



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

FIRST SECTION

Application no. 15357/07
Vladimir Aleksandrovich MAKHNYCHEV
against Russia
lodged on 12 February 2007

STATEMENT OF FACTS

The applicant, Mr Vladimir Alekseyevich Makhnychev, is a Russian national who was born in 1970 and is currently serving a sentence of imprisonment in the town of Verkhneuralsk, the Chelyabinsk Region.

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

A. The background of the case

On 21 and 22 June 2004 the town of Nazran came under attack by a organised group of armed insurgents, which left 78 persons dead and 113 wounded.

B. The applicant's arrest and subsequent events

1. Events of 27 and 28 June 2004

On 27 June 2004 at around 2 p.m. the applicant travelled in his personal car VAZ 1101 carrying number plates V227VM 05 RUS with his two friends of Chechen ethnicity V. and M. to the town of Nalchik in the Republic of Kabardino-Balkariya.

They were stopped by the police at a checkpoint at the outskirt of the village of Nartkala for a routine ID check. The police officers decided to drive the applicant and his friends in his car to a district department of the interior.

After this transfer, the applicant's car was apparently stolen by the police officials. According to the applicant, the car did not appear on the list of the evidence in the criminal case, nor was it ever mentioned in any other records.

Upon arrival, the applicant took part in an interview which lasted without interruption until the evening of that day.

The applicant spent the night and slept in the building of the district department of the interior.

On 28 June 2004 the interviews continued in office of the head of that department of the interior, this time with personal participation of the head and representatives of a Department of the Federal Security Service (“the FSB”) and the Department in charge of the fight with organised crime of the Ministry of the Interior of the Republic of Kabardino-Balkariya.

During this series of interviews the applicant was heavily beaten with a plastic bottle full of water and also threatened with various adverse consequences for his pregnant wife.

As a result of this treatment, the applicant made a false confession that he had helped the attack on Nazran by bringing food to the fighters and by carrying the ammunition during the attack.

The applicant spent the next night attached with handcuffs to a radiator in the gym in the building of the district department of the interior. It appears that his friend V. was also attached to the radiator, having endured the same interrogation some time earlier.

2. Events of 29 June 2004

In the morning of 29 June 2004 the applicant and V. were transported to the building of the Republican Department of the FSB in the town of Magas in the Republic of Ingushetiya.

The applicant was interviewed intermittently by various people, but in the evening entered masked people, who started to beat the applicant with rubber sticks demanding to confess in the attack on the building of the border guards in Nazran.

Some time later, three officers, two wearing masks and one bareheaded, aged around 50 years old and wearing white short beard, started torturing the applicant with electricity. As a result, the applicant confessed in the active participation in the attack.

During that day, the applicant heard distant screams of other people under torture, having recognised the voice of one K., who later acted as a prosecution witness.

The applicant alleges that his detention between 27 and 30 June 2004 remained completely undocumented because the first instance judgment and the appeal decision stated that he had been in detention as of 8.30 p.m. on 30 June 2004.

3. Events of August 2004

On an unspecified date in August 2004 the applicant was taken by two officers of the Department in charge of fighting organised crime of the Ministry of the Interior of the Republic of Ingushetiya Mr Dze. M. and Mr Dze. B. from remand prison in Vladikavkaz to the building of the Ministry of the Interior of the Republic of Ingushetiya.

These officers fettered the applicant’s hands, suffocated and beat him demanding to show the location of events on the spot. The applicant was supposed to show on the spot how and where he had fired a grenade with a

grenade launcher into the building of border guards in the town of Nazran. The applicant alleges that the officers gave him precise and specific as to what and how he should do this. The applicant eventually did as he was told to do.

4. Events of 1 December 2004

On 1 December 2004 the applicant, who at the time was detained in the temporary detention ward of the Department of the Interior of the Republic of Ingushetiya, was taken to the investigation room of that detention ward. The interview was conducted by the same person, who had already interviewed him in Nalchik. The applicant was threatened with beatings and various adverse consequences for his pregnant wife and asked not to change his initial statements during the trial.

On the same day the applicant asked the prison administration to see a prosecutor in person. He was then paid a visit by someone who presented himself as a prosecutor of Nazran. The applicant then filed with this person a written complaint, mentioning the above events and ill-treatment. There was no reaction to this complaint.

5. The applicant's ill-treatment during the trial proceedings

On 17 March 2005, during a break in the court hearings, the applicant was taken to the temporary detention ward of the Ministry of the Interior of the Republic of Ingushetiya. He was hooded, beaten and put under pressure to make him maintain his earlier self-incriminating statements during the trial. These actions were guided by an investigator of the Prosecutor General's office one So.

After this incident the applicant asked for an ambulance, which arrived and confirmed the presence of the injuries on the applicant's body in the relevant medical logs of the temporary detention ward.

According to the applicant, a co-accused I. also underwent the same treatment.

During the next hearing the applicant, co-accused I. and other co-accused complained to the trial judge about the coercion and beatings. These complaints were apparently ignored.

The applicant made unsuccessful attempts to collect evidence which would confirm his version of the event by requesting information from relevant prisons on the names of his visitors and medical data. These attempts remained futile, as the prisons never responded.

C. Trial and appeal proceedings

As a result of the investigation, the applicant was charged as one of the core participants in the attack in the town of Nazran under the following provisions of the domestic law: Articles 30 § 3 (attempted crime), 105 § 2 (a), (e), (zh), (z) (murder of more than two persons, committed with a socially dangerous method, in an organised and armed group, for hire), 205 § 3 (terrorist act), 209 § 2 (participation in an armed formation created to attack citizens and organisation) and 222 § 3 (traffic of arms) of the Criminal Code of Russia.

According to the investigation, the applicant was guilty of having joined the group of the future attackers on 21 June 2004 in a special training camp situated between Aly-Yurt and Surkhakhi. He was told that the attack would take place on the same day at around 10.30 p.m. The applicant then assisted the group in carrying out the attack and personally made shots with hand grenade launcher.

By the first judgment of 3 August 2005 the Supreme Court of the Republic of Ingushetiya convicted the applicant as charged and gave him a sentence of imprisonment of 15 years with the first three years to be served in an ordinary prison and the rest of the sentence in a strict regime prison.

The trial took place in the building the Ministry of the Interior of the Republic of Ingushetiya. It appears that under this arrangement the jurors could easily communicate with the police officials and could also be easily influence by the latter. In addition, there were many police officials among the victims of the attack. At one point the applicant saw the head of the Department in charge of fighting organised crime of the Republican Ministry of the Interior talking to jurors, who in return nodded their heads.

According to the applicant, some jurors lied about their family connection with the police officials and also about their knowledge of the events in question.

This judgment was upheld on appeal by the Supreme Court on 10 October 2006.

The applicant and his counsel complained about the ill-treatment repeatedly throughout the trial and appeal proceedings. These complaints were apparently ignored. The applicant also raised the argument concerning the lack impartiality of the jurors and prejudicial connections between the jurors and the policemen, but these complaints were rejected.

D. Media coverage of the applicant's trial

The applicant was described as guilty on multiple occasions by various officials before the delivery of the judgment in his criminal case.

In an interview of the then president of the Republic of Ingushetiya published as an article in newspaper "Sovershenno sekretno" in the second half of 2004, the applicant was named and described as the participant of the attack.

This interview was later reprinted in a local press of the Republic of Ingushetiya.

The applicant was also described as guilty in an article in the Rossiyskaya Gazeta newspaper, issue of 27 July 2004.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that he had been seriously ill-treated on multiple occasions by various investigative authorities, which forced him to give self-incriminating evidence.

2. Relying on Article 5 of the Convention, the applicant complained that the initial period of his detention between 27 and 30 June 2004 had remained completely unacknowledged and therefore unlawful.

3. Under Articles 6 and 6 § 3 (c) of the Convention the applicant was dissatisfied with his criminal conviction because of the courts' use of his self-incriminating statements obtained under torture and coercion. He also complained that jurors Gi., Au. E., Mu. and Au. B. gave false answers to the questions concerning their personal relations to various officers in the law enforcement bodies and that these jurors had been personally biased because of such connections. The applicant was also generally dissatisfied with the fact that the trial had taken place in the building of the Ministry of the Interior and that police officials could easily influence the jurors and had indeed done so.

4. Under Article 6 § 2 of the Convention the applicant also complained that there had been numerous comments on his participation in the Nazran attack prior to the delivery of the judgment in his case, in breach of his presumption of innocence.

5. Under Article 1 of Protocol No. 1 the applicant complained that his car in which he had travelled on the day of the arrest had been stolen by the police, was never returned to his family or appeared in the list of evidence in the criminal case against him.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to a treatment contrary to Article 3 of the Convention? The Government are invited to comment separately on each of the episodes described in the statement of facts (episodes of 28 and 29 June 2004, an episode on an unspecified date in August 2004, episodes of 1 December 2004 and 17 March 2005).

2. The Government are invited to submit all interrogation, arrest and search records (as well as any video footage) of the applicant, V., K. and I. in their possession (those contained in the court's criminal case and **also** those contained in the prosecution case file among the evidence not disclosed during the trial) as well as records of these persons' statements during the trial and their bills of indictment.

3. The Government are requested to produce copies of all medical records of the applicant, V., K. and I. from the remand prisons, temporary detention centres and other locations at which they were detained during the investigation of this criminal case. The information and documents provided should indicate these persons' exact diagnosis and anamnesis, as well as the treatment and medication provided to them, if any.

4. When was the applicant's family informed about his arrest and detention? Who was/were the applicant's counsel(s) throughout the proceedings starting from the moment of his arrest? Were they legal aid or

paid counsel? Was the applicant furnished with any detailed information concerning the availability and contact information of legal aid and paid counsel and did he have the right to choose one of them and enter into contact with him/her/them and an effective opportunity to do so? Was any investigation conducted into the allegations of ill-treatment of the applicant or any of his co-accused and, if so, what was its outcome? In this connection, the Government are requested to submit copies of relevant documents from the domestic case file.

5. Did the investigation into the applicant's alleged ill-treatments comply with the requirements of the procedural aspect of Article 3 of the Convention?

6. The Government are requested to comment on the applicant's description of his arrest on 27 June 2004. Was the applicant's detention between 27 and 30 June 2004 compatible with Article 5 of the Convention?

7. Did the applicant have an effective remedy within the meaning of Article 5 § 4 of the Convention to complain about his detention between 27 and 30 June 2004?

8. Were the criminal proceedings against the applicant fair within the meaning of Article 6 of the Convention? In particular, did the courts use the applicant's self-incriminatory statements or any evidence originating from such statements during the trial? In view of the applicant's allegations under Article 3 of the Convention, can it be said that the use of such evidence and the pressure which the police officials had put on the applicant during the trial rendered the proceedings unfair? In view of the applicant's allegations of pressure, coercion and inability to communicate with the outside world, were the rights set out in Article 6 § 3 (b) and (c) respected?

9. The Government are requested to comment on the applicant's allegations concerning jurors Gi., Au. E., Mu. and Au. B., their alleged personal connections with local police officials and the decision to hold the trial proceedings in the building of the Ministry of the Interior. In view of these comments, was the applicant's tried by an independent and impartial tribunal established by law, as required by Article 6 of the Convention?

10. The Government are requested to comment on the applicant's allegations concerning the publications in the press concerning this criminal case containing prejudicial statements by various officials, including the then President of the Republic of Ingushetiya and to submit copies of the publication mentioned by the applicant.

11. In view of the above comments, can it be said that the applicant's presumption of innocence was respected, as required by Article 6 § 2 of the Convention?

12. The Government are requested to comment on the applicant's allegations concerning the seizure and subsequent loss of his car VAZ 1101

carrying number plates V227VM 05 RUS by the authorities. In view of these comments, can it be said that the applicant's right to peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 respected?

13. In view of the applicant's allegations of pressure, coercion and inability to communicate with the outside world, can it be said that in connection with each of the mentioned grievances (Articles 3, 5, 6 and 1 of Protocol No. 1) the applicant had an effective remedy within the meaning of Article 13 of the Convention to complain about the relevant events?