



## The circumstances surrounding the unacknowledged detention of a police officer suspected of taking a bribe were contrary to the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of **Oleynik v. Russia** (application no. 23559/07) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights,

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** under its substantive and procedural heads, and

**a violation of Article 8 (right to respect for private and family life).**

The case related to the allegations of ill-treatment made by Mr Oleynik, a police officer suspected of soliciting a bribe, the lack of an effective investigation in that regard, the recording of his conversations and his unacknowledged detention on the premises of the Federal Security Bureau.

The Court found in particular that Mr Oleynik had been subjected to unacknowledged detention in the absence of a report on his apprehension, and that this situation amounted to a complete negation of the guarantees that had to be afforded to persons deprived of their liberty and constituted an extremely serious breach of Article 5.

The Court further found that Mr Oleynik had been the victim of inhuman and degrading treatment, since the authorities had not succeeded in providing a plausible explanation as to the origin of the injuries recorded by the hospital on the day of his release and no effective investigation had been carried out in that regard.

Lastly, the Court found that the interference with Mr Oleynik's right to respect for his private and family life had not been in accordance with the law within the meaning of Article 8 § 2 of the Convention, as the use of the recordings of his conversations had not been accompanied by adequate safeguards against various possible abuses.

### Principal facts

The applicant, Aleksey Nikolayevich Oleynik, is a Russian national who was born in 1974 and lives in Rtishchevo (Saratov Region, Russia).

Mr Oleynik was alleged, in his capacity as a police officer, to have solicited a bribe from an individual (V.), who then reported him to the Federal Security Bureau (FSB) and recorded their conversations using a tape recorder hidden on his person. The first recording was made on V.'s own initiative and the subsequent recordings on the instructions of the FSB.

On 3 February 2006 Mr Oleynik was apprehended by FSB officers in the State school where his wife worked, while V. was in the act of handing over money to him. Several other people were present at the time.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

According to the applicant, he was held for a large part of the night on the premises of the FSB without any document being drawn up authorising his detention, and was severely beaten by officers seeking to extract a confession from him.

After being released on 4 February 2006 Mr Oleynik went to hospital for treatment. The following day he lodged a complaint with the military prosecutor of Saratov barracks requesting the opening of a criminal investigation into ill-treatment. Following a preliminary investigation his request was rejected on two occasions, as the military prosecutor's office took the view that the injuries had resulted from a situation unconnected to the applicant's arrest (decisions not to prosecute of 25 February 2006 and 25 October 2006).

On 6 October 2006 Mr Oleynik was sentenced to two years' imprisonment. The court based its judgment, among other considerations, on the statements given by V. and some witnesses, the reports concerning the seizure of the banknotes and the audio recordings of conversations between the applicant and V. Following an appeal on points of law, the Saratov Regional Court upheld the judgment on 26 December 2006.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Oleynik complained of being severely beaten by the FSB officers following his arrest.

Under Article 5 § 1 (right to liberty and security), he also complained of being apprehended by the FSB officers and detained on FSB premises for 15 hours without his detention being acknowledged.

Lastly, relying on Article 8 (right to respect for private and family life), Mr Oleynik alleged that the recording of his conversations with V., carried out in the context of a test operation instigated by the FSB, had been in breach of domestic law.

The application was lodged with the European Court of Human Rights on 19 March 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,  
 Helena **Jäderblom** (Sweden),  
 Helen **Keller** (Switzerland),  
 Johannes **Silvis** (the Netherlands),  
 Dmitry **Dedov** (Russia),  
 Branko **Lubarda** (Serbia),  
 Pere **Pastor Vilanova** (Andorra),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 5 § 1 (right to liberty and security)

The Court noted the discrepancy between Mr Oleynik's assertion that he had been held in unacknowledged detention and the position of the Government, who inferred from the absence of the relevant reports that the alleged apprehension and detention had not taken place. The Court observed that the decision of 25 February 2006 not to prosecute confirmed that Mr Oleynik had entered the premises of the FSB on 3 February 2006 at around 6 p.m. in order to be questioned by FSB officers and members of the prosecutor's office, and had been released on 4 February 2006 at around 4 a.m. He had thus remained on the premises during the period indicated and had been under the control of the officers in question.

The Court therefore lent credence to Mr Oleynik's version of events according to which, as he was being questioned about the circumstances of the offence, he had not been free to leave and had been kept in detention at least from 6 p.m. on 3 February 2006 until 4 a.m. the following day. The Court also considered that the absence of a report on the applicant's apprehension confirming his procedural status during that period was to be regarded as an indication of unacknowledged detention, a situation that amounted to a complete negation of the guarantees that had to be afforded to persons deprived of their liberty and constituted an extremely serious violation of Article 5.

Accordingly, the Court found that Mr Oleynik's detention between 3 and 4 February 2006 had not been lawful for the purposes of Article 5 § 1 of the Convention, and held that there had been a violation of that provision.

### Article 3 (prohibition of inhuman or degrading treatment)

**With regard to the injuries sustained by Mr Oleynik**, the applicant contended that they had been inflicted by the FSB officers while he was under their control. The Government maintained that they had resulted from unknown circumstances unconnected to the applicant's apprehension.

The Court noted that Mr Oleynik had not had any injuries before being apprehended but had been found to have injuries when he was examined in hospital on 4 February 2006 a few hours after his release. Furthermore, he had given a detailed account of his ill-treatment, supported by medical evidence, and had consulted a doctor on the day of his release in order to be examined.

The Court considered that the applicant's allegations, despite being arguable, had nevertheless not been investigated. It noted that the reasons given for the decisions not to prosecute had been very brief and gave the impression that the facts had not been established with care. The issue of the use of force by the officers had not been definitively settled and the wording used by the prosecutors suggested that the officers had had recourse to force because Mr Oleynik had resisted arrest, an assertion which he had consistently denied. This contradiction could have been resolved by means of measures such as a confrontation with the witnesses present at the time of the events; however, neither Mr Oleynik nor the witnesses had been questioned. The Court also observed that the decisions not to prosecute had left unresolved the question whether, assuming that force had indeed been used, some or all of the applicant's injuries had been attributable to the officers' actions.

The Court therefore found that the Government had not provided a plausible explanation as to the origin of Mr Oleynik's injuries, and it thus accepted that the alleged ill-treatment had occurred during his 10 hours in unacknowledged detention. In the Court's view, that detention, which had taken place in breach of all the applicable laws and in the absence of any procedural safeguards, could not but have increased the applicant's vulnerability and constituted a factor conducive to ill-treatment.

Consequently, the Court held that Mr Oleynik's treatment had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention under its substantive head.

**With regard to the investigation**, the Court considered that Mr Oleynik had given a coherent and detailed account of his alleged ill-treatment, supported by a medical certificate. In the Court's view, this information had provided sufficient grounds for instituting a criminal investigation in order to ascertain when the ill-treatment had taken place. The authorities had therefore been under a duty to conduct an effective investigation within the meaning of Article 3 of the Convention with a view to providing a plausible explanation as to how the injuries had been sustained. As to the preliminary investigation carried out by the military prosecutor's office, the Court considered that only a criminal investigation governed by Article 146 of the Code of Criminal Procedure (CCP) would have been an adequate response to the allegations of ill-treatment, in that it would have enabled all the investigative measures provided for by the CCP to be deployed. Furthermore, no forensic medical

tests had been ordered, the doctor at the civil hospital who had treated Mr Oleynik had not been questioned, and the authorities had not furnished any explanation as to the origin of the injuries identified; both the decisions not to prosecute had stated that the injuries had been sustained in circumstances unconnected with the applicant's detention, without attempting to establish Mr Oleynik's movements following his release.

Accordingly, the Court considered that the investigation carried out had not explained the origin of Mr Oleynik's injuries and had not been effective within the meaning of Article 3 of the Convention. There had therefore been a violation of Article 3 under its procedural head.

#### Article 8 (right to respect for private and family life)

The Court found that the recording of Mr Oleynik's conversations amounted to interference with the exercise of his right to respect for his private and family life. In order to ascertain whether that interference had been in accordance with the law within the meaning of Article 8 § 2 of the Convention, the Court referred to its judgment in the case of *Bykov*<sup>2</sup>, in which it had found that *"in the absence of specific and detailed regulations, the use of this surveillance technique as part of an 'operative experiment' was not accompanied by adequate safeguards against various possible abuses. Accordingly, its use was open to arbitrariness and was inconsistent with the requirement of lawfulness."*

The Court noted that since the adoption of that judgment the authorities had not enacted any legislative amendments such that the use of this surveillance technique could henceforth be said to be accompanied by adequate safeguards against various possible abuses. The Court therefore held that the interference in the present case had not been "in accordance with the law" within the meaning of Article 8 § 2 of the Convention, and that there had been a violation of Article 8.

#### Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Oleynik 13,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,650 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

<sup>2</sup> *Bykov v. Russia* [GC], no. 4378/02, §§ 80-81, 10 March 2009.