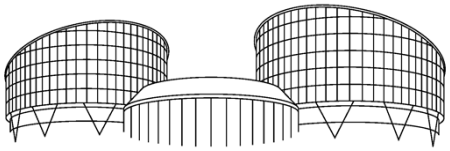

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ILGIZ KHALIKOV v. RUSSIA

(Application no. 48724/15)

JUDGMENT

STRASBOURG

15 January 2019

FINAL

15/04/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ilgiz Khalikov v. Russia,

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

Vincent A. De Gaetano, *President,*
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 4 December 2018,

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

PROCEDURE

1. The case originated in an application (no. 48724/15) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Ilgiz Yagafarovich Khalikov ("the applicant"), on 16 November 2015.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a legal expert resident in Strasbourg. The Russian Government ("the Government") were represented initially by Mr A. Fedorov, Deputy Minister of Justice, and then by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been seriously wounded during a prisoner transfer and that the Russian authorities had not carried out an effective criminal investigation into the incident.

4. On 23 January 2017 notice of the above complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and is now serving his sentence in a detention facility at Nizhniy Tagil.

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

7. On 7 November 2013 a group of nine detainees, including the applicant, was scheduled for a transfer from a police station to a remand prison. A Gazel prison van was available for transfer. It was designed to transport a maximum of seven prisoners, but Police Major V., who was in charge of the transfer, took the decision to take all nine prisoners at once to save fuel.

8. The prison van was manned by four officers. Driver G. and Major V. were seated in the front, and Officers K. and D. were riding in the rear part of the cabin next to the prisoner cells.

9. Five prisoners were placed in the large cell in the van, and three prisoners in individual cells. As the applicant was a former law-enforcement officer, the transfer regulations required that he should be separated from the other detainees. However, no other individual cells were available, so he was allowed to ride in the rear together with Officers K. and D.

10. Approximately half way to the destination, prisoners Sa., Ma. and Mu. kicked out the door of the large cell and attacked the convoy officers. Prisoner Mu. overpowered Officer D. and seized his holster containing a handgun. A struggle for the gun ensued and Mu. fired a shot at the floor. Prisoner Sa. grabbed Officer D. from behind, and a second shot was fired.

11. Meanwhile, Officer K. pushed prisoner Ma. aside, drew his gun and told everyone to freeze or he would shoot. Prisoners Sa. and Mu. were still struggling with Officer D. for the gun. Officer K. shot at Sa. and hit him.

12. Major V. came running to the back of the van and opened the door. More shots followed. Eventually, prisoner Mu. released the gun and threw it out of the van. At some point, a bullet ricocheted, wounding the applicant in his left shin.

13. The applicant was taken to a local military hospital where his wounded leg was put in a cast. On the following day he was discharged and transferred to a prison hospital.

14. In December 2013 the applicant complained to a prosecutor that he had been injured as a consequence of the grossly negligent actions of convoy officers who had breached the transfer regulations.

15. On 9 January 2014 an investigator with the Bashkortostan Regional Division of the Investigations Committee refused to open a criminal case. He found no indications of gross negligence arising from the decision to transport two prisoners in excess of the van's design capacity and that not putting the applicant in a cell had been motivated by "considerations of budgetary austerity and saving money allocated for the purchase of fuel".

16. On 4 December 2014 a deputy prosecutor of the Kirovskiy District in Ufa rejected the applicant's complaint against the investigator's decision.

17. On 30 April 2015 the Kirovskiy District Court in Ufa upheld the investigator's decision as lawful, noting that it had been within his

competence to issue such a decision, and that the decision contained no defects of form. On 20 July 2015 the Supreme Court of the Bashkortostan Republic rejected an appeal against the District Court's judgment.

18. On 14 September 2015 the acting head of the regional division of the Investigations Committee ordered an additional "pre-investigation inquiry" into whether an offence of negligence causing grievous bodily harm had been committed. Ten days later the investigator refused to institute criminal proceedings:

> "... it does not appear possible to establish with certainty that the bullet which hit [the applicant] was shot from the handgun of Officer V., rather than from [the handgun of] Officer D., while it was in the possession of prisoner Mu. Besides, under Article [41] of the Criminal Code, causing damage to interests protected by criminal law is not a criminal offence if the act causing such damage was based on a reasonable risk assessment and sought to achieve a socially useful objective, such as preventing an attempted escape in the instant case."

19. On 8 February 2016 the deputy head of the regional division upheld the investigator's decision refusing to institute criminal proceedings.

20. On 5 May 2016 the supervising deputy prosecutor of the Bashkortostan Republic set the decision aside and ordered a forensic assessment of the applicant's injury. On 6 June 2016 the investigator with the Central Investigations Department in Ufa again refused to institute criminal proceedings, noting that the applicant's medical record could not be located. It had been sent to the facility where he was serving his sentence and that facility had not responded to the investigator's request for a copy.

21. In parallel criminal proceedings, on 22 December 2014 the Ordjonikidzevskiy District Court in Ufa convicted prisoners Mu. and Sa. of attempted escape from prison and sentenced them to five years' imprisonment each. Convoy Officers K., D. and V. had been given the status of injured parties in those proceedings. The applicant testified as a witness.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Section XVII of the Instruction on the performance of duties by special convoy departments of the penal service (the "Conveyance Instruction"), approved jointly by the Ministry of Justice and the Ministry of the Interior on 24 May 2006 and amended by their joint order no. 236dsp/900dsp of 22 October 2008, prescribes the conditions of detention to be applied to untried prisoners and convicted offenders during transportation. Guards are required to ensure separate detention of sixteen categories of detainees: women must be kept separate from men, juveniles from adults, untried prisoners from convicted offenders; foreigners, life prisoners, sick prisoners and former police officers from any other group;

and so on (points 164 and 166). A prison van can accommodate as many categories of detainees as it has cells (point 168).

23. For the provisions of the Code of Criminal Procedure governing the procedure for examining allegations of serious bodily harm, see *Manzhos v. Russia* (no. 64752/09, §§ 21-27, 24 May 2016). Article 144 of the Code, which defines the scope of a "pre-investigation inquiry", was amended by Federal Law no. 23-FZ of 4 March 2013. The 2013 amendments expanded the list of investigative measures which may be carried out before reaching a decision on whether or not criminal proceedings should be instituted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained that he had been wounded as a result of the negligence of convoy officers and that the authorities had not carried out an effective investigation into the incident. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

25. The Government submitted that as the applicant had not joined the criminal proceedings against the detainees who had attempted to escape as a civil party, or sought damages from them, he had not exhausted domestic remedies.

26. The Court observes that the applicant's complaint does not concern criminal or civil proceedings against the perpetrators of the escape attempt but the State's alleged responsibility for the incident and its duty to carry out an effective investigation (compare *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 53, ECHR 2012 (extracts)). By lodging a criminal complaint with a prosecutor and challenging the refusal of the investigators to institute criminal proceedings before a court, the applicant has given the Russian authorities an adequate opportunity to remedy the alleged violation at the domestic level (see *Gerasimenko and Others v. Russia*, nos. 5821/10 and 65523/12, §§ 82-84, 1 December 2016). The Court therefore dismisses the Government's objection.

27. The Court notes that the application is 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.

B. Merits

28. The Government submitted that the capacity of the prison van had only been insignificantly exceeded, by just two people. In their view, it was impossible to predict how the failed escape attempt might have affected the applicant had he been travelling in a cell together with other prisoners rather than with the police officers. His wound had not been a serious one and had been inflicted by accident, in the course of a legitimate attempt to prevent prisoners from escaping. The police had carried out a pre-investigation inquiry into the incident and had taken a lawful and well-founded decision not to open criminal proceedings. The senior officer had been disciplined for breaching the prisoner transfer regulations and the prisoners concerned had been convicted of attempting to escape and given custodial sentences.

29. The applicant submitted that the reason he had found himself embroiled in a shoot-out between police and escaping detainees was the incompetent and criminal conduct of the convoy officers. The officers had not placed him in an isolated cell inside the prison van as they should have done in accordance with the regulations. He alleged that he had been wounded by a stray bullet which Officer V. had fired. The domestic authorities had not instituted criminal proceedings, granted him the status of an injured party or conducted a forensic assessment of the gravity of his injury. The applicant emphasised that the incident had left him disabled for life, in considerable pain, and unable to walk without a crutch or cane.

30. The Court reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States a positive obligation to ensure that individuals within their jurisdiction are protected against inhuman and degrading treatment, irrespective of whether that treatment is inflicted by State officials or by private actors. This obligation involves, in particular, the protection of the physical integrity and well-being of persons who are in custody under the exclusive control of the authorities, as well as taking all steps which could reasonably be expected to prevent a real and immediate risk of ill-treatment of which the authorities had or ought to have had knowledge (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V; *Pantea v. Romania*, no. 33343/96, §§ 189-90, ECHR 2003-VI (extracts); *J.L. v. Latvia*, no. 23893/06, § 64, 17 April 2012; and *M.C. v. Poland*, no. 23692/09, §§ 87-88, 3 March 2015).

31. A further element relevant to the present case is the State's positive obligation to carry out an effective investigation into an arguable claim of ill-treatment, which applies equally in cases of ill-treatment by State agents or by private parties who are under State control. To be effective, the investigation must be prompt and thorough. The authorities should not rely on hasty or ill-founded conclusions to close their investigation and they must take all reasonable steps to secure the evidence concerning the incident, including, in particular, forensic evidence. Any deficiency in the

investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009; *Kopylov v. Russia*, no. 3933/04, § 133, 29 July 2010; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 322, ECHR 2014 (extracts)).

32. In the instant case the applicant received a gunshot wound to his lower leg. The Court finds this injury sufficiently serious to amount to inhuman treatment falling within the scope of Article 3 (compare *Necdet Bulut v. Turkey*, no. 77092/01, § 24, 20 November 2007).

33. The applicant filed a complaint of a serious breach of the prisoner transfer regulations that had led to his being injured, shortly after the incident in December 2013 (see paragraph 14 above). The matter was thus duly brought before the competent authorities at a time when they could reasonably have been expected to investigate the incident in question. His complaint amounted to an arguable claim of the State's failure to protect him from ill-treatment, triggering the obligation to carry out an investigation satisfying the requirements of Article 3.

34. A "pre-investigation inquiry" into the complaint was followed, less than a month later, by a decision refusing to institute criminal proceedings (see paragraph 15 above). Over the next two years, further decisions concluding the pre-investigation inquiries were repeatedly set aside and additional checks were requested (see paragraphs 18 and 20 above). Nevertheless, the "pre-investigation inquiry" never progressed to the stage of a criminal investigation.

35. The Court has found in many previous Russian cases that the authorities, when confronted with credible allegations of ill-treatment, have a duty to open a criminal case and conduct an investigation; a "pre-investigation inquiry" alone not being capable of meeting the requirements for an effective investigation under Article 3. That preliminary stage has too restricted a scope and cannot lead to the identification and punishment of the perpetrators of the alleged ill-treatment, since the opening of a criminal case and a criminal investigation are no more than prerequisites for bringing charges against alleged perpetrators, which may then be examined by a court. The Court has held that a refusal to open a criminal investigation into credible allegations of serious ill-treatment is indicative of the State's failure to comply with its procedural obligation under Article 3 (see *Lyapin v. Russia*, no. 46956/09, §§ 134-40, 24 July 2014; *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 81-82, 2 May 2017; and *Sergey Ivanov v. Russia*, no. 14416/06, §§ 81-83, 15 May 2018).

36. As in those cases, the investigators' reluctance to open a criminal investigation in a prompt and diligent fashion led to the loss of precious time and undermined their ability to secure and to analyse the evidence

concerning the ill-treatment. A forensic firearm examination was carried out many months after the events and was neither able to link the bullets or cartridges used to the handgun from which the shot had been fired, nor to link the handgun to the individual who had wielded it (see paragraph 18 above). An assessment of the extent of the applicant's injuries and the resulting disability was not ordered until two years after the incident, and proved to be impossible because his medical record had been misplaced in the meantime (see paragraph 20 above). Thus, in addition to the structural defects of the format of a "pre-investigation inquiry", which the Court has highlighted in previous cases, the inquiry in the instant case fell short of the requirements of Article 3 because it was both belated and of insufficient scope. The investigators did not make a serious attempt to establish all the circumstances of the incident and to attribute responsibility for firing the shot that had wounded the applicant. The Court finds that the refusal to open a criminal case into the applicant's credible allegations of the failure to protect his physical integrity, of which the authorities were promptly made aware, amounted to a failure to carry out an effective investigation as required by Article 3 of the Convention.

37. The Court will turn next to the issue whether or not the State may be held responsible for the applicant's injury. Different versions of how he actually sustained the injury were put forward during the proceedings. As noted above, the "pre-investigation inquiry" failed to elucidate the most important aspects of the incident. In particular, it was unable to establish from which handgun the shot concerned had been fired or the identity of the person who had pulled the trigger. However, while these aspects would have been of paramount importance in other cases, they are of lesser relevance in the circumstances of the present case. There is nothing to indicate that anyone took aim at the applicant or meant to harm him. The applicant was a casualty in the melee and haphazard shooting that followed an abortive escape from prison, in which he played no part. It is undisputed that he was hit in the leg by chance rather than intention.

38. Even though the applicant's injury was accidental, his presence in the non-secure area of the prison van was not. It was the result of the convoy officers' decision to transport more detainees than the prison van should have accommodated. As a consequence, there was no separate cell available for the applicant and he had to ride with the guards. That arrangement was in breach of the general regulation which prohibited convoys from exceeding the design capacity of the prison van. It also violated the specific regulation relating to the placement of particularly vulnerable categories of prisoners, such as former law-enforcement officers, like the applicant, in separate cells (see paragraph 22 above). The applicant would not have been injured had he been placed in a secure area as required by the applicable regulations.

39. The Court reiterates that the State has an obligation to take all steps which could reasonably be expected to prevent a real and immediate risk to a detainee's physical integrity of which the authorities had, or ought to have had, knowledge. Owing to the absolute character of the right guaranteed, Article 3 may also apply where the danger emanates from persons or groups of persons who are not public officials. The assessment of whether the authorities have provided adequate protection must take into account that in the detention context both attacker and victim are under the control of the authorities, unlike cases in which they are both at liberty (see *H.L.R. v. France*, 29 April 1997, § 40, *Reports of Judgments and Decisions* 1997-III; *Stasi v. France*, no. 25001/07, §§ 78-79, 20 October 2011; *M.C. v. Poland*, cited above, §§ 88-89; and *Dimcho Dimov v. Bulgaria (no. 2)*, no. 77248/12, § 60, 29 June 2017).

40. The prisoner transfer regulations were designed with the objective of preventing security incidents such as the one at issue in the present case. They limit the number of prisoners that can be transported together to reduce the risk of a concerted attempt on their part to overpower convoy officers. They also seek to avoid cases of inter-prisoner violence by requiring separation of vulnerable detainees. In the instant case, the convoy officers gave no consideration to the security risks entailed by transporting more prisoners than permitted by the van's capacity. Irrespective of whether they sought to save fuel or the effort of an extra journey, they acted with disregard for the regulations which had been put in place to protect the well-being and physical integrity of detainees during transfers. It follows that the State must be held responsible for their failure to provide adequate protection to the applicant**'s** physical integrity during the transfer.

41. There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. The applicant claimed 500,000 euros (EUR) in respect of pecuniary damage which was estimated on the basis of his life-time dependence on painkillers and rehabilitation. He further claimed the same amount in respect of non-pecuniary damage and 2,000,000 Russian roubles for costs and expenses.

44. The Government submitted that Article 41 should be applied in accordance with the established case-law.

45. The Court rejects the applicant's claims in respect of pecuniary damage and costs and expenses, which were not corroborated by any documentary evidence. On the other hand, it awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

46. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President