



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

6 September 2010

CHAMBER
SECOND SECTION

Application no. 19072/08
by Adnan HABIMI and Others
against Serbia
lodged on 2 April 2008

STATEMENT OF FACTS

THE FACTS

The applicants (see the attached list) are Serbian nationals. They are represented before the Court by Mr D. Vidosavljević, a lawyer practising in Leskovac.

A. The circumstances of the case

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

In November 2006 prison riots broke out in the Niš Prison (where the applicants were then detained) and other prisons in Serbia over unfulfilled demands for the parliament to pass an amnesty law. On 24 November 2006 at about 7 a.m. hundreds of special police officers wearing masks entered the Niš Prison and brought the protests under control. Reportedly, dozens of inmates were injured during the operation (see the 2006 Report on Human Rights in Serbia of the Belgrade Centre for Human Rights and the 2006 Report on Human Rights Practices in Serbia of the US State Department).

The applicants claim that they were beaten with baseball bats and truncheons, forced to run between two rows of police officers who kicked them as they passed and lastly forced to lie on a cold, concrete floor for hours, whilst being handcuffed and, some of them, naked. Some applicants

(who declare affiliation with Albanians and Roma) also claim that they were subjected to racist verbal abuse. As a result, the applicants allegedly sustained various injuries, such as fractured bones, bruises and wounds all over the body, internal bleeding and brain concussion. Some of them (Mr Adnan Habimi, Mr Ljubomir Simić, Mr Srđan Lomigora, Mr Bojan Vučković, Mr Bajram Baždar, Mr Branislav Radulović, Mr Darko Savić, Mr Čerim Binaj and Mr Nenad Đokić) were treated in the Niš Hospital (*Klinički centar Niš*). Mr Slađan Matić was treated in the Niš Military Hospital. The remaining applicants were either treated in the Niš Prison hospital unit or left without any medical assistance. They have submitted no evidence in this regard apart from three photos.

Between 29 March and 11 May 2007 the applicants lodged criminal complaints against unnamed special police officers and prison staff. They asked the public prosecutor to find out who had participated in the operation at issue, seek the applicants' medical records from the Niš Hospital, Niš Military Hospital and Niš Prison and interview some eyewitnesses.

On 5 December 2007 the public prosecutor decided not to prosecute, relying on a report from the special police forces concluding that the force used had been lawful and that the applicants' injuries had mainly been due to their mutual fights and/or their falling down the stairs or against the cell furniture.

Shortly thereafter the applicants applied to the investigating judge to find out which special police officers and prison staff had participated in the impugned operation, with the intention of starting a subsidiary prosecution against them. The investigating judge at first refused to take any action, but he eventually interviewed the applicants pursuant to an order of a pre-trial chamber of the Niš Municipal Court of 17 April 2008. On 22 December 2008 the investigating judge closed the investigation. It appears that he failed to determine the identity of the alleged perpetrators, which prevented the applicants from taking over the prosecution (see "Relevant domestic law" below).

On 21 January 2009 Mr Adnan Habimi, Mr Ljubomir Simić, Mr Srđan Lomigora, Mr Bojan Vučković, Mr Bajram Baždar, Mr Branislav Radulović, Mr Darko Savić, Mr Čerim Binaj and Mr Nenad Đokić asked the Niš Hospital, through their counsel, to send them a copy of their medical files. On 23 January 2009 the Niš Hospital responded that this would be in breach of section 37 of the Health Act 2005 (the principles of confidentiality and respect for patients' privacy).

B. Relevant domestic law

The Criminal Code 2005 (published in Official Gazette of the Republic of Serbia no. 85/05, amendments published in Official Gazette nos. 88/05, 107/05, 72/09 and 111/09) has been in force since 1 January 2006. The relevant Article reads as follows:

Article 137 (Ill-treatment and Torture)

"(1) Whoever ill-treats another or treats such person in humiliating and degrading manner shall be punished with imprisonment of up to one year.

(2) Whoever causes severe pain or suffering to another for such purposes as obtaining from him or a third person a confession, a statement or information, or intimidating or unlawfully punishing him or a third person, or for any reason based on discrimination of any kind, shall be punished with imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 above is committed by an official acting in an official capacity, the official shall be punished for the offence in paragraph 1 with imprisonment from three months to three years, and for the offence in paragraph 2 with imprisonment from one to eight years.”

The Code of Criminal Procedure 2001 (published in Official Gazette of the Federal Republic of Yugoslavia no. 70/01, amendments published in Official Gazette of the Federal Republic of Yugoslavia no. 68/02 and Official Gazette of the Republic of Serbia nos. 58/04, 85/05, 115/05, 49/07, 20/09 and 72/09) has been in force since 28 March 2002. Most criminal offences (including ill-treatment and torture) are subject to public prosecution. By Article 20 of the Code, the public prosecutor must prosecute when there is sufficient evidence that a named individual has committed a criminal offence which is subject to public prosecution. Article 61 of the Code provides that when the public prosecutor decides not to prosecute such an offence because of the lack of evidence, the victim of the offence may nevertheless start a subsidiary prosecution against a named individual within eight days from the notification of that decision.

The Police Act 2005 (published in Official Gazette of the Republic of Serbia no. 101/05) has been in force since 29 November 2005. Pursuant to section 86 of that Act, whenever force has been used, the police officer concerned must submit a written report to his or her superior within 24 hours. The superior officer will then establish whether the force used has been justified and lawful.

The Health Act 2005 (published in Official Gazette of the Republic of Serbia no. 107/05) has been in force since 10 December 2005. Section 37 of that Act deals with the principles of confidentiality and respect for patients’ privacy.

COMPLAINTS

The applicants complain that they were ill-treated during a special police operation of 24 November 2006 and that there was no effective official investigation in this connection. They rely on Article 3 of the Convention.

Num.	Last name	First name	Birth date
1.	HABIMI	Adnan	22/05/1967
2.	VUČKOVIĆ	Bojan	11/08/1969
3.	LOMIGORA	Srđan	08/02/1979
4.	FRANC	Robert	12/10/1972
5.	STANKOVIĆ	Siniša	26/05/1973
6.	IVLJANIN	Vladimir	09/04/1977
7.	JURIŠIĆ	Miloš	23/09/1982
8.	LJATIFI	Ramadan	14/04/1968
9.	RAJKOVIĆ	Bratislav	21/11/1953
10.	MATIĆ	Sladjan	09/09/1975
11.	ŠEKULARAC	Ivan	21/07/1975
12.	ĐOKIC	Nenad	07/07/1970
13.	VASILJEVIĆ	Vladimir	10/01/1975
14.	BINAJ	Ćerim	15/05/1961
15.	JONOVIĆ	Ivica	24/06/1979
16.	SAVIĆ	Darko	11/01/1979
17.	ALEKSIĆ	Predrag	01/09/1959
18.	OSMANOVIĆ	Branislav	02/05/1984
19.	STEVANOVIĆ	Saša	24/12/1973
20.	STOJANOVIĆ	Dejan	26/04/1981
21.	RADULOVIĆ	Branislav	08/11/1973
22.	JOVANOVIĆ	Nenad	28/10/1976
23.	ZDRAVKOVIĆ	Zoran	25/02/1977
24.	KOSTIĆ	Vukašin	22/08/1978
25.	RISTIĆ	Goran	06/04/1963
26.	TANASKOVIĆ	Ivan	26/07/1980
27.	BAŽDAR	Bajram	21/02/1979
28.	BELILOVIĆ	Minuš	07/08/1977
29.	VASIĆ	Zoran	30/01/1976
30.	VUJOVIĆ	Ognjen	10/06/1982
31.	SIMONOVIĆ	Aleksandar	14/05/1982
32.	GAJIĆ	Ivan	01/11/1974
33.	MARKOVIĆ	Zoran	31/05/1982
34.	STRUGAR	Slaviša	03/03/1975
35.	GLUŠICA	Dane	14/01/1978
36.	MATOVIĆ	Zoran	17/12/1955
37.	ANTIĆ	Zoran	?

QUESTIONS TO THE PARTIES

1. Were the applicants subjected to treatment contrary to Article 3 of the Convention during the special police operation of 24 November 2006 (see *Vladimir Romanov v. Russia*, no. 41461/02, 24 July 2008)?

2. Having regard to the procedural protection from ill-treatment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), has there been a breach of Article 3 of the Convention in the present case?

3. The Government are requested to submit the report on the use of force concerning the operation of 24 November 2006 prepared pursuant to section 86 of the Police Act 2005 and any follow-up reports, the entire file concerning the present case from the Office of the Niš Municipal Public Prosecutor and the Niš Municipal Court as well as the applicants' medical files from the Niš Hospital, Niš Military Hospital and Niš Prison for the period from 24-30 November 2006.

4. The Government are also requested to clarify whether it is indeed the practice of the local hospitals to refuse to send a copy of patients' medical files to their counsel and to submit any secondary legislation and/or policy documents in this connection.