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La Corte EDU sull'uso della forza pubblica contro i partecipanti di una manifestazione politica (CEDU, sez. III, sent. 13 ottobre 2020, ric. nn. 35880/14 and 75926/17)

La decisione resa al caso Zakharov e Varzhabetyan contro la Federazione Russa muove dal ricorso presentato da due cittadini russi con il quale si lamentava la violazione degli articoli 3, 11 e 13 della Convenzione EDU. In particolare, i ricorrenti denunciavano il presunto uso eccessivo della forza da parte della polizia durante la dispersione di una manifestazione politica e, di seguito, il mancato svolgimento di indagini efficaci. Entrambi i ricorrenti avevano avanzato infatti richiesta di avvio di un'indagine penale, affinché venissero accertate eventuali responsabilità per i maltrattamenti subiti.

La richiesta di avviare un procedimento penale veniva respinta dalla Corte distrettuale di Mosca, ritenendo l'impianto probatorio - fornito dai due ricorrenti - insufficiente a dimostrare la colpevolezza degli agenti e, dunque, inconsistente a comprovare l'offesa denunciata.

La Corte EDU, dopo aver dichiarato i ricorsi ricevibili, decideva di scrutinarli congiuntamente e procedeva preliminarmente a ricomporre la cornice giuridica e giurisprudenziale di riferimento. In particolare, l'analisi della disciplina nazionale illustrava le circostanze nelle quali fosse ammesso il ricorso a mezzi speciali, compresi i manganelli di gomma, per reprimere disordini di massa nonché il ricorso all'uso della forza fisica per prevenire reati penali e amministrativi.

Alla luce di quanto emerso, la Corte riteneva violato l'art. 3 CEDU sia sotto il suo profilo procedurale che sostanziale. Quanto al primo profilo facendo leva sull'obbligo per le autorità giudiziarie di avviare un'indagine penale sia in presenza di una denuncia ufficiale sia *d'ufficio*, quando vi fossero elementi sufficienti e chiari per ritenere sussistenti atti di maltrattamenti e di tortura. Tale ultima evenienza, per i giudici di Strasburgo, sarebbe essenziale a mantenere stretto il rapporto di fiducia tra cittadini e istituzioni. Sicché nel caso di specie e alla luce dei fatti accaduti - prontamente verbalizzati dal vicecapo della direzione dell'ordine pubblico del dipartimento degli interni di Mosca - risultava sufficientemente plausibile ritenere che fossero stati compiuti maltrattamenti ai danni dei partecipanti alla manifestazione. Per conseguenza la Corte concludeva asserendo la violazione dell'art. 3 CEDU da parte delle autorità per non aver svolto alcuna indagine efficace. Quanto al secondo profilo, l'art. 3 CEDU, come ribadito dalla Corte, racchiude in sé uno dei valori più fondamentali di una società democratica. Esso vieta in termini assoluti la tortura e i trattamenti inumani o degradanti, a prescindere dalla condotta della vittima. E qui la polizia aveva fatto ricorso alla forza fisica pur non essendo strettamente necessaria, data la regolare condotta dei ricorrenti, i quali non erano stati condannati per alcun reato riferibile alla manifestazione né per disordini di massa.

Parimenti violati venivano ritenuti anche gli articoli 11 e 13 della Convenzione. Per la Corte l'intervento della polizia e la relativa condotta *nei confronti* dei ricorrenti avevano integrato gli

estremi di un'indebita interferenza nella libertà di riunione e di associazione *ex* art. 11 CEDU. Mentre riguardo all'art. 13 la Corte non ha ritenuto di dover scrutinare separatamente le doglianze alla luce delle sue conclusioni già svolte sull'art. 11 e 3 della ConvenzioneEDU.
Conclusivamente la Corte condannava lo Stato al risarcimento del danno morale ad entrambi i ricorrenti.

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

THIRD SECTION

CASE OF ZAKHAROV AND VARZHABETYAN v. RUSSIA

(Applications nos. 35880/14 and 75926/17)

JUDGMENT

STRASBOURG

13 October 2020

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

In the case of Zakharov and Varzhabetyan v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Paul Lemmens, *President*,
Georgios A. Serghides,
Helen Keller,
Dmitry Dedov,
María Elósegui,
Gilberto Felici,
Erik Wennerström, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*
Having regard to:
the applications (nos. 35880/14 and 75926/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mr Viktor Nikolayevich Zakharov and Ms Turana Apkarovna Varzhabetyan ("the applicants"), on 1 May 2014 and 26 September 2017 respectively;
the decision to give notice to the Russian Government ("the Government") of the application no. 75926/17; and the decision to give notice to the Government of the complaints under Articles 3, 11 and 13 of the Convention raised in application no. 35880/14 concerning the alleged excessive use

of force by the police during the dispersal of the rally on 6 May 2012 and the lack of effective investigation thereof, and to declare inadmissible the remainder of that application;
the parties' observations;
Having deliberated in private on 22 September 2020,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns police ill-treatment of the applicants during a political rally on 6 May 2012 at Bolotnaya Square. The applicants were neither convicted of mass disorder nor accused of any other offence in connection with the relevant events at Bolotnaya Square.

THE FACTS

2. The first applicant (Mr Zakharov) was born in 1966. The second applicant (Ms Varzhabetyan) was born in 1945. They both live in Moscow. The applicants were represented by Mr S.A. Minenkov and Mr A.N. Laptev respectively, lawyers practising in Moscow.
3. The Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.
I. THE PUBLIC ASSEMBLY ON 6 MAY 2012 AND THE APPLICANTS' ALLEGED ILL-TREATMENT
4. The background facts relating to the planning, conduct and dispersal of the assembly at Bolotnaya Square are set out in more detail in the judgment of *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016). The parties' submissions directly relevant to the present case may be summarised as follows.
5. Both applicants participated in the political rally on 6 May 2012. The first applicant was one of the organisers of the event. According to them, they neither violated public order nor resisted the police who were present at the assembly. However, during the dispersal of the meeting the police allegedly hit each of the applicants on the head with a rubber truncheon.
6. The first applicant submitted photographs. One of the photographs shows some police officers aiming blows at the crowd with their rubber truncheons. The first applicant can be seen in that crowd. Another photograph shows the first applicant being pulled by two police officers. These photographs do not show the actual moment when the first applicant was allegedly attacked with a rubber truncheon. However, two other photographs show the applicant at the site of the events, with his face bleeding. According to the first applicant, having received a blow to the head, he lost consciousness. Other participants in the rally helped him obtain first aid treatment. Later on, the first applicant was taken to a hospital, and he was discharged from that hospital on the same day. He submitted a medical certificate of 6 May 2012 stating that he had been diagnosed with a contused wound of the frontal lobe.
7. The second applicant provided links to YouTube videos showing the clashes between the police and the protesters. The videos indicate that the second applicant was surrounded by police officers

when she fell and started screaming. The videos also show other participants in the assembly carrying the second applicant and shouting at the police officers, accusing them of hitting an elderly woman, referring to the second applicant.

8. The second applicant also submitted a medical certificate stating that on 6 May 2012 an ambulance had been called for her to Bolotnaya Square. The certificate attested that she had sustained a head injury, and had had soft tissue bruises on the right side of her head and in the perineal region. Medical certificates of 7 May and 8 June 2012 stated that the applicant had had health problems as a result of the trauma she had experienced on 6 May 2012.

9. Neither of the applicants was arrested or charged with any offence in connection with the events of 6 May 2012.

II. INVESTIGATION INTO THE ALLEGED ILL-TREATMENT OF THE FIRST APPLICANT

A. Request for a criminal investigation and refusal of that request

10. On 23 June 2012 the first applicant asked the Investigation Committee to institute criminal proceedings on account of his alleged ill-treatment during the dispersal of the public assembly. He enclosed the photographs and the medical certificate (see paragraph 6 above) with his application. The applicant's request was joined to other requests concerning the alleged abuse of powers by the police officers on 6 May 2012.

11. On 20 March 2013 the Zamoskvoretskiy branch of the Investigation Committee dismissed several individual complaints and two official enquiries concerning the allegedly unlawful acts of the police in dispersing the rally on 6 May 2012, including the excessive use of force and arbitrary arrests. In his decision, the investigator referred to, *inter alia*, the first applicant's description of the incident and statements by other persons, including some of the police officers. He further noted that according to an internal inquiry which had been conducted in the aftermath of the events at Bolotnaya Square, a police officer had called the first applicant, inviting him to come to the police station to give further information and identify the police officer responsible for the attack. The report on the above-mentioned inquiry was dated 8 June 2012 and stated that the applicant had refused to attend the meeting, stating that he could not identify the police officer concerned.

12. In the same decision, the investigator found that on 6 May 2012, in response to the breaking of a police cordon by some protesters, the police had started arresting persons who had been most actively involved in those acts. The investigator further concluded that the work of the officers who had been in charge of apprehending offenders had involved the use of force and special means of restraint, in so far as necessary, against persons who had been putting up resistance (see *Frumkin*, cited above, § 52). It was found that there were no elements of a crime in the acts of the police officers.

13. The investigator did not examine the incident in respect of the first applicant, and his decision did not indicate that the first applicant had acted aggressively towards the police or shown any disobedience. The investigator's decision confirmed that the applicant was not listed among the persons who had been apprehended that day.

B. Complaints about the refusal to institute a criminal investigation

14. The first applicant complained about the decision of 20 March 2013 to the prosecutor's office and challenged it before the courts. He argued, in particular, that the investigator had not addressed his allegations and had made no attempt to identify the police officer concerned. The

applicant claimed that by joining his application to those of others, the investigator had avoided assessing the particular incident of which he had complained. He also disputed what had allegedly been said during the telephone call in June 2012 (see paragraph 11 above).

15. On 17 May 2013 the applicant was sent a reply from the prosecutor's office which briefly stated that there were no grounds for setting aside the decision not to open a criminal case.

16. On 16 August 2013 the Zamoskvoretskiy District Court of Moscow ("the District Court") dismissed the applicant's complaint in respect of the decision of 20 March 2013 not to open a criminal case. The court considered that the investigator had made a thorough evaluation of the acts of the police that had safeguarded public order during the mass event. The judge further noted that the fact that the applicant had been admitted to hospital on 6 May 2012 had been reported on the same day and had triggered an internal inquiry. The allegations regarding unlawful acts by the police in respect of the applicant had not been confirmed during that inquiry.

17. On 20 August 2013 the District Court dismissed a judicial complaint by the applicant concerning the prosecutor's reply of 17 May 2013. The court considered that the applicant's constitutional rights had not been violated, as he had had the opportunity to lodge a judicial complaint in respect of the decision of 20 March 2013.

18. The applicant appealed against the decision of 16 August 2013, arguing, in particular, that the investigator had not provided a thorough assessment of his arguments, and that the investigator's conclusions were not based on the material of the pre-investigation inquiry.

19. On 1 November 2013 the Moscow City Court upheld the decision of 16 August 2013. In reply to the arguments raised by the applicant, the court stated that, at the pre-trial stage, a court had no jurisdiction to rule on the credibility of information which an investigator had to check in accordance with Article 144 of the Code of Criminal Procedure.

20. On 11 November 2013 the Moscow City Court upheld the decision of 20 August 2013.

III. INVESTIGATION INTO THE ALLEGED ILL-TREATMENT OF THE SECOND APPLICANT

A. Request for a criminal investigation and refusals in respect of that request

21. On 29 October 2012 the second applicant asked for criminal proceedings to be instigated on account of her alleged ill-treatment by the police officers. As in the first applicant's case, her request was joined to other requests concerning the alleged abuse of powers by the police officers on 6 May 2012.

22. On 7 December 2012, 25 October 2013, 22 May 2014 and 21 January 2016 the investigator refused to open a criminal investigation, on the grounds that the acts of the police did not constitute a criminal offence. In his decisions, the investigator set out the second applicant's arguments concerning the incident and, without analysing the particular circumstances of her case, came to literally the same conclusions as those made in the first applicant's case (see paragraph 12 above).

23. The decisions mentioned in the paragraph above were overruled by the prosecutor as premature and ill-founded on 23 October 2013, 25 April 2014, 27 November 2015 and 2 November 2016 respectively. Each time, the material in the case file was subjected to a further inquiry. On the last occasion the prosecutor noted in particular that during the next additional inquiry the investigator had to examine the DVD that the applicant had previously submitted. According to the second applicant, she was informed about the decisions not to open a criminal investigation

following substantial delays; as regards the prosecutor's decisions, on at least two occasions she learnt about those decisions during court proceedings, after she had challenged the decisions (see paragraph 24 below).

B. Judicial complaints about the refusals to institute criminal proceedings

24. On an unspecified date in 2013, and on 23 September 2015 and 23 September 2016 the second applicant challenged the decisions not to open a criminal investigation before the courts. On 25 October 2013 the District Court dismissed the applicant's claim, finding that the decision not to institute a criminal investigation dated 7 December 2012 was lawful. On 30 November 2015 and 10 November 2016 the District Court dismissed the applicant's claims, as the investigator's decisions of 22 May 2014 and 21 January 2016 had been overruled by the prosecutor before the court hearings had taken place (see paragraph 23 above). It does not follow from the materials available before the Court that the second applicant appealed against these decisions of the District Court.

C. Claim in respect of non-pecuniary damage on account of allegedly ineffective investigation

25. On 21 June 2016 the second applicant claimed compensation for non-pecuniary damage allegedly caused by the investigating bodies that had dealt with her application and refused to institute a criminal investigation. She argued that considering her request jointly with those of others had been unlawful, and that the numerous remittals of the case for further inquiries revealed the deficiency of the work of the investigators. She further claimed that the failure to take the necessary measures to establish the circumstances of the incident had violated her rights and caused her psychological and physical suffering.

26. On 28 November 2016 the Basmannyy District Court of Moscow rejected the applicant's claim. The court found that the alleged defects in the work of the investigators had been remedied by the overruling of their decisions. The court further found that the applicant had provided no evidence indicating that the defendants' acts had caused her any suffering and that they were at fault for the alleged negative consequences.

27. On 30 March 2017 the Moscow City Court upheld the decision on appeal.

28. On 10 October 2017 a judge of the Moscow City Court dismissed a cassation appeal by the applicant.

RELEVANT LEGAL FRAMEWORK

29. For a summary of the relevant domestic law provisions governing pre-investigation inquiries and judicial review of the decisions of investigating authorities not to open a criminal case, see *Lyapin v. Russia* (no. 46956/09, §§ 99-100, 24 July 2014).

30. Section 20 of the Police Act (no. 3 of 7 February 2011, as in force at the material time) provided that police officers might use physical force, including combat methods, to prevent criminal and administrative offences, to arrest individuals who had committed such offences, and to overcome resistance to lawful orders if non-violent methods did not ensure compliance with responsibilities entrusted to the police.

31. Section 21 of the Police Act laid down an exhaustive list of circumstances in which special means, including rubber truncheons, might be used. In particular, rubber truncheons might be used to repel an attack on civilians or police officers, to overcome resistance shown to a police officer, and to repress mass disorder and put an end to collective actions disrupting the operation

of transport, means of communication and legal entities. The law prohibited, *inter alia*, hitting a person on the head with a rubber truncheon. Section 22 of the Police Act further stated that the use of special means to suppress an unlawful, but peaceful manifestation that did not disrupt the operation of transport, means of communication and legal entities was prohibited.

32. For relevant international material on freedom of peaceful assembly, including guidelines on policing public assemblies see *Frumkin* (cited above, § 80).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained under Article 3 that they had been ill-treated by the police during the dispersal of the rally on 6 May 2012, and that there had been no effective investigation following their ill-treatment complaints. Article 3 of the Convention provides as follows:

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

A. Admissibility

35. In respect of the second applicant, the Government argued that she had lodged her Article 3 complaint outside the six-month period, which should be calculated from 10 November 2016, the date of the decision of the District Court (see paragraph 24 above).

36. In reply, the second applicant argued that the decision of 10 November 2016 had not been the final decision in her case, and that the ineffective investigation had been of a continuous nature.

37. The Court reiterates that normally the six-month period runs from the final decision in the process of exhaustion of domestic remedies (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 72, 10 January 2012, with further references).

38. The Court has previously found that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities. The Court has consistently required applicants to lodge judicial appeals in respect of investigators' decisions not to institute criminal proceedings (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003, and *Belevitskiy v. Russia*, no. 72967/01, §§ 54-67, 1 March 2007).

39. The Court observes that in the second applicant's case there were four decisions not to open a criminal investigation. The second applicant sought judicial review of those decisions, but her applications were dismissed, as the relevant decisions not to investigate had been quashed by the prosecutor (see paragraphs 22-24 above). On 10 November 2016 the District Court issued such a dismissal (the most recent one available to the Court), which stated that there was no subject to be examined by that court, since on 2 November 2016 the prosecutor had quashed the decision not to institute criminal proceedings and requested an additional inquiry. The Court has not been provided with any documents showing the results of the subsequent pre-investigation inquiry,

which appears to be ongoing. The Court therefore cannot agree with the Government that the decision of 10 November 2016 constitutes the final decision for the purpose of calculating the six-month period as regards the second applicant's ill-treatment complaint.

40. The Court further observes that the second applicant lodged her complaint with the Court approximately ten months after the above-mentioned decision by the prosecutor to send the file for an additional inquiry. During this time, she could reasonably have expected some progress in the investigation, as the prosecutor had explicitly ordered the examination of the DVD featuring the incident. During the same period, the second applicant received and challenged the rejection of her civil claim for compensation for non-pecuniary damage (see paragraphs 25-28 above).

41. In view of the foregoing, the Court considers that the second applicant complied with her duty of diligence and did not delay unduly in lodging her application before the Court (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 264-69, ECHR 2014 (extracts)). It therefore dismisses the Government's preliminary objection in respect of her complaint under the substantive and the procedural limbs of Article 3 of the Convention.

42. The Court notes that the applicants' complaints under Article 3 of the Convention 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. Submissions by the parties

43. As regards the first applicant, the Government disputed when and how his injuries had occurred. They further submitted that the information they had received from the hospital concerning his injury had not been sufficient to start an investigation without a request from the applicant himself. They argued that the fact that he had delayed in lodging his application for over one month (see paragraph 10 above) had impeded the pre-investigation inquiry, as it had been too late to conduct an expert examination and question him and witnesses. They argued that there had been no violation of Article 3 in respect of the first applicant.

44. As regards the second applicant, the Government submitted that the second applicant's allegations of ill-treatment had not been confirmed during the pre-investigation inquiry. They considered that she had not made an arguable claim, and therefore the authorities had not been under an obligation to start a criminal investigation.

45. The first applicant maintained his complaint. He submitted that when he had received the phone call from the police in June 2012 he had confirmed that he had been beaten by a police officer. He further submitted that there had been an expert examination confirming that he had sustained an injury. He argued that the date of the injury could not be disputed, since that was apparent from the medical certificate and the photographs. He also argued that the pre-investigation inquiry had been too slow.

46. The second applicant maintained her complaint. She claimed that the State authorities had been aware that the police had used disproportionate force against the participants in the rally on 6 May 2012. However, they had chosen to ignore that fact. With reference to the findings in *Frumkin v. Russia* (no. 74568/12, §§ 128-30, 5 January 2016), she reiterated that responsibility for the violent clashes that had erupted between the police and the protesters on that day at Bolotnaya Square lay with the authorities.

2. The Court's assessment

(a) Alleged lack of an effective investigation

(i) General principles

47. The Court refers to the general principles summarised in *Bouyid v. Belgium* [GC] (no. 23380/09, §§ 114-123, ECHR 2015).

48. In particular, where a serious allegation of ill-treatment under Article 3 is made out, the authorities have an obligation to take action as soon as an official complaint has been lodged. However, even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred. The authorities must act of their own motion once the matter has come to their attention (see, *mutatis mutandis*, *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 165, ECHR 2011, with references therein; see also *Velev v. Bulgaria*, no. 43531/08, § 60, 16 April 2013, for an example of a case where ill-treatment took place in the presence of police officers).

49. The Court has stressed that a proper response by the authorities in investigating serious allegations of ill-treatment at the hands of the police or other similar agents of the State in compliance with the Article 3 standards is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts (see, among other authorities, *Gasanov v. the Republic of Moldova*, no. 39441/09, § 50, 18 December 2012; *Amine Güzel v. Turkey*, no. 41844/09, § 39, 17 September 2013; and *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013).

50. When the authorities resort to the use of force, there should be some form of independent monitoring of the action taken, including the issue of its proportionality, in order to ensure accountability for the force used. In ensuring such accountability, it must be verified whether the operation was properly regulated and organised in such a way as to minimise to the greatest extent possible any risk of serious bodily harm to individuals (see *Muradova v. Azerbaijan*, no. 22684/05, § 113, 2 April 2009, with references therein).

51. In *Lyapin v. Russia* (no. 46956/09, §§ 128-40, 24 July 2014) the Court summarised its approach in previous police ill-treatment cases against Russia where a "pre-investigation inquiry" had been the only procedure employed by the investigating authority. The Court concluded that the mere fact that an investigating authority had refused to open a criminal investigation into credible allegations of serious ill-treatment in police custody was indicative of the State's failure to comply with its obligation under Article 3 of the Convention to carry out an effective investigation.

(ii) Application of the principles to the present case

52. The Court observes that the first applicant and the second applicant lodged their criminal complaints with the investigating authorities on 23 June 2012 and 29 October 2012 respectively (see paragraphs 10 and 21 above). Both applicants complained that they had been injured by the police on 6 May 2012 during the dispersal of the rally at Bolotnaya Square. In particular, they stated that certain police officers had hit them on the head with a rubber truncheon, which was directly prohibited by law. In support of their allegations, the applicants submitted medical documents attesting to their injuries, along with photographs and video material. The Court has no doubt that

from the moment that evidence was submitted, each applicant had an arguable claim of ill-treatment.

53. However, the Court takes note of the Government's argument that the first applicant delayed in lodging his criminal complaint, rendering the ensuing pre-investigation inquiry difficult (see paragraph 43 above). The Court further notes that the second applicant lodged her criminal complaint even later, and takes into account her submissions that the authorities persistently ignored the widely reported fact that there had been police brutality during the dispersal of the political rally concerned (see paragraph 46 above). The Court therefore considers that in the present case it has to establish, *inter alia*, whether the authorities were required to start the investigation of their own motion and irrespective of the applicants' official criminal complaints.

54. The Court has previously found, in a similar context, that a large-scale confrontation between protesters and law-enforcement officers involving violence on both sides called for particularly thorough scrutiny of the actions of not only those protesters who had acted violently, but also those of the law-enforcement authorities (see *Muradova*, cited above, § 114).

55. When clashes occurred at Bolotnaya Square the police officers used force and special equipment in respect of some of the participants in the rally. According to the report prepared on the same day by the Deputy Chief of the Public Order Directorate of the Moscow Department of the Interior, more than twenty police officers and military servicemen were injured during the security operation at the public assembly. A criminal investigation was immediately opened into offences of mass disorder and violent acts against the police (see *Frumkin*, cited above, §§ 43-44). Thus, the authorities, having become aware of violent clashes between the police and the protesters, proceeded to investigate the violent acts committed by the protesters in respect of the police officers. In the circumstances, it was sufficiently clear that there might also have been ill-treatment of the participants in the public event. According to the case-law cited above (see paragraph 48 above), that should have triggered an official investigation, even in the absence of individual complaints lodged by the participants in the rally.

56. The Government asserted that the events at Bolotnaya Square had been the subject of a large-scale domestic inquiry resulting in criminal proceedings in which the organisers had been convicted of mass disorder and a number of other individuals had been convicted of violent acts against the police. They submitted that overall the establishment of the facts and the assessment of those facts by the domestic investigating and judicial authorities had been thorough and correct. Having previously examined the criminal proceedings referred to by the Government, in particular those against the organisers, the Court accepts that they involved the establishment of some of the relevant facts (see *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 137, 19 November 2019). However, the purpose of those proceedings was not to attribute responsibility to the State or police officers personally for the clashes and the consequent damage. Police officers' participation in those proceedings was limited to testifying as victims or witnesses in respect of the mass disorder perpetrated by the protesters, and the courts did not scrutinise their conduct *vis-à-vis* the protesters.

57. Turning to the present case, the Court observes that in addition to being aware of the general situation, the authorities received several specific complaints of ill-treatment, as well as information about the applicants' injuries which came from other sources. An ambulance was

called for the second applicant directly to the site of the events (see paragraph 8 above). The Government confirmed that on 6 May 2012 the police had been informed by the hospital about the first applicant's injuries, but that information from the hospital had not been considered sufficient to proceed with the investigation. The authorities conducted an internal inquiry, which did not confirm the allegation of police ill-treatment (see paragraph 11 above), but they did not disclose the particular steps taken within that procedure, apart from a telephone call to the first applicant.

58. It follows that immediately after the events the investigating authorities were fully capable of identifying and promptly questioning both applicants, and taking independent, tangible and effective investigative measures aimed at: verifying the causes of their injuries; identifying the culprits, for example by obtaining a list of the police officers who had been involved in the operation; questioning the police officers involved; and identifying and questioning other witnesses and medical personnel who had dealt with the applicants. The investigating authorities did none of this as soon as the matter came to their attention.

59. Furthermore, it does not appear that the authorities made a serious attempt to verify the applicants' allegations of ill-treatment when they lodged their formal criminal complaints. In the first applicant's case, a pre-investigation inquiry lasting nine months resulted in a decision of 20 March 2013 not to open a criminal case. From the text of that decision, it cannot be discerned that any measures were implemented to establish the circumstances of the alleged assault, apart from the collection of explanations from the applicant. In particular, it does not appear that the investigator examined the medical certificate and photographs submitted by the first applicant (see paragraphs 11-12 above) before rejecting his complaint.

60. In respect of the second applicant's allegations, four decisions not to open a criminal investigation were issued, but criminal proceedings were not instituted. The Court has previously held that the mere carrying out of a pre-investigation inquiry, when this is not followed by a preliminary investigation, is insufficient for the authorities to comply with the requirements of an effective investigation into credible allegations of ill-treatment by the police under Article 3 of the Convention (see *Lyapin*, cited above, § 136, and, more recently, *Samesov v. Russia*, no. 57269/14, § 51, 20 November 2018). The same holds true for the present case. The decisions dispensing with a criminal investigation in the second applicant's case were quashed by the prosecutor, with reference to various flaws. However, during the resumed inquiry, the authorities made no genuine attempt to establish the circumstances of the attack on the second applicant and identify the perpetrator (see paragraphs 22-23 above). Moreover, it appears that the applicant learned about the prosecutor's interventions only when she complained to the courts about the refusals to open a criminal investigation (see paragraph 23 above). That inquiry therefore did not constitute an effective investigation into the second applicant's credible assertions of ill-treatment.

61. In view of the foregoing, and having regard to its case-law, the Court concludes that in the present case the authorities failed to carry out an effective investigation. There has accordingly been a violation of Article 3 of the Convention under its procedural head in respect of both applicants.

(b) Alleged ill-treatment

(i) General principles

62. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, §§ 100-01). Specifically, when authorities resort to the use of force for the purpose of quelling mass unrest, such force may be used only if it is indispensable, and it must not be excessive (see *Muradova*, cited above, § 109).

63. Allegations of ill-treatment must be supported by appropriate evidence. In assessing this 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 unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, no. 5310/71, § 161, 20 March 2018). As to the burden of proof in relation to the alleged ill-treatment inflicted in the context of policing a demonstration, the Court found that the applicants were required to make a prima facie case that their injuries had resulted from the use of force by the police before the burden is shifted to the Government to refute those allegations (see *Muradova*, cited above, §§ 107-08). When the cause of injury was in dispute between the parties the Court attached special importance to the fact that the injury was sustained while the applicant was within the area in which the law-enforcement authorities were conducting an operation during which they resorted to the use of force for the purpose of quelling mass unrest (ibid., § 109). To discharge the burden of proof the Government had to provide a satisfactory and convincing explanation as to the cause of the applicant's injuries (ibid., § 112).

64. The Court has found that in cases where it cannot be said that the police have been called upon to react without prior preparation (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII), they may be expected to show a degree of patience and tolerance before attempting to disperse a crowd which does not present a danger to public order and is not engaging in acts of violence. The Court has previously found violations of Article 3 of the Convention where police officers failed to show the required degree of tolerance and restraint when dispersing peaceful gatherings (see, for example, *Biçici v. Turkey*, no. 30357/05, §§ 35-36, 27 May 2010).

(ii) Application of the principles to the present case

65. It is not disputed between the parties that both applicants participated in the political rally on 6 May 2012. The event had been approved by the city authorities as a march followed by a meeting at Bolotnaya Square which was supposed to end at 7.30 p.m. The march was peaceful and took place without any disruptions, but when the marchers arrived at Bolotnaya Square it became clear that barriers installed by the police had narrowed the entrance to the meeting venue, allegedly restricting the space allocated for the meeting. To control the crowd, a police cordon forced the protesters to remain within the barriers. There were numerous clashes between the police and protesters. At 5.30 p.m. the police ordered that the meeting should be terminated early, and they began to disperse the participants. It took them about two hours to clear the protesters from the square.

66. In previous cases concerning the same events the Court found that the authorities had failed to discharge their positive obligation under Article 11 of the Convention to ensure the peaceful conduct of the assembly, to prevent disorder and to secure the safety of all the citizens involved (see *Frumkin*, cited above, § 130). The Court also concluded that the early termination of that meeting had not been inevitable, and that the information about the termination had not been effectively transmitted to the participants in the march (ibid., §§ 36 and 133). As regards the methods used to disperse the assembly at Bolotnaya Square, the Court refrained from making a general assessment of the police's conduct, reserving its assessment to an examination of the specific allegations in each particular case (ibid, § 134). In several related cases it found that the applicants' arrest at the site of the venue had violated Article 11 of the Convention (ibid., §§ 138-40; see also *Aristov and Gromov v. Russia* [Committee], nos. 76191/12 and 5438/13, §§ 58-62, 9 October 2018; *Asainov and Sibiryak v. Russia* [Committee], nos. 16694/13 and 32701/13, §§ 50-53, 4 December 2018; and *Zinovyeva v. Russia* [Committee], no. 69272/13, § 53, 8 January 2019). However, the Court has not yet dealt with individual complaints like the present ones, relating to ill-treatment by police during that event.

67. In the present case, the Government did not contest that the applicants had sustained injuries, or that the police had applied force at Bolotnaya Square on that day. At the same time, in their observations, they can be understood as denying that the injuries were inflicted by the police during the operation on 6 May 2012 (see paragraphs 43-44 above). In this regard, the Court notes that during the domestic pre-investigation inquiries the questions of exactly when and how the injuries had been inflicted were not addressed. The applicants submitted medical certificates, photos and/or videos, as well as explanations as to how their injuries had resulted from police actions. The decisions refusing to institute a criminal investigation do not contain any detailed analysis of the submitted material, refer to any other material in respect of the incidents involving the applicants, or put forward an alternative explanation for their injuries (see paragraphs 59-60 above).

68. The Court further notes that the Investigation Committee's decision of 20 March 2013 and the subsequent decisions (see paragraphs 12 and 22 above) stated that the police had legitimately used force when arresting the protesters who had acted unlawfully and shown resistance Although the applicants were not among those arrested or accused of acting violently, the Court considers that the general conclusions of the investigators can be understood as implying that force was also used by the police in respect of the applicants.

69. In the light of the foregoing, and noting the applicants' consistent and detailed explanations about the origin of their injuries which were supported by medical certificates, photographs or video material, the Court considers that both applicants have made out a prima facie case that the injuries described in the medical certificates were inflicted by the police during the dispersal of the political rally on 6 May 2012. Further noting the lack of an effective investigation into the applicants' allegations, and consequently the absence of any alternative and plausible explanations for the causes of the applicants' injuries provided by the Government, the Court concludes that the injuries described in the medical certificates were inflicted by the police during the dispersal of the political rally on 6 May 2012.

70. As in previous similar cases, the Court attaches particular weight to the fact that the injuries were sustained while the applicants were within an area in which law-enforcement authorities were conducting an operation during which they resorted to the use of force for the purpose of quelling mass disorder. While the use of force in such circumstances is not prohibited, it has to be indispensable and not excessive (see *Muradova*, cited above, § 109, with references therein).

71. In this regard, the Court notes that at no stage in the domestic proceedings or the proceedings before the Court has the applicants' peaceful conduct during the assembly been called into question. The use of force against them was therefore not warranted by their own conduct, and thus diminished their dignity.

72. The Court finds that the present case involved degrading treatment.

73. There has accordingly been a violation of Article 3 of the Convention in its substantive limb in respect of both applicants.

(c) Conclusion concerning the alleged violations of Article 3

74. The Court has established beyond reasonable doubt that on 6 May 2012 the police used force against both applicants during the dispersal of the assembly at Bolotnaya Square, and that they sustained injuries as a result. It has further held that the recourse to physical force was not made strictly necessary by the applicants' own conduct, nor had it been indispensable use in the context of quelling mass disorders, let alone in compliance with the proportionality requirement. It therefore amounted to ill-treatment prohibited by Article 3 of the Convention.

75. The Court has also found that the Russian authorities failed to open an official investigation capable of establishing whether the use of force by the police at Bolotnaya Square on 6 May 2012 had been indispensable and proportionate. They thus failed in their obligation to carry out an effective investigation into the plausible allegations of ill-treatment brought by both applicants.

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

III. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

77. The applicants complained that because of the police violence against them during the dispersal of the demonstration they could not enjoy their right as provided for in Article 11 of the Convention. The second applicant also relied on Article 10 of the Convention. The Court will examine the complaint under Article 11, interpreted where appropriate in the light of Article 10 (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202). Article 11 reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

78. The Government submitted that the complaints were inadmissible, as the applicants had not argued before the domestic authorities that their right to freedom of assembly had been violated.

79. In reply, the second applicant submitted that when the investigating authorities had conducted the inquiry into the applicants' allegations they had stated that the force used by the police had been intended to address the disorder during the rally, and had been used when arresting the most active participants responsible for acts of disorder. Thus, she claimed that the national authorities had been given an opportunity to rule on the proportionality of the use of force during the assembly.

80. The Court notes that the applicants complained before the domestic investigating authorities and the courts that they had been injured by the police during the public assembly. The investigating authorities did not start a criminal investigation in respect of those allegations, on the grounds that the developments at Bolotnaya Square during the assembly had called for the use of force by the police and the force used had been justified. The Court has found a procedural violation of Article 3 of the Convention on account of, in particular, the lack of analysis of the individual incidents in respect of the applicants (see paragraphs 59-60 above). However, the material of the pre-investigation inquiries leaves no doubt that the investigating authorities carried out an assessment of the police intervention at Bolotnaya Square to disperse the public assembly. It was not disputed that both applicants had participated in the assembly. In these circumstances, and since the Government did not specify any other avenue of redress for the applicants to exhaust as regards their rights under Article 11 of the Convention, the Court considers that the objection of non-exhaustion should be dismissed.

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

B. Merits

1. Submissions by the parties

82. The applicants reiterated their complaints. They argued that they had been peaceful participants in the rally, and therefore the use of any force against them had been unlawful and unjustified.

83. As regards the first applicant, the Government submitted that there had been no violation of the right under Article 11 of the Convention, as the police had used legitimate force only in respect of the most active perpetrators whom they had arrested. In respect of the second applicant, the Government submitted that there had been no interference with her right under Article 11 of the Convention, as it had not been confirmed during the domestic inquiry that the police had unlawfully used force against her.

2. The Court's assessment

(a) General principles

84. The Court refers to the principles established in its case-law regarding the right to freedom of peaceful assembly (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, ECHR 2015, with further references) and the proportionality of interference with that right (see *Oya Ataman v. Turkey*, no. 74552/01, ECHR 2006-XIV, and *Hyde Park and Others v. Moldova*, no. 33482/06, 31 March 2009).

85. The Court reiterates that an interference does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or

during an assembly and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39).

86. An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour (see *Ezelin*, cited above, § 53; *Ziliberberg v. Moldova* (dec.), no. 61821/00, 4 May 2004; and *Primov and Others v. Russia*, no. 17391/06, § 155, 12 June 2014). Even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of Article 11 § 1 of the Convention, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 103, ECHR 2011).

(b) Application of the principles to the present case

87. The Court has previously held that the assembly at Bolotnaya Square on 6 May 2012 fell within the scope of Article 11 of the Convention (see *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, §§ 168-72, 4 October 2016). As regards the applicants personally, it is common ground that they were not among those responsible for the initial acts of aggression which contributed to the deterioration of the assembly's initial peaceful character. Article 11 is applicable to both applicants' complaints (see *Razvozzhayev and Udaltsov*, cited above, §§ 282-86).

88. The Court notes that it has found a violation of Article 3 of the Convention on account of the applicants' ill-treatment by police during the public assembly (see paragraph 71 above). The Court considers that the intervention by the police and their conduct *vis-à-vis* the applicants also constituted an interference with the applicants' rights under Article 11 of the Convention (see *İzci v. Turkey*, no. 42606/05, § 82, 23 July 2013).

89. The Government submitted in their observations that the Police Act allowed police officers to use force and special equipment in order to, *inter alia*, prevent a crime and suppress resistance shown towards a police officer. Thus, the Court accepts that the interference in question was "prescribed by law" and pursued the legitimate aim of the prevention of disorder and crime.

90. Turning to the question of the "necessity" of the interference, the Court notes the Government's submissions that the force was used to arrest those participants in the assembly who had acted violently and disobeyed the police. However, the Government have not submitted any explanations as to why force had to be applied in respect of the applicants, who were not arrested and did not engage in any acts of violence. In the light of its finding that the force used in respect of the applicants was unnecessary and excessive and thus contrary to Article 3 of the Convention (see paragraph 74 above), it finds that it was "not necessary in a democratic society" within the meaning of Article 11 § 2 of the Convention. Moreover, it could have had a chilling effect and discouraged the applicants and others from taking part in similar public gatherings.

91. There has accordingly been a violation of Article 11 of the Convention as regards both applicants.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. Lastly, the applicants complained under Article 13 of the Convention that there had been no effective investigation into their allegations of ill-treatment by the police. The second applicant further complained that she had not had an effective remedy in respect of her complaint that the

use of force by the police had violated her freedom of assembly. Article 13 of the Convention reads:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

93. In view of its conclusions as regards the admissibility and merits of the complaints under Article 11 of the Convention, and its finding of a violation of Article 3 of the Convention under its procedural limb, the Court does not consider it necessary to examine separately the applicants' complaints under Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. In respect of non-pecuniary damage, the first applicant claimed 16,000 euros (EUR), and the second applicant claimed EUR 35,000.

96. The Government contested the first applicant's claim as excessive. As regards the second applicant's claims, they submitted that if the Court found a violation of her rights, it should award just satisfaction according to its case-law.

97. Having regard to the nature of the violations found, the principle of *non ultra petita*, and its case-law, the Court awards the applicants the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable: EUR 16,000 to the first applicant and EUR 16,900 to the second applicant.

B. Costs and expenses

98. The first applicant also claimed EUR 5 for postage and EUR 5,000 for the costs and expenses incurred before the domestic courts and before the Court. This latter amount included the fees of his legal representative. The second applicant claimed EUR 22,500 for her legal representation in the domestic proceedings and before the Court. She submitted her request for legal assistance from the organisation for which her representatives worked, and a letter from her confirming that the lawyers had spent 150 hours on her case and that she had undertaken to pay them EUR 150 per hour for their work.

99. The Government submitted that they did not object to the first applicant's claims for costs and expenses. As regards the second applicant's claim, they submitted that if the Court found a violation of her rights, it should make an award under that head according to its case-law.

100. 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 each applicant EUR 4,500 in respect of costs and expenses incurred before the domestic courts and before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Decides to join the applications;
2. Declares the applications admissible;
3. Holds that there has been a violation of Article 3 of the Convention in its substantive and procedural aspects in respect of both applicants;
4. Holds that there has been a violation of Article 11 of the Convention in respect of both applicants;
5. Holds that there is no need to examine the complaints under Article 13 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 16,000 (sixteen thousand euros) to the first applicant, and EUR 16,900 (sixteen thousand nine hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,500 (four thousand five hundred euros) to each applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly to the respective representatives;
(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;
7. Dismisses the remainder of the applicants' claim for just satisfaction.
Done in English, and notified in writing on 13 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.
Olga Chernishova
Deputy Registrar
Paul Lemmens
President