

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 22027/08
by Vladimir Alekseyevich KUZNETSOV
against Russia

The European Court of Human Rights (First Section), sitting on 23 August 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 29 April 2008,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimir Alekseyevich Kuznetsov, is a Russian national who was born in 1987 and lives in the town of Nizhniy Novgorod. He was represented before the Court by Ms L. Zhukova, Mr M. Bereza and Mr V. Andreyev, lawyers practising in Nizhniy Novgorod.

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

On 20 June 2006 the Military Commission of the Leninskiy District of Nizhniy Novgorod registered the applicant for compulsory military service and scheduled a medical examination of him by a medical panel comprising a number of specialists in order to determine whether he was fit to serve. With the medical panel finding him fit to perform military service, the applicant was drafted into the army and sent to military unit no. 3256 in Nizhniy Tagil.

In August 2006 the applicant and four other conscripts were sent for two months of training with military unit no. 3275 in the village of Lesnoy, Sverdlovsk Region. According to the applicant, almost immediately upon arrival at that military unit he became the subject of ill-treatment and humiliation by senior conscripts. The treatment included sleep and food deprivation, acts of violence, excessive physical exercise, threats, extortion (including that of money, food and personal belongings), insults and orders to commit theft within the military unit's premises or in nearby villages. Similar acts of violence and degrading treatment continued upon the applicant's return to military unit no. 3256 in October 2006.

On 15 November 2006 a senior soldier, sergeant Z., woke the applicant up at night and ordered him to clean the floors of the barrack's lavatories. In response to the applicant's refusal, sergeant Z. took him outside, ordered him to put on a military hat, having, beforehand, turned it inside out so that the metal cockade on the hat would press against the applicant's forehead, and allegedly punched him on the head a number of times, leaving an impression of the cockade on the applicant's forehead. Although the applicant felt extreme pain and was feeling dizzy and disoriented for almost a week after the incident, he did not seek medical assistance, considering that to be futile. According to the applicant, the incident on 15 November 2006 was not the first occasion on which sergeant Z. had acted violently towards him. For instance, approximately a week before the events on 15 November 2006 sergeant Z. had also hit the applicant when the latter had refused to make coffee for him.

On 29 November 2006 the applicant was granted leave to stay in town with his parents, who had come to visit him. Having noticed the applicant's poor state of health, on 1 December 2006 his mother took him to a private hospital, the NikoMed Consultative Diagnostic Centre, where, following an ultrasound scan of his kidneys and abdominal cavity and an examination by a neurologist, to whom the applicant complained of severe headache and dizziness, the applicant was diagnosed with the residual effects of concussion and mild diffuse changes in the liver. No injuries were, however, recorded on his body. Having been questioned by the doctor about the cause of the concussion, the applicant explained that he had hit his head against a propeller shaft when cleaning military equipment more than three weeks before the medical examination.

On 19 December 2006 the applicant was admitted to the gastroenterological department of the Yekaterinburg Military Circuit Hospital. The applicant submitted that his doctors had misinterpreted the symptoms of concussion, such as vomiting and dizziness, considering that he had been suffering from an intestinal disease. He was released from the hospital a month later.

Having again been subjected to mockery on his return to the military unit, the applicant left the unit without authorisation when his parents came to visit him on 28 January 2007.

Two days later the applicant lodged a complaint with the military prosecutor of Nizhniy Novgorod Garrison, seeking the institution of criminal proceedings against his commanding officers and senior conscripts.

Having heard the applicant and his mother, having interrogated the personnel of the military unit and conscripts who had come into contact with the applicant and having requisitioned medical records describing the applicant's state of health, on 19 February 2007 the prosecutor refused to open a criminal case in the absence of any evidence of ill-treatment.

On 22 August 2007 the Military Court of the Nizhniy Tagil Garrison examined the applicant's appeal against the decision of 19 February 2007 and dismissed it as unfounded. The Military Court studied the materials of the prosecutor's inquiry and the applicant's medical history and heard the prosecutor and witnesses, including the alleged perpetrators and the doctors. It endorsed the prosecutor's conclusion that there was no evidence of ill-treatment: all of the witnesses had denied subjecting or having seen the applicant being subjected to acts of violence or psychological pressure and there was no medical evidence, save for the medical certificate of 1 December 2006, documenting signs of possible violence. The court noted, in particular, that daily medical examinations of soldiers had been performed in the military unit and that injuries had never been discovered on the applicant's body. Relying on medical expert testimony, the court stressed that the diffuse changes discovered in the applicant's liver during the examination in the private hospital were linked to illnesses of the digestive system. As to the alleged residual effects of concussion, the court found no reason to doubt the applicant's statement given to the doctors that he had hit his head against a propeller shaft.

Having been properly informed of the hearings before the Military Court of the Nizhniy Tagil Garrison, the applicant did not attend.

On 8 November 2007 the Military Court of the Ural Circuit dismissed the applicant's appeal against the judgment of 22 August 2007, having fully endorsed the lower court's reasoning. At the same time, the appellate court laid particular emphasis on the applicant's inconsistent description of events and the fact that, having had an opportunity to freely complain to the doctors in the private hospital, he had explained his alleged concussion as an accident.

Without providing the Court with a copy of the decision or indicating when the decision had been issued, the applicant submitted that the prosecutor's decision of 19 February 2007 had been quashed by a higher-ranking prosecutor while the appeal proceedings before the Military Court of the Ural Circuit had still been pending. According to the applicant, the new round of the investigation had also ended with a decision not to open a criminal inquiry in view of a lack of criminal conduct.

COMPLAINTS

The applicant complained under Articles 3 and 13 of the Convention that he had been subjected to systematic inhuman and degrading treatment during his military service and that he had not benefited from an effective investigation into his complaints, having been unable to obtain the protection of his rights.

THE LAW

The Court will examine the applicant's complaints from the standpoint of the State's obligations under Article 3, which reads as follows:

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

A. Alleged ill-treatment

As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention, even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied

the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control, strong presumptions of fact will arise in respect of injuries occurring during such control. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, §32, Series A no. 336).

Turning to the circumstances of the present case, the Court reiterates that on 1 December 2006, during the applicant's authorised leave from the military unit, he was examined in a private hospital. The medical examination resulted in his being diagnosed with the residual effects of concussion and mild diffuse changes in the liver. The diagnosis was based on an ultrasound scan of the applicant's kidneys and abdominal cavity and on his complaints that he had experienced headaches and nausea. The doctor did not record any injuries. No further tests were performed. More than two weeks after the visit to the private hospital, the applicant was admitted to the gastroenterological department of the military hospital for treatment of an intestinal disease.

The Court takes note of the applicant's argument that his health problems were the result of being systematically beaten by senior conscripts, the most recent incident of which occurred on 15 November 2006. However, having regard to the evidence before it, the Court is not convinced by the applicant's submissions. In particular, as regards the diffuse liver changes, the Court observes that none of the medical specialists, including the doctors from the private hospital, linked the occurrence of those changes to the possibility of the applicant having been subjected to physical violence during his military service. On the contrary, the specialists concluded that that damage was a clear manifestation of intestinal disease, in respect of which the applicant received treatment in the military hospital. The Court sees no reason to doubt the competence of the medical specialists who either

diagnosed and treated the applicant in the military hospital or gave their expert opinion to the Military Court of the Nizhniy Tagil Garrison. The Court's conclusion that the applicant's liver problem was not related to alleged incidents of military violence is further supported by the fact that the applicant has never provided the Court or the domestic authorities with an explanation as to how the damage to his liver could have been sustained.

As to the concussion, which is at the core of the applicant's allegations of ill-treatment by senior conscripts, the Court cannot overlook the inconsistencies that abound in the various accounts of the events which the applicant gave in his submissions to the Court and in his complaints to domestic authorities. In particular, during the medical examination by the neurologist in the private hospital on 1 December 2006 the applicant stressed that he had hit his head against a propeller shaft while performing cleaning duties. He indicated that the accident had occurred three weeks prior to the medical examination in the hospital, that is to say in the first third of November 2006. However, in his application to the Court, the applicant asserted that he had sustained the head injury when sergeant Z. had hit him a number of times on the head on the night of 15 November 2006. In this respect, the Court, firstly, finds it surprising that the applicant did not raise his grievance of ill-treatment with the doctors of the private hospital where he was taken by his mother. There is no evidence that he felt intimidated or was unable to make his complaints freely to the independent medical specialists (see, by contrast, see *Colibaba v. Moldova*, no. 29089/06, § 49, 23 October 2007; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts); *Artyomov v. Russia*, no. 14146/02, § 152, 27 May 2010; and, most recently, *Georgiy Bykov v. Russia*, no. 24271/03, § 56, 14 October 2010). The Court's doubts as to the plausability of the applicant's allegations of ill-treatment are further strengthened by the fact that not only did he give a different description of the cause of his head injury, but he also indicated different dates on which the head trauma could have occured.

While noting the contradictory and confusing submissions made by the applicant, as well as the inconclusive character of the concussion with which he was diagnosed on the basis of his complaints of headaches and nausea more than three weeks after the alleged incident and which was not backed up by any subsequent medical findings, the Court further observes that there was no other evidence of ill-treatment, such as testimony by an independent witness, which could have provided support to the applicant's version of events. At the same time, the Court attributes particular weight to the fact that no injuires were discovered on the applicant's body – either during medical check-ups which, as is detained in the judgment of the Military Court of the Nizhniy Tagil Garrision, were performed daily in the military unit, or during the examination of him in the hospital on

1 December 2006. This fact disproves the applicant's argument of systematic ill-treatment during his military service.

It follows that the material in the case file does not provide an evidential basis sufficient to enbale the Court to find "beyond reasonable doubt" that the applicant was subjected to the ill-treatment alleged (see, for similar reasoning, *Gusev v. Russia* (dec.), no. 67542/01, 9 November 2006; *Toporkov v. Russia*, no. 66688/01, §§ 43-45, 1 October 2009; *Maksimov v. Russia*, no. 43233/02, §§ 97-99, 18 March 2010; and, by contrast, *Chember v. Russia*, no. 7188/03, §§ 43-57, 3 July 2008). Accordingly, the Court cannot but conclude that the applicant's complaint of ill-treatment under the substantive limb of Article 3 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged inadequacy of the investigation

The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, cited above, § 102 et seq.).

Turning to the circumstances of the present case, the Court notes that the prosecuting authorities, who were made aware of the applicant's alleged ill-treatment, carried out a preliminary investigation which did not result in a criminal prosecution. The applicant's ill-treatment complaints were also the subject of examination by the domestic courts. In the Court's opinion, the

issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], cited above, §§ 78 and 79). In the present case, the Court finds it established that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings. In that respect, the Court would like to stress that the applicant's ill-treatment complaint was lodged more than two months after the most recent instance of alleged beating on 15 November 2006. The Court is mindful of the fact that the delay in lodging the complaint after the physical signs of ill-treatment had long been gone undoubtedly imposed constraints on the prosecutor's ability to establish the facts. In any event, in the days following the receipt of the applicant's complaint the authorities took significant investigative measures, including questioning the personnel of the unit, soldiers, doctors, and other possible witnesses, and collecting medical evidence. From the materials in the case file it follows that the authorities made diligent efforts to establish the circumstances of the events. In particular, they tried to identify and interview witnesses who could have shed light on the events in question and they thoroughly evaluated medical evidence before them, attempting to draw conclusions from it, without accepting any particular version of events too readily.

The Court is mindful of the fact that the authorities' task was significantly complicated by the applicant's confusing complaints and by his inconsistent description of the events. The investigators were forced to proceed more cautiously and thoroughly when processing vague or perplexing information from the applicant. At the same time, the Court is satisfied that the investigators did not delay questioning the applicant and his family members in person and also provided him with opportunities to clarify his testimony. The authorities did not fail to look for corroborating evidence, nor did they exhibit a deferential attitude to the officers or senior conscripts. They may be regarded as having acted with sufficient promptness and having proceeded with reasonable expedition. In this respect, the Court attributes particular weight to the role played by the domestic courts at two levels of jurisdiction which thoroughly examined the applicant's complaints, having heard the witnesses (military officials, soldiers, doctors) and having evaluated the medical evidence before them, including by hearing the opinion of a medical specialist. It should therefore be concluded that the domestic investigation was effective for the purposes of Article 3 of the Convention. This conclusion is not altered by the

applicant's questionable submission, which was not supported by any evidence (copies of the prosecutor's decisions, letters to the applicant, etc.), that a higher-ranking prosecutor had quashed the decision of 19 February 2007 by which the criminal inquiry had been closed.

The complaint is thus manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President