



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

THIRD SECTION

CASE OF VERZILOV AND OTHERS v. RUSSIA

(Application no. 25276/15)

JUDGMENT

Art 3 (procedural and substantive) • Degrading treatment • Violent attack by Cossacks on members of a feminist punk band – Pussy Riot - during an artistic performance in Sochi during the 2014 Olympic Winter Games • Severity threshold reached • Failure to carry out an effective investigation capable of leading to the identification and punishment of those responsible • Clear indications of political and religious motives for attack left without any assessment and reaction by authorities • Attack imputable to the respondent State • Direct connection between the Cossacks' actions and their duties in carrying out State service for maintaining public order • Use of force by Cossacks in carrying out that service not regulated by domestic law at material time • No indication of any assessment of the Cossacks' fitness and of any training and supervision by domestic authorities as envisaged by the regulations then in force • Striking passivity of police officers at the scene indicating connivance or acquiescence on the authorities' part

Art 10 • Respondent State's failure to discharge its duty not to interfere unlawfully and disproportionately with right to freedom of expression and to take reasonable and appropriate measures to enable exercise of that right to proceed peacefully • Respondent State responsible for regulating Cossacks' activities appropriately and for their training and supervision in order to shield individuals adequately from ill-treatment, in particular when exercising freedom of expression

STRASBOURG

29 August 2023

FINAL

29/11/2023

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

In the case of Verzilov and Others v. Russia,

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

Pere Pastor Vilanova, *President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 25276/15) 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”) on 7 May 2015 by five Russian nationals whose personal details appear in the appended table (“the applicants”);

the decision to give notice of the application to the Russian Government (“the Government”);

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Committee Against Torture and the Memorial Human Rights Centre, non-governmental organisations based in Nizhniy Novgorod and Moscow respectively, who were granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 27 June 2023,

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

INTRODUCTION

1. The case concerns a violent attack on the applicants by Cossacks during an artistic performance by the applicants in Sochi on 19 February 2014.

THE FACTS

2. The applicants were represented by Ms N. Dobreva, a lawyer practising in Sofia.

3. The Government were represented by Mr M. Galperin and Mr A. Fedorov, former Representatives of the Russian Federation to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. THE APPLICANTS' BAND

5. The applicants were members of a Russian feminist punk band, Pussy Riot, founded in late 2011. According to the group members, their songs contained “clear and strongly worded political messages critical of the government”. The group carried out a series of impromptu performances of their songs in various public areas in Moscow selected to enhance their message. The group performed in disguise, with its members wearing brightly coloured balaclavas and dresses. On 21 February 2012 five members of the band, including the second and fifth applicants, attempted to perform “Punk Prayer – Virgin Mary, Drive Putin Away” from the altar of Moscow’s Christ the Saviour Cathedral. The cathedral guards quickly forced the band out. Subsequently, the second and fifth applicants were remanded in custody, convicted of hooliganism motivated by religious hatred and sentenced to two years’ imprisonment. In addition, a court ruled that videos of the band’s performances were of an extremist nature and ordered that access to that material be limited (see *Mariya Alekhina and Others v. Russia*, no. 38004/12, 17 July 2018).

II. XXII OLYMPIC WINTER GAMES

6. Between 7 and 23 February 2014 the city of Sochi, Krasnodar Region, Russia, hosted the XXII Olympic Winter Games.

7. 500 Cossacks from the Cossack associations of the Krasnodar Region assisted the police in maintaining public order during the event.

III. ATTEMPTED PERFORMANCE IN SOCHI

8. On 16 February 2014 the applicants arrived in Sochi to perform their new song “Putin Will Teach You to Love the Motherland”. The lyrics can be translated as follows:

“50 billion and a rainbow ray
Rodnina and Kabayeva will pass you the torch
You’ll be taught to obey and cry in the camps
Fireworks for the bosses. Hail, Duce!
Sochi is blocked, Olympus is under surveillance
Special means, weapons, crowds of cops
FSB – an argument, Interior Ministry – an argument
On Channel One – applause
Putin will teach you to love the Motherland

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In Russia, spring can come suddenly
Greetings to the messiah as a shot from Aurora
The prosecutor is determined to be rude
Give him resistance, not pretty eyes
A cage for protest, vodka, matrioshka
Jail for the Bolotnaya, more vodka, caviar
The Constitution is in the noose, Vitishko is in jail
Stability, prison rations, the fence, the watchtower
Putin will teach you to love the Motherland
Broadcast has been shut down for Dozhd
Gay pride has been sent to the shithouse
A two-assed toilet – a priority
Sentence to Russia – the general regime, 6 years
Putin will teach you to love the Motherland
The Motherland
The Motherland
The Motherland.”

9. At about 4 p.m. on 19 February 2014 at the seaport in the Tsentralnyy district of Sochi, the applicants, wearing brightly coloured balaclavas, started their performance against the background of a large billboard with the sign “Sochi 2014”, in the presence of friends and journalists who were filming and taking pictures of them. The female members of the band were dancing in colourful open-shoulder dresses, while the fourth applicant was playing a guitar and the first applicant was filming them.

10. The applicants’ account of subsequent events is the following. When the fifth applicant, who was in front of the other women from the band, began singing the song, a group of approximately ten men, including several in Cossack uniform, rapidly approached the band. One of the men in Cossack uniform (identified by the applicants as V.K.) sprayed the face of the fifth applicant with gas. She continued singing and dancing, holding a microphone with one hand and compressing her eyes with the other. Another man in Cossack uniform (identified by the applicants as Yu.S.) attacked the applicants with a whip, hitting the fifth applicant on the leg and the second applicant on the abdomen. Other attackers rushed towards the applicants, grabbing them, ripping their balaclavas off, pushing them and pulling their arms. The third applicant was screaming with pain when a Cossack pulled her arm. She and the fifth applicant were thrown to the ground. The first applicant’s eyes were sprayed with gas twice by a Cossack (identified by the applicant as V.K.). The attackers seized the fourth applicant’s guitar and used

it to hit him on the head. He was left with blood on his face. During the whole time of the attack – around two minutes – the applicants kept repeating the refrain of the song: “Putin will teach you to love the Motherland”. Eventually the applicants had to abandon their performance and leave the scene.

11. Video recordings of the attack, available on the Internet¹, largely support the applicants’ account of events. In particular, the fifth applicant appears to receive a blow from a whip while dancing and is later seen pressing her hand on her lower back after receiving another blow from a whip while lying on the ground.

IV. THE APPLICANTS’ INJURIES

12. On the same day after the incident the applicants’ injuries and complaints were recorded at Sochi Town Hospital no. 4 as follows:

- The first applicant was diagnosed with mild chemical burns to both eyes.
- The second applicant had scratches on the abdomen, pain in the area of the wrist and elbow joints and an itchy nose.
- The fourth applicant, who was diagnosed with a wound in the left forehead area, a closed brain injury and contusion of the left shoulder by the ambulance doctor, was examined and a contused wound measuring 2.5 cm by 0.5 cm on his head was recorded at the hospital.
- The fifth applicant had a bruise on the right hip and a 3 cm by 0.1 cm abrasion on the right arm with a thick crust. She also had pain in the area of the sacrum, stinging eyes, an itchy nose and throat, and stinging skin on the face, neck, chest and shoulders.

13. On 21 February 2014, after returning to Moscow, the second and fifth applicants were examined at Outpatient Clinic no. 5.

According to the second applicant’s medical records, she had a bruise on the right side of the abdomen measuring 6 cm by 4 cm and swellings in the areas of the right elbow joint and the left middle finger. She was diagnosed with contusion and haematoma in the right iliac area, and contusions of the right elbow joint and the middle finger on the left hand.

According to the fifth applicant’s medical records, she had abrasions on the right hand, left forearm and in the area of the knee joints; bruises in the area of the knee joints, left hand and right forearm; and oedema in the lumbar region measuring 2 cm by 1.5 cm. She was diagnosed with contusions, haematomas and abrasions of the upper and lower extremities, and contusion of soft tissues of the lumbar region.

¹ For example, Associated Press reporting at <https://newsroom.ap.org/editorial-photos-videos/detail?itemid=0392e8175bbd5e9b1a55e1cb8b7200f7&mediatype=video&source=youtube>

V. THE AUTHORITIES' RESPONSE

A. The applicants' complaints and statements

14. On 19 February 2014 the incident was reported to the police, including as a result of complaints made by the applicants when applying for medical aid at the hospital. On the same day the police interviewed the first, third and fourth applicants, on 22 February 2014 the first, second and fifth applicants, and on 28 February 2014 the third and fourth applicants. The applicants complained that they had been attacked by a group of men in Cossack uniform and in civilian clothes. The applicants described the violence they had suffered, noting that it had not been preceded by any warning.

15. In particular, the third applicant stated that she had been sprayed from a gas canister simultaneously with the fifth applicant by the same man in Cossack uniform; her eyes had started burning. A short Cossack with a fur hat had grabbed and pulled her by the arms and had then grabbed her by the neck, pressing on her throat with one hand and on the back of her head with the other hand. He had then pushed her to the ground with force; she had fallen hitting her head, elbow and knees. After that the police had arrived. The Cossacks had continued attacking people when the police arrived, without the police reacting in any way. Nor had the police reacted to the applicants' request that the Cossacks who had attacked them be arrested. Her eyes had been watery, and she had felt pain in the left elbow and in the area of the right kidney. A man in civilian clothes had been giving orders to the Cossacks, accompanying this with foul language.

16. The fourth applicant stated that the attackers had held his arms behind his back, hit him on the head and pushed him to the tarmac while holding his arms, inflicting intense pain. A man in civilian clothes had been giving orders to the Cossacks; he had ordered them to attack the fourth applicant. The applicants had asked police officers who had arrived at the scene of the incident to arrest the Cossacks who had attacked them, but to no avail.

17. On 20 February 2014 the applicants informed the police that with the help of open sources they had managed to establish the identity of two assailants, N.K., who was head of the Cossack association of the Tsentralnyy district of Sochi, and V.K., who was commander of a Cossack guard of the same association. On 22 February 2014 the fifth applicant stated that it was N.K. who had pushed and thrown her to the ground and dragged the second applicant by the arms. The applicants were confident that they would be able to identify the other assailants.

18. On 27 February 2014 the applicants' lawyer submitted an application to the police, arguing that the attackers' violent actions had to be classified as hooliganism motivated by religious and ideological hatred committed by a group of persons, under Article 213 of the Criminal Code. N.K. had been giving orders to the Cossacks and had committed violence himself, ripping

the balaclavas from the second and fourth applicants, pulling the second and fifth applicants by the arms and grabbing the fourth applicant by the head. After the incident, wishing to justify the violence, he had sent a letter to the Sochi public prosecutor (and published it on the Internet) protesting against Pussy Riot's presence in Sochi and expressing his religious and ideological animosity towards them. V.K. had attacked the first and fifth applicants with tear gas and ripped the fifth applicant's balaclava off. A tall Cossack with a moustache had attacked the applicants with a whip and threatened them verbally, using foul language. A short Cossack in a traditional Cossack hat had sprayed tear gas and attacked the third applicant, suffocating her, twisting her arms, pushing and throwing her to the ground and ripping her balaclava off. Several individuals had attacked the fourth applicant, ripping a guitar from his hands and hitting him on the head.

B. Pre-investigation inquiry

19. On 20 February 2014 the acting head of the inquiry unit (*отдел дознания*) of the Sochi transport police submitted a plan for an inquiry into the applicants' complaints, which was approved the next day by the head of the transport department of the Russian Ministry of the Interior for the Southern Federal Circuit. The plan consisted of a number of "pre-investigation" measures, in particular: (i) to interview the Pussy Riot members at their places of residence and to establish if they had applied for medical assistance there; (ii) to request their medical records for examination by forensic medical experts; (iii) to establish the identity of the Cossacks involved and to interview them; (iv) to request the ataman of the Cossack Association of the Tsentralnyy district of Sochi to provide information about the members of the Cossack guards in February 2014 in the Tsentralnyy district of Sochi, including the timetable and lists of those carrying out service, service regulations and references; (v) to request the Tsentralnyy district police department of Sochi to provide information about Cossacks who had participated in police patrols in February 2014; and (vi) to interview Yu.S., who had been found guilty in the administrative proceedings on 20 February 2014 (see paragraph 24 below).

20. On 4 March 2014 a deputy head of the investigation unit (*следственный отдел*) of the Sochi transport police ordered that the application submitted by the applicants' lawyer on 27 February 2014 be transferred to the inquiry unit of the Sochi transport police, before which similar complaints were pending. He stated that the alleged actions could not be categorised as hooliganism, and that other provisions of the Criminal Code could apply, for example intentional infliction of harm to health of medium gravity motivated by hatred under Article 112 § 2 (f).

21. Following a "pre-investigation inquiry", on 21 March 2014 an inquirer (*дознаватель*) from the seaport police unit of the Sochi transport

police issued a refusal to institute criminal proceedings. On 31 March 2014 that decision was set aside as unlawful and unfounded by the Sochi transport prosecutor's office. The inquirer issued eight more decisions declining to prosecute for want of the elements of a crime in the actions of Yu.S. and I.G. and, starting from the decisions issued in May 2014, in the actions of N.K. and V.K. All the decisions were set aside by the prosecutor's office for the same reason, in particular for failure to establish the identity of the other Cossacks who had participated in the incident, and to establish whether the Cossack who had used a whip could be identified as Yu.S. An appeal by the applicants to the courts seeking to have the investigating authority's inaction declared unlawful was rejected on the grounds that the investigating authority had not been inactive, its activity having been demonstrated by the decisions it had issued (the Sochi Tsentralnyy District Court's judgment of 24 September 2014, as upheld by the Krasnodar Regional Court on 7 November 2014).

22. In the course of the pre-investigation inquiry the police interviewed witnesses and examined video recordings and forensic medical experts' reports as follows.

1. Witnesses

23. Four individuals, interviewed on 19 February 2014, stated that they had seen the incident (S.D., S.A., D.Ya. and A.Kh., who was a security guard from the Ministry of Transport security service). They expressed indignation at the applicants' "provocative" behaviour, the "political character" of their song and the use of "profane" language, considering their performance to be a breach of public order which the Cossacks had rightly tried to suppress.

24. On 20 February 2014 Yu.S. stated that at about 4 p.m. the previous day at the Sochi seaport he had seen a group of people including Cossacks, as well as female members of Pussy Riot who had performed in the Christ the Saviour Cathedral in Moscow and desecrated the feelings of the Orthodox believers. A deep believer himself, he had been unable to restrain himself and had sworn at them. He had been outraged by the offensive denigrating words some of the women had been shouting in respect of the President of the country. He denied "touching anyone with his hands". On 20 February 2014 the chief of the Sochi transport police established that Yu.S. had behaved aggressively, swearing loudly and engaging in harassing behaviour towards citizens, thereby breaching public order and displaying blatant disrespect to society. Yu.S. was found guilty of petty hooliganism (an administrative offence) and given a fine of 1,000 Russian roubles (RUB).

25. On 21 February 2014 the head of the criminal search unit of the Sochi transport police questioned Yu.S., who stated that he was one of eight Cossacks from a village in the Krasnodar Region who had been sent to Sochi by their Cossack association for the duration of the Olympic Winter Games, to carry out service for maintaining public order in the Adler district of Sochi,

where they were all provided with accommodation. He denied beating the Pussy Riot members or having had a whip or a pepper spray can on him at the time of the incident.

26. On 2 March 2014 I.G., a member of the Cossack association of Armavir (Krasnodar Region), stated that he had been present at the place of the incident where young people including girls in bright clothes had been behaving provocatively and unknown people had been suppressing their unlawful actions. No one had inflicted injuries on those young people, and no one, including himself, had been dressed in Cossack uniform. He denied that anyone from his Cossack association had been present.

27. O.N., A.K., T.S. and Kh. (interviewed on 27 February, 2 March, 3 March and 7 April 2014 respectively) confirmed the applicants' account of events. Kh. stated that N.K. (dressed in civilian clothes) had been giving orders to the Cossacks. A.K., a journalist, and T.S., a photographer, had also been victims of the attack with a whip and gas spray and had suffered injuries.

28. N.K., head of the Cossack association of the Tsentralnyy district of Sochi of the Kuban Host Cossack Association, interviewed on 11 April 2014, stated that on 19 February 2014 he had not been on duty and had been wearing civilian clothes. He had seen a scuffle between a group of people in bright clothes and caps, who had been insulting society through their indecent behaviour (that is to say, by using foul language and shouting "Putin will teach [you] to love the Motherland"), and unknown people wearing a uniform resembling the Kuban Cossack uniform joined by others, who had been suppressing the group's unlawful actions. The Cossacks had not applied any physical force to anyone and had had no Cossack attributes or "special means" in their hands. He himself had said nothing and had not used any physical force. Several minutes later people had started dispersing, the police had arrived, and he had left.

29. V.K., commander of the Cossack guard of the Cossack association of the Tsentralnyy district of Sochi of the Kuban Host Cossack Association, interviewed on 13 April 2014, stated that on 19 February 2014 he had been on duty in the Tsentralnyy district of Sochi. He had been dressed in Cossack uniform. He had had no whip or special means on him. At about 4 p.m. he had been on his way to check on a Cossack patrol at the seaport. He had seen unfamiliar Cossacks standing by a cafe. People wearing bright clothes had emerged from the cafe and proceeded to the pier. The Cossacks had followed them. He had also followed them. The people had put bright balaclavas on their heads and had started behaving provocatively, using foul language and shouting "Putin will teach [you] to love the Motherland". By doing so they had clearly expressed their negative attitude towards society, and therefore the Cossacks had started suppressing their unlawful actions. One of the Cossacks had started using a whip, which was a Cossack attribute. V.K. had asked him to stop using the whip. In the middle of the scuffle N.K., ataman of the Cossack association of the Tsentralnyy district of Sochi, had arrived at

the scene of the incident. He had been wearing civilian clothes. Neither V.K. nor N.K. had used any physical force, and they had not been swearing. V.K. had seen a young man running away. Thinking that he had committed an offence, V.K. had unsuccessfully tried to apprehend him. Police officers had arrived at the scene of the incident and V.K. had left to check on the Cossack patrol. V.K. had identified himself on a video which the police inquirer had shown to him. There had been no members of the Cossack guard from his association among the Cossacks who had participated in the scuffle. V.K. and N.K. had been there by chance.

2. *Video recordings*

30. On 6 and 8 April 2014 the inquirer examined the video recordings of the incident from a CCTV camera on pier no. 10 and video recordings submitted by the applicants' lawyer on 27 February 2014. The inquirer's records of the examination of the recordings largely reflected the applicants' account of events (see paragraph 10 above). In particular, the records indicated that a short Cossack had grabbed the third applicant by the hands and pushed her; then had grabbed her hair with one hand and her neck with the other; she had fallen on her knees, screaming. A woman with a photo camera, identified as T.S., had been pushed by a man in civilian clothes, after which she had fallen on the cobblestones "on her own". There had been a scuffle between a man with a camera and a Cossack.

31. According to those records, two police officers arrived after the Pussy Riot members had collected their belongings and moved away towards the pavement, where many people had gathered. The Cossacks who had participated in the scuffle were in the crowd. The fourth applicant pointed to a man in the crowd, asking the police to arrest him because that man had allegedly beaten the fourth applicant up. A woman complained about having been hit with a whip. The camera then showed a moustached Cossack holding a whip. Some scuffles continued to take place after the arrival of the police: between a man and a Cossack holding a small object in his hand, with "unidentified liquid" being sprayed; and between a man with a camera screaming and another man in civilian clothes. There were voices in the crowd saying, *inter alia*: "traitors of Russia", "came from America", "political whores" and "villains". A police officer said that everyone needed to disperse. Then more police officers arrived.

3. *Forensic medical experts' reports*

32. Forensic medical experts' reports of 3 March 2014, ordered by the police inquirer on 24 February 2014 and prepared by experts from State forensic medical bureau no. 2 in Sochi on the basis of the applicants' medical records from Sochi Town Hospital no. 4 (see paragraph 12 above), stated as follows.

33. The first applicant's diagnosis of mild chemical burns to the eyes was not supported by the description of clinical signs in his medical records, which did not mention corneal erosion. Therefore, the injuries were not subject to a forensic medical assessment of damage to health. Eye irritation akin to the applicant's could have had a variety of causes, including eye infections, allergies, mechanical irritation or exposure to irritating substances.

34. The second applicant's records did not refer to any injuries which could be subject to an assessment of damage to health.

35. It could not be established how and when the fourth applicant had received the wound in the area of the left forehead because no description of the wound's morphological characteristics was present in the medical records. Not leading to a short-term health disorder, such a wound was not considered an injury causing damage to health. The injuries relating to the diagnoses of closed brain injury and contusion of the left shoulder were not described in the medical records and could not therefore be assessed.

36. The fifth applicant's abrasion on the arm did not lead to her temporary loss of working capacity and was not therefore considered damage to health. It could have been caused by a blunt object with a limited contact surface or by an object with a sharp end.

C. Decision of 9 March 2015 concluding the inquiry

37. Relying on the results of the pre-investigation inquiry (see paragraphs 23-36 above), on 9 March 2015 the inquirer of the Sochi transport police issued the most recent refusal to institute criminal proceedings for want of the elements of a crime, largely repeating the refusals issued previously. It was established that at 4 p.m. on 19 February 2014 at pier no. 10 at the seaport in the Tsentralnyy district of Sochi a scuffle had taken place between the Pussy Riot members and members of the Kuban Host Cossack Association Yu.S., I.G., V.K. and N.K., in the course of which the fourth and fifth applicants had received injuries. The first applicant's injuries could have originated from causes unrelated to the incident, and no injuries had been recorded on the second applicant. None of the injuries recorded had been classified as damage to health. It was found that, in the absence of damage to health, the actions of Yu.S. and I.G. could not be classified under Article 115 of the Criminal Code (intentional infliction of minor damage to health, see paragraph 55 below). Nor could they be classified under Article 116 of the Criminal Code (battery, see paragraph 55 below) because one blow did not constitute battery. As regards V.K. and N.K., it had not been established that they had subjected anyone to beatings or other violence inflicting physical pain. The decision did not clarify what actions of the four Cossacks had been established. It indicated that the applicants could apply to the Justice of the Peace seeking private prosecution of the attackers. In a letter of 29 March 2015 accompanying the decision sent to the applicants, the inquirer

added that offences under Article 116 of the Criminal Code were subject to private prosecution, through an application to the Justice of the Peace.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Cossack State service

1. Legislation of the Russian Federation

38. The legislation of the Russian Federation in force at the material time regulated Cossack State service, in so far as relevant to the present case, as follows.

39. Decree no. 355 of 22 April 1994 of the Government of the Russian Federation on State Policy concerning Cossacks provided as follows:

1. Resurrection of Cossack State service

“For the main part of their history the Cossacks were linked to State service, and it was in the course of State service that the Cossacks acquired the features that distinguish them as a particular group of the Russian people. The combination of State service with a specific military and agricultural way of life constituted the precondition for the development of the traditional form of Cossack State service, which proved highly efficient for centuries ...”

2. Type and forms of Cossack State service

“Taking into account the historical traditions and the State’s modern needs, ... the government considers it appropriate to define the following types of Cossack State service:

- service in the armed forces of the Russian Federation;
- service for the State border protection;
- customs service;
- service in the operative units of the internal troops of the Ministry of the Interior of the Russian Federation;
- service for maintaining public order ...”

40. Section 2 of Federal Law no. 154-FZ of 5 December 2005 on State Service of the Russian Cossacks (hereinafter “the Cossack State Service Act”) provided that the Russian Cossacks were citizens of the Russian Federation who were members of Cossack associations (*каза́чьи общества*). A Cossack association was a non-profit organisation, the members of which took upon themselves a duty to carry out State or other public service; such an association had to be entered in the State register of Cossack associations of the Russian Federation. Article 123.15 of the Civil Code of the Russian Federation and section 6(2) of the Non-Commercial Organisations Act

(Law no. 7-FZ of 12 January 1996, as amended on 3 June 2009) contained similar provisions.

41. Under section 2 of the Cossack State Service Act, territorial Cossack associations, namely (i) village, settlement and town associations; (ii) district associations; (iii) circuit associations; and (iv) host (or army) associations, formed part of the All-Russian Cossack Association. A Cossack association was managed by its high governing body, its ataman and other bodies in accordance with its charter; the charter of the All-Russian Cossack Association was approved by the President of the Russian Federation.

42. Under section 4 of the Cossack State Service Act, the main principles of Cossack State service were legality, priority of human rights and freedoms, their direct application and the obligation to acknowledge, enforce and protect them.

43. Under section 5 of the Cossack State Service Act, Cossacks carried out State civil service, military service and law-enforcement service in accordance with the federal legislation. They also took part in maintaining public order and carried out other activities on the basis of agreements between Cossack associations and organs of the federal executive State authorities, executive State authorities of the subjects (constituent entities) of the Russian Federation and local municipal authorities in accordance with the legislation of the Russian Federation. The President of the Russian Federation determined the procedure by which members of Cossack associations took up duties to carry out State or other public service, and the Cossack ranks, uniform and insignia.

44. Decree no. 1124 of the President of the Russian Federation of 7 October 2009 provided that individual applications by members of a Cossack association to take up duties to carry out State or other public service were submitted to the association ataman, who presented them to the general assembly of the Cossack association for approval. The decision of the Cossack association thus taken (with information about the number of Cossacks for each type of service) was subject to approval by a higher ataman and the federal and/or territorial organs of the State executive authority. Approvals of duties to carry out service were recorded in the charter of the Cossack association. Employment contracts for carrying out service were concluded between the Cossack association and its members.

45. The process for the taking up of duties to carry out State or other public service by members of primary Cossack associations (village, settlement and town associations) or district and circuit Cossack associations which formed part of a Cossack host (or army) association was organised by the ataman of a Cossack host. The ataman of a Cossack host was elected by its high governing body for five years and had to be approved by the Russian President on a proposal by a federal organ of the State executive authority responsible for interaction with the Cossack associations (section 5 §§ 9-10 of the Cossack State Service Act). The highest rank – Cossack general – was

conferred by the President of the Russian Federation on a proposal by a federal organ of the State executive authority responsible for interaction with Cossack associations; the main ranks were conferred in the order determined by the President of the Russian Federation (decree no. 169 of the President of the Russian Federation of 9 February 2010).

46. Under section 7 of the Cossack State Service Act, federal and/or territorial organs of State executive authorities, State executive authorities of the subjects of the Russian Federation and local municipal authorities had a right to involve the members of Cossack associations in carrying out their respective tasks and functions in accordance with agreements concluded with Cossack associations in the order determined by the Government of the Russian Federation. Those authorities carried out supervision over the compliance with the terms of such agreements.

47. In accordance with Decree no. 806 of the Government of the Russian Federation of 8 October 2009, State civil service, law-enforcement service and municipal service were to be carried out on the basis of employment or service contracts with the members of Cossack associations. As regards service of the members of Cossack associations in the form of assistance to federal and/or territorial organs of the State executive authorities, State executive authorities of the subjects of the Russian Federation and local municipal authorities in carrying out their tasks and functions, it was to be performed on the basis of agreements concluded between a federal or territorial organ of a State executive authority and a Cossack association in accordance with a template approved by a competent Ministry. The decision to conclude such agreements had to be taken by the head of a federal or territorial organ of a State executive authority. The agreements had to determine, *inter alia*, the procedure for the involvement of the members of Cossack associations, the rights and obligations of the parties and financial terms.

48. Under section 8 of the Cossack State Service Act, the State service of the Russian Cossacks was financed from the federal budget, budgets of the subjects of the Russian Federation and municipal budgets.

49. Federal Law no. 44-FZ of 2 April 2014 on Participation of Citizens in Maintaining Public Order (which entered into force in July 2014) created the legal conditions for voluntary assistance of Russian citizens to the police and other law-enforcement authorities in maintaining public order. The forms of such activity include, *inter alia*, people's guards (*народные дружины*) participating in maintaining public order in collaboration with the police and other law-enforcement, State and local authorities. People's guards can be formed from members of Cossack associations entered in the State register of Cossack associations. Members of people's guards have to satisfy certain conditions, such as, *inter alia*, having full legal capacity, not having any mental disorders or drug or alcohol addiction, not being the subject of an ongoing prosecution or not having a criminal record in respect of certain

offences. Under section 19 of the Act, members of people's guards are allowed to use physical force in the event of danger directly threatening them or others in situations of necessary defence or extreme need within the limits established by the legislation of the Russian Federation. The use of physical force must normally be preceded by a warning. The use of force against visibly pregnant women, invalids and minors is prohibited, save in the case of an armed or grouped attack committed by such individuals.

2. Cossack State service in the Krasnodar Region

50. Law no. 1267-KZ of the Krasnodar Region of 28 June 2007, as in force at the material time, provided that the collective participation of citizens in maintaining public order could be done through the activity of Cossack guards formed by the Cossack associations of the Kuban Cossack Host Association if there was an agreement with the relevant law-enforcement authority. The Cossack guards were composed of members of the Cossack associations who had undertaken to carry out State and other public service. Members of the Cossack guard had to perform their duties jointly with law-enforcement officers. Individuals who had criminal records or had been convicted of certain administrative offences, placed under medical supervision for mental disorders or drug or alcohol addiction, or declared legally incapacitated or physically unfit could not become members of the Cossack guard.

Law no. 1267-KZ (section 9) defined the duties of the Cossack guard members as follows:

- “(1) to participate in maintaining public order; to take the initiative in carrying out preventive work with offenders;
- (2) to strictly observe the legislation of the Russian Federation and the legislation of the Krasnodar Region;
- (3) to act in a disciplined manner; while carrying out duties to maintain public order, to faithfully execute tasks given by the commander of ... a Cossack guard and by police officers;
- (4) to use the rights given by the legislation of the Russian Federation for the suppression and prevention of offences; to protect citizens' honour and dignity from culpable infringements or other anti-social manifestations; to be polite and attentive in communication with citizens;
- (5) to increase their level of legal knowledge; to acquire modern methods of fighting crime;
- (6) while carrying out duties to maintain public order, to carry with them a guard card and other external attributes.”

Members of the Cossack guard had the following rights (section 10 of Law no. 1267-KZ):

- “(1) to demand that citizens cease the commission of offences;

(2) to demand ID documents from persons violating public order where their identification is necessary for establishing the circumstances of offences that have been committed;

(3) for the purposes of suppressing offences, to take perpetrators to public centres for maintaining order or the relevant police stations;

(4) to enter entertainment, recreation and other public areas in pursuit of fleeing offenders;

(5) to take individuals to police stations when they appear in public places in a state of inebriation offensive to human dignity and public morality.”

Law no. 1267-KZ (section 12) provided for allowances to be paid from the regional budget in the event of death (RUB 1,000,000), disability (RUB 500,000) and injuries (RUB 100,000) caused to members of Cossack guards in connection with their participation in maintaining public order.

51. In accordance with joint orders of the head of the Main Department of the Ministry of the Interior of Russia for the Krasnodar Region and the Ataman of the Kuban Cossack Host Association (no. 908/114/1 of 29 June 2012) and the head of the Transport Department of the Ministry of the Interior of Russia for the Southern Federal Circuit and the Ataman of the Kuban Cossack Host Association (no. 514/239 of 29 November 2012), the duties of the atamans of the Cossack district associations included, *inter alia*: ensuring the Cossack guards’ participation in preserving public order in accordance with the legislation of the Russian Federation and the Krasnodar region; ensuring systematic personal supervision of the work of Cossacks in patrolling the relevant territory; and giving instructions and training to Cossacks. Experienced police officers were to work on a permanent basis with Cossack guards, organising their joint activities and providing training and legal assistance to Cossacks. The police were responsible for carrying out checks of candidate members of Cossack guards to ensure their compliance with the requirements, and also for the overall management of activities involving Cossacks, including keeping records of Cossacks on duty and providing instructions and training, in particular on the legislation in force.

52. Decree no. 656-r of the Governor of the Krasnodar Region of 14 August 2012 on the organisation of the activity of Cossack guards participating in maintaining public order in the Krasnodar Region recommended:

- that the Kuban Host Cossack Association ensure, jointly with the Main Police Department of the Krasnodar Region and local authorities of the Krasnodar Region, the participation of Cossack guards in maintaining public order from 1 September 2012;

- that the Main Police Department of the Krasnodar Region organise:

(i) checks of candidate members of the Cossack guards for the presence of any compromising material in police records;

(ii) the approval of the lists of the Cossack guards by the heads of local police departments;

(iii) the preparation and approval of a training programme for members of the Cossack guards; and

(iv) training for members of the Cossack guards in the local police departments;

- that the department for Cossack affairs and work with servicemen of the administration of the Krasnodar Region ensure permanent monitoring of the local authorities' work on the implementation of the Decree;

- that the local authorities of the Krasnodar Region provide assistance to the district Cossack associations in organising the participation of Cossack guards in maintaining public order, and carry out supervision of the organisation of that activity; and

- that the local authorities of the Krasnodar Region, together with the district Cossack associations of the Kuban Host Cossack Association:

(i) ensure the approval of the lists of members of the Cossack guards by the heads of local police departments; and

(ii) prepare and conclude agreements on the participation of members of the Cossack guards in maintaining public order.

53. An agreement on the participation of members of the Cossack guard of the Tsentralnyy District Cossack Association of Sochi of the Black Sea Circuit Cossack Association of the Kuban Host Cossack Association in maintaining public order in the territory of Sochi during the period from 1 January 2014 to 31 December 2014 was signed by A.P. (head of the municipality of Sochi), V.U. (deputy head of the Main Police Department of the Krasnodar Region and head of the Sochi police department) and N.K. (ataman of the Tsentralnyy District Cossack Association of Sochi).

Under the agreement, the Tsentralnyy District Cossack Association of Sochi undertook, *inter alia*:

- to form from its members a Cossack guard composed of no fewer than fifty-five Cossacks for participation in the protection of public order in the territory of Sochi, the Cossack guard to become operational from 1 January 2014 in accordance with monthly rotas approved by the head of the Sochi police department;

- to ensure that the members of the Cossack guard wore the Cossack uniform and carried their guard cards and badges with them;

- to form the Cossack guard aiding the local authorities and the police in maintaining public order and protecting individuals, society and the State from unlawful infringements;

- to form the Cossack guard aiding the police in preventing and suppressing offences, and in solving and investigating crimes; and

- to ensure the participation of the Cossack guard in the education of citizens in the spirit of respect for the law and the rules of living together.

The Sochi police department undertook:

- to involve, from 1 January 2014, members of the Cossack guard in the protection of public order in the territory of Sochi, jointly with police officers of the Sochi police department, in accordance with monthly rotas;
- to provide the necessary conditions, permanent assistance and support for members of the Cossack guard to carry out their duties under this agreement;
- to organise training of members of the Cossack guard for their participation in the protection of public order and acquisition of knowledge of the legislation currently in force;
- to organise the management of activities for the protection of public order to be carried out together with the Cossack guards, and to ensure the joint briefing of police officers and members of the Cossack guard on duty;
- to ensure the systematic recording of the Cossack guards' participation in the protection of public order by entering the Cossacks' names in the duty log; and
- to give incentives to members of the Cossack guard actively participating in the protection of public order, aiding police officers in solving and detecting crimes, and detecting and suppressing administrative offences.

The administration of Sochi undertook:

- to carry out supervision of the interaction between the Sochi police department and the Central District Cossack Association in organising the Cossack guards' work; and
- to give incentives to members of the Cossack guard who had been outstanding in the protection of public order.

54. Decree no. 1107 of the Governor of the Krasnodar Region of 2 October 2013 on the "Kuban Cossacks" State programme allocated funds from the regional budget for the permanent participation of at least 330 Cossack guards from the Kuban Host Cossack Association in maintaining public order in Sochi during the Olympic Winter Games in 2014.

B. Criminal Code

55. For Articles 115 and 116 of the Criminal Code of the Russian Federation, see *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, §§ 54-57, 14 December 2021.

II. INTERNATIONAL LAW AND PRACTICE

A. Responsibility of States for internationally wrongful acts

56. The Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission (ILC) in 2001 (Yearbook of the International Law Commission, 2001, vol. II, Part Two), and their commentary, codified principles developed in modern international

law in respect of the State's responsibility for internationally wrongful acts. The relevant provisions of the Articles are as follows:

Article 5 – Conduct of persons or entities exercising elements of governmental authority

“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

Article 7 – Excess of authority or contravention of instructions

“The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.”

B. European Code of Police Ethics

57. In its Recommendation Rec(2001)10 on the European Code of Police Ethics adopted on 19 September 2001, the Committee of Ministers of the Council of Europe stated its conviction that

“public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights”.

It recommended that the governments of member States be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the European Code of Police Ethics appended to the Recommendation, with a view to their progressive implementation and the widest possible circulation of the text.

58. The Code states in particular that one of the main purposes of the police is to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the Convention (paragraph 1). In the section on “Guidelines for police action/intervention” it states that “[t]he police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances” (paragraph 36) and that they “may use force only when strictly necessary and only to the extent required to obtain a legitimate objective” (paragraph 37). Furthermore, “in carrying out their activities, [they] shall always bear in mind everyone's fundamental rights” (paragraph 43) and “police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups” (paragraph 44).

THE LAW

I. JURISDICTION

59. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicants complained under Article 3 of the Convention that the violent attack perpetrated by the Cossacks against them on 19 February 2014 was imputable to the respondent State. They also complained under Articles 3 and 13 of the Convention that the State had failed to carry out an effective investigation into the incident. In particular, they argued that the investigating authority had failed to take into account the context in which the performance had taken place, the political nature of the lyrics and the political hatred which the attackers had openly expressed towards them. The Court considers that the applicants' complaints fall to be examined under 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

61. The Government submitted that in their complaints to the domestic authorities the applicants had failed to rely on those provisions of the Criminal Code which punished acts of public officials on duty to maintain public order, having instead referred to, *inter alia*, Article 213 of the Criminal Code, which punished hooliganism committed by private individuals. The Government argued that, although several Cossacks had participated in the incident, they had acted in their private capacity and not as State agents, as they had indicated in their statements to the police. However, the applicants had failed to bring private prosecution proceedings.

62. The applicants submitted that they had clearly stated in their complaints to the police that their attackers had been dressed in Cossack uniform. It had been for the law-enforcement authorities – not the applicants – to determine the legal classification of the violent acts committed against them. The applicants argued that the State was responsible for their ill-treatment by the Cossacks, whose main function, financed by the State, had been to maintain public order.

63. The Court finds that the question whether the applicants have exhausted domestic remedies in respect of their complaints under Article 3 is inextricably linked to the merits of the complaints. Accordingly, the Court holds that the Government's objection should be joined to the merits.

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

B. Merits

1. The parties' submissions

(a) The applicants

65. The applicants submitted that the national legislation had not regulated Cossack State service in a clear and detailed manner. There had been no regulation of the Cossacks' use of physical force and weapons, and this had created a significant risk of arbitrariness. Police officers who had witnessed the attack had failed to stop it and to arrest the assailants.

66. The applicants argued that the refusal to institute criminal proceedings had been contrary to the authorities' duty to carry out an effective investigation. While some reasonable steps had been taken to collect evidence, the findings of the authorities had been ill-conceived and extremely formalistic, ignoring the strong evidence of political hatred which had motivated the assailants. Basic steps to identify all attackers had not been taken. The applicants submitted that the attack against them should have been subject to public prosecution, for example under Article 115 § 2 or Article 116 § 2 of the Criminal Code. Even assuming that the Cossacks had not acted in the capacity of State agents, they should still have been publicly prosecuted for acting arbitrarily or misappropriating State powers (Articles 288 and 330 of the Criminal Code). The applicants pointed out that cases of alleged violence by demonstrators against the police with similar consequences, that is to say, no lasting damage to health, had been publicly prosecuted by the respondent State (they referred to applications nos. 50041/14, 5550/15, 5565/15 and 5562/15 against Russia concerning the demonstration at Bolotnaya Square on 6 May 2012, which at the time of their observations had been notified to the Government and were pending examination by the Court).

(b) The Government

67. The Government disagreed, arguing that the injuries inflicted on the applicants had not caused damage to health and thus had not reached the "minimum level of severity" required by Article 3.

68. The Government stated that the necessary steps had been taken to establish the circumstances of the incident, those involved had been identified

and one of them had been found to have committed an administrative offence. They noted that it had not been proven that the Cossacks involved in the incident had been performing the duty of maintaining public order at the time of the incident. Therefore, their actions were not imputable to the State, and the provisions of the Criminal Code punishing acts committed in an official capacity (Article 286 of the Criminal Code) did not apply. For that provision to apply the person concerned not only had to be regarded as an official, but also had to be operating in an official capacity when committing an act punishable by criminal law.

(c) The third-party interveners

(i) Memorial Human Rights Centre

69. Memorial Human Rights Centre submitted that although the Cossack associations had been incorporated as separate legal entities (non-commercial organisations), the mere fact that a Cossack association had been included in the State register of Cossack associations meant that its members had voluntarily undertaken to perform State service. While performing State service they had to be recognised as State agents. The legislation had defined the forms of State service carried out by the Cossacks, which was financed from the federal, regional or municipal budgets. The State conferred the highest Cossack ranks and supervised the granting of the lower ranks. The Kuban Host Cossack Association had been entered in the State register of Cossack associations of the Russian Federation in 2012; its charter included participation in maintaining public order among its activities. A number of domestic court judgments delivered between 2016 and 2020 had demonstrated that the Cossacks had participated in maintaining public order jointly with police officers. No legislative framework regulating the use of force or special means by the Cossacks involved in maintaining public order had existed prior to Federal Law no. 44-FZ entering into force (see paragraph 49 above).

(ii) NGO Committee Against Torture

70. The NGO Committee Against Torture added that under Federal Law no. 44-FZ, the use of force to stop unlawful actions was only allowed in strictly limited situations involving direct threat and necessary defence. The cases of unauthorised use of force by the members of the Cossack associations in the course of maintaining public order had to be classified as abuse of power by a public official under Article 286 of the Code of Criminal Procedure. Domestic courts, however, had not treated the Cossacks as public officials in such cases and had applied provisions of the Criminal Code punishing criminal acts of private individuals.

2. *The Court's assessment*

(a) **The severity threshold**

71. Ill-treatment that attains a minimum level of severity within the meaning of Article 3 of the Convention usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, § 87, ECHR 2015). Any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his or her conduct, whatever the impact on the person in question (*ibid*, § 101). Whether or not physical injuries of a certain gravity were sustained is not decisive for the assessment of the severity threshold (see *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, § 60, 16 December 2021; see also *Gremina v. Russia*, no. 17054/08, §§ 21 and 89-91, 26 May 2020, and *Kreyndlin and Others v. Russia*, no. 33470/18, §§ 53-54, 31 January 2023).

72. Allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see, among other authorities, *Vladimir Romanov v. Russia*, no. 41461/02, § 58, 24 July 2008).

73. The Court observes that the applicants' allegations of the attack perpetrated against them by Cossacks were supported by medical records of the injuries sustained by the first, second, fourth and fifth applicants, witness statements and video recordings (see paragraphs 12-13, 27 and 30-31 above), and have not been disputed by the Government. In particular, it was not disputed between the parties that the attack had not been preceded by any warning, that it had started immediately after the applicants had commenced their performance and had ended about two minutes later as soon as they had abandoned it, and that the applicants had not acted in any manner which could have warranted the use of force against them. The attack included such violent acts as being grabbed, pushed and pulled by the arms and having their balaclavas ripped off, being subjected to the use of pepper spray (the first and fifth applicants), being hit with a whip (the second and fifth applicants), being thrown to the ground (the third and fifth applicant) and receiving a blow to the head (the fourth applicant).

74. The Court finds that the attack has been established “beyond reasonable doubt”, and that the situation in which the applicants found themselves during the attack was not compatible with respect for their human dignity and reached the threshold of severity for Article 3 of the Convention to apply.

(b) Procedural obligation

75. The general principles as regards the State’s procedural obligations when confronted with cases of violent incidents have been summarised in *Bouyid*, cited above, §§ 114-23 with further references; *Identoba and Others v. Georgia*, no. 73235/12, §§ 66-67, 12 May 2015; and *Sabalić v. Croatia*, no. 50231/13, §§ 93-98, 14 January 2021. Such procedural obligations are similar in cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Sabalić*, cited above, § 96).

76. The Court notes the Government’s submissions that the Cossacks had not been regarded by the domestic inquiry as State agents, and therefore could not be prosecuted as such, because it had not been proven that they had been on duty maintaining public order at the time of the incident. The Court observes, however, that one of the four Cossacks of the Kuban Cossack Host Association identified by the police inquiry as the participants in the incident (V.K.) had openly acknowledged being on duty and in Cossack uniform at the relevant time in the Tsentralnyy District of Sochi, where the incident had taken place (see paragraph 29 above). Despite his acknowledgment and the post he occupied as commander of the Cossack guard in the Tsentralnyy District of Sochi, no reasons were given by the authorities for not treating him as a State agent. Yu.S. also acknowledged that he had worn Cossack uniform and been in Sochi (albeit in a different district) on a mission to maintain public order during the Olympic Games (see paragraphs 24-25 above). He also acknowledged swearing at the applicants. Yet again, no assessment of his status and responsibility as a State agent was made. Besides a small administrative fine imposed on him for swearing, no efforts were made to establish whether it was Yu.S. who had attacked the applicants with a whip, regardless of the available video recordings of the incident, among other evidence, and the repeated instructions to that end by the prosecutor’s office (see paragraph 21 above). There was no examination of N.K.’s responsibility as a State agent in view of his rank as the ataman of the Tsentralnyy District Cossack Association, supervising the proper performance of the activities of the Cossack guards in the territory of the district in which the incident had occurred, and his corresponding duties (see paragraphs 28 and 51 above). Such an examination should have taken into account the witness statements that a man in civilian clothes, who was allegedly N.K., had been giving orders to the Cossacks who had attacked the applicants (see paragraphs 15-18 and 27 above). No steps were taken to find out whether I.G. had, like Yu.S., been

in Sochi on a mission to maintain public order during the Olympic Games (see paragraphs 7 and 26 above). No identification parade was ever conducted in respect of any of the four Cossacks involved to allow the applicants to formally identify them. The evident contradictions in those Cossacks' statements were never resolved (see paragraph 79 below). While hinting at the use of force by Yu.S. and I.G., the inquiry ended with a failure to establish that any violence had been committed by V.K. and N.K. However, no reasons and evidence were given in support of that conclusion, and the specific actions of the four Cossacks, whose participation in the "scuffle" with the applicants was not in doubt, were not established (see paragraph 37 above). V.K. and N.K., whose identities had been communicated to the police the day after the incident by the applicants themselves, who had discovered them from open sources, were interviewed by the police for the first time almost two months after the incident (see paragraphs 17, 28 and 29 above). Despite the steps initially planned (see paragraph 19 above), the instructions given by the prosecutor's office throughout the inquiry, the video recordings of the incident and other evidence, no efforts were made to establish the identity and status of the other attackers.

77. It is especially striking that no serious efforts to establish and record the identities and whereabouts of the alleged attackers were made by the police officers who arrived at the scene of the incident. The identity of those same police officers or their questioning was not part of the establishment of the facts of the incident either. This was an important omission, given that the Cossacks performed their duties in maintaining public order jointly with the police, who were responsible for their training and supervision (see paragraphs 7, 46-47 and 50-53 above). Furthermore, the fact that the inquiry was conducted by a local unit of the police raises a question about its compliance with the requirement of independence, given the Cossacks' connection with the police.

78. The Court further reiterates that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask possible discriminatory motives and to establish whether or not intolerance, for example of a racial, religious, gender-related or political nature, may have played a role in the events. Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights (see *Identoba and Others*, cited above, § 67, and *Virabyan v. Armenia*, no. 40094/05, § 218, 2 October 2012). Political pluralism, which implies the peaceful coexistence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law, and acts of violence committed by agents of the State which are intended to suppress, eliminate or discourage political dissent or to punish those who hold or voice a dissenting political opinion pose a special threat to the ideals and values of such society

(see *Virabyan*, cited above, § 200). The authorities' duty to investigate the existence of a possible link between political attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention (*ibid.*, § 220).

79. The Court notes that, while some of the statements of the four identified Cossacks were clearly contradictory (N.K. denying the use of force and whips and V.K. acknowledging having seen a whip being used, or I.G. stating that none of the participants in the incident had been in Cossack uniform and statements by N.K. and V.K. to the contrary), all four identically explained that the motivation for the Cossacks' actions had been the applicants' performance itself, which the Cossacks found to be provocative, outrageous, indecent and amounting to unlawful actions which had to be suppressed. The lyrics of the song, in particular the refrain which the applicants had kept repeating during the entire attack (see paragraphs 8 and 10 above), were considered by the Cossacks to be offensive and denigrating towards the Russian President, insulting to society or expressing negative attitudes towards society. Yu.S., self-described as a deep Orthodox believer, had recognised the female applicants as members of Pussy Riot who had performed in the Christ the Saviour Cathedral in Moscow and "desecrated the feelings of the Orthodox believers" (see paragraph 5 above) and, unable to restrain himself, had sworn at them (see paragraphs 24-26 and 28-29 above). The Court concludes that the clear indications of political and religious motives for the violence against the applicants were left without any assessment and reaction by the authorities, in contravention of their obligation under Article 3 of the Convention.

80. The Court has found previously, in the context of Russian cases concerning police ill-treatment, that the mere fact of the investigating authority's refusal to open a criminal investigation into credible allegations of ill-treatment was indicative of the State's failure to comply with its obligation under Article 3 of the Convention to carry out an effective investigation. The framework of the pre-investigation inquiry alone (if it was not followed by a criminal investigation) did not allow the identity of the alleged perpetrators of ill-treatment to be established and was not capable of leading to their punishment. The authorities had to initiate an investigation proper, in which the whole range of investigative measures could be carried out, including the questioning of witnesses, confrontations and identification parades (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014, and *Samesov v. Russia*, no. 57269/14, §§ 51-52 and 54, 20 November 2018).

81. The State's reaction to the credible allegations of the applicants' ill-treatment at the hands of Cossacks was limited to the pre-investigation inquiry, as a result of which they refused to institute criminal proceedings and to carry out an investigation. In total they took ten such decisions, nine of which were set aside as unlawful and unfounded. Their most recent decision

(taken more than a year after the incident), which was not set aside, was, however, similar to the previous decisions, containing the same shortcomings. The applicants' court appeal was to no avail (see paragraphs 21 and 37 above).

82. In view of the foregoing, the Court concludes that the authorities failed to carry out an effective investigation capable of leading to the identification and punishment of those responsible.

(c) Substantive obligations

83. It remains to be determined whether the applicants are justified in claiming the State's responsibility for their treatment by Cossacks under Article 3 of the Convention. The Court notes that the Government denied this, arguing that the Cossacks had acted in their private capacity and not in the performance of their duties to maintain public order.

84. It is a well-established principle of the Court's case-law that a Contracting State will be responsible under the Convention for violations of human rights caused by acts carried out by its agents in the performance of their duties (see *V.K. v. Russia*, no. 68059/13, § 174, 7 March 2017, and *Chernega and Others v. Ukraine*, no. 74768/10, § 125, 18 June 2019). In order to establish whether a State can be held responsible for the unlawful actions of its agents outside their official duties, the Court needs to assess the totality of the circumstances and consider the nature and circumstances of the conduct in question (see *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 48, ECHR 2012 (extracts)). Whether a person is an agent of the State for the purposes of the Convention is defined on the basis of a multitude of factors, none of which is determinative on its own. The key criteria used to determine whether the State is responsible for the acts of a person, whether formally a public official or not, are as follows: manner of appointment, supervision and accountability, objectives, powers and functions of the person in question (see *V.K. v. Russia*, cited above, § 175).

85. In the case of *Đurđević* the Court considered that an incident involving off-duty police officers concerned allegations of police violence because there had been no other reason for them to intervene in the situation in question than in their capacity as police officers, with one of them identifying himself as such (see *Đurđević v. Croatia*, no. 52442/09, § 75, ECHR 2011 (extracts); see also *Mižigárová v. Slovakia*, no. 74832/01, § 87, 14 December 2010, in which the fact that a police officer was off duty, during questioning at a police station which ended with a detainee being shot with the officer's service pistol, did not in itself rule out the State's responsibility). In *Sašo Gorgiev* the Court found that a harmful act committed by a police reservist in a bar (a shot fired from a service gun endangering the applicant's life) outside his official duties, at a time when he was supposed to be on duty and was in uniform, was imputable to the respondent State (see *Sašo Gorgiev*, cited above, § 52). The Court took into account the Government's failure to

inform it of whether any assessment of the police reservist's fitness for being recruited and equipped with a weapon had been made by the national authorities (*ibid.*, §§ 47-54). In cases involving civilian volunteers in a quasi-police function, factors such as whether the persons in question made use of their official position while committing the harmful acts and whether there was connivance or acquiescence in those acts by the authorities have been found relevant for dismissing arguments by the Government that the acts had been committed by those persons in their private capacity and for holding the State responsible (see, in the context of Article 2, *Avşar v. Turkey*, no. 25657/94, §§ 409-16, ECHR 2001-VII (extracts); *Acar and Others v. Turkey*, nos. 36088/97 and 38417/97, §§ 83-86, 24 May 2005; and *Seyfettin Acar and Others v. Turkey*, no. 30742/03, § 35, 6 October 2009). Whether a State agent was on or off duty when committing harmful acts has not therefore in itself been decisive for the issue of the State's responsibility.

86. It follows from the relevant domestic law that the Cossacks who assisted the police in preserving public order were employed by their primary Cossack associations and performed their duties on the basis of agreements concluded by their associations with the local police and local authorities (see paragraphs 38-48 above). The Cossacks' service was performed under the close control of the State, which: (i) entered the Cossack associations in a special register (a condition necessary for Cossacks belonging to those associations to perform State service); (ii) approved the charter of the All-Russian Cossack Association (an umbrella organisation of all territorial Cossack associations); (iii) established the procedure for Cossacks to enter State service; (iv) gave final approvals for the Cossack associations' decisions granting individual applications to enter State service; (v) determined the Cossack ranks, uniform and insignia; (vi) approved the election of the atamans of Cossack Host Associations (of which all smaller territorial associations were part); (vii) conferred the highest rank of Cossack general; (viii) determined the order in which other main ranks were conferred; and (ix) took decisions to conclude agreements with Cossack associations in order to involve their members in assisting State authorities in carrying out their tasks and functions, and carried out supervision of compliance with the terms of such agreements (see paragraphs 41-47 above). The powers listed under (ii-iii) and (v-viii) above belonged to the Russian President. The Cossacks' service was financed from the State or municipal budgets (see paragraph 48 above).

87. Under the regulations pertaining to the Cossack State service in the Krasnodar Region, members of the Cossack guard assisting the police in maintaining public order had to comply with certain requirements, such as not having a criminal record or any mental disorders or drug or alcohol addiction, and the police were expected to carry out checks of the candidates and approve the lists of Cossack guards (see paragraphs 50-52 above). Under the agreement concluded between the municipality of Sochi, the Sochi police

department and the Tsentralnyy District Cossack Association of Sochi (where the attack took place), the Sochi police were required to involve members of the Cossack guard in the protection of public order jointly with police officers, providing the necessary conditions and permanent assistance, organising their training and being responsible for their overall management (see paragraph 53 above). The administration of Sochi had to carry out supervision of the interaction between the Sochi police and the Cossack Association in organising the Cossack guards' work (ibid.).

88. The Court further notes that Cossacks from the Kuban Cossack Host Association, in their role of maintaining public order, had the duties of executing tasks assigned by police officers, "protect[ing] citizens' honour and dignity from culpable infringements or other anti-social manifestations" and ensuring the suppression and prevention of offences (see paragraph 50 above). Special funds were allocated from the Krasnodar regional budget for their permanent participation during the Olympic Winter Games in Sochi in February 2014 (see paragraphs 7 and 54 above). Allowances in the event of death, disability and injuries caused to Cossacks in the course of their participation in maintaining public order in the territory of the Krasnodar Region were paid from the regional budget (see paragraph 50 above).

89. As the Court has noted above, several members of the Kuban Cossack Host Association participated in the attack to stop the applicants from performing and recording their song, and at least two were wearing Cossack uniform and were therefore seen as officially exercising their duties in maintaining public order. There were clear indications that the Cossacks participating in the attack regarded the applicants' performance as an anti-social unlawful activity which had to be suppressed (see paragraph 79 above). It cannot be ruled out that the State's prosecution of the Pussy Riot members two years earlier conditioned, at least in part, the Cossacks' attitude (see *Women's Initiatives Supporting Group and Others*, cited above, § 76, and paragraphs 5 and 24 above concerning the statements by Yu.S.).

90. All in all, there are sufficient elements to conclude that there was a direct connection between the Cossacks' actions and their duties in maintaining public order, which the State had invited them to perform under its close control and supervision. This gives rise to serious reasons to consider, regardless of whether or not the Cossacks were formally on duty at the time of the attack, that the State should be held responsible for their attack on the applicants.

91. Those reasons are further enhanced by the striking passivity of the police officers who arrived at the scene of the incident. While the evidence before the Court does not allow it to conclude that the police themselves witnessed the violence committed against the applicants (see paragraphs 15 and 31 above), that evidence does indicate that when the police arrived the attack was still continuing against other people, hostile and insulting remarks against the applicants were still being shouted, complaints were being made

about the violence committed by specific attackers still present at the scene, in particular about the use of a whip against women, and at least one Cossack visibly holding a whip was present. Nevertheless, apart from an invitation to everyone to disperse, the police officers did nothing to make it clear that the use of force and abusive language was unacceptable and had to stop, and to arrest the attackers or at the very least to establish their identity. Such behaviour indicates connivance or acquiescence in the Cossacks' attack on the part of the authorities.

92. The Court further reiterates that the authorities' positive obligations under Article 3 of the Convention comprise an obligation to put in place a legislative and regulatory framework to shield individuals adequately from treatment incompatible with Article 3 (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021, and *Abdu v. Bulgaria*, no. 26827/08, § 41, 11 March 2014). States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in those systems meet the requisite criteria (see *Sašo Gorgiev*, cited above, § 51).

93. The Court notes that the use of force by Cossacks in carrying out State service for maintaining public order was not regulated by the domestic law at the time of the incident (see the relevant legal provisions, which entered into force after the incident in question, cited in paragraph 49 above). In particular, the domestic law neither expressly prohibited nor regulated the Cossacks' use of a whip, a Cossack attribute, or pepper spray.

94. The duties of the Cossacks of the Kuban Cossack Host Association were defined very broadly (see paragraph 88 above). However, there is no indication of whether any assessment had been made for the Cossacks' fitness for being involved in maintaining public order, and whether they received any training and supervision by the national authorities, as was envisaged in the regulations in force at the time (see paragraph 87 above).

95. The Cossacks' unjustified use of force in the present case caused the applicants physical pain and injuries, humiliating them, showing a lack of respect for and diminishing their human dignity, and arousing feelings of fear, anguish and inferiority on their part. It amounted to degrading treatment, which must be imputable to the respondent State.

(d) Conclusion

96. The applicants' criminal complaint was an appropriate remedy by which to establish liability for the Cossacks' actions resulting in a breach of the applicants' rights under Article 3 of the Convention, and the State was not bound by the applicants' lawyer's views on the applicable provisions of the Criminal Code. The fact that the applicants did not pursue private prosecution proceedings is not decisive, since the purpose of their application before the Court was to establish the State's responsibility as such (see *Sašo Gorgiev*,

cited above, § 53). The Government's non-exhaustion objection is therefore dismissed.

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

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

98. The applicants complained that the State was responsible for their ill-treatment by the Cossacks, which had been perpetrated because of their artistic performance and political speech and in order to suppress it. While the performance had been provocative and deliberately designed to shock, it had to be considered in the specific context of the Olympics, when the critical international gaze had moved on to Russia, and the filming of their performance near the billboard with the sign "Sochi 2014" had had a symbolic meaning. Even assuming that their performance had hurt deeply held feelings, this could not have justified putting an end to it by force and whips in a democratic society, where even disturbing political opinions were to be accepted. The case should not be viewed as an isolated case of ill-treatment under Article 3 only. Given Pussy Riot's overall artistic stance on political events, the conviction of the second and fifth applicants for their artistic performance in 2012 (see paragraph 5 above), the applicants' specific actions when the attack had occurred, the Cossacks' openly stated reasons for the attack and the inaction of the police and the investigating authority, the incident also had to be regarded as a breach of their freedom of expression guaranteed by Article 10 of the Convention, the relevant part of which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

99. The Government reiterated essentially the same arguments as those under Article 3. The applicants disagreed.

100. The Court observes that the applicants' complaints stem from exactly the same factual circumstances as those it has already examined under Article 3 of the Convention. It considers, similarly to its conclusion under Article 3 (see paragraph 96 above), that the applicants' criminal complaint was also an appropriate remedy for the purposes of Article 10. It was the State's responsibility to carry out an effective investigation; this included a duty to investigate the existence of a possible link between political attitudes

and the act of violence (see paragraph 78 above). Consequently, the complaints under Article 10 are neither manifestly ill-founded nor inadmissible on any other ground listed in Article 35 of the Convention, and they must therefore be declared admissible.

101. Having regard to the relevant general principles governing the application of Article 10 of the Convention and, in so far as relevant to the present case concerning the applicants' expression of their opinion through a public performance, Article 11 of the Convention (see *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 197-200, 17 July 2018, and *Identoba and Others*, cited above, §§ 93-95), as well as to its thorough factual and legal findings set out above under Article 3, which are equally pertinent in the circumstances of the present case to the complaints relating to freedom of expression, the Court considers that the State was responsible for the violent attack on the applicants by Cossacks, preventing the applicants from proceeding with their artistic performance in Sochi on 19 February 2014. The Cossacks were involved in carrying out State service to assist the police in maintaining public order and the State was responsible for regulating their activities appropriately, and for their training and supervision in order to shield individuals adequately from ill-treatment, in particular when exercising freedom of expression. The respondent State failed to discharge its duty not to interfere unlawfully and disproportionately with the right to freedom of expression and to take reasonable and appropriate measures to enable the exercise of freedom of expression to proceed peacefully in the present case (see, *mutatis mutandis*, *Women's Initiatives Supporting Group and Others*, cited above, §§ 83-84).

102. There has accordingly been a violation of Article 10 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicants each claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

105. The Government stated that any just satisfaction should be awarded in accordance with the Court's well-established case-law.

106. The Court considers that on account of the violations it has found the applicants sustained non-pecuniary damage that cannot be compensated for

by the mere finding of a violation. Ruling on an equitable basis as required by Article 41 of the Convention, it awards each applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicants also claimed EUR 7,200 for the legal costs incurred before the Court.

108. The Government considered the amount to be excessive.

109. 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 considers it reasonable to award the sum claimed for the proceedings before it, plus any tax that may be chargeable to the applicants, to be paid directly into the bank account of the applicants' representative as requested by them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicants' complaints as they relate to facts that took place before 16 September 2022;
2. *Decides* to join to the merits of the complaint under Article 3 of the Convention the Government's objection concerning the exhaustion of domestic remedies, and *dismisses* it;
3. *Declares* the application admissible;
4. *Holds* that there has been a violation of both the substantive and procedural limbs of Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 10 of the Convention;
6. *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 15,000 (fifteen thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and

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expenses, to be paid into the applicants' representative's bank account;

- (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.

Done in English, and notified in writing on 29 August 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

APPENDIX

List of applicants

Application no. 25276/15

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Petr Yuryevich VERZILOV	1987	Russian	Moscow
2.	Mariya Vladimirovna ALEKHINA	1988	Russian	Moscow
3.	Lusine Nikolayevna DZHANYAN	1981	Russian	Krasnodar
4.	Aleksey Pavlovich NEKRASOV	1976	Russian	Krasnodar
5.	Nadezhda Andreyevna TOLOKONNIKOVA	1989	Russian	Norilsk