



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

FIRST SECTION

Application no. 10060/07
Vladislav Igorevich BATALIN and others
against Russia
lodged on 7 February 2007

STATEMENT OF FACTS

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

**A. First applicant's placement and treatment in psychiatric hospital.
Alleged beatings**

In 2004 the first applicant, suffering from tachycardia and severe headaches, was diagnosed with neurocirculatory dystonia. In 2004-2005 he underwent treatment in various hospitals in Moscow, without any tangible result.

In April 2005 his illness aggravated.

On 25 May 2005 he called an ambulance and was taken to neurology unit of Moscow City Clinical Hospital no. 6 (*Московская городская клиническая больница № 6*). The doctor in admissions unit, however, refused to hospitalise the applicant, having found no pathology, and recommended his outpatient treatment in a district polyclinic.

Desperate to receive any relief, on the same day the first applicant cut the veins on his forearm. Another ambulance was called for him by his parents, the second and the third applicants, and he was taken to N.V. Sklifosovsky Research Institute of Emergency Medicine (*НИИ скорой помощи им. Н.В. Склифосовского*). After the first applicant was provided with emergency medical aid at the surgical unit, he was taken to somato-psychiatric unit no. 2 (*ПСО-2*) of the Institute with diagnosis "chronic somatoform pain disorder, personality disorder, continuous sluggish schizophrenia, cutting wound of left forearm, attempted suicide".

On 26 May 2005 the first applicant contacted his parents asking them to take him home. When the parents arrived, they were not allowed to take the first applicant home and were forced to leave. The first applicant, in his

turn, was severely beaten. Three nurses were holding his hands and two of the recovering patients were administering blows to the first applicant's face and body. The second and the third applicants heard their son screaming for help. The first applicant was then taken to his ward, and one of the nurses kicked him on the bed with such force that he hit the bedside table with his head and lost his consciousness. When the first applicant came to his senses he found himself bleeding, strapped to the bed with a gag in his mouth. No medical assistance was provided to him.

On 27 May 2005 the two patients who participated in the first applicant's beatings were discharged from hospital.

The first applicant was allegedly warned by doctor L. that his parents would not be let in, that the police would not help, that a document was already drafted to the effect that he had himself initiated the brawl, that if he would bring any complaints he would be given such a diagnosis that nobody would believe him and be surprised if one day he would commit a suicide.

The first applicant remained hospitalised until 9 June 2005, allegedly subjected to scientific experiments by having been treated with seroquel (a then new antipsychotic drug) and disallowed any contact with the outside world. He was having blood tests every other day.

Several hours following the first applicant's discharge from psychosomatic unit no. 2 of Sklifosovsky Hospital, an ambulance was called for him at home. The ambulance doctor saw a haematoma under the first applicant's right eye, bruises and contusions in the area of his chest and waist. The first applicant was further diagnosed with hypertensive crisis with high blood pressure and strong tachycardia. He was immediately hospitalised in Moscow City Clinical Hospital no. 67 (*Московская городская клиническая больница № 67*) where he remained until 5 August 2005.

B. Applicants' complaints

In October 2005 the applicants complained to the Russian Federation's Ombudsman about the first applicant's unlawful committal and treatment in psychosomatic unit no. 2 of Sklifosovsky Hospital, and his alleged beatings by the hospital nurses and two of the patients. The applicants' complaint was referred to Meshchanskiy District Prosecutor's Office of Moscow, from where it was further referred to Meshchanskiy District Department of the Interior.

1. Criminal proceedings into the first applicant's alleged beatings (criminal case no. 82906)

After two refusals to institute criminal proceedings, on 2 November 2006 criminal proceedings were finally instituted (criminal case no. 82906) under Article 116 of the Russia Criminal Code (Beatings).

On 15 November 2006 the first applicant was granted victim status in the proceedings.

On 16 March and 25 June 2007 an investigator of the investigation department of Meshchanskiy District Department of the Interior suspended the proceedings due to the impossibility of identifying the alleged perpetrators.

On 19 March and 1 July 2007 respectively Meshchanskiy Interdistrict Prosecutor's Office of Moscow quashed the above decisions and remitted the case for additional investigations.

On 11 August 2007 the investigator discontinued the proceedings due to the expiry of the procedural time-limit for prosecution.

On 30 August 2007, however, the above decision was quashed and the proceedings were reopened.

The proceedings were subsequently suspended on 14 January 2008 and 16 March 2009 and yet again resumed (unspecified dates).

In 2012 the applicants were informed that on 25 November 2010 the proceedings were terminated due to the expiry of the procedural time-limit for prosecution.

2. Criminal proceedings into the first applicant's allegedly unlawful placement in psychiatric hospital and his stay there (criminal case no. 401966)

In the meantime, on 5 March 2007 the complaints concerning the first applicant's placement in psychiatric hospital were singled out from criminal case no. 82906 for separate examination.

On 24 March 2007 an investigator of Meshchanskiy Interdistrict Prosecutor's Office of Moscow refused to institute criminal proceedings.

On 3 May 2007 Preobrazhenskiy District Court of Moscow found the above decision unlawful and groundless.

On 6 July 2007 the acting prosecutor of Meshchanskiy Interdistrict Prosecutor's Office of Moscow quashed the decision of 24 March 2007 and ordered an additional inquiry.

On 12 October 2007 criminal proceedings were instituted (criminal case no. 401966) under Article 128 § 2 of the Russian Criminal Code (Unlawful Placement in Psychiatric Hospital).

On 12 January, 5 March and 27 April 2008 the proceedings were suspended due to the impossibility of identifying those responsible.

However, on 5 February, 27 March and 27 April 2008 respectively the above decisions were quashed and additional investigations ordered.

In the meantime, on 18 April 2008 the forensic psychiatric examination was conducted which established that the first applicant's hospitalisation on 26 May 2005 had been justified (psychiatric pathology of an acute character accompanied by expressed depression with attempted suicide). It was further established that his subsequent stay in the psychiatric ward had been unlawful. In particular, contrary to the provisions of the relevant domestic law (the Psychiatric Assistance Act of 2 July 1992), no report had been drawn up in the course of 48 hours' following the first applicant's involuntary hospitalisation by a panel of psychiatrists on the necessity of his further stay in the psychiatric hospital and no application had been made to the court by the head of the psychiatric hospital on the necessity of the first applicant's continued involuntary stay in the psychiatric hospital.

In the absence of any meaningful investigation since the institution of the criminal proceedings, the applicants challenged the investigator's inactivity before the court.

On 7 May 2008 Preobrazhenskiy District Court found unlawful the inactivity of the investigator (failure to identify and question witnesses and carry out other relevant investigative actions).

On 28 October 2008 the head of somato-psychiatric unit no. 2 of Sklifosovsky Hospital D. was involved in the proceedings as a defendant.

On 31 October 2008 the preliminary investigation was completed, and on 28 November 2008 the bill of indictment was submitted for approval to Meshchanskiy Interdistrict Prosecutor's Office.

On 9 December 2008, however, the case was returned for an additional investigation since the prosecutor considered the charges brought against D. unsubstantiated.

On 5 February 2009 the qualification of the crime charged against D. was changed to Article 127 § 1 of the Criminal Code (Unlawful Deprivation of Liberty). The case-file material was sent to Meshchanskiy District Department of the Interior for further investigation.

On 19 July 2009 an investigator of Meshchanskiy District Department of the Interior discontinued the proceedings due to the expiry of the procedural time-limit for prosecution.

It appears that subsequently the proceedings were reopened.

In 2012 the applicants were informed that on 26 November 2010 the proceedings were again discontinued as being time-barred.

COMPLAINTS

1. Relying on Articles 2, 3 and 5 § 1 (e) of the Convention the applicants complained that the first applicant, a mentally sane person, had been compulsorily admitted to and retained for two weeks in psychiatric hospital, in the absence of any psychiatric diagnosis given by a competent psychiatric commission warranting his involuntary psychiatric treatment and a relevant court decision, subjected to treatment with strong psychotropic drugs and severely beaten up. They claimed that the first applicant had been subjected to scientific experiments by having been treated with seroquel, the intake of which was contraindicated for patients like him suffering from cerebroasthenia, arterial hypotension and tachycardia.

2. They further complained under Articles 13 and 17 about the lack of effective domestic remedies in connection with the above complaints.

QUESTIONS TO THE PARTIES

1. Was the first applicant's detention in somato-psychiatric unit no. 2 of N.V. Sklifosovsky Research Institute of Emergency Medicine between 25 May and 9 June 2005 "lawful" and "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 (e) of the Convention? In particular, was the first applicant reliably shown to be suffering from a mental disorder of a kind and degree warranting compulsory confinement? What was the legal basis for the first applicant's

deprivation of liberty during the above period (see *Gorobet v. Moldova*, no. 30951/10, § 40, 11 October 2011)?

2. Did the first applicant have at his disposal an effective procedure by which he could challenge the lawfulness of his detention in somato-psychiatric unit no. 2 of N.V. Sklifosovsky Research Institute of Emergency Medicine between 25 May and 9 June 2005, as required by Article 5 § 4 of the Convention (see, by analogy, *Mukharev v. Russia*, no. 22921/05, §§ 33-40, 3 April 2012, and *Razhev v. Russia*, no. 29448/05, §§ 29-35, 12 June 2012)?

3. Has the first applicant's forced medical treatment in somato-psychiatric unit no. 2 of N.V. Sklifosovsky Research Institute of Emergency Medicine between 25 May and 9 June 2005 amount to inhuman or degrading treatment, in breach of Article 3 of the Convention (see *Gorobet*, cited above, §§ 47-53)? In particular, has the medical necessity for the first applicant's psychiatric treatment (including treatment with seroquel antipsychotic drug) been convincingly shown to exist? Have the procedural guarantees for the decision to administrate involuntary psychiatric treatment in respect of the first applicant been complied with?

4. As regards the events of 26 May 2005, was the first applicant subjected to torture or to inhuman or degrading treatment by the medical personnel of somato-psychiatric unit no. 2 of N.V. Sklifosovsky Research Institute of Emergency Medicine, in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present instance by the domestic authorities in breach of Article 3 of the Convention?