CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33132/02
by Yevgeniy METELITSA
against Russia

The European Court of Human Rights (First Section), sitting on 28 April 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 17 August 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Yevgeniy Anatolyevich Metelitsa, is a Russian national, who was born in 1968 and is now serving his sentence in Irkutsk. He is represented before the Court by Ms K. Moskalenko, a lawyer with the International Protection Centre in Moscow. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant

On 17 September 2001 the applicant was arrested on suspicion of having severely beaten a certain Mr D. The applicant was placed in custody in the temporary confinement wing of the Nazarovo town police department (*ИВС Назаровского ГОВД*). The applicant was subsequently transferred to pre-trial detention facility no. 3 of Achinsk town (*СИЗО № 3 г. Ачинска*).

On an unspecified date the applicant, along with two other persons, was formally charged with infliction of multiple bodily injuries, a criminal offence under Article 111 § 3 (a) of the Russian Criminal Code.

On an unspecified date the investigator L. allegedly offered the applicant to countersign decisions on appointment of medical experts without adding supplementary questions for them. According to the applicant, the investigator threatened him that his failure to do so would result in worse detention conditions. It appears that the applicant signed the documents.

On an unspecified date the applicant was committed for trial.

On an unspecified date during the trial the applicant asked the trial court to have examined the witnesses K. and Zh. According to the applicant, his request was refused because other parties to the proceedings consented to the reading-out of their written depositions made during the pre-trial investigation and his request was not entered into the trial record.

The applicant also allegedly asked the trial court to summon the witness G. who was a cellmate of his co-defendant S. and could testify about a conspiracy between S. and the police. It appears that the request was rejected.

On 19 December 2001 the Nazarovo Town Court of the Krasnoyarsk Region found the applicant and his co-defendants guilty of causing grave bodily injuries. The court grounded its findings on the partial confession of the defendant S., forensic evidence, statements by several witnesses, two medical reports and oral testimony of the medical expert who gave clarifications as to the origin and gravity of bodily injuries. The applicant was sentenced to six years' imprisonment in a correctional colony.

On 25 December 2001 the applicant's lawyer, Ms Struchenko, submitted a statement of appeal. She pointed to alleged discrepancies between the facts established by the trial court and their description in the judgment and sought recharacterisation of the criminal offence and/or reduction of the sentence.

On an unspecified date the applicant also submitted his points of appeal. He contended that his co-accused had slandered him, that the forensic report had not reflected the facts as established by the trial court and that the

investigation had not been sufficiently thorough. He asked that the conviction be quashed and he and his lawyer be invited to the hearing.

According to the applicant, neither he nor his lawyer was notified of the appeal hearing. According to the Government, on 20 February 2002 a summons for the appeal hearing was sent to Ms Struchenko's legal office and to the detention facility where the applicant was held.

On 5 March 2002 the Krasnoyarsk Regional Court upheld the conviction in respect of the applicant, reduced sentences for both of his co-accused and attributed a different legal characterisation to the offence committed by one of them. The applicant and his lawyer were not present at the appeal hearing, while his co-accused were both present and represented. According to the Government, the prosecutor was in attendance and made submissions to the appeal court.

On 6 April 2002 the applicant was transported from facility no. 3 of Achinsk to correctional colony no. 272/3 where he is now serving the sentence.

2. Alleged interference with the applicant's correspondence

The applicant alleges that his correspondence with his counsel, Ms Struchenko, is subject to "thorough review" by the administration of facility no. UK-272/3 of Irkutsk. He claims that his letters to Ms Struchenko and to a member of the regional legislature did not reach the addressees.

The applicant submits that at the time he prepared his application to the Court, the facility administration refused to give him copies of the appeal judgment, summons to the appeal hearing and a response from the President's representative for human rights in the Krasnoyarsk Region.

Subsequently the applicant produced a copy of his handwritten receipt for copies of the above documents. The receipt is dated 30 October 2003 and is addressed to the director of facility no. UK-272/3 of Irkutsk.

The applicant also submitted a copy of a covering letter from the facility director to his mother, dated 23 January 2001. The letter indicates that the above documents were provided to the applicant on 30 October 2003. A copy of the above receipt was enclosed with the letter.

B. Relevant domestic law and practice

Criminal Code

Article 111 § 1 of the Criminal Code provides that intentional infliction of grave bodily injuries shall be punishable with two to eight years' imprisonment. Paragraph 3 (a) of that Article provides that the same act committed by a group of persons shall be punishable with five to twelve years' imprisonment.

Articles 115 and 116 provide that intentional infliction of light bodily injuries or battery shall be punishable with a fine, mandatory works or up to one year's correctional works.

Code of Criminal Procedure

Article 336 of the RSFSR Criminal Procedure Code of 27 October 1960 (in force at the material time) provided that persons who had submitted their points of appeal were to be apprised of the appeal hearing. If a person had been notified, but failed to appear, the appeal court could hold the hearing in that person's absence. Article 338 required that at the beginning of a hearing the presiding judge verify the attendance and the court decide whether to proceed with the hearing.

On 10 December 1998 the Constitutional Court of the Russian Federation declared Article 335 § 2 of the Criminal Procedure Code incompatible with the Constitution to the extent that it allowed appeal courts to reach a final decision on a convicted person's appeal if the defendant was absent from the hearing and if he (she) had not been provided with an opportunity to study the materials of the hearing and communicate his (her) opinion on the issues raised before the appeal court.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the conditions of his detention in the temporary confinement wing of the Nazarovo town police department, facility no. 3 of Achinsk town, and conditions of transport from the detention facility to the correctional colony.

2. The applicant complains under Article 5 of the Convention about the unlawfulness of his arrest and placement in custody.

3. Invoking Article 6 of the Convention, the applicant makes a number of complaints relating to the fairness of the criminal proceedings against him. He alleges that the domestic courts erroneously admitted medical reports in evidence and based their findings on incomplete and contradictory statements by his co-defendants. He could not put additional questions to experts because the investigator pressured him to sign the decisions on their appointment. The trial court refused to summon witnesses whose attendance he sought. Upon delivery of the judgment a copy of the trial record was not made immediately available to him. His absence from the appeal hearing prejudiced the fairness of the proceedings because he relied on a version of events substantially different from that of his co-accused, but he was not given an opportunity to present it before the appeal court. Finally, the applicant claims that by the time his application was submitted to this Court he had not yet received a copy of the appeal judgment.

4. The applicant complains under Article 7 of the Convention that the trial court should have convicted him of inflicting light bodily injuries, an offence under Article 115 or 116 of the Criminal Code.

5. The applicant complains under Article 8 of the Convention that his correspondence with his lawyer was subjected to "thorough review" by the colony administration and that some of his letters did not reach their destination.

6. Finally, the applicant alleges a hindrance under Article 34 of the Convention in that the administration of the correctional colony refused to provide him with copies of documents necessary to complete his application to the Court.

THE LAW

1. The applicant complains under Article 3 of the Convention that the conditions of his detention in the temporary confinement wing of the Nazarovo town police department, in detention facility no. 3 in the town of Achinsk, and during his transport to colony no. UK-272/3 on the night of 5 April 2002 were "inhuman and degrading". Article 3 reads as follows:

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

The Court notes that the applicant never complained about the conditions of his detention or transport to any domestic authority (see, by contrast, *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI, where the Court accepted that many complaints lodged by the applicant were sufficient to make the authorities appropriately aware of his situation and to give them an opportunity to examine conditions of his detention and, if appropriate, to offer redress).

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complains under Article 5 of the Convention that his placement in custody was not justified and was in breach of applicable domestic rules. Article 5 of the Convention provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed

an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

The Court observes that the applicant never complained about the detention matters to a domestic court. Nor does it appear from his submissions that he raised these issues in his grounds of appeal.

It follows that this part of the application must also be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicant complains under Article 6 of the Convention that the criminal proceedings against him were unfair because the domestic courts erroneously admitted and assessed evidence, refused to have examined witnesses whose attendance he sought, restricted his access to trial documents, and did not give him an opportunity to take part in the appeal hearing. The relevant parts of Article 6 provide as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him...”

a. Absence in the appeals hearing

The Government claim that the applicant never requested leave to appear before the appeal court. By contrast, his co-accused Z. had submitted such a request and the appeal court granted it. A summons for the appeal hearing was sent to the applicant and his lawyer on 20 February 2002. Under the then effective rules of procedure (Article 336 § 3 of the Code of Criminal Procedure, the “CCrP”), if the defendant was duly notified of the hearing and failed to appear, the court could proceed with the examination of the merits in his absence.

In support of their statements the Government produce a copy of the summons of 20 February 2002 addressed to, in particular, “[facility no.] IZ-24/3 (for Y.Metelitsa, S. Z[.], Yu. S[.])” and “Achinsk legal services office,

for Struchenko N.", and a copy of the "conveyance request" of 21 February 2002 from the deputy president of the Krasnoyarsk Regional Court to the head of investigations ward no. 1 of Krasnoyarsk, relating to the escorting of the applicant's co-accused Z. to the appeal hearing on 5 March 2002.

The Government further concede that a prosecutor was present at the appeal hearing. However, in their opinion, his presence did not affect adversely the applicant's defence rights because the applicant could have raised his arguments in the statement of appeal and because there is no information that the prosecutor sought an amendment of the judgment in respect of the applicant.

The applicant submits that the domestic authorities violated his right to be informed of the appeal hearing in good time. As he and his lawyer, Ms Struchenko, had lodged separate statements of appeal, by virtue of Article 336 § 1 of the RSFSR CCrP summonses were to be served on both of them. Paragraph 4 of that Article additionally required the service of summonses in good time. However, this was not done. It follows from Ms Struchenko's affidavit that she never received the summons to which the Government refer and could not attend the appeal hearing. Furthermore, a "receipt" hand-written by the applicant for the head of detention facility no. UK-272/3 indicates that on 30 October 2003 he received a copy of the appeal judgment of 5 March 2003, a copy of a certain letter of 23 April 2002 and a copy of the summons of 27 [*sic*] February 2002. He also indicates that previously he had already received a copy of the appeal judgment from his mother, in October or November 2002. The applicant submits that the then current rules of criminal procedure did not impose an obligation on the accused or his lawyer to petition the court for leave to appear, such right was vested in them automatically.

The applicant further submits that he had no knowledge of whether or not the prosecutor made any observations at the appeal hearing and, in any event, he had no opportunity to comment on them. The Government's allegation that the prosecutor did not comment on the applicant's sentence has no evidentiary basis because, according to the domestic practice, no record of appeal hearings is kept. Moreover, their submissions are self-contradictory because previously they had referred to the prosecutor's opinion "on the need to amend the judgment". The applicant concludes that there was a violation of Article 6 §§ 1 and 3 (c) in that he was not afforded an opportunity to have knowledge of, and to comment on, the observations filed by the other party at the appeal hearing.

The Court considers, in the light of the parties' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

b. Other complaints concerning Article 6

The applicant complains that the domestic courts gave undue weight to statements by his co-accused and wrongly admitted a medical expert's report in evidence. He further submits that at the stage of preliminary investigation he was not given an opportunity to put additional questions to medical experts and obtain attendance of certain witnesses on his behalf.

The Court notes that, while its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 45). Moreover, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, *mutatis mutandis*, *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 541, § 59). On the basis of the materials submitted by the applicant, the Court notes that within the framework of the criminal proceedings the applicant was not prevented from arguing in favour of the interpretation of the domestic law which he considered correct, and the judicial authorities gave his arguments due consideration.

As regards assessment and admissibility of evidence, the Court recalls that while Article 6 of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Furthermore, the Court observes that it is not a court of appeal from the decisions of domestic courts and that, as a general rule, it is for those courts to assess the evidence before them. The Court's task under the Convention is to ascertain whether the proceedings as a whole were fair (see *García Ruiz v. Spain* [GC], cited above, *loc. cit. et seq.*; and also, *mutatis mutandis*, *Doorson v. the Netherlands*, judgment of 26 March 1996, *Reports* 1996-II, p. 470, § 67). In the applicant's case there is no indication, nor has it been persuasively argued, that the courts went beyond their discretion to admit or refuse evidence or that they gave inappropriate weight to certain pieces of evidence.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicant complains under Article 7 of the Convention that the victim only sustained light injuries and therefore he should not have been charged with inflicting severe bodily harm. Article 7, in the relevant part, provides:

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international

law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed...”

The Court reiterates that it is not its task to rule on the applicant's individual criminal responsibility or the facts disputed by the applicant (namely the gravity of the injuries which he caused to the victim), those being primarily matters for the assessment of the domestic courts. From the standpoint of Article 7 § 1 of the Convention, it must consider whether the applicant's acts, at the time when they were committed, constituted offences defined with sufficient accessibility and foreseeability by domestic law (see *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, § 51, ECHR 2001-II). In this connection, the Court observes that the Criminal Code of the Russian Federation provided for criminal liability for bodily injuries of various degrees of gravity, both at the time of the acts imputed to the applicant and at the time of the trial (see the Domestic law above). These provisions were publicly accessible and their application should have been sufficiently clear and foreseeable to the applicant. The penalty imposed by the trial court did not exceed the maximum penalty provided for in the Criminal Code for the act of which the applicant was found guilty.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Finally, the applicant complains under Articles 8 and 34 of the Convention that his correspondence was censored by the colony administration, that his letters did not reach addressees and that the administration refused to give him copies of the appeal judgment, summons to the appeal hearing and the letter from the President's representative in the Krasnoyarsk Region. Article 8 reads as follows:

“1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.”

The relevant part of Article 34 provides:

“The Court may receive applications from any person... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

The Court observes, firstly, that the applicant's allegations about an interference with his correspondence are not supported with any evidence and lack essential details, such as the dates of his allegedly censored letters. Furthermore, as regards alleged non-delivery of his mail, the Court recalls

that Article 8 does not oblige the State to provide a perfectly functioning postal system (see *Foley v. the United Kingdom* (dec.), no. 39197/98, 11 September 2001; *X v. Germany*, no. 8383/78, Commission decision of 3 October 1979, Decisions and Reports 17, p. 227) and there is no indication that these letters were intercepted by public authorities.

As regards the authorities' failure to provide the applicant with certain documents, and to the extent that this complaint is not already subsumed in the complaint about the failure to apprise him of the appeal hearing, the Court notes that the applicant furnished a copy of the appeal judgment in the original package of documents submitted to the Court. It does not appear that any other documents were necessary to complete his application to the Court. In any event, on 30 October 2003 he received copies of these documents, which fact is confirmed by his hand-written receipt.

It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that neither he nor his lawyer were apprised of the appeal hearing and given an opportunity to plead his defence before the appeal court;

Declares inadmissible the remainder of the application.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President