THIRD SECTION

CASE OF LAPSHINA AND OTHERS v. RUSSIA

(Applications nos. 65031/16 and 2 others – see appended list)

JUDGMENT

STRASBOURG

22 October 2019

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

In the case of Lapshina 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 1 October 2019,

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

1. PROCEDURE

1.  The case originated in three applications (nos. 65031/16, 67815/16 and 10415/17) 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 three Russian nationals, Ms Valentina Olegovna Lapshina, Ms Svetlana Nikolayevna Mishina and Mr Sergey Kapitonovich Vyatkin (“the applicants”). Their details appear in Appendix I below.

2.  The applicants were represented by Mr O. Beznisko, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 20 July 2017 notice of the complaints concerning the applicants’ arrest, impartiality of the tribunal and the fairness of the proceedings was given to the Government and the remainder of the applications was declared inadmissible.

1. THE FACTS
	1. THE CIRCUMSTANCES OF THE CASE
		1. Application no. 65031/16, *Lapshina v. Russia*
			1. Incident of 4 December 2015

4.  On 4 December 2015 the police arrested the applicant and at 5.40 p.m. brought her to the police station in order to draw up an administrative‑offence record. According to the administrative-offence record, while in a public place the applicant had offered to photograph passers-by with her pet pigeons. As a result, she had gathered a group of approximately five people around her. The police construed her actions as obstructing passage along the street and access to nearby buildings for the public. At 8.30 p.m. the applicant was released.

5.  On 22 January 2016 the Tverskoy District Court of Moscow found the applicant guilty as charged and ordered her to pay a monetary fine in the amount of 10,000 Russian roubles (RUB). The applicant appealed, alleging, *inter alia*, that there had been no grounds for her arrest and detention.

6.  On 14 June 2016 the Moscow City Court upheld the judgment of 22 January 2016 on appeal. The court found that the applicant’s arrest and detention carried out for the purposes of preparing an administrative-offence record had been in full compliance with the applicable legislation.

* + - 1. Incident of 5 December 2015

7.  On 5 December 2015 the police arrested the applicant, accusing her of obstructing passage along the street and access to nearby buildings for the public. At 2.30 p.m. the police brought the applicant to the police station in order to draw up an administrative-offence record, according to which, the applicant had gathered a group of approximately twenty people around her, offering to photograph them with her pet pigeons. At 5.30 p.m. the applicant was released.

8.  On 22 January 2016 the District Court found the applicant guilty as charged and ordered her to pay a monetary fine in the amount of RUB 10,000. The applicant appealed, alleging, *inter alia*, that there had been no grounds for her arrest and detention.

9.  On 22 April 2016 the City Court upheld the judgment of 22 January 2016 on appeal. The court found that the applicant’s arrest and detention carried out for the purposes of preparing an administrative-offence record had been in full compliance with the applicable legislation.

* + 1. Application no. 67815/16, *Mishina v. Russia*

10.  On 23 December 2015 the police arrested the applicant and at 7.50 p.m. brought her to the police station in order to draw up an administrative‑offence record. According to the administrative-offence record, while in a public place the applicant had offered passers-by a pony ride. As a result, she had gathered a group of approximately thirty persons around her. The police construed her actions as obstructing passage along the street and access to an underground station for the public. At 9.40 p.m. the applicant was released.

11.  On 19 January 2016 the Tverskoy District Court of Moscow found the applicant guilty as charged and ordered her to pay a monetary fine in the amount of 10,000 Russian roubles (RUB). The applicant appealed, alleging, *inter alia*, that there had been no grounds for her arrest and detention.

12.  On 10 May 2016 the Moscow City Court upheld the judgment of 22 January 2016 on appeal. The court found that the applicant’s arrest and detention carried out for the purposes of preparing an administrative-offence record had been in full compliance with the applicable legislation.

* + 1. Application no. 10415/17, *Vyatkin v. Russia*

13.  On 10 February 2016 the police arrested the applicant and at 7.20 p.m. brought him to the police station in order to draw up an administrative-offence record. According to the administrative-offence record, while in a public place, the applicant had played the musical saw, gathering around him a group of approximately ten persons. The police construed his actions as obstructing passage along the street and access to a shopping centre for the public. At 9.40 p.m. the applicant was released.

14.  On 25 February 2016 the Tverskoy District Court of Moscow found the applicant guilty as charged and ordered him to pay a monetary fine in the amount of 10,000 Russian roubles (RUB). The applicant appealed, alleging, *inter alia*, that there had been no grounds for his arrest and detention.

15.  On 26 July 2016 the Moscow City Court upheld the judgment of 22 January 2016 on appeal. The court found that the applicant’s arrest and detention carried out for the purposes of preparing an administrative-offence record had been in full compliance with the applicable legislation.

* + 1. Enforcement of the judgments against the applicants

16.  According to the Government, the judgments against Ms Lapshina (application no. 65031/16) and Ms Mishina (application no. 67815/16) have not been enforced. The bailiffs service did not receive the bills of execution and no enforcement proceedings were instituted. As regards Mr Vyatkin (application no. 10415/17), the bailiffs recovered RUB 41.93 from one of the applicant’s bank accounts. It was impossible to recover the remainder of the judgment debt.

* 1. RELEVANT DOMESTIC LAW
		1. Time-limits for institution of enforcement proceedings

17.  Under the Enforcement Proceedings Act (Law no. 229-FZ), enacted on 2 October 2007 with further amendments, the bill of enforcement in respect of a judgment delivered by a court of general jurisdiction can be submitted for execution within three years of the said judgment’s becoming final (Article 21).

* + 1. Administrative escorting and arrest

18.  The domestic legal provisions governing administrative arrest (escorting) and detention are set out in the case of *Butkevich v. Russia* (see, no. 5865/07, §§ 33-36, 13 February 2018).

1. THE LAW
	1. JOINDER OF THE APPLICATIONS

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

* 1. ALLEGED VIOLATION OF ARTICLE 5  OF THE CONVENTION

20.  The applicants complained that their arrest had been in contravention of Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

“1.  Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c)  the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]”

* + 1. Admissibility
			1. The parties’ submissions

21.  The Government considered that the applicants’ complaints should be rejected as inadmissible. Firstly, they claimed that the applicants had applied to the Court belatedly. In the applicants’ case, the six-month period should be calculated from the moment of their respective arrests. They also pointed out that the applicants had raised the issue of the alleged unlawfulness of their arrest only before the appellate courts and had not brought it to the attention of the court at the first level of jurisdiction. In the alternative, the Government argued that the applicants had not exhausted effective domestic remedies in respect of their complaints. In particular, they had failed to apply for a review of the judgments in their cases.

22.  The applicants considered their complaints to be admissible.

* + - 1. The Court’s assessment
				1. Exhaustion of effective remedies

23.  The Court observes that, as pointed out by the Government, the applicants did not raise an issue of the alleged unlawfulness of their arrest before the court at the first level of jurisdiction. They did, however, raise that issue before the appellate court, which was competent to review the issue and, in fact, did so in the present case. The Court considers, therefore, that the applicants raised, in substance, their complaints in the domestic proceedings. As regards the Government’s contention that it was incumbent on the applicants to apply for a review of the judgments in order to exhaust effective domestic remedies as required by the Convention, the Court reiterates that the review procedure referred to by the Government is not subject to any ascertainable time-limit and thus cannot be considered as a remedy for the purpose of Article 35 § 1 of the Convention (see *Smadikov v. Russia* (dec.), no. 10810/15, 18 February 2015). The Court dismisses the Government’s objection.

* + - * 1. Compliance with the six-month rule

24.  As to the Government’s argument that the six-month period should be calculated from the date of the applicants’ arrest and in so far as the Government may be understood to argue that there was no remedy to exhaust in respect of the applicants’ grievances under Article 5 of the Convention, the Court considers that, in the absence of a clear stance on the Government’s part as to the availability of an effective domestic remedy against the unlawful arrest within the framework of the administrative proceedings (see paragraph 21 above, in which the Government argued that it had been incumbent on the applicants to raise the complaints under Article 5 of the Convention in course of the administrative proceedings), the applicants cannot be reproached for having made a reasonable attempt to comply with the exhaustion requirement by raising the issue of the alleged unlawfulness of their arrest and detention before the appellate court which considered their administrative case (compare *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 102, 10 April 2018). Accordingly, the Court finds that the final decisions for the purpose of the application of the six-month rule are the judgments delivered by the appellate court and that the applicants have complied with the six months’ requirement as shown in the table below:

|  |  |  |
| --- | --- | --- |
| Application no. | Date of the final decision delivered by the Moscow City Court (appellate court) | Date of introduction of the application |
| 65031/16 | 14 June 2016 | 21 October 2016 |
| 22 April 2016 |  |
| 67815/16 | 10 May 2016 | 7 November 2016 |
| 10415/17 | 26 July 2016 | 23 January 2017 |

* + - * 1. Conclusions

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

* + 1. Merits

26.  Relying on Articles 27 § 2 and 27 § 3 of the Code of Administrative Offences, the Government submitted that the applicants’ arrest and ensuring detention had been in compliance with law. The police had had a reasonable suspicion that the applicants had committed an administrative offence. The applicants’ detention at the police station had not exceeded three hours, as required by national legislation.

27.  The applicants maintained their complaints.

28.  The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see, among numerous other authorities, *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41 *in fine*, *Reports of Judgments and Decisions* 1996‑III).

29.  It has not been disputed that during the periods indicated (see paragraphs 4, 7, 10 and 13 above), the applicants were deprived of their liberty within the meaning of Article 5 § 1 of the Convention. The Government contended that the legal grounds for their arrest had been Article 27 § 2 of the Code of Administrative Offences, which had empowered the police to escort individuals, that is to say to take them to the police station in order to draw up an administrative-offence record. In this connection, the Court observes that the national regulations in question specify that a person suspected of having committed an administrative offence could only be “escorted” to a police station and detained there for the purpose of preparing an administrative-offence record, if such a record could not be drawn up at the place where the offence had been discovered. It further notes that Article 27 § 3 of the Code requires that the arrest and ensuing detention be (1) an “exceptional case” and (2) “necessary for the prompt and proper examination of the alleged administrative case and to secure the enforcement of any penalty to be imposed”.

30.  Having examined the materials submitted, the Court considers, and the Government have not argued to the contrary, that the police were not prevented from preparing the administrative-offence record on the spot. Nor does it discern any exceptional circumstances or necessity justifying the applicants’ arrest and detention as required by the national legislation (compare *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, §§ 489-90, 7 February 2017). The Court concludes therefore that the national authorities failed to comply with the applicable rules of domestic procedure. It therefore considers that the applicants’ arrest and detention were not “in accordance with a procedure prescribed by law”.

31.  Accordingly, there has been a violation of Article 5 § 1 of the Convention in respect of the applicants.

* 1. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32.  The applicants complained that the District Court which had considered their cases had not been impartial and the proceedings against them had been unfair. They relied on Article 6 of the Convention, which, is no far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

33.  The Government contested that argument. They considered that the proceedings against the applicants had been in compliance with the guarantees set out in Article 6 of the Convention. The fact that the prosecuting party had not taken part in the proceedings should not be construed as having had an adverse effect on the impartiality of the tribunal. It had been open to the applicants to challenge the judge had they had doubts as regards his or her impartiality.

34.  The applicants maintained their complaints.

35.  The Court finds it appropriate to examine firstly, of its own motion, whether the applicants’ complaints are admissible under Article 35 § 3 (b) of the Convention. This provision provides as follows:

Article 35 § 3(b)

“3.  The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b)  the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

...”

36.  The Court reiterates that the main issue contained in the above mentioned admissibility criterion is whether the applicants suffered a “significant disadvantage”. Inspired by the general principle of *de minimis non curat praetor*, this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010). The assessment of this minimum level is relative and depends on all the circumstances of the case(see *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts)).

37.  The Court further observes that on a number of previous occasions it has examined allegations of violations of Article 6 of the Convention in the course of administrative proceedings. Having established that (1) the size of the fine imposed on the applicants had not represented a financial hardship for them and (2) the subject matter of the complaint did not give rise to an important matter of principle, it found that the applicants had not suffered a significant disadvantage (see, *Rinck v. France* (dec.), no. 18774/09, 19 November 2010, and *Ţiglar v. Romania* (dec.), no. 47600/10, §§ 17-27, 28 November 2017).

38.  Having examined the circumstances of the present case, the Court discerns no reason to hold otherwise. Even though the amount of the fine may seem significant, the Court does not lose sight that the judgments ordering the applicants to pay the fine were not enforced save for in the case of Mr Vyatkin, where the bailiff recovered a negligible amount of approximately 0.60 euros (EUR). It further notes that the statutory three‑year time-limit for institution of enforcement proceedings against Ms Lapshina and Ms Mishina has expired and the judgments against them are no longer enforceable. In Mr Vyatkin’s case, the bailiff established that the recovery of the judgment debt had been impossible (see paragraph 16 above). Accordingly, the adverse effect of the judgments rendered against the applicants, if any, did not affect their life. Nor can the Court conclude that the subject matter of the complaints gives rise to an important matter of principle. In such circumstances, the Court considers that the applicants did not suffer a significant disadvantage as a result of the alleged violations of the Convention.

39.  Lastly, the Court accepts that the present case has been duly considered by domestic courts and that respect for human rights does not require an examination of this complaint on the merits (compare *Cavajda v. the Czech Republic* (dec.), no. 17696/07, 29 March 2011).

40.  It follows that this complaint must be declared inadmissible, in accordance with Article 35 § 3 (b) of the Convention.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41.  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

42.  The applicants’ claims in respect of non-pecuniary damage are summarised in the table below:

|  |  |
| --- | --- |
| Application number | Amount (euros (EUR)) |
| 65031/16 | 20,000 |
| 67815/16 | 10,000 |
| 10415/17 | 15,000 |

43.  The Government considered the applicants’ claims excessive and unsubstantiated.

44.  Having regard to the nature and scope of the violations found, the Court awards to each of the applicants EUR 1,000 in respect of non‑pecuniary damage, plus any tax that may be chargeable.

* + 1. Costs and expenses

45.  The applicants’ claims for the costs and expenses incurred before the Court are summarised in the table below:

|  |  |  |
| --- | --- | --- |
| Application number | Legal fees (EUR) | Postal and telephone expenses (EUR) |
| 65031/16 | 18,200 | 120 |
| 67815/16 | 8,300 | 60 |
| 10415/17 | 9,900 | 60 |

In support of their claims, the applicants submitted copies of the legal‑services agreements signed with their representative. They requested that the amount in respect of the legal fees for the proceedings before the Court be paid into the bank account of their representative.

46.  The Government considered the applicants’ claims excessive and unsubstantiated. They further pointed out that the applicants had not actually incurred the expenses claimed and that the addenda to the agreements specifying the actual amounts of the legal fees had been signed only by the applicants’ representative. Lastly, they submitted that the applicants had failed to substantiate their claim in respect of postal and telephone expenses.

47.  Regard being had to the documents in its possession and to its case‑law, the Court considers it reasonable to award the sum of EUR 1,500 covering legal costs and expenses to be paid into the bank account of Mr O. Beznisko, the lawyer who represented the applicants in the proceedings before the Court.

* + 1. Default interest

48.  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 complaints concerning the alleged unlawfulness of the applicants’ arrest and detention admissible and the remainder of the applications inadmissible;
4. *Holds* that there have been violations of Article 5 § 1 of the Convention;
5. *Holds*
	1. that the respondent State is to pay the applicants, within three months the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
		1. EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to each of the applicants;
		2. EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses. The said amount is to be paid into the bank account of Mr O. Beznisko, a lawyer who represented the applicants;
	2. 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;
6. *Dismisses* the remainder of the applicants’ claims for just satisfaction.

Done in English, and notified in writing on 22 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Stephen Phillips Alena Poláčková
 Registrar President

Appendix

List of cases

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| No. | Application no. | Case name | Lodged on | ApplicantDate of BirthPlace of Residence |
| 1. | 65031/16 | Lapshina v. Russia | 21/10/2016 | Valentina Olegovna LAPSHINA04/03/1996Fryazino |
| 2. | 67815/16 | Mishina v. Russia | 07/11/2016 | Svetlana Nikolayevna MISHINA01/04/1983Moscow |
| 3. | 10415/17 | Vyatkin v. Russia | 23/01/2017 | Sergey Kapitonovich VYATKIN01/09/1960Moscow |