



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

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### THIRD SECTION

Application no. 8607/09

Dokka Sulumbekovich DZHANTEMIROV and others against Russia  
and 3 other applications  
(see list appended)

The applicants are Russian nationals, living in various regions of Russia. Their personal details are indicated in Appendix I and II. The facts of the cases, as submitted by the applicants, may be summarised as follows.

#### **A. The circumstances of the case**

Between 2003 and 2009 the applicants were prosecuted and convicted within different criminal proceedings opened into murder, banditry or terrorist activity.

The applicants submitted that they had been taken to the Operational-Search Division of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of the Interior in the Southern Federal Circuit (*ОПС-2 СКОВ ГУ МВД РФ по ЮФО* – “ORB-2”). They were placed in the ORB-2 temporary detention facility (“IVS”) where they were ill-treated by electric shocks, beatings, suffocations with the use of gas masks. Arrest records were drawn up days after their apprehensions.

In support of their allegations of ill-treatment, demonstrating the existence of bodily injuries of different types and severity, the applicants submitted medical certificates drawn up in a detention facility in Grozny (“IZ-20/1”). Besides that, forensic medical examinations have been conducted in respect of Mr Razhayev (no. 21531/09) and Mr Ganayev (no. 26030/10).

As a result of the alleged ill-treatment, the applicants gave confession statements, which they retracted during their trial as allegedly obtained under duress. The courts ordered prosecution inquiries into the applicants’ alleged ill-treatment in ORB-2. The inquiries resulted in decisions not to

open a criminal case. The applicants' arguments were rejected as unsubstantiated as the facts of the ill-treatment were not confirmed. The applicants were convicted shortly after the inquiries had been completed. Their complaints about ill-treatment and the use of confession statements obtained under duress were dismissed with reference to the conclusions of the inquiries. The applicants' appeals to the Supreme Court of Russia were dismissed as unfounded.

The applicants' subsequent appeals against their respective refusals before the courts were dismissed. Other relevant information about the circumstances of the applicants' alleged ill-treatment, unrecorded detention, their respective trials and the proceedings about ill-treatment at domestic level are summarised in Appendix I (concerning application no. 8607/09 lodged by Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev) and Appendix II (concerning other applications).

## **B. Relevant domestic law and practice**

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

For the relevant domestic law and practice concerning the rights of suspects, see *Turbylev v. Russia*, no. 4722/09, §§ 46-49, 6 October 2015.

## COMPLAINTS

1. The applicants complain under Article 3 of the Convention that they were ill-treated by the ORB-2 officers and that the investigations into their allegations of ill-treatment were ineffective.

2. Relying on Article 5 § 1 of the Convention, applicants Dzhantemirov, Matsiyev, Salavatov and Khabibulayev (no. 8607/09) complain about their unrecorded detention, in particular, between:

21 and 25 January 2003 (Mr Dzhantemirov and Mr Matsiyev);  
8 and 13 January 2003 (Mr Salavatov);  
22 and 27 January 2003 (Mr Khabibulayev).

3. Under Article 6 § 1 of the Convention applicants Dzhantemirov, Matsiyev, Salavatov and Khabibulayev (no. 8607/09), Razhayev (no. 21531/09) and Gairbekov (no. 19278/10) complain that the criminal proceedings against them were unfair as their convictions were based on their confession statements obtained under duress.

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4. Lastly, applicants Dzhantemirov, Matsiyev, Salavatov and Khabibulayev (no. 8607/09) and Ganayev (no. 26030/10) complain under Article 13 of the Convention that they did not have an effective remedy in respect of their complaints under Article 3 of the Convention.

## COMMON QUESTIONS

1. Having regard to the injuries found on the applicants in police custody, have the applicants been subjected to torture, or inhuman or degrading treatment, in breach of Article 3 of the Convention (see, among other authorities, *Razzakov v. Russia*, no. 57519/09, 5 February 2015; *Gorshchuk v. Russia*, no. 31316/09, 6 October 2015; *Turbylev v. Russia*, no. 4722/09, 6 October 2015; *Fartushin v. Russia*, no. 38887/09, 8 October 2015; *Aleksandr Andreyev v. Russia*, no. 2281/06, 23 February 2016; and *Leonid Petrov v. Russia*, no. 52783/08, 11 October 2016)?

2. a) Have the authorities discharged their burden of proof by providing a plausible or satisfactory and convincing explanation of how the applicants' injuries were caused (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII and *Bouyid v. Belgium* [GC], no. 23380/09, § 83 and further, ECHR 2015)?

b) In particular, did the authorities carry out an effective investigation, in compliance with the procedural obligation under Article 3 of the Convention (see *Lyapin v. Russia*, no. 46956/09, §§ 125-40, 24 July 2014), having regard to the investigating authorities' refusals to open criminal cases and investigate the applicants' allegations of ill-treatment by the State officials?

## CASE SPECIFIC QUESTIONS

### 1. Application no. 8607/09

As regards each instance of the applicants' alleged unrecorded detention, were they deprived of their liberty, within the meaning of Article 5 § 1 of the Convention? If such detentions took place, were they compatible with the guarantees of Article 5 §§ 1-5 of the Convention? In answering the question, the parties are invited to address the following points:

- a) What was the final decision in respect of this complaint?
- b) Did the applicants lodge their complaint within a period of six months from the date on which the final decision was taken, as required by Article 35 § 1 of the Convention?

### 2. Applications nos. 8607/09, 21531/09, 19278/10

Did the applicants have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 § 1 of the Convention, in view of the applicants' conviction based on the confession statements, which were allegedly obtained under duress?

**3. Applications nos. 8607/09 and 26030/10**

Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3, as required by Article 13 of the Convention?



**APPENDIX I**

Application no. 8607/09 lodged on 12 January 2009, represented by Stichting Russian Justice Initiative:

No.	Applicant's name Date of birth Place of residence	Details about arrest, location of the police station	Arrest records (if any), interviews and other investigative activities with the applicant's participation	Medical evidence: date of the document, document type	Individual complaints and decisions in this respect	Applicants' common complaints about ill treatment to the domestic authorities under Art. 125 CCRP	Applicants' trial and appeal courts' judgments and the results of the examination of their allegations of ill-treatment, if any
1.	<b>Doka Sulumbekovich DZHANTEMIROV</b>  1974  Grozny	Arrested on 21/01/2003 at 3 a.m. in Ingushetia  Held in ORB-2 until 25/04/2003	Arrest record drawn up on 25/01/2003 at 3.10 p.m.  13/08/2003 Confessed during an interview as an accused	Extract from IZ-20/1 journal of 25/04/2003  (no fresh traces of beatings)	First complaint of 07/05/2003  29/05/2003 Refusal to open a criminal case (the applicant had no injuries on 25/04/2003 when he was admitted to IZ-20/1)	Complaints made during the trial  05/03/2005 Supreme Court of Chechnya ordered a prosecution inquiry  21/04/2005 Refusal to open a criminal case (the applicants' complaints were unsubstantiated, as they had no injuries and they had not complained during their detention in ORB-2)  24/03/2008 Leninskiy District Court (allegations of ill-treatment have been examined and dismissed in trial proceedings)  23/07/2008 Supreme Court of Chechnya dismissed the appeal	Supreme Court of Chechnya Convicted on 18/07/2005; Issued a separate ruling noting that the dates of the applicants' arrest records did not correspond to the dates of their factual arrests  Supreme Court of Russia quashed the conviction and remitted the case for a new examination on 18/09/2007  Supreme Court of Chechnya Convicted on 02/09/2008  (complaints about ill-treatment were dismissed with reference to the conclusions of the inquiry; as to the unrecorded detention the court referred to the arrest records)  02/04/2009 Supreme Court of Russia upheld the conviction
	<b>Sultan Delembekovich MATSIYEV</b>  1974  Grozny	Arrested on 21/01/2003 at 3 a.m. in Ingushetia  Held in ORB-2 until 25/04/2003	Arrest record drawn up on 25/01/2003 at 5.10 p.m.  09/06/2003 / 14/08/2003 Confessed during an interview as an accused	Extract from IZ-20/1 journal of 24/04/2003  (scars on both hips, lower legs, and two scars on the shoulder, caused in 2001)			
	<b>Shamsudin Dadashevich SALAVATOV</b>  1971  Grozny	Arrested on 08/01/2003 at 10 a.m. near Grozny  Held in ORB-2 until 17/07/2003	Arrest record drawn up on 13/01/2003 at 4.50 p.m.  Between 13/01/2003 and 15/08/2003 Confessed during interviews as a suspect and accused	Extract from IZ-20/1 journal (no date)  (no injuries)			
	<b>Viskhan Zaurbekovich KHABIBULAYEV</b>  1979  Grozny	Arrested on 22/01/2003 in Kalmykia  Held in ORB-2 until 25/04/2005	Arrest record drawn up on 27/01/2003 at 2.10 p.m.  31/01/2003 / 14/08/2003 Confessed during interviews as an accused	Extract from IZ-20/1 journal (no date)  (no injuries)	First complaint of 03/05/2003  21/05/2003 Refusal to open a criminal case in the case (no physical force was used)		

**APPENDIX II**

Other three applications:

No.	Applicant name Date of birth Place of residence Represented by Application no. Lodged on	Details about arrest, location of the police station	Arrest records (if any), interviews and other investigative activities with the applicant's participation	Medical evidence: date of the document, document type	Applicants' complaints about ill treatment to the domestic authorities under Art. 125 CCrP	Applicants' trial and appeal courts' judgments and the results of the examination of their allegations of ill-treatment, if any
2.	<p><b>Mansur Visaitovich RAZHAYEV</b></p> <p>1977</p> <p>Elban</p> <p>21531/09</p> <p>02/04/2009</p>	<p>Arrested on 07/08/2007 at 4.00 a.m. at the applicant's house by police officers in Nazran, Ingushetia</p> <p>Taken to ORB-2 IVS in Grozny</p>	<p>Arrest record drawn up on 08/08/2007 at 8 p.m.</p> <p>08/08/2007 Confessed during an interview as a suspect</p> <p>13/08/2007 Confessed partly during an interview of an accused</p>	<p>IZ-20/1 medical act of 17/08/2007</p> <p>(redness on the chest on the right and neck, hematoma on the right shoulder and left lower leg, a bruising on the right temple)</p> <p>Forensic medical examination act no. 1957 of 17/12/2007</p> <p>(hematoma on the right shoulder could be caused within 1-2 days before the examination)</p>	<p>First refusal to open a criminal case of 03/09/2007</p> <p>On 12/12/2007 the Supreme Court of Chechnya ordered a prosecution inquiry</p> <p>06/02/2008 Refusal to open a criminal case (the applicant did not complain while he was in ORB-2, he could have inflicted the injuries himself in order to incriminate officers and to evade criminal responsibility)</p> <p>26/03/2009 The applicant was notified about the decision</p> <p>On 30/11/2009 the Zavodskoy District Court refused to examine an appeal against the refusal of 06/02/2008, referring to the conviction</p>	<p>Supreme Court of Chechnya Convicted on 04/04/2008 (allegations of ill-treatment have been examined and dismissed in the refusal to open a criminal case)</p> <p>16/09/2008 Supreme Court of Russia upheld the conviction</p> <p>15/10/2008 The applicant was notified about the decision of the appellate court</p>
3.	<p><b>Gazimagomed Gairbekovich GAIRBEKOV</b></p> <p>1977</p> <p>Barnaul</p> <p>19278/10</p> <p>20/03/2010</p>	<p>Arrested on 15/03/2005 in Dagestan</p> <p>On 22/04/2005 and 25/05/2005 taken to ORB-2</p>	<p>Confessed during interviews of 28/05/2005, 31/05/2005, 02/06/2005, 03/06/2005.</p>	<p>02/06/2005 (dislocation of the shoulder joint)</p> <p>Forensic medical examination act (no number) of 03/06/2005</p> <p>(no injuries)</p>	<p>First complaint of 17/05/2005</p> <p>Conclusions on prosecution inquiries (no dates)</p> <p>(unfounded allegations of ill-treatment)</p>	<p>Supreme Court of Dagestan Convicted on 28/04/2009</p> <p>(the applicant's medical documents were examined, FSB officers and an appointed lawyer were questioned in court, who had not confirmed the applicant's allegations of ill-treatment; the presence of injuries did not necessarily indicate the use of violence by the officers)</p> <p>Supreme Court of Russia 22/09/2009 upheld the conviction</p>

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4.	<p><b>Amur Temirlanovich GANAYEV</b></p> <p>1978</p> <p>Argun</p> <p>Anton Igorevich RYZHOV</p> <p>26030/10</p> <p>05/05/2010</p>	<p>Arrested on 03/01/2006 in Grozny by ORB-2 officers</p> <p>Held in ORB-2: 03/01/2006-16/01/2006 18/01/2006-07/02/2006 27/02/2006-07/03/2006</p>	<p>No information</p>	<p>Forensic medical examination act no. 49 of 23/01/2006 (bruises on the face and right hip caused within 3-7 days before the examination)</p> <p>Extract from IZ medical journal of 28/01/2006 (closed fractures of the fifth, sixth, seventh right ribs)</p>	<p>First complaint of 25/01/2006</p> <p>First refusal to open a criminal case of 05/02/2006 (allegations of ill-treatment were not confirmed)</p> <p>Supreme Court of Chechnya ordered an inquiry on 11/08/2006</p> <p>Refusal to open a criminal case of 28/03/2008 (the applicant's unfounded allegations were aimed to evade criminal responsibility)</p> <p>On 28/10/2009 the Supreme Court of Chechnya dismissed the appeal against the refusal referring to the conviction</p> <p>On 03/02/2010 the applicant's lawyer notified about the decision</p>	<p>Supreme Court of Chechnya Convicted on 25/04/2008</p>