



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

Communicated on 12 December 2013

FIRST SECTION

Application no. 39169/07  
Igor Sergeyevich TEMNIKOV  
against Russia  
lodged on 2 August 2007

**STATEMENT OF FACTS**

The applicant, Mr Igor Sergeyevich Temnikov, is a Russian national who was born in 1986 and lives in Taksimo, the Republic of Buryatiya.

**A. Alleged ill-treatment on 19 October 2006 and the applicant's injuries**

On 19 October 2006 at approximately 2 a.m. the applicant was apprehended by the police officers of the Muyskiy District Police Station of the Republic of Buryatiya («Му́йский РОВД Респу́блики Бу́рятия») (hereafter "ROVD") near the ROVD building. During the arrest he was allegedly beaten by policemen B. and Ts. with a view to obtain confessions to three counts of theft. The applicant agreed to confess and to show the policemen where he had stored the stolen goods.

The applicant conducted the officers to the house yard of his mother's acquaintance I., whom he allegedly sought to ask to inform his mother about his arrest. As the policemen did not find any stolen goods in the yard, they started beating the applicant again. Having heard the noise and the applicant's screams, I. went out of the house. At that moment the policemen stopped beating the applicant. They conducted a search in I.'s house, but no items of evidence were discovered.

It appears that at approximately 5 a.m. the applicant was brought back to the ROVD premises where the applicant signed surrender with a confession of guilt in respect of the three counts of theft, apparently in a lawyer's presence. According to the applicant, on the ROVD premises he was seen by three witnesses, Iz., L., and D., who could attest of his injuries.

In the evening of the same day, at approximately 11 p.m., the applicant was released after signing an undertaking not to leave his place of residence.

On 20 October 2006 at 3.10 p.m. the applicant was examined by a doctor at a hospital. According to a copy of the applicant's medical file, the doctor recorded an oedema of tissues and a haemorrhage in the nasal-bridge area;

haemorrhages in scapulae area and in the lumbar region measuring 15x8cm and 10x6cm respectively; a bruise measuring 6x4cm on the back of the applicant's neck; an oedema of the right hand. After an X-ray examination of the applicant's right hand, apparently conducted on the same day, he was diagnosed with a fracture of the 5<sup>th</sup> metacarpal bone.

### **B. The authorities' response to the applicant's complaint of police ill-treatment**

It appears that on 24 November 2006 the applicant complained to the District Prosecutor of the ill-treatment by the police officers. On 23 January 2007 the applicant requested the Prosecutor's office to advise him of the decision taken upon the complaint. Having received no reply either to his initial complaint or to the subsequent inquiry, in January 2007 the applicant complained of the Prosecutor's inaction to court. By letter received by the applicant on 1 February 2007 he was informed that on 2 December 2006 investigator Bo. of the District Prosecutor's office had refused to open criminal investigation into the matter for lack of *corpus delicti*. On 2 February 2007 the Muyskiy District Court of the Republic of Buryatiya (hereafter "District Court") declared unlawful the failure of the Prosecutor's office to notify the applicant in due time of the decision taken upon the applicant's complaint.

It appears that on 5 February 2007 the decision of 2 December 2006 was annulled by the Deputy District Prosecutor, and the case was remitted for further inquiry. Since then four decisions not to open criminal proceedings, dated 10 February 2007, 24 February 2007, 30 April 2007, and 11 May 2007, were adopted. The decisions of 10 February 2007, 24 February 2007, and 30 April 2007 were subsequently annulled by a superior prosecutor, and the case was remitted for further inquiry.

On an unspecified date the applicant's mother complained to court of the decision not to bring criminal proceedings of 24 February 2007, and of the Prosecutor's failure to inform the applicant's about the developments in the investigation. On 3 April 2007 the District Court dismissed the complaint against the decision of 24 February 2007 on the ground that it had been annulled, and granted the remainder of the complaint. On 15 May 2007 the Supreme Court of the Republic of Buryatiya examined the Prosecutor's appeal against the District Court's decision and discontinued the proceedings on the ground that the applicant had already been convicted by a final judgment (see below).

### **C. The applicant's trial**

On 6 February 2007 the Muyskiy District Court of the Buryatiya Republic found the applicant guilty of a theft and of an attempted theft. During the trial the applicant asserted that he had confessed to those crimes under ill-treatment. The Court examined B.'s statements given in the course of the pre-trial investigation, in which B. had denied the applicant's allegations. The Court held that the applicant's allegations were not credible and aimed at avoiding criminal responsibility.

On 5 April 2007 the applicant's conviction was upheld by the Supreme Court of Buryatiya. With regard to the applicant's complaint of ill-treatment by the police, the Court referred to the decision not to open criminal proceedings of 2 December 2006 and concluded that the applicant's allegations were unfounded.

## COMPLAINT

The applicant complains under Articles 3 and 13 of the Convention about ill-treatment in police custody and of the lack of an effective investigation into his relevant complaint.

## QUESTIONS TO THE PARTIES

1. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by the police officers, in breach of Article 3 of the Convention?

In answering that question the Government are requested to address, inter alia, the following points concerning the circumstances surrounding the applicant's alleged ill-treatment:

(a) Once in the hands of the police on 19 October 2006:

(i) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(ii) Was he given the possibility of informing his family about his apprehension and, if so, when?

(iii) Was he given access to a lawyer and, if so, when? Was that a lawyer on duty invited by a police officer or an investigator, or a lawyer of the applicant's choice? If given initially a State-appointed lawyer, when did the applicant receive access to a lawyer of his choice?

(iv) Was he given access to a doctor and, if so, when?

(b) What activities, where, when and by whom were conducted with the applicant's participation during the period between the moment of his actual apprehension and until the moment when he was released against undertaking not to leave his place of residence? The Government are required to provide a detailed hour-by-hour report on what happened during that period and to account for the time spent by the applicant in the hands of police.

Where was the applicant held during that period? What was his procedural status? What confessions and/or statements (*«явка с повинной; показания»*) did he give during that period? Was he given

access to a lawyer before and during each such activity, and, if so, was that a lawyer on duty invited by a police officer or an investigator, or a lawyer of the applicant's choice?

The Government are required to provide relevant procedural and other documents in support of their answers, including where applicable the decision on bringing the criminal proceedings within the framework of which the applicant was apprehended; records of the applicant's apprehension as a suspect; records of investigative activities including interrogations as a suspect and accused, surrender with a confession of guilt («явка с повинной»), if any; records of the applicant's entering and leaving the police station from the Register of persons brought to a police station («Книга учета лиц, доставленных в дежурную часть органа внутренних дел»), any documents attesting to his state of health and injuries during the period concerned, etc.

2. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), did the State conduct an investigation in compliance with Article 3 of the Convention (see, among many others, *Mikheyev v. Russia*, no. 77617/01, §§ 108-110 and 121, 26 January 2006)?

In particular, considering that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V),

(a) Did the domestic authorities discharge such a duty?

(b) Were the police officers, which assisted the investigating authority and carried out operational activities in the course of the pre-investigation inquiry into the applicant's complaint, impartial and independent from the police officers who allegedly subjected the applicant to ill-treatment?

(c) Was the investigating authority which examined the applicant's complaint of police ill-treatment impartial and independent from the police officers who allegedly subjected the applicant to ill-treatment? Did those police officers' department conduct operative and other supporting activities in cases investigated by the investigating authority in question?

(d) What operational and other activities were carried out in the course of the pre-investigation inquiry? Were the witnesses who had allegedly seen the applicant in the ROVD on 19 October 2006 questioned?

(e) Does the pre investigation inquiry under Articles 144-145 of the Code of Criminal Procedure of the Russian Federation provide for procedural guarantees and investigative methods capable of establishing

the facts of the case and leading to the identification and punishment of those responsible, where there is an arguable claim of ill-treatment under Article 3 of the Convention? Did the domestic authorities' refusal to bring criminal proceedings and, hence, to conduct a preliminary investigation according to Part VIII, Articles 150-226 of the Code of Criminal Procedure breach the State's obligation to conduct an investigation in compliance with Article 3?

The Government are invited to submit copies of the materials of the pre-investigation inquiries under Articles 144-145 of the Code of Criminal Procedure including a copy of the applicant's complaint of 24 November 2006, the investigating authorities' decisions on the applicant's complaints of ill-treatment, as well as courts' decisions on the applicant's complaints against the investigating authority's decisions, medical certificates and medical experts' reports concerning the applicant's injuries and other relevant documents.

3. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention as required by Article 13 of the Convention?