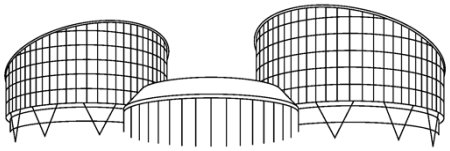

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DOKUKINY v. RUSSIA

(Application no. 1223/12)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Failure to conduct effective investigation into arguable claim of ill-treatment by police against parent and child • Absence of concern for providing extra protection to child throughout proceedings • Burden of proof on Government to cast doubt on applicants' account of events not discharged • Failure of police to carry out duties with particular consideration for situation of individuals belonging to especially vulnerable groups, such as children, in the absence of relevant regulations or instructions

STRASBOURG

24 May 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dokukiny v. Russia,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
María Elósegui,
Anja Seibert-Fohr,
Andreas Zünd,
Frédéric Krenc,
Mikhail Lobov, *judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 1223/12) 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 two Russian nationals, Ms Yuliya Ivanovna Dokukina and Ms Alina Aleksandrovna Dokukina ("the applicants"), on 19 December 2011;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the applicants' alleged ill-treatment by the police and the authorities' failure to carry out an effective investigation into the applicants' complaints;

the parties' observations;

Having deliberated in private on 26 April 2022,

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

INTRODUCTION

1. The application concerns the applicants' alleged ill-treatment by the police and the authorities' alleged failure to carry out an effective investigation into their complaints.

THE FACTS

2. The applicants were born in 1976 and 2005 respectively and live in Lipetsk. They were represented before the Court by Ms I.V. Khrunova, a lawyer practising in Kazan.

3. The Government were represented initially by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case are largely in dispute between the parties. The following facts are undisputed.

5. Shortly before midnight on 9 May 2010 in Lipetsk, two police patrol officers approached the applicants (the first applicant and her daughter, the second applicant, aged 4 at the time), Mr D. (their husband and father

respectively) and their friends (Ms O.Z. and Mr S.Z. and their son, aged 7) in a park which was deserted at that hour, suspecting the adults of consuming alcohol, which they denied. The officers called for support. Four other police officers arrived in two cars. After a verbal exchange, D. and S.Z., who did not offer resistance, were taken to the police station in connection with the administrative offence of "disturbance of public order accompanied by obscene language in a public place" (which they later unsuccessfully contested in court). They were released the next day. Administrative records concerning the escorting of D. to the police station indicated no reason as to why it had been impossible to draw up a record on the spot.

6. On 11 May 2010 a forensic medical expert recorded the following injuries on the applicants, which could have been inflicted on 9 May 2010: the first applicant had two bruises on the middle and lower parts of each shin, measuring from 2 cm by 3 cm up to 4 cm by 5 cm; the second applicant had a bruise on the left cheek and bruises on the front and inside areas of the upper and middle parts of the lower right leg and on the inside surface of the right ankle, measuring from 1 cm by 1.5 cm up to 2 cm by 3 cm.

7. On 13 May 2010 the first applicant lodged a criminal complaint alleging that the injuries had been inflicted by the police. She stated that during D.'s apprehension, the second applicant, who was holding onto her father by the leg, had been pushed by one of the officers, had fallen and had had her leg stepped on by another officer. Two police officers had allegedly kicked the first applicant's lower legs as they tried to push her into the police car in order to take her to the police station. They had subsequently agreed to let her remain, after she had kneeled before them at their request.

8. The investigating authority carried out a pre-investigation inquiry and received "explanations". The police officers denied any wrongdoing. Their "explanations" contained numerous contradictions, in particular in respect of the first applicant's behaviour and whether or not the site of the incident had been sufficiently well lit to be visible to witnesses (a park administrator and cafe servers stated that they had observed the scene from a distance). The police officers alleged that the first applicant had slapped one of them in the face, but this was not mentioned in their official reports about the incident, nor did it give rise to any official complaint or proceedings. It was not established which of the officers had taken D. to the car and where the others had been at that moment, or whether the applicants' injuries had been seen before the incident by people in whose company they had spent that day. According to witness Yu.S., the first applicant had been wearing shorts whose legs ended just below the knee, which would not have covered the bruises present on her lower legs. The second applicant and another child present at the scene of the incident were not interviewed.

9. The first applicant, D. and O.Z. consistently stated that during the incident, the second applicant had grabbed her father by the leg and held onto him while he was being taken by the officers to the car. Yu.S. stated that she

had seen two men being taken by their hands and led to a police car. After D. had been placed in the car, the second applicant had been seen lying on the pavement crying (according to the first applicant and O.Z.). D. and S.Z. (who had been placed in the police car) had heard the children crying. O.Z. had seen the first applicant kneeling near the officers and had later been told by her that they had inflicted injuries on her while trying to get her into the car. O.Z. had also heard the second applicant complaining after the incident of pain in her leg after somebody had stepped on it.

10. The Sovetskiy interregional investigative unit of Lipetsk dismissed the applicants' complaints as unsubstantiated. That decision was declared void as having been based on an incomplete inquiry, as were subsequent, similar decisions. One of those decisions was declared unfounded by the Pravoberezhniy District Court in a judgment of 15 November 2010. However, the most recent decision of 9 December 2010 refusing to institute criminal proceedings against the police officers, which was essentially the same as the previous decision, was upheld by the same court in a judgment subsequently endorsed by the Lipetsk Regional Court on 21 June 2011.

11. According to a 2011 report on a psychological examination of the first applicant, the authorities' response to her complaints about the incident had caused her anxiety and depression.

12. On 21 March 2011 the Lipetsk Regional Court dismissed a complaint brought by the first applicant against the investigating authority.

13. The incident was reported in the local media.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The applicants complained that they had been subjected to ill-treatment by the police and that no effective investigation had been carried out into their complaints. They relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

15. The Government submitted that the application was manifestly ill-founded. They relied on the results of the pre-investigation inquiry, stating that (i) the first applicant had sustained the injuries by kneeling of her own volition, (ii) there was no evidence that the second applicant's injuries had been inflicted as alleged by the applicants, (iii) the police officers had not used physical force against the applicants, (iv) it had been necessary to escort D. and S.Z. to the police station because the first applicant's aggressive

behaviour had made it impossible to draw up administrative offence records on the spot, (v) arresting the second applicant's father in her presence had not amounted to her inhuman or degrading treatment, and (vi) the applicants' allegations had not been found credible as a result of the thorough inquiry. In reply to the Court's question concerning a legal and administrative framework aimed at ensuring the protection of children from physical violence and psychological trauma during police operations, the Government stated that the police had had to act in accordance with the principles of respecting human rights and freedoms, lawfulness, humanism and transparency set forth in section 3 of the Police Act (no. 1026-I of 18 April 1991).

16. The applicants maintained their complaints, stating that the second applicant had received psychological trauma by seeing her father being taken away by the police and feeling heightened fear and anxiety. The applicants submitted that at the time of the events in question there had been no legislation regulating or clarifying the protection of children during police operations. Nor had it been adopted thereafter.

17. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

18. The applicants submitted that their treatment by the police and the authorities' reaction to their complaints had violated Article 3.

19. The Government disagreed.

20. The general principles concerning ill-treatment by State agents and the obligation to carry out an effective investigation have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, ECHR 2015).

21. Having regard to the forensic medical expert's findings, the Court considers that the applicants' injuries could have arguably been inflicted in the circumstances alleged by them. Given the location of the first applicant's injuries, the Court cannot agree with the Government's suggestion that she had sustained the injuries by kneeling of her own volition (and not at the officers' request, as she alleged).

22. In view of the medical and witness evidence, the Court finds that the applicants' complaints amounted to an arguable claim of ill-treatment, triggering an obligation for the State to carry out an investigation satisfying the requirements of Article 3. The authorities, however, dismissed the applicants' complaints following the pre-investigation inquiry. The Court has found previously that a pre-investigation inquiry is the initial stage in dealing with a criminal complaint under Russian law which may serve the legitimate purpose of filtering out ill-founded complaints, saving the resources of the investigating authorities. However, if the information gathered has disclosed

elements of a criminal offence, that is to say that the alleged ill-treatment may have been committed, the pre-investigation inquiry no longer suffices and the authorities should initiate an investigation proper, in which the whole range of investigative measures can be carried out, including the questioning of witnesses, confrontations and identification parades (see *Samesov v. Russia*, no. 57269/14, § 54, 20 November 2018). The mere carrying out of a pre-investigation inquiry 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 by police (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014, and *Samesov*, cited above, §§ 51-53 and 59). In particular, individuals who give "explanations" in the course of a pre-investigation inquiry bear no liability for false statements or for a refusal to testify (see *Lyapin*, cited above, §§ 105 and 134). An investigation compliant with the standards of Article 3 should result in a reasoned decision to reassure a concerned public that the rule of law had been respected (ibid., § 126).

23. The Court has no reason to hold otherwise in the present case, in which "explanations" received during the pre-investigation inquiry contained numerous contradictions, the basic facts were not established and the investigating authorities did not offer any explanation as to how the applicants' injuries had been sustained.

24. In the light of the Court's case-law, according to which children, who are particularly vulnerable to various forms of violence, are entitled to State protection, in the form of effective deterrence, against serious breaches of personal integrity (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI, and *Okkalı v. Turkey*, no. 52067/99, § 70, ECHR 2006-XII (extracts)), the authorities could have been expected to pay special attention to the seriousness of the alleged violations in view of the second applicant's age. The Court observes, however, that concern for providing extra protection to the child in question was lacking throughout the proceedings.

25. The Court finds that no effective investigation was carried out into the applicants' complaints. There has therefore been a violation of Article 3 under its procedural limb.

26. The Court reiterates that in all cases where a person is under the control of the police or a similar authority, the burden of proof lies with the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Bouyid*, cited above, §§ 83-84, with further references). Yet, the Government's denial of the State's responsibility for the applicants' injuries in the present case was solely based on the results of the superficial pre-investigation inquiry, which fell short of the requirements of Article 3. The Court therefore finds that the Government have failed to discharge their burden of proof and to produce evidence capable of casting

doubt on the applicants' account of the events (see *Samesov*, cited above, § 53). Given that the parties have not disputed the fact that the applicants were under the control of the police when subjected to the use of physical force, the presumption of the State responsibility for the applicants' injuries should apply (see *Bouyid*, cited above, §§ 100-01; *Yudina v. Russia*, no. 52327/08, § 68, 10 July 2012; *Shevtsova v. Russia*, no. 36620/07, § 49, 3 October 2017; and *A.P. v. Slovakia*, no. 10465/17, §§ 52-56, 28 January 2020).

27. In view of the material in the case file, the Court is not convinced by the Government's argument based on the investigating authority's finding that the six police officers had been unable to draw up an administrative offence record on the spot because of the first applicant's behaviour, and that it had been necessary, therefore, to escort D. to the police station by force – a measure of restraint provided for in the Code of Administrative Offences if a record cannot be drawn up at the place where the offence was discovered (see *Gremina v. Russia*, no. 17054/08, §§ 53-54, 26 May 2020). Administrative records concerning the escorting of D. to the police station indicated no reason as to why it had been impossible to draw up a record on the spot.

28. The applicants argued that, for the second applicant, who was 4 years old at the time, seeing her father being taken away by the police had been hurtful and traumatic. The Court notes that the police paid no heed to her presence and did not take her interests into consideration, as they should have, in deciding on and implementing the measure of restraint in respect of her father, all the more so because the measure was not shown to have been necessary (see *A v. Russia*, no. 37735/09, §§ 67-68, 12 November 2019, and *Gutsanovi v. Bulgaria*, no. 34529/10, § 132, ECHR 2013 (extracts)). In describing a legal and administrative framework aimed at ensuring the protection of children from physical violence and psychological trauma during police operations, the Government referred solely to the general principles of respecting human rights and freedoms, lawfulness, humanism and transparency set forth in section 3 of the Police Act (no. 1026-I of 18 April 1991), as in force at the material time. The Court is concerned by the absence of any specific guidelines and instructions for the Russian police force, of which the police officers would have been well aware, in respect of planning and carrying out arrests and other police operations in situations involving the presence of children, in order to avoid or minimise their exposure to violent scenes and the risk of their falling victim of physical abuse, be it intentional or not.

29. In the present case, the second applicant and her mother, the first applicant, indeed sustained physical injuries as a result of their encounter with the law-enforcement officers (see paragraph 26 above). It has not been shown by the Government that the use of force against them was strictly necessary in the circumstances of the case. Mr D. (the applicants' husband and father respectively) and Mr S.Z. offered no resistance to their escorting to the police station (see paragraph 5 above). Bearing in mind the vulnerability of minors

in the context of Article 3 of the Convention, the six police officers should have been capable of planning and carrying out their duties for maintaining public order with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups (see *Bouyid*, cited above, §§ 50-51, referring to the European Code of Police Ethics adopted by the Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe; and *A.P. v. Slovakia*, cited above, § 62). However, they failed to do so in the absence of the relevant regulations or instructions, as noted at paragraph 28 above. Having regard to the material in its possession, the Court concludes that the applicants' injuries resulted from the treatment to which they were subjected at the hands of the police on 9 May 2010.

30. There has accordingly also been a violation of Article 3 of the Convention under its substantive limb, in respect of both applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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."

A. Damage

32. The applicants claimed compensation in respect of non-pecuniary damage, leaving its amount at the Court's discretion. They asserted that they had suffered psychological harm, which, in respect of the first applicant, had been confirmed by the psychologist's report, on account of the abuse inflicted by the police and the latter's impunity.

33. The Government contested the claims.

34. The Court awards each of the applicants 10,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

35. The applicants also claimed EUR 1,588 in respect of costs and expenses incurred before the Court, including EUR 1,500 for their legal representation by Ms Khrunova and EUR 88 for postal and translation expenses, to be paid into their representative's bank account.

36. The Government contested the claims.

37. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court notes that although Ms Khrunova had a properly signed authority form and represented the applicants from the time their application form was lodged, the applicants did not submit an agreement indicating the cost of their representation by her before the Court. The lawyer's letter attesting to the fee for her work does not suffice to show that that amount was actually and necessarily incurred by the applicants or, in other words, that they had a legally binding obligation to pay the stipulated fee for legal services, as required by the Court's case-law (see *Sukhovoy v. Russia*, no. 63955/00, §§ 42-43, 27 March 2008). In these circumstances the Court makes no award under this head. It further considers it reasonable to award EUR 70 for expenses incurred in the proceedings before it, plus any tax that may be chargeable to the applicants. This amount should be paid into the bank account of the applicants' representative as requested by them.

C. Default interest

38. 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 procedural limb in respect of both applicants;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in respect of both applicants;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 70 (seventy euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georges Ravarani President