THIRD SECTION

CASE OF BOTOV AND OTHERS v. RUSSIA

(Applications nos. 22463/07 and 8 others – see appended list)

JUDGMENT

STRASBOURG

4 February 2020

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

In the case of Botov and Others v. Russia,

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

 Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 14 January 2020,

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

1. PROCEDURE

1.  The case originated in nine applications 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”) on various dates indicated in the appended table.

2.  The Russian Government (“the Government”) were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  Notice of the applications was given to the Government. The Government did not object to the examination of the applications by a Committee.

1. THE FACTS
	1. THE CIRCUMSTANCES OF THE CASE

4.  The applicants are Russian nationals. Between 2005 and 2015 they were arrested on suspicion of having committed crimes in different regions of Russia. They alleged, among other things, that they had been ill-treated by the police.

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

* + 1. *Botov v. Russia*, no. 22463/07
			1. The events of 11-13 December 2005

6.  On 11 December 2005 the applicant attacked Mr G. on the street and in this connection he was taken to the Yuzhnoe Tushino District Department of the Interior in Moscow (*ОВД района Южное Тушино в г. Москва*).

7.  According to the applicant, the police officers beat him and threatened to injure his relatives.

8.  On the next day he was taken to a hospital. According to the medical certificate of 12 December 2005, he had scratches on the face, chest, left forearm, bruises, contusions and injuries on both shoulders.

9.  On 13 December 2005 the applicant was charged with a violent attack on Mr G.

* + - 1. Official inquiry into the alleged ill-treatment

10.  On 30 January 2006 the applicant complained to a prosecutor about the ill-treatment.

11.  On 5 January 2007 the investigator issued a decision not to open a criminal case, referring mainly to the explanations of the police officers. He concluded that the applicant’s injuries had been inflicted during his fight with Mr G.

12.  On 19 July 2007 the Tushinskiy District Court dismissed his complaint against the refusal, endorsing the investigator’s reasoning.

* + - 1. Proceedings related to his detention on remand

13.  On 13 December 2005 the court ordered the applicant’s detention on remand. The measure was extended until the date of his conviction on 31 October 2006.

* + 1. *Bayramkulov v. Russia*, no. 6202/12

14.  In 2010 the applicant was serving his sentence in the city of Vladimir. In October he was transferred to a remand prison in the Republic of Karachayevo-Cherkessia (RKC).

* + - 1. The events of 1 November 2010

15.  On 1 November 2010 the applicant was taken from the remand prison to the office of the RKC Centre for Combatting Extremism (*Центр по борьбе с экстремизмом*). According to the applicant, the officers applied electric shocks to his fingers, feet, neck, spine and head. They ill‑treated him for five hours, forcing to confess.

16.  According to the temporary detention facility’s medical records of 2 November 2010, the applicant had abrasions on both hands and a wound on the temple.

* + - 1. The events of 23 March 2011

17.  According to the applicant, on 23 March 2011 he was again taken to the Center’s office, where he was subjected to electric shocks.

18.  On 7 April 2011 the applicant underwent a forensic medical examination. According to report no. 575, he had no injuries which could result from the impact of electric shocks.

* + - 1. Official inquiry into the alleged ill-treatment

19.  On unspecified date the applicant complained to an investigator about the ill-treatment.

20.  On 1 January 2011 the investigator issued the first decision not to open a criminal case, finding the applicant’s allegations unfounded. Between January 2011 and April 2013 the investigators issued at least twenty one decisions not to open a criminal case. All decisions were quashed by the superior authorities.

21.  On 27 September 2013 the prosecutor reported to the head of the relevant investigative department about the inefficient investigation and unjustified delays in the applicant’s case.

22.  On 14 August 2014 the investigator issued another decision not to open a criminal case, mainly referring to the explanations of the police officers that no physical force had been used against the applicant.

23.  On 15 September 2014 the Ust-Dzhegutinskiy District Court dismissed that applicant’s complaint against the latest refusal as unfounded. On 29 December 2014 the Supreme Court of RKC upheld the court decision on appeal.

* + 1. *Rasputin v. Russia*, no. 4842/13

24.  On 26 May 2009 the applicant was arrested on suspicion of a crime in the Amur Region.

* + - 1. The events of 20 August 2009

25.  On 20 August 2009 police officers of the District Department of Interior of the Amur Region (*УВД по Амурской области*) visited the applicant in a temporary detention facility in Blagoveshchensk. According to the applicant, the officers kicked and punched him with a view to extracting confession statements.

26.  According to ambulance medical certificate no. 44 of 21 August 2009, the applicant had brain concussion, a hematoma on the head, bruises on the face and lower lip, a bruise around the right eye. On 23 August 2009 a forensic expert examined the applicant. According to report no. 4661, the applicant’s injuries recorded by the ambulance could have been inflicted by a hard blunt object between three and six days before his examination. As it follows from forensic medical report no. 4731 of 2 November 2009, the applicant’s injuries to the head and face could result from at least two blows by a hard blunt object. According to the expert, in some circumstances they “could result from the falling from a distance equal to his height but in the present case no such circumstances had been provided”.

* + - 1. Official inquiry into the alleged ill-treatment

27.  On 27 August 2009 the applicant complained to a prosecutor about the ill-treatment.

28.  Between September and December 2009 the investigators issued three decisions not to open a criminal case. Two of them were quashed by a superior investigator as incomplete.

29.  On 22 March 2010 the investigator issued the latest decision not to open a criminal case, referring to the explanations of the police officers that they had not beaten the applicant, and explanations of the applicant, given during the inquiry, that his injuries had resulted from the falling from his bed. As it follows from the decision, the applicant further retracted them due to the fear of ill-treatment. The investigator found that the applicant’s complaints were unfounded and his explanations were inconsistent.

30.  On 28 April 2012 the Tsentralniy District Court dismissed the applicant’s complaint against the latest refusal. On 17 July 2012 the Khabarovsk Regional Court upheld the court decision.

* + 1. *Fedorov v. Russia*, no. 38614/13
			1. The events of 10 April 2012

31.  On 10 April 2012 officers of the Road Patrol Service (*патрульно‑постовая служба*) of the Moscow Region stopped the applicant and took him to the police station. According to the applicant, police officers of the Criminal Investigation Department (*уголовный розыск*) kicked him twice on the chest and body, forcing to confess.

32.  According to the ambulance certificate of 10 April 2012, the applicant complained about the pain in the chest, he had a bruise on the chest and a broken rib. On 11 April 2012 the applicant underwent an X-ray examination, which confirmed the fracture of the eighth, ninth and tenth right ribs.

* + - 1. Official inquiry into the alleged ill-treatment

33.  On 14 April 2012 the applicant complained to a prosecutor about the ill-treatment.

34.  On 18 June 2012 the investigator issued the first refusal, mainly referring to the explanations of the police officers that no force had been used against the applicant.

35.  On 30 July 2012 the Korolevskiy District Court refused to examine the applicant’s appeal against the refusal of 18 June 2012 since it had been already quashed. On 27 September 2012 the Moscow City Court upheld the decision on appeal.

36.  On 16 August 2012 the applicant underwent a forensic examination. The case contains only two introductory pages of report no. 341.

37.  On 23 August 2012 and 19 February 2014 the investigators issued two more refusals. They found that the applicant’s allegations were unfounded, also referring to the explanations of the police officers and earlier explanations of the applicant that he had fallen on the asphalt prior to the arrest. On 24 December 2013 the refusal of 23 August 2012 was quashed.

38.  On 27 May 2014 the Korolevskiy District Court allowed the applicant’s complaint against the refusal of 19 February 2014. The court indicated that the investigator had failed to question the forensic expert whether the applicant’s injuries could have resulted from the falling from a distance equal to his height. Also, it pointed out that the authorities had not clarified the reason for the applicant’s arrest.

39.  On 18 July 2014 and 5 February 2015 the investigator issued two more refusals which were subsequently quashed for the failure to comply with the court decision of 27 May 2014.

40.  On 12 August 2016 the Korolevskiy District Court refused to examine the applicant’s appeal against the refusal of 5 February 2015 since it had been already quashed.

* + 1. *Pushnin v. Russia*, no. 59277/13
			1. The events of 24-26 February 2009

41.  On 24 February 2009 police officers of Criminal Investigation Department no. 1 of the Main Department of Interior of the Krasnoyarsk Region (*уголовный розыск № 1 Главного УВД по Красноярскому краю*) arrested the applicant on suspicion of a crime and took him to the police station.

42.  According to the applicant, the officers kicked and punched him, applied electric shock on his ears. The ill-treatment continued from 8 p.m. until 6 a.m. of the following day.

43.  On 25 February 2009 the applicant underwent a forensic examination. According to report no. 1641, he had bruises on the right arm, caused by a hard blunt object within a day before the examination.

44.  According to the applicant, the ill-treatment continued on 25 and 26 February 2009. The officers subjected him to electric shock and beat on his head with a pistol.

45.  On 26 February 2009 around 7.20 p.m. he was taken to the hospital. As it follows from hospital medical certificate no. 1067 of 26 February 2009, the applicant had a contused wound of the forehead.

* + - 1. The events of 27 August 2009

46.  On 24 August 2009 in a hearing the applicant complained to a judge about the ill-treatment.

47.  According to the applicant, on 27 August 2009, in view of his complaint, the officers of the temporary detention facility in Krasnoyarsk kicked and punched him, strangled with a bag, suspended on his arms to a steel grid for an hour.

48.  According to hospital medical certificate no. 31 of 27 August 2009, he had a contusion of the right eye and a hematoma of his eye-lids. As follows from forensic medical report no. 7655 of 27 August 2009, he had bruises and abrasions on the face, body, the right arm inflicted within a day before the examination. According to the medical certificate issued by the remand prison on the same day upon his admission, the applicant had a fracture of the seventh rib and a hematoma on the right eye.

49.  On the same day the investigator questioned the applicant into the matter and the applicant retracted his statements he had made during the hearing.

* + - 1. Official inquiry into the alleged ill-treatment

50.  On 31 August 2009 the applicant complained to an investigator about the ill-treatment submitting that he had retracted his earlier complaint out of fear.

51.  On 1 October 2009 the investigator issued a decision not to open a criminal case, referring to the applicant’s earlier retraction of his complaint. He found that the applicant’s allegations had not been supported by any evidence.

52.  On 25 February 2010 the investigator refused to open a criminal case into the alleged ill-treatment in the temporary detention facility, finding that he had disobeyed lawful orders of the officers and the physical force had been used against him. He concluded that the injuries had been either self‑inflicted or resulted from his resistance.

53.  On 9 January 2013 the investigator issued a refusal to open a criminal case into the alleged ill-treatment on 24-26 February 2009, referring to the explanations of the police officers that the applicant had self-inflicted the injuries by hitting a table at the police station. He found that the applicant’s injuries had been caused “in circumstances not related to his detention in police custody”.

54.  On 26 April 2013 the Zheleznodorozhniy District Court dismissed the applicant’s appeal against the refusal of 9 January 2013 as unfounded. On 30 July 2013 the Krasnoyarsk Regional Court upheld the decision.

55.  On 5 February 2015 the Tsentralniy District Court dismissed his appeal against the refusal of 25 February 2010 as unfounded. On 13 August 2015 the Krasnoyarsk Regional Court upheld the court decision.

* + 1. *Krivonogov v. Russia*, no. 52372/14
			1. The events of 18 October 2011

56.  On 18 October 2011 officers of Police Department no. 4 in Perm searched the applicant’s flat. After the search, at around 10 p.m., the applicant was taken to the police station. According to him, the officers punched him on the head, forcing to confess to a crime.

57.  On 19 October 2011 the applicant was taken to a hospital. According to medical certificate no. 9900, he had bruises on his face and head.

* + - 1. Official inquiry into the alleged ill-treatment

58.  On 20 October 2011 the applicant was transferred from the temporary detention facility to the remand prison in the Perm Region. On the same day, an on-duty officer of the remand prison reported to his supervisor that the applicant had injuries.

59.  On 13 November 2011 the Deputy Head of Police Department no. 4 issued a decision refusing to open a criminal case, according to which, on 17 October 2011 the applicant, being in the state of alcoholic intoxication at home, had fallen and “hit his face on the table”.

60.  On 18 April 2012 the applicant complained to an investigator about the ill-treatment.

61.  On 24 December 2012 the Motovilikhinskiy District Court returned the applicant’s complaint against the refusal of 13 November 2011 for the failure to comply with the procedural requirements.

62.  Between June 2012 and October 2014 the investigators issued at least five refusals to open a criminal case, referring to the explanations of police officers that no force had been used against the applicant and that he had had a hematoma on his eye when they had arrested him. All decisions, apart from the latest decision of 27 October 2014, were quashed.

* + 1. *Bogdanov v. Russia*, no. 68544/14

63.  On 21 October 2011 the applicant consumed alcohol with his acquaintances, one of whom was subsequently murdered.

* + - 1. The events of 22 October 2011

64.  On 22 October 2011 at around 10 a.m. officers of Police Department no. 3 in Orenburg arrested the applicant on suspicion of a murder and took him to the police station. According to the applicant, the officers kicked and punched him on the body, strangled him with a plastic bag and threatened him with rape.

65.  On 24 October 2011 the applicant underwent a forensic examination. According to forensic report no. 8028, he had hematomas on soft tissues, bruises on the upper lip, right eye and ear, on upper and lower limbs, which could result from the impact of a hard blunt object within “the period corresponding to the circumstances of the case”.

* + - 1. Official inquiry into the alleged ill-treatment

66.  On 27 October 2011 the applicant complained to an investigator about the ill-treatment.

67.  On 28 November 2012 the Dzerzhinskiy District Court convicted the applicant. Regarding his allegations of ill-treatment in police custody, it found that the applicant’s injuries had been inflicted on the night of the murder and due to their little significance witnesses, who had seen him following the arrest, had not noticed them.

68.  Between January 2012 and November 2015 the investigators issued at least six decisions not to open a criminal case. The investigators referred to the explanations of the police officers that the applicant had injured himself before the arrest being in a state of alcoholic intoxication.

69.  On 12 May 2014 the Dzerzhinskiy District Court refused to examine the applicant’s appeal against the refusal of 23 January 2014 since the trial court had dismissed his allegations of ill-treatment as unfounded.

70.  On 10 July 2014 the Orenburg Regional Court dismissed the applicant’s appeal against the court decision.

* + 1. *Kalinin v. Russia*, no. 26299/15
			1. The events of 2 March 2012

71.  On 2 March 2012 at around 9.30 p.m. officers of the Criminal Police Department (*отдел уголовного розыска* *УМВД России по Краснодару*) of Krasnodar arrested the applicant on suspicion of a crime and took him to the police station. According to the applicant, the officers kicked and punched him on the ears, head, body and in the groin area, forcing to confess.

72.  According to medical certificate no. 1015 of 3 March 2012 issued by the Drug Dispensary of Krasnodar, the applicant had a swollen left cheek. As it follows from the medical certificate of emergency unit no. 7 in Krasnodar, he had bruises on his face, limbs and groin. According to forensic report no. 1951/2012 of 25 April 2012, the injuries had resulted from the impact of a hard blunt object. Due to the lack of objective morphological characteristics, it was impossible to determine their degree and the time when they had been inflicted.

* + - 1. Official inquiry into the alleged ill-treatment

73.  On 28 March 2012 the applicant complained to an investigator about the ill-treatment.

74.  On 28 April 2012 the investigator issued a decision not to open a criminal case, referring mainly to the explanations of the police officers who had denied the use of force. The investigator concluded that the applicant’s injuries had been caused either before or during the arrest. The decision was quashed by a superior investigator as premature.

75.  On 2 January 2013 the investigator issued a new refusal to open a criminal case. The case file does not contain a copy of the decision.

76.  On 23 January 2013 the investigator opened a criminal case against officer G. into abuse of power in that he had unlawfully detained the applicant for several hours at the police department on 3 March 2012.

77.  On 6 May 2014 the Leninskiy District Court refused to examine the applicant’s appeal against the refusal of 2 January 2013 since the criminal case against officer G. had been already opened.

78.  On 13 March 2015 the investigator issued a decision not to open a criminal case against police officers into the alleged ill-treatment. The case file does not contain a copy of the decision.

* + 1. *Onipenko v. Russia*, no. 24719/17

79.  The applicants are Mr V.V. Onipenko and his father, Mr V.I. Onipenko.

* + - 1. The events of 25 September 2015

80.  On 25 September 2015 police officers of the Privolzhskiy District in the Astrakhan Region arrested the applicants on suspicion of a murder and took them to the police station.

81.  According to the applicants, officers repeatedly punched them on the forehead, kicked their bodies, applied electric shocks to their wet heads and ears, and strangled him with plastic bags. They threatened V.V. Onipenko to bring his wife and rape her in front of him. After V.V. Onipenko confessed, V.I. Onipenko was released.

82.  According to forensic medical report no. 2682 of 26 September 2015, V.V. Onipenko had bruises on the body, and upper limbs inflicted between one and three days before the examination by a hard blunt object, and an abrasion to his hip inflicted between four and six days before the examination by a hard blunt object.

83.  According to forensic medical report no. 1549 of 28 September 2015, V.I. Onipenko had bruises on his head, body and left lower limb, abrasions to the neck and body, and a haemorrhage of the left eye. According to forensic medical report no. 123 of 6 October 2016, the applicant’s injuries were inflicted by a hard blunt object, which excluded the impact of an electric shock.

* + - 1. Official inquiry into the alleged ill-treatment

84.  On an unspecified date V.I. Onipenko complained about the ill‑treatment to an investigator. On 17 October 2015 the investigator issued the first refusal to open a criminal case finding the applicant’s allegations unfounded.

85.  In March and April 2016 the applicants complained to an investigator about their ill-treatment. Between June and October 2016 the investigators issued at least six decisions not to open a criminal case, solely referring to the explanations of the police officers that no force had been applied to them. All decisions, apart from the latest decision of 21 October 2016, were quashed.

86.  On 18 November 2016 the Privolzhskiy District Court dismissed the applicants’ appeal against the latest refusal as unfounded. On 12 January 2017 the Astrakhan Regional Court upheld the court decision.

* 1. RELEVANT DOMESTIC LAW AND PRACTICE

87.  For the relevant provisions of domestic law on the prohibition of torture and other ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014, and *Ryabtsev v. Russia*, no. 13642/06, §§ 48‑52, 14 November 2013.

88.  Paragraph 16 of the Instruction on the police officers’ execution of their obligations and rights in the police departments of the Ministry of the Interior after the persons are taken to police custody (adopted by order no. 389 of the Ministry of the Interior of the Russian Federation on 30 April 2012) provides that a police officer on duty in the police custody shall inform his superior about all cases when a person arrested and taken to the police custody has visible wounds, injuries or is in a state that requires urgent medical intervention.

Similar rules have been in force in respect of the police since 2009.

1. THE LAW
	1. JOINDER OF THE APPLICATIONS

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

* 1. PRELIMINARY ISSUES

90.  The Court notes that the Government made preliminary objections in four cases, *Bayramkulov v. Russia* (no. 6202/12), *Fedorov v. Russia* (no. 38614/13), *Krivonogov v. Russia* (no. 52372/14) and *Kalinin v. Russia* (no. 26299/15).

* + 1. *Bayramkulov v. Russia*, no. 6202/12

91.  The Government questioned the date of 23 November 2011 as the date of introduction of the application form.

92.  The Court notes that on 23 November 2011 the applicant dispatched his first letter alleging violation of his rights under Article 3 of the Convention. The applicant lodged a completed application form on 21 March 2012, that is without undue delay. The Court therefore accepts the date of 23 November 2011 as the date of introduction of his application and rejects the Government’s objection.

* + 1. *Fedorov v. Russia*, no. 38614/13, *Krivonogov v. Russia*, no. 52372/14 and *Kalinin v. Russia*, no. 26299/15

93.  The Government argued that the applicants had failed to comply with the six-month time-limit. They submitted that Mr Fedorov had complained to the Court more than one year after the alleged ill-treatment. Mr Krivonogov and Mr Kalinin had complained three years and four years, respectively, after the relevant events.

94.  They further noted that the final court decisions in their cases had been adopted more than six months before they complained to the Court. In the case of Mr Fedorov, such decision was issued on 30 July 2012. In the case of Mr Krivonogov, the date of the decision was 24 December 2012. And in the case of Mr Kalinin, the court terminated the proceedings on 6 May 2014.

95.  The Government considered that the six-month period had started running from the dates of the court decisions and that it had expired before the dates on which the applications had been introduced.

96.  The Court observes that, in the Government’s view, the courts adopted the final decisions on the above mentioned dates. The Court disagrees with the Government for the following reasons.

97.  Firstly, even following the mentioned court decisions, the national authorities adopted several decisions refusing to open a criminal case. At least four more refusals were adopted in Mr Fedorov’s and Mr Krivonogov’s cases (see paragraphs 37, 39 and 62 above) and one more refusal after the court decision was issued in the case of Mr Kalinin (paragraph 78 above).

98.  Secondly, the Court notes that the domestic proceedings regarding the applicants’ complaints about ill-treatment lasted for no more than four years and there were no apparent undue delays in the proceedings. Accordingly, the applicants had no special reasons to doubt the effectiveness of the investigations.

99.  Lastly, the Court observes that for various reasons the court decisions, on which the Government relied, not address the merits of the applicants’ complaints (see paragraphs 35, 61 and 77 above). In such circumstances, the relevant court decisions cannot be considered as final in the chain of the applicants’ attempts to initiate criminal investigation into their allegations of ill-treatment.

100.  The Court therefore concludes that the applicants complied with the six-month time-limit and rejects the Government’s objections.

* 1. ALLEGED VIOLATIONs OF ARTICLEs 3 AND 13 OF THE CONVENTION

101.  The applicants complained that they had been subjected to ill‑treatment by State officials and that the State had failed to conduct an effective domestic investigation into those incidents. Mr Rasputin, Mr Bogdanov, Mr Kalinin, Mr V.V. Onipenko and Mr V.I. Onipenko also complained under Article 13 of the Convention that they had no effective remedy in respect of their complaints of ill-treatment. The relevant parts of the Convention provisions 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 ...”

102.  The Government contested their allegations, maintaining the conclusions of the domestic inquiries. They stated that the inquiries into the applicants’ allegations of ill-treatment had been thorough and comprehensive.

103.  In the case of Mr Pushnin, the Government submitted that he had self-inflicted the injuries by hitting a table corner in a temporary detention facility on 24 February 2009. In the case of Mr Bogdanov, the Government argued that his description of ill-treatment did not correspond to his injuries, which were inflicted before the arrest. Regarding Mr V.I. Onipenko, they submitted that he had been in the state of alcoholic intoxication by the time of his arrest. They referred to forensic report no. 123 that the allegation of the use of electric shock was not confirmed. As to Mr V.V. Onipenko they argued that, as established by forensic report no. 2682, the applicant’s injuries had been caused before the arrest.

104.  In the cases of Mr Fedorov, Mr Kvivonogov and Mr Kalinin, the Government did not comment on the merits.

* + 1. Admissibility

105.  The Court notes that the applications 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.

* + 1. Merits
			1. Credibility of the applicants’ allegations of ill-treatment in police custody and the presumption of fact

106.  The Court observes that all applicants were arrested by the police on suspicion of them having committed various crimes. After spending different periods of time in police custody the applicants were found to have sustained injuries of various degrees, as recorded by forensic medical experts (see paragraphs 18, 26, 36, 43, 48, 65, 72, 82 and 83 above), the detention facilities and medical institutions (see paragraphs 8, 16, 26, 32, 45, 48, 57 and 72 above).

107.  Having examined the case files and the parties’ submissions, the Court considers that the applicants’ injuries were well-documented and could arguably have resulted from the violence allegedly suffered by them at the hands of the police officers. The above factors are sufficient to give rise to a presumption in favour of the applicants’ accounts of events and to satisfy the Court that the applicants’ allegations of ill-treatment in police custody were credible.

* + - 1. Whether an effective investigation was carried out into the applicants’ allegations of police ill-treatment

108.  The Court observes that the applicants’ credible allegations of their injuries being the result of police violence were dismissed by the investigating authorities as unfounded based mainly on the statements of police officers denying the applicants’ ill-treatment (see paragraphs 11, 22, 29, 37, 53, 62, 68, 74 and 85 above).

109.  In the case of Mr Botov, the investigator concluded that his injuries had been inflicted before the arrest during the alleged fight with Mr G. The Court notes that the applicant was convicted for the violent attack on Mr G. It does not follow from the hearing records or the conviction judgment that Mr G. had hit the applicant. The investigator’s conclusions as regards the origin of the applicant’s numerous scratches and bruises on the face and body are therefore unconvincing.

110.  Regarding Mr Bayramkulov, the Court observes that the investigators issued at least 21 decisions refusing to open a criminal case into credible allegations of ill-treatment. In the latest decision not to open a criminal case no regard was given to the prosecutor’s report that the case had been procrastinated and that the investigation had been ineffective (see paragraph 21 above).

111.  Similar considerations apply to the case of Mr Fedorov, in which the investigators failed to correct deficiencies indicated by the Korolevskiy District Court (see paragraph 38 above). The Court notes that, disregarding the court’s instructions, the investigator issued two more refusals with the same conclusions as before.

112.  The Court further considers that the investigator’s conclusions about Mr Rasputin’s injuries were inadequate. It notes that the forensic expert was not provided with the relevant versions of the events in order to establish whether such injuries could have resulted from such a fall (see paragraph 26 above). Also, it is questionable how brain concussion, a hematoma on the head and numerous bruises on the face could result from a single fall from his bed given that they had resulted from at least two blows by a hard blunt object (see paragraph 26 above).

113.  As regards the second episode of the alleged ill-treatment of Mr Pushnin on 27 August 2009, the investigator found that the applicant’s injuries had resulted from his disobedience to the officers’ orders (see paragraph 52 above). Considering the applicant’s rib fracture and many other bruises on his body allegedly resulted from the resistance, the investigator failed to assess the proportionality of the physical force used by the officers. Moreover, the Court finds it suspicious that a few days after he had complained during the hearing about the first episode of ill-treatment, the applicant retracted his complaint following the incident in the temporary detention facility (see paragraph 49 above).

114.  The Court observes that in respect of Mr Botov, Mr Fedorov, Mr Krivonogov, Mr Bogdanov and Mr Kalinin, the national authorities concluded that the applicants had already had injuries prior to their arrests. In this regard, the Court notes that, according to national law, the police officers were particularly obliged to report to their superiors where the arrested person had visible injuries (see paragraph 88 above). Such a report could have provided clarification regarding the possibility that the applicants’ injuries had been caused before the arrest (see *Türkan v. Turkey*, no. 33086/04, § 41, 18 September 2008).

115.  As regards the quality of the forensic expert examinations, the Court reiterates that proper medical examinations are essential safeguards against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000‑X). In some cases the forensic examinations were conducted with a significant delay after the events or after the applicants had complained about ill-treatment. Mr Bayramkulov was examined about two weeks after his alleged ill-treatment (see paragraph 18 above). Mr Fedorov underwent the examination four months after the events (see paragraph 36 above). Mr Kalinin was examined about two months following the alleged ill-treatment (see paragraph 72 above). By the time the applicants were examined, precious time had been lost and it was impossible to determine the cause or origin of their injuries (*Tangiyev v. Russia*, no. 27610/05, § 61, 11 December 2012). Besides that, in the case of Mr Kalinin, the expert was provided with insufficient information to give a proper assessment of the injuries (see paragraph 72 above).

116.  In this connection, the Court considers that significant delays such as in these cases, as well as lack of information provided to forensic experts made it impracticable for the experts to provide adequate answers to the questions raised by the requesting authority (see *Mogilat v. Russia*, no. 8461/03, § 64, 13 March 2012).

117.  It is notable that no forensic medical examination at all was carried out in respect of Mr Bayramkulov as to his first episode of alleged ill-treatment, and in respect of Mr Botov and Mr Krivonogov.

118.  The investigators and courts based their findings on the results of the pre‑investigation inquiry, which is the initial stage in dealing with a criminal complaint under Russian law and should normally be followed by the opening of a criminal case and the carrying out of an investigation if the information gathered has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). The investigators issued several decisions refusing to institute criminal proceedings some of which, as it appears from the case file, had been annulled as incomplete or premature or for the failure to comply with court’s instructions (see paragraphs 20, 28, 35, 39, 62, 74 and 85 above).

119.  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 (*Lyapin*, cited above, §§ 129 and 132‑36).

120.  The Court has no reason to hold otherwise in the present cases, which involve credible allegations of treatment proscribed by Article 3 of the Convention. It finds that the State has failed to carry out an effective investigation into the applicants’ allegations of police violence.

* + - 1. Whether the Government provided explanations capable of casting doubt on the applicants’ versions of events

121.  It remains for the Court to examine whether the Government produced any evidence establishing facts, which would cast doubt on the versions of the events given by the applicants (see paragraph 103 above).

122.  In the case of Mr Pushnin, the Government repeated the investigator’s version that the applicant had intentionally hit the table to cause injuries during his stay in police custody between 24 and 26 February 2009. The Court notes that this version was supported only by explanations of the police officers against whom the applicant had complained. No other witnesses, including the investigator who, as follows from the case file, had been present in the room with the applicant, were questioned. The Court finds therefore the Government’s explanation unconvincing.

123.  As to Mr Bogdanov, the Government firstly referred to the trial court conclusions regarding the injuries (see paragraph 67 above). Secondly, they submitted that they were caused before the arrest. As to the first argument, the Court observes that the trial court did not analyse the applicant’s complaints in any detail. It merely found that the applicant’s allegations did not correspond to the injuries found on him. No due regard was given to the conclusions of the forensic report or the fact that the applicant had been examined for the first time by a doctor two days after his arrest. As to the Government’s second argument, the Court has already found that given the applicant’s visible injuries on the face, the police officers were obliged to report about them which they had failed to do (see paragraph 114 above).

124.  In application no. 24719/17, the Government referred to Mr V.I Onipenko’s alleged state of alcoholic intoxication without further explanations. The Court does not consider this submission as an explanation of the applicant’s injuries. As regards Mr V.V. Onipenko, the Government correctly pointed out that some of the applicant’s injuries had been caused during the period preceding the arrest, as established by the forensic examination (see paragraph 82 above). However, the Court observes that other injuries were caused within the period of the applicant’s presence in police custody (see paragraph 82 above) and they remained unexplained by the Government.

125.  Given that the Government’s explanations were provided as a result of the superficial domestic inquiries falling short of the requirements of Article 3 of the Convention, the Court finds that they cannot be considered satisfactory or convincing. It holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicants’ account of events, which it therefore finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102‑04, 12 December 2017).

* + - 1. Legal classification of the treatment

126.  The applicants alleged that they had been subjected to torture and inhuman and degrading treatment.

* + - * 1. Allegations of ill-treatment by electric shocks

127.  The Court observes that Mr Bayramkulov, Mr Pushnin (as regards the first episode of ill-treatment), Mr V.V. Onipenko and Mr V.I. Onipenko alleged that they had been subjected to ill-treatment, among other things, by electric shocks (see paragraphs 15, 17, 42 and 81 above).

128.  The Court has already found the applicants’ allegations of ill‑treatment credible. However, it notes that no traces of electric shock were recorded in the case of Mr Pushnin. The forensic expert, who examined him on the following day after the ill-treatment, only recorded the bruises on his right arm. As the expert established, they had been inflicted by a hard blunt object (see paragraph 43 above). Later at the hospital, the applicant was diagnosed with contusion of his forehead which corresponded to his statement that the officers had hit him with a pistol on the head (see paragraph 45 above). No other injuries were recorded. In such circumstances, the Court is unable to conclude that the applicant was subjected to ill-treatment by electric shock.

129.  The Court similarly considers in the case of Mr V.V. Onipenko and Mr V.I. Onipenko, that it was not shown that they had been subjected to electric shocks. The forensic examinations, which were carried out between one and three days after the alleged ill-treatment, demonstrated that their injuries had been caused by hard blunt objects (see paragraphs 82 and 83 above).

130.  The Court observes that Mr Bayramkulov had, among other injuries, abrasions on his hands, the origin of which had not been established (see paragraph 16 above). In this case, the procedural defects during the investigation, particularly, that the forensic examination was conducted two weeks after the ill-treatment (see paragraphs 110 and 115 above), made it hard to prove his ill-treatment by electric shock.

131.  However, the Court finds that the existence of the Mr Bayramkulov’s physical pain and suffering is attested by the temporary detention facility’s medical records and the applicant’s statements regarding his ill-treatment in the police station, in particular, with electric shocks, which was not refuted by the Government. The sequence of events also demonstrates that the pain and suffering was inflicted on him intentionally, namely with the view of extracting confessions to having committed a crime (see *Samoylov v. Russia*, no. 64398/01, § 53, 2 October 2008, and *Lolayev v. Russia*, no. 58040/08, § 79, 15 January 2015).

* + - * 1. Other allegations of ill-treatment

132.  As regards the ill-treatment of Mr Fedorov and Mr Pushnin (the second episode), the Court notes, among other injuries, the fractures of their ribs. It considers that the ill-treatment was inflicted on the applicants with the view of extracting confession statements causing severe physical and mental suffering (see *Razzakov v. Russia*, no. 57519/09, § 55, 5 February 2015).

* + - * 1. Conclusion

133.  Having regard to the violence suffered by the applicants at the hands of the police officers, the Court finds that in respect of Mr Bayramkulov, Mr Fedorov and Mr Pushnin (the second episode of ill‑treatment) such treatment amounted to torture.

134.  Having regard to the applicants’ injuries confirmed by the medical evidence, the Court finds that the police subjected Mr Botov, Mr Rasputin, Mr Pushnin (the first episode of ill-treatment), Mr Krivonogov, Mr Bogdanov, Mr Kalinin, Mr V.V. Onipenko and Mr V.I. Onipenko to inhuman and degrading treatment.

* + - 1. Conclusion

135.  There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs in respect of all applicants. In the light of this finding, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention in respect of Mr Rasputin, Mr Bogdanov, Mr Kalinin, Mr V.V. Onipenko and Mr V.I. Onipenko.

* 1. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

136.  Mr Botov further complained that his detention on remand had been excessively long and had not been based on relevant and sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

137.  The Government submitted that the applicant’s detention on remand had been justified.

138.  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.

139.  The Court notes that the period to be taken into consideration lasted from the date of the applicant’s arrest on 11 December 2005 and until the date of his conviction on 31 October 2006. It therefore lasted for about eleven months.

140.  In the leading case of *Dirdizov v. Russia,* no. 41461/10, 27 November 2012, the Court already found a violation in respect of issues similar to those in the present case.

141.  Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant’s detention on remand was excessive.

142.  There has accordingly been a violation of Article 5 § 3 of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143.  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.”

* + 1. Damage, costs and expenses

144.  The amounts claimed by the applicants under the head of non‑pecuniary damage and costs and expenses are indicated in the appended table.

145.  Mr Bayramkulov and Mr Pushnin were granted legal aid amounting to 850 euros (EUR) each in compensation for the costs and expenses. They did not provide any receipts or contracts in support of the remaining part of their claims for the costs and expenses incurred before the Court. Mr Bayramkulov also claimed compensation for costs and expenses incurred in national proceedings amounting to 22,500 Russian roubles (RUB) (about EUR 313), for which he provided documents and receipts.

146.  Mr Rasputin provided documents and receipts in support of his claim for the costs and expenses incurred before the Court. Mr V.V. Onipenko and Mr V.I. Onipenko provided documents and receipts in support of the costs and expenses incurred before the Court for the amount of RUB 70,235.68 (about EUR 976).

147.  Mr Fedorov provided a statement in which he had undertaken an obligation to pay his representatives expenses incurred before the Court and a detailed clarification of the lawyer’s fees, the time billed for the preparation of the case and the hourly rates.

148.  Mr Botov, Mr Krivonogov and Mr Kalinin did not claim any compensation under the head of costs and expenses. Mr Bogdanov did not provide any receipts or contracts in support of his claim for the costs and expenses incurred before the Court.

149.  Regarding Mr Botov, the Government argued that the amount claimed for non-pecuniary damage was excessive.

150.  As to Mr Fedorov, the Government submitted that he had not produced a legal services agreement with his representative.

151.  In the remaining cases, the Government submitted that Article 41 of the Convention should be applied in accordance with the established case-law.

* + 1. The Court’s assessment

152.  Wherever the Court finds a violation of the Convention, it may accept that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations, and make a financial award.

153.  As to costs and expenses, the Court has to establish whether they were actually incurred and whether they were necessary and reasonable as to quantum (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

154.  As to Mr Fedorov, regard being had to the Government’s submission and the documents provided by the applicant, the complexity of the case and the above criteria, the Court considers it reasonable to award EUR 3,000, plus any tax that may be chargeable to the applicant on this amount, in respect of costs and expenses.

155.  Having regard to the conclusions and principles set out above and the parties’ submissions, the Court awards the applicants the amounts detailed in the appended table, plus any tax that may be chargeable to them on those amounts.

* + 1. Default interest

156.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Decides* to join the applications;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in that Mr Bayramkulov, Mr Fedorov and Mr Pushnin (the second episode of ill-treatment) were subjected to torture in police custody, that Mr Botov, Mr Rasputin, Mr Pushnin (the first episode of ill-treatment), Mr Krivonogov, Mr Bogdanov, Mr Kalinin, Mr V.V. Onipenko and Mr V.I. Onipenko were subjected to inhuman and degrading treatment, and a violation of Article 3 of the Convention under its procedural limb in respect of all applicants in that no effective investigation into their complaints was carried out by the authorities;
5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of excessive length of detention on remand in respect of Mr Botov;
6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
7. *Holds*
	1. that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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;
	2. that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the amounts indicated in the appended table at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 4 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Alena Poláčková
 Registrar President

APPENDIX

IT

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No. | Case nameApplication no.Lodged on | ApplicantDate of BirthPlace of ResidenceRepresented by | Non-pecuniary damage | Costs and expenses |
| 1 | Botov v. Russia22463/0726/03/2007 | **Valeriy Arkadyevich BOTOV**27/07/1966Moscow | Sought by the applicant |
| EUR 30,000 | Not claimed |
| Awarded by the Court |
| EUR 19,400(nineteen thousand four hundred euros) | - |
| 2 | Bayramkulov v. Russia6202/1223/11/2011 | **Zoltan Khadzhi-Kishiyevich BAYRAMKULOV**09/07/1967SosnovkaYekaterina Viktorovna YEFREMOVA | Sought by the applicant |
| RUB 40,000,000(about EUR 555,555) | RUB 22,500 (about EUR 313)and EUR 3,000 |
| Awarded by the Court |
| EUR 39,700(thirty nine thousand seven hundred euros) | EUR 313[[1]](#footnote-1)(three hundred and thirteen euros) |
| 3 | Rasputin v. Russia4842/1310/12/2012 | **Viktor Yuryevich RASPUTIN**16/06/1957Shimanovsk | Sought by the applicant |
| EUR 1,000,000 | RUB 60,000(about EUR 833) |
| Awarded by the Court |
| EUR 19,400(nineteen thousand four hundred euros) | EUR 833(eight hundred and thirty three euros) |
| 4 | Fedorov v. Russia38614/1313/05/2013 | **Valeriy Gennadyevich FEDOROV**21/08/1970KorolevAni Mesropovna AGAGYULYAN | Sought by the applicant |
| EUR 45,000 | EUR 16,650 |
| Awarded by the Court |
| EUR 39,700(thirty nine thousand seven hundred euros) | EUR 3,000[[2]](#footnote-2)(three thousand euros) |
| 5 | Pushnin v. Russia59277/1310/07/2013 | **Sergey Alekseyevich PUSHNIN**23/10/1967YeniseyskMarina Vladimirovna MAKAROVA | Sought by the applicant |
| EUR 100,000 | EUR 3,000 |
| Awarded by the Court |
| EUR 39,700(thirty nine thousand seven hundred euros) | - |
| 6 | Krivonogov v. Russia52372/1420/10/2014 | **Sergey Mikhaylovich KRIVONOGOV**15/05/1949Vostochnyy | Sought by the applicant |
| EUR 20,000 | Not claimed |
| Awarded by the Court |
| EUR 19,400(nineteen thousand four hundred euros) | - |
| 7 | Bogdanov v. Russia68544/1415/10/2014 | **Aleksandr Viktorovich BOGDANOV**24/10/1979OrenburgCOMMITTEE AGAINST TORTURE | Sought by the applicant |
| At the Court’s discretion | EUR 4,975.5 |
| Awarded by the Court |
| EUR 19,400(nineteen thousand four hundred euros) | - |
| 8 | Kalinin v. Russia26299/1530/03/2015 | **Denis Mikhaylovich KALININ**16/05/1980CherepovetsMarat Munirovich ZINNATULLIN | Sought by the applicant |
| EUR 50,000 | Not claimed |
| Awarded by the Court |
| EUR 19,400(nineteen thousand four hundred euros) | - |
| 9 | Onipenko v. Russia24719/1714/02/2017 | **Viktor Viktorovich ONIPENKO**05/11/1992Astrakhan**Viktor Ivanovich ONIPENKO**06/01/1959AstrakhanAleksandr Anatolyevich ANOKHIN | Sought by the applicants |
| EUR 25,000 jointly | RUB 440,235.03(about EUR 6,114) |
| Awarded by the Court |
| EUR 25,000 jointly(twenty five thousand euros) | EUR 976(nine hundred and seventy six euros) |

1. The sum is to be paid into the representative’s bank account, as identified by the applicant. [↑](#footnote-ref-1)
2. The sum is to be paid into the representative’s bank account, as identified by the applicant. [↑](#footnote-ref-2)