medical examination and was diagnosed with haematomas of soft tissues of both shoulders, an abrasion and a hyperaemia on the left wrist joint, a hyperaemia on the right wrist joint, contusions on the small of the back and in the lumbar region, and soft-tissue bruises on the neck.

8. On 26 July 2007 the officers drew up reports, stating in general terms that at the time of the arrest the applicant had given a blow on the chest of one officer and had torn a shoulder strap off his uniform, following which the officers had had to use force against the applicant and handcuff him. The internal police inquiry concluded that the use of force and handcuffs against the applicant had been lawful; the reports did not contain a description of the restraint technique used by the officers against the applicant.

B. Inquiry into the alleged ill-treatment

9. On an unspecified date between July and September 2007 the applicant complained about his ill-treatment to the authorities.

10. On 14 September 2007 the investigator refused to open a criminal case. The applicant appealed against the refusal to the Lermontov Town Court in the Stavropol Region. On 3 October 2007 the court overruled the impugned refusal.

11. According to the medical report of 28 September 2007 drawn up in the course of the criminal investigation against the applicant (see paragraph 13 below), the applicant had contusions on both shoulders and swelling on both wrists received as a result of an impact from a hard blunt object shortly before his medical examination on 26 July 2007.

12. On 29 November 2007 another refusal to open a criminal case was issued.

13. On 28 December 2007 the Lermontov Town Court convicted the applicant of insulting and using violence against an officer. On the basis of the officers' statements, the court established that the applicant had repeatedly refused to stop upon the police officers' order; the officers had given chase, and when the applicant had stopped, they asked for his driving licence. Judging by the applicant's behaviour, the officers had concluded that he had been drunk and requested that he take an intoxication test. The applicant had denied that he had been driving the car, refused to undergo the test, behaved aggressively, swore at the officers, and threatened retaliation. Then he had called a taxi and tried to flee. The officers had grabbed and handcuffed him to prevent his fleeing and dragged him to the police car, when the applicant had given a blow to an officer and torn a shoulder strap off his uniform, causing abrasion on his torso. Other police officers who had arrived at the scene confirmed their colleagues' statements. The applicant contested

the officers' testimonies: he had not been the one driving the car and therefore refused to undergo the intoxication test; when he had been on the phone, the officers demanded that he hang up and grabbed him, twisted his arms and one of the officers had choked him; then they had thrown him on the hood of the car and knocked the phone out of his hands. When the taxi had arrived and he had gotten in it, the officers had pulled him out and handcuffed him. According to the forensic medical report, one officer had an abrasion on his torso. The court dismissed the applicant's allegations of ill-treatment as unsubstantiated and concluded that the officers had lawfully apprehended the applicant and had "reasonably" applied physical force against him. No assessment of proportionality of that force was carried out by the court. The applicant was convicted as charged and sentenced to a fine of 100,000 roubles (RUB) (about 2,710 euros (EUR)).

14. The applicant appealed against the sentence stating that the officers' actions had been disproportionate and in the excess of their authority. On 23 April 2008 the Stavropol Regional Court dismissed the appeal without an assessment of the proportionality of the force used against the applicant and upheld the conviction.

15. On 22 March 2013 the case-file of the inquiry into the applicant's alleged ill-treatment was destroyed due to expiration of the statutory time-limits for its storage.

II. CHALENKO v. RUSSIA, No. 27965/10

A. The events of 6 September 2008

16. At about 4 p.m. on 6 September 2008 police officers arrested the applicant in Voronezh on suspicion of infliction of serious bodily harm and took him to a police station, where on the same date he signed the statement of surrender and confession.

17. According to the applicant, at the station for about two or three hours the officers beat and kicked him on various parts of his body and one officer applied electric current to his handcuffs, ears, neck and groin. After that the applicant was questioned as a suspect in the presence of an appointed lawyer. He was forced to give self-incriminating statements.

18. On 7 September 2008 the applicant was examined at the remand prison upon his arrival. The examination found that he had an abrasion on the right thigh and a contusion on the right buttock.

B. Inquiry into the alleged ill-treatment

19. On 8 September 2008 the applicant complained to the authorities about the ill-treatment.

20. According to the forensic medical report of 8 September 2008, he had the following injuries: contusions on the right shoulder, on the chest, in the lumbar region, on the right thigh, and abrasions on the left forearm. All injuries had been caused by a hard blunt object possibly between 4 and 6 September 2008. During the medical examination the applicant explained that he had been beaten by the police officers after his arrest.

21. On 22 September 2008 the investigator refused to open a criminal case. The applicant appealed against the refusal to the Zheleznodorozhniy District Court in Voronezh. Meanwhile, on 27 October 2008 the impugned refusal was overruled by the investigator's superior and on 30 October 2008 the District Court discontinued examination of the appeal.

22. According to the police internal inquiry report of 6 October 2008, it was impossible to either confirm or refute the officers' involvement in the applicant's alleged ill-treatment due to conflicting statements of the parties.

23. On 6 November 2008 the investigator again refused to open a criminal case. The decision referred to the officers' statements that the applicant had offered active resistance, necessitating application by the officer a restraint technique against him. It concluded that the applicant's injuries had been inflicted during the arrest and that the use of the physical force by the officers was justified. The decision neither explained how the applicant's injuries (see paragraph 20 above) could have been sustained as a result of the application of the restraint method nor did it contain an assessment of the proportionality of the use of force by the officers. On 6 May 2009 the applicant challenged that decision before the investigators' superiors, but to no avail.

24. On 6 August 2009 the District Court convicted the applicant and on 12 November 2009 the Voronezh Regional Court upheld the applicant's conviction. During the proceedings the applicant, who was represented by a lawyer, did not challenge the admissibility of his statement of surrender and confession of 6 September 2009.

25. The courts dismissed the applicant's allegations of ill-treatment, having found that the allegations of torture with electric shocks were not confirmed by the results of the medical examination on 7 September 2008 at the arrival at the remand prison; as for the other injuries, they had been inflicted at the time of the arrest. The courts did not assess the proportionality of the use of force by the officers during the applicant's arrest.

26. On 4 February 2014 the inquiry file into the applicant's alleged ill-treatment was destroyed due to expiration of the statutory time-limit for its storage.

III. ZAYTSEVA v. RUSSIA, No. 4878/15

A. The events of 15 September 2012

27. On 15 September 2012 the applicant participated in an unauthorised manifestation in Nizhniy Novgorod. According to her, during the manifestation, when she took the helmet off the head of a police officer, the latter hit her on the head with a rubber truncheon causing her to lose consciousness; the applicant was taken to the hospital.

28. According to the extract from her medical file, the applicant had a closed craniocerebral injury, concussion and a soft-tissue bruise on the scalp.

B. Inquiry into the alleged ill-treatment

29. On 15 September 2012 the hospital reported the applicant's injuries to the authorities.

30. Between 17 October 2012 and 17 February 2013 the investigators refused to open a criminal case on at least three occasions.

31. On 24 March 2013 the investigators again refused to open a criminal case. The decision relied on the statements of the police officers and the eyewitnesses, according to whom during the manifestation on 15 September 2012 two men and the applicant had tried to prevent one officer from arresting another participant in the manifestation; they had pushed the officer back and two men grabbed him, while the applicant had pulled the helmet off his head; the officer had freed himself and hit the helmet in the applicant's hands with a rubber truncheon, knocking it off her hands. According to the officers and some other witnesses of the incident, a blow with a rubber truncheon had also hit the applicant's forearm, but the officer had not hit the applicant on her head. According to an internal police inquiry, the officer had lawfully applied the rubber truncheon to counter the attack on him and thus lawfully used force against the applicant. It contained neither an assessment of the proportionality of the use of the force by the officer against the applicant nor any explanations as to the circumstances in which the applicant had sustained the injuries (see paragraph 28 above).

32. The applicant's lawyer challenged the decision of 24 March 2013 before the Nizhegorodskiy District Court in Nizhniy Novgorod. On 19 August 2013 the District Court dismissed the applicant's appeal and she lodged further appeal with the Nizhniy Novgorod Regional Court. Meanwhile, on 14 November 2013 the investigator's superiors overruled the impugned refusal and on 23 June 2014 the Regional Court discontinued the proceedings on the applicant's appeal.

33. On 25 November 2013 the investigator again refused to open a criminal case. On 11 September 2014 the applicant's lawyer appealed against it to the District Court, which on 24 September 2014 granted the appeal.

34. On 26 September 2014 following the above decision a fresh preliminary inquiry was initiated whose results are unknown.

IV. GRECHIN v. RUSSIA, No. 32572/16

A. The events of 23 May 2015

35. At about 1 p.m. on 23 May 2015 traffic police officers, in the presence of two attesting witnesses, arrested the applicant in Perm on suspicion of drunk driving and took him to a police station.

36. According to the applicant, on the way to the station, one of the officers hit him on the face, later at the station that officer also hit his head against the wall in the corridor.

37. At 8.45 p.m. the applicant was released and at 11.15 p.m. he underwent a medical examination at a trauma centre, where he complained of bruises and swelling of both of his wrists caused by handcuffs.

38. On the same date the officers reported to their superior that at the time of the arrest the applicant had been drunk and had insulted them; they had had to handcuff him to prevent him from fleeing.

B. Inquiry into the alleged ill-treatment

39. On 23 May 2015 the applicant complained to the police about the alleged ill-treatment.

40. On 25 and 26 May 2015 the applicant underwent a forensic examination, which established that he had a contusion on the left eye and multiple abrasions on his upper limbs and chest which had been caused by hard blunt objects possibly on 23 May 2015.

41. On 15 June 2015 the investigators refused to open a criminal case. The decision stated that according to the officers and two attesting witnesses, the applicant had refused to undergo an intoxication test; while one of the officers had been drawing up record of the administrative offence, the applicant had behaved aggressively and sworn at the officers. Then he had knocked cell phone out of the hands of an officer, after that he had been handcuffed. According to the officers and the witnesses, the officers had not used physical force against the applicant. On the basis of these statements and the video recording of the arrest, the investigators concluded that the officers had not inflicted injuries on the applicant. The decision did not explain where the applicant's injuries could have been sustained (see paragraph 40 above).

42. On 15 September 2015 the Permskiy District Court in Perm dismissed the applicant's appeal against the above refusal. On 26 November 2015 the Perm Regional Court upheld that decision.

43. On 21 November 2016 the District Court convicted the applicant for insulting the officers and using violence against an officer. The District Court

established that on 23 May 2015 the applicant had insulted the officers and the attesting witnesses, had hit one of the officers on the hand while the latter had been recording his arrest on video, and that the officers had had to handcuff him; later at the police station the applicant had kicked the officer's leg. The applicant contested their version of the events; he admitted that he had insulted the officers as they had provoked him; he had not hit an officer on the hand, but had just tried to cover the telephone camera to stop recording; he also denied hitting the officer at the police station and insisted that the officers had used disproportionate physical force against him and unnecessary handcuffs. In view of the evidence given by the officers, the attesting witnesses and the recording of the incident, the court dismissed the applicant's allegations and sentenced him to two years' imprisonment. On 17 February 2017 the Regional Court upheld the conviction.

V. ZHUKOV v. RUSSIA, No. 6809/18

A. The events of 5 November 2016

44. At about 10 p.m. on 5 November 2016 two police officers arrested the applicant in his flat in Ivanovo and took him to a police station. According to the applicant, in his flat the officers gave him a blow on his ribs on the left side, then knocked him off his feet and beat him on the left side of his body.

45. At about midnight on 6 November 2016 an ambulance was called to the station at the applicant's request and he was taken to the hospital for surgery, where he was diagnosed with a fractured rib and a pneumothorax.

B. Inquiry into the alleged ill-treatment

46. On 22 November 2016 the applicant complained to the authorities about the ill-treatment.

47. According to the forensic medical report of 27 February 2017, at the arrival at the hospital the applicant had a fracture of the sixth rib on the left side with lung laceration and air leakage in the left pleural space inflicted by an impact from a hard blunt object no more than twelve hours before the applicant's admission to the hospital and several abrasions on the chest inflicted by three impacts from hard blunt objects between one hour and fourteen days before the applicant's admission to the hospital.

48. According to the forensic medical report of 30 March 2017, the abrasions on the applicant's chest could have been sustained in the circumstances described by both the applicant and one of the officers, while the chest injury could have been sustained in the circumstances described by the applicant and not by the officer.

49. On 4 May 2017 the investigator refused to open a criminal case. The decision referred to the explanations of the officers, both of whom stated that

they had arrived at the applicant's flat at the request of the applicant's wife who had alleged that the applicant had beaten her; the applicant had been intoxicated, had behaved aggressively and insulted the officers; he had tried to push them out of the flat; then he had hit one officer on his head, after which another officer had applied a restraint method to the applicant, twisting his arms behind his back and then handcuffing him. The applicant's wife and mother-in-law had been in the flat, but had not witnessed the incident, as they had been in another room. The decision concluded that the applicant could have been injured as a result of a "reasonable" use of force by the officers. It neither explained how the applicant's serious injuries (see paragraphs 45 and 47 above) could have been inflicted by the use of the restraint technique nor contained assessment of the proportionality of the force used against the applicant.

50. On 31 May 2017 the Frunzenskiy District Court in Ivanovo dismissed the applicant's appeal against the above decision and on 12 July 2017 the Ivanovo Regional Court upheld that decision.

51. On 24 May 2017 the District Court convicted the applicant of the use of violence against a police officer. On the basis of the officers' statements, the court established that on 5 November 2016 the applicant had hit the officer on the right side of his head, as a result of which the latter had sustained a craniocerebral injury and a concussion; the experts had concluded that the officer's injuries could have been sustained in the circumstances described by the police witnesses. The court took into account that the applicant had been a repeat offender who had committed the offence while intoxicated. It sentenced him to four years and six months' imprisonment. The applicant appealed, arguing that the officers had inflicted injuries on him. On 31 July 2017 the Regional Court dismissed the applicant's allegations that the officers had beaten him with the reference to the refusal to open a criminal case and upheld the conviction.

VI. S.M. v. RUSSIA, No. 35015/18

A. The events of 26 and 27 January 2016

52. On two occasions early in the morning hours on 26 January 2016 police officers took the applicant and her husband, who were heavily drunk, to a police station in Magnitogorsk in the Chelyabinsk Region, following their neighbour's repeated complaints.

53. According to the applicant, during their second escort to the station, an officer dragged her outside, pushed her in the back several times towards the police van and threw her on its floor, causing her physical pain; at the station he kept on pushing her in the back and pushed her once in the chest against a metal grill.

54. According to the applicant, during her detention at the station, one police officer inappropriately touched her, and then another officer attempted to rape her.

55. At 9 a.m. the applicant and her husband were released.

B. Investigation into the alleged ill-treatment

56. On 28 and 29 January 2016 the applicant complained to the police about her alleged ill-treatment and attempted rape.

57. According to the forensic medical report of 29 January 2016, the applicant had multiple contusions on the right shoulder, left forearm, right scapula, in the right iliac and left lumbar region, on both thighs, and in the left knee pit; the injuries had been inflicted by hard blunt objects “possibly on 26 January 2016 in the circumstances described by the applicant”.

58. According to the forensic medical report of 1 February 2016, no injuries were found in her anogenital area. The forensic medical report of 22 April 2016 found that the semen on the applicant’s underwear belonged to her husband, and the epithelial cells on her clothes were hers and her husband’s.

59. On 7 April 2016 a criminal case was opened into the applicant’s allegations.

60. On 31 May 2016 the investigator terminated the investigation in the criminal case for the lack of evidence of crime. According to the decision, even though the applicant’s husband had witnessed the officers dragging the applicant out of the flat, his statement was deemed unreliable in view of their family ties. The officers and the applicant’s neighbours stated that the officers had not applied physical force to the applicant and her husband; one of the officers submitted that during the escort to the station the applicant had fallen on the ground as she had been heavily drunk. Relying on the statements of the officers and the applicants’ neighbours, the investigator concluded that the applicant’s injuries had not been inflicted by the officers in the circumstances alleged by the applicant. The decision neither explained how the applicant’s numerous injuries could have been sustained as a result of the fall on the ground (see paragraph 57 above), nor it suggested an explanation of their origin.

61. On 23 August 2016 that decision was overruled by the investigator’s superiors as premature and incomplete.

62. On 28 July 2017 the investigator again terminated the investigation. On 4 December 2017 the Leninskiy District Court in Magnitogorsk granted the applicant’s appeal against that decision. On 5 February 2018 the Chelyabinsk Regional court upheld the impugned decision and dismissed the applicant’s appeal.

63. On 10 April 2018 the Leninskiy District Court convicted the applicant for falsely accusing the officers of beatings and attempted rape. The officers

and the applicant's neighbours testified that the officers had not used physical force against the applicant; the neighbours submitted that in the state of intoxication, as she had been at the time of the events, the applicant had often fell; she had also sustained injuries as a result of fights with her husband. The officers testified that during the first escort to the station the applicant had fallen several times. As regards the allegations of rape, they were not confirmed by the results of the medical examinations and the experts' conclusions. The District Court convicted the applicant as charged and sentenced her to a fine of RUB 20,000 (about EUR 271). According to the applicant, on 6 June 2018 the conviction became final.

RELEVANT DOMESTIC LAW

64. The relevant provisions of domestic law can be found in *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014.

THE LAW

I. JOINDER OF THE APPLICATIONS

65. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

66. As to the Government's objection that Ms Zaytseva (no. 4878/15) failed to comply with the six-month time-limit, the Court observes that the latest court decision in the proceedings concerning the alleged ill-treatment was taken on 24 September 2014 (see paragraph 33 above) and her application was lodged on 20 January 2015. The Court is therefore satisfied that the applicant lodged her application within the six-month time limit and rejects the Government's objection.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

67. The applicants complained that they had been subjected to ill-treatment by State officials and that there had been no effective investigation into their allegations of ill-treatment. They relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

68. The Government contested the applicants’ allegations, maintaining the conclusions of the domestic inquiries. In respect of Mr Kursish (no. 62003/08), Mr Chalenko (no. 27965/10), Ms Zaytseva (no. 4878/15) and Mr Zhukov (no. 6809/18), the Government submitted that they had sustained the injuries as a result of the lawful use of force by the officers at the time of their apprehension, since they had behaved aggressively and had offered active resistance. In the case of Mr Chalenko and Ms S.M. (no. 35015/18), the Government submitted that the applicants’ allegations of the torture with electric shocks and the allegations of the sexual assaults respectively were unsubstantiated and should be dismissed as manifestly ill-founded.

A. Admissibility

69. As regards the respective complaints of Mr Chalenko and Ms S.M. concerning the alleged torture with electric shocks and the allegations of the sexual assaults, the Court notes that these allegations are unsupported by any medical evidence, enabling it to find *prima facie* that the applicants were subjected to such a form of proscribed treatment. It follows that the applicants’ complaints in this part are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 of the Convention.

70. The Court notes that the remaining complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Procedural aspect of Article 3

71. The Court is satisfied that each of the applicants presented an “arguable claim” of ill-treatment by State officials. In each case the applicants submitted medical documents, consistent and detailed statements and the documents showing their attempts to have their allegations investigated by the domestic authorities. The latter were therefore under the obligation to carry out an effective investigation into those allegations.

72. The summary of principles pertaining to an effective investigation into allegations of ill-treatment could be found in *Lyapin*, cited above, §§ 125-40.

73. Turning to the circumstances of the present cases, the Court observes that in all cases, except for the case of Ms S.M., the authorities confined themselves to carrying out a pre-investigation inquiry and refused to open a criminal case. The Court reiterates that a pre-investigation inquiry alone is

incompatible with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment by State officials. As regards the case of Ms S.M., the Court notes that the criminal case into the applicant's allegations was opened with a delay of more than two and half months, it was subsequently terminated and reopened and ultimately was not able to elucidate the cause of the applicant's injuries (see paragraphs 59, 60 and 62 above).

74. The Court further notes that in all cases the investigating authorities based their conclusions mainly on the statements of the implicated police officers denying the ill-treatment (see paragraphs 8, 23, 31, 41, 49 and 60 above). In the cases of Mr Kursish, Mr Chalenko, Ms Zaytseva and Mr Zhukov, where, according to the Government, the applicants had sustained injuries as a result of the lawful use of force by the officers (see paragraphs 13, 25, 31 and 49 above), no assessment was carried out whether the use of that force had been necessary and proportionate (see *Kuchta and Mętel v. Poland*, no. 76813/16, § 88, 2 September 2021).

75. In such circumstances, the Court concludes that no effective investigation, as required by Article 3 of the Convention, was carried out into the applicants' allegations of ill-treatment by State officials. Accordingly, there has been a violation of Article 3 of the Convention under its procedural limb in respect of the applicants.

2. Substantive aspect of Article 3

76. A summary of relevant general principles can be found in *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90, ECHR 2015, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V.

77. The Court notes that in the present cases the applicants confronted the officers in different situations, after which all of the applicants sustained injuries (see paragraphs 7, 20, 28, 40, 47 and 57 above) confirmed by medical evidence. According to the applicants, those injuries resulted from their ill-treatment by the police officers. The experts' conclusions, submitted by them as a part of the medical evidence, confirmed that those injuries could have been sustained at the time of the applicants' confrontation with the officers. The Government neither contested the authenticity of the medical evidence submitted by the applicants nor did they argue that the applicants had any injuries before the police intervention (see, by contrast, *Makhashevy v. Russia*, no. 20546/07, § 125, 31 July 2012).

(a) The application of Ms S.M. (no. 35015/18)

78. In present case the Government denied that any physical force had been used against the applicant. They stated in general terms that the applicant had sustained the injuries elsewhere (see paragraph 60 above), whereas she

consistently maintained her detailed account of the events throughout the proceedings.

79. To this end, the Court notes that according to the expert's findings, the applicant's injuries could have been caused by hard blunt objects (see paragraph 57 above). The authorities neither explained how these injuries had occurred nor provided an alternative version of their origin. Relying on the statements of the applicants' neighbours and the police officers involved (see paragraph 60 above), they concluded that the injuries could not be attributed to the actions of the police officers.

80. Considering the vague nature of the Government's explanations and the lack of effective investigation into the applicant's allegations (see paragraph 75 above), the Court finds that they cannot be considered satisfactory or convincing. As regards the testimony relating to the applicant's state of intoxication and the allegation that she had fallen on the ground during her escort to the police station (see paragraph 60 above), it cannot explain on its own, in the Court's view, the serious injuries sustained by the applicant and confirmed by the forensic medical report of 29 January 2016 (see paragraph 57 above). The Court can accordingly draw inferences from the Government's failure to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's account of the events as supported by medical evidence (see *Bouyid*, cited above, § 83, and *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017).

(b) The applications of Mr Kursish (no. 62003/08), Mr Chalenko (no. 27965/10), Ms Zaytseva (no. 4878/15), Mr Grechin (no. 32572/16) and Mr Zhukov (no. 6809/18)

81. In the cases at hand, the Government did not deny that physical force and restraint methods had been used against the applicants. However, according to them, that use of force was lawful and proportionate, since the applicants had behaved in an aggressive and violent manner. To this end they referred to the criminal proceedings instituted against Mr Kursish, Mr Grechin and Mr Zhukov on account of insulting and assaulting the police officers (see paragraphs 13, 43 and 51 above). In the cases of Mr Chalenko and Ms Zaytseva they referred to the findings of the domestic inquiries, which established that the applicants had behaved in an aggressive and violent manner and resisted their arrest (see paragraphs 23 and 31 above).

82. The Court does not call into question the findings that the applicants resisted arrest. However, it must determine whether the injuries sustained by them were the result of force strictly necessary and proportionate. In this regard, the Court reiterates its established case-law that the use of force by the police in the course of arrest operations will only not be in breach of Article 3 of the Convention if indispensable and not excessive. The burden rests on the Government to demonstrate this (see *Ksenz and Others v. Russia*,

nos. 45044/06 and 5 others, § 94, 12 December 2017, and *Kuchta and Mętel*, cited above, § 70).

83. On this point the Court observes that the applicants' injuries, including bruises, abrasions, bone fractures and a concussion, were recorded by the medical services (see paragraphs 7, 18, 20, 28, 40 and 47 above).

84. It further notes that when concluding that the use of force by the officers had been lawful, the investigating authorities and the domestic courts only referred to the applicants' alleged resistance and failed to assess the proportionality of the officers' reaction to the applicants' behaviour and examine whether the use of force to that extent was strictly necessary in each situation (see paragraphs 8, 23, 31, 41 and 49 above). They did not establish any specific acts undertaken by the police officers when using force or any actions on the part of the applicants which could have justified the use of force – that is to say they did not assess whether such force had been indispensable and not excessive. Furthermore, the refusals to open a criminal case into the alleged ill-treatment and the applicants' conviction of use of violence against the officers were mainly based on the statements of the implicated officers (see *Ksenz and Others*, cited above, §§ 94 and 103, and *Sergey Ryabov v. Russia*, no. 2674/07, § 47, 17 July 2018).

85. The events in the present case did not concern planned police operations, but rather random confrontations between the applicants and the officers, where the applicants were unarmed and apprehended in connection with minor administrative or non-violent criminal offences. After those confrontations with the officers who outnumbered them or had greater physical force, the applicants sustained serious injuries (see paragraphs 7, 18, 20, 28, 40 and 47 above). The Government did not advance any argument that would allow the Court to establish that the applicants' conduct was of such character as to justify recourse to the considerable physical force that, judging by the relative seriousness of their injuries, must have been employed by the police (see *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007).

86. The Court reiterates that any recourse to physical force in respect of an individual confronted by law-enforcement officers which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Bouyid*, cited above, §§ 88 and 100, and *Ksenz and Others*, cited above, § 94). Therefore, it concludes that the use of force by the police against the applicants amounted to a conduct in breach of Article 3 of the Convention.

87. There has accordingly been a violation of Article 3 of the Convention in its substantive aspect in respect of all the applicants.

(c) Legal classification of treatment

88. Having regard to the applicants' injuries confirmed by medical evidence, the Court finds that State officials subjected the applicants to inhuman and degrading treatment.

3. Alleged violation of Article 13 in conjunction with Article 3 of the Convention

89. Having regard to the finding of a violation of Article 3 of the Convention, the Court considers that it is not necessary to examine this complaint under Article 13 of the Convention (see *Lyapin*, cited above, § 144).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. Mr Chalenko (no. 27965/10) complained under Article 6 §§ 1 and 3 (c) of the Convention that his statements of surrender and confession had been used for his conviction. The Court observes that there is no evidence that the applicant, who was duly represented, had properly raised this complaint either before the District or the Regional Courts (see paragraph 24 above). This complaint is therefore must be rejected under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

91. As regards the remaining complaints submitted by the applicants, the Court 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, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the applications must be rejected in accordance with Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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.”

93. The amounts claimed by the applicants in respect of pecuniary and non-pecuniary damage and costs and expenses are indicated in the Appendix II.

94. The Government submitted that the claims were excessive and unsubstantiated.

95. As regards the claim of Mr Kursish for pecuniary damage, the Court observes that the documents submitted do not relate to the violations found and rejects that claim.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that they have been actually and necessarily incurred and are reasonable as to quantum.

97. Having regard to the documents in its possession and the above criteria, the Court awards the applicants the amounts detailed in Appendix II, plus any tax that may be chargeable to them on those amounts.

98. 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. *Decides* to join the applications;
2. *Rejects* the Government's objection concerning the compliance with the six-month time-limit by Ms Zaytseva;
3. *Declares* the complaints concerning Articles 3 and 13 of the Convention admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs in respect of all the applicants;
5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention on the merits;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in Appendix II, plus any tax that may be chargeable to the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; the award in respect of costs and expenses is to be paid to the representative's bank account as indicated by the applicant;
 - (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;
7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

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Done in English, and notified in writing on 5 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Darian Pavli
President

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APPENDIX I

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	62003/08	Kursish v. Russia	24/09/2008	Mr Aleksey Valentinovich KURSISH 1960 Lermontov Russian	Ms Oksana Valeryevna SADCHIKOVA
2.	27965/10	Chalenko v. Russia	12/05/2010	Mr Aleksandr Sergeevich CHALENKO 1987 Voronezh Russian	Mr Ilya Vladimirovich SIVOLDAYEV
3.	4878/15	Zaytseva v. Russia	20/01/2015	Ms Yekaterina Igorevna ZAYTSEVA 1988 Nizhniy Novgorod Russian	Ms Olga Aleksandrovna SADOVSKAYA
4.	32572/16	Grechin v. Russia	26/05/2016	Mr Sergey Ivanovich GRECHIN 1969 Perm Russian	Ms Darya Sergeevna PIGOLEVA

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No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
5.	6809/18	Zhukov v. Russia	12/01/2018	Mr Anatoliy Yuryevich ZHUKOV 1985 Ivanovo Russian	Mr Aleksey Nikolayevich LAPTEV
6.	35015/18	S.M. v. Russia	10/07/2018	Ms S.M. 1970 Magnitogorsk Russian	Ms Svetlana Anatolyevna TOREYEVA

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APPENDIX II

No.	Case name	Non-pecuniary damage	Pecuniary damage	Costs and expenses
1	Kursish v. Russia	Sought by the applicant		
		EUR 20,000	EUR 1,443.31	EUR 876.31
		Awarded by the Court		
		EUR 20,000 (twenty thousand euros)	-	EUR 518 (five hundred and eighteen euros)
2	Chalenko v. Russia	Sought by the applicant		
		EUR 20,000	-	EUR 887.15
		Awarded by the Court		
		EUR 20,000 (twenty thousand euros)	-	EUR 8 (eight euros) ¹
3	Zaytseva v. Russia	Sought by the applicant		
		EUR 25,000	-	EUR 5,136

¹ The sum is to be paid to the representative's bank account, as indicated by the applicant.

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No.	Case name	Non-pecuniary damage	Pecuniary damage	Costs and expenses
		Awarded by the Court		
		EUR 25,000 (twenty-five thousand euros)	-	-
4	Grechin v. Russia	Sought by the applicant		
		EUR 40,000	-	EUR 4,019.67
		Awarded by the Court		
		EUR 26,000 (twenty-six thousand euros)	-	EUR 20 (twenty euros) ²
5	Zhukov v. Russia	Sought by the applicant		
		EUR 27,500	-	EUR 4,518.44
		Awarded by the Court		
		EUR 26,000 (twenty-six thousand euros)	-	EUR 19 (nineteen euros) ³

² The sum is to be paid to the representative's bank account, as indicated by the applicant.

³ The sum is to be paid to the representative's bank account, as indicated by the applicant.

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No.	Case name	Non-pecuniary damage	Pecuniary damage	Costs and expenses
6	S.M. v. Russia	Sought by the applicant		
		EUR 150,000	-	EUR 91,000
		Awarded by the Court		
		EUR 26,000 (twenty-six thousand euros)	-	-