



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

FIRST SECTION

Application no. 21511/07
Magomed Vakhidovich TSAKHIGOV
against Russia
lodged on 9 April 2007

STATEMENT OF FACTS

The applicant, Mr Magomed Vakhidovich Tsakhigov, is a Russian national who was born in 1976 and is currently serving a sentence of imprisonment in penitentiary establishment IK-25 in the Komi Region. He was represented before the Court by Mr B.A. Akhilgov, a lawyer practising in the town of Nazran, the Republic of Ingushetiya, and Mr A.S. Gishkayev, a legal specialist practising in the village of Alkhazurovo, the Urus-Martan District of the Chechen Republic.

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

A. The background of the case

The applicant is an ethnic Chechen. Prior to the highly publicised murder of the then President of the Chechen Republic A. Kadyrov on 9 May 2004 in the town of Grozny, the applicant resided in the village of Goyty of the Urus-Martan District of the Chechen Republic. After that date, his family decided temporarily to send him away from Chechnya to live in a refugee camp (“the refugee camp”) near the town of Nazran in the Republic of Ingushetiya. The decision was motivated by the fear of possible reprisals and indiscriminate mopping-up operations by the authorities in respect of all young men remaining in Chechnya.

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. The applicant's arrest

The applicant and his acquaintance I. were arrested in the refugee camp on 23 June 2004. They were found to be in possession of a military uniform and one hand grenade. The authorities also took a sample of the dirt on their hands, which later proved to contain traces of gunpowder and other by-products of recent gun shooting.

Thereafter the authorities brought the applicant and I. to the 6th Department of the Ministry of the Interior of the Republic of Ingushetiya. The police officers repeatedly and continuously tortured both the applicant and I., demanding them to confess to their involvement in the recent attack on Nazran.

The applicant submitted that the police officers had broken him seven ribs, upper jaw, right foot and had injured his both wrists. Finally, the applicant refused to admit his involvement in the events in Nazran, but confessed to the participation in the terrorist group of Doku Umarov between May and September 2002. According to him, the authorities continued beating him even after he had agreed to give the confession at issue.

2. SIZO no. 6 in the town of Vladikavkaz

From 28 June to 22 July 2004 the applicant was held in remand prison of the Federal Security Service of Russia in the town of Vladikavkaz (as of 1 January 2006 the facility has been transferred to the Ministry of Justice and renamed SIZO no. 6).

Upon the applicant's admission to this facility on 28 June 2004, a medical examination by a prison doctor revealed that the applicant complained about a chest pain during deep inhalations. There were visible injuries on his body such as bruises under his left eye, on the back and in the area of the right foot. As a result, the applicant was diagnosed as having a bruise on the face and his chest.

On 5 July 2004, during a medical examination in this facility, a doctor mentioned that the applicant's back "hurt during palpation and body movements".

3. SIZO no. 1 in the town of Vladikavkaz

Between 22 July and 28 September 2004 the applicant was held in remand prison IZ-15/1 (SIZO no. 1) of the town of Vladikavkaz in the Republic of Northern Ossetia (Alaniya). During his stay the applicant was transferred to the Temporary Detention Ward in Beslan during between 20 and 27 August 2004.

4. SIZO no. 2 in the town of Pyatigorsk

On 28 September 2004 the applicant was transferred to remand prison IZ-26/2 (SIZO no. 2) of the town of Pyatigorsk in the Stavropol Region.

The applicant stayed in this prison until 9 February 2007, when he was transferred to penitentiary establishment IK-25 in the Komi Region to serve his sentence of imprisonment.

5. The statements of the applicant and I. and the bill of indictment

(a) The statements given on 24 June 2004

Having been interviewed as a suspect between 2.50 and 8.45 p.m. on 24 June 2004, I. admitted having taken part in the recent attack on Nazran and earlier participation in the armed insurgency in Chechnya. He also indicated that the applicant had been among the participants of the attack. According to the interview record, the applicant received a warning concerning his right not to incriminate himself and was assisted by a lawyer of his choice Kh.

Between 9.15 and 9.30 on 24 June 2004, I. was interviewed again, this time as an accused. He confirmed the earlier statements and admissions, having mentioned that he “felt fit” and had given these statements voluntarily and in the presence of his lawyer Ch.

The applicant was interviewed as a suspect between 9.30 and 11.00 p.m. on 24 June 2004, he admitted that he had earlier participated in the armed insurgency, but denied having anything to do with the attack in the town of Nazran. The applicant admitted that he had an intention to participate in the attack, was ready to participate and was never called. According to the interview record, the applicant was given notice of his right not to incriminate himself and gave the statement in the presence of his lawyer P.

Later on the same day between 11.30 and 11.45 p.m. the applicant was interviewed again as an accused. He essentially confirmed his earlier statement.

It appears that at least some of the applicant’s interviews have been filmed and later shown at the trial.

(b) The subsequent statements

On 25 June 2004, during face-to-face confrontation of I. and the applicant, I. confirmed his earlier statements and again indicated that the applicant had been involved in the recent Nazran attack. There is no copy of the record of this event in the case file.

On the same day I. was brought to the location of the attack and confirmed his earlier statement. He provided more specific details concerning the attack and the participation of various actors.

During his interview of 6 July 2004 I. essentially confirmed his earlier statements. I. was assisted by lawyer Kh.

On 14 August 2004 formal charges have been brought against I., who admitted his guilt only in part. He reckoned that he had indeed participated in the activities of the insurgents, but denied any involvement in the attack on Nazran. He submitted that he had indeed been waiting for a call to participate, but the call never came.

On 17 August 2004 charges have been brought against the applicant, who admitted having taken part in the insurgency earlier, but denied his participation in the events in Nazran.

(c) Bill of indictment

According to the bill of indictment dated 28 August 2004, the applicant was involved in the following two episodes. During the first episode which took place early in 1999 the applicant was invited to become a member of a group of armed insurgents in Chechnya. He agreed, joined a training camp and was given a Kalashnikov rifle with ammunition. Until October 2002 he participated in the activities of that camp by building fortifications and guarding it. The second episode concerned his alleged participation in the recent attack in Nazran. The applicant was said to have been invited to take part in it by an unknown individual in May 2004. The applicant then made arrangements to implicate his acquaintance I. On the day of the attack both of them received Kalashnikov automatic rifles and an F-1 grenade. Having received and followed the instructions to stay at a certain place and provide covering fire for the other attackers and to attack law enforcement officers if they happened to appear. The applicant and I. fulfilled the orders until 3 a.m. of 22 June 2003 by firing a few rounds in the forest at the outskirts of Nazran.

In respect of these two episodes, the applicant was charged and indicted under Article 208 § 2 (participation in an illegal armed formation) of the Criminal Code of Russia, Article 209 § 2 (participation in a stable armed group and its attacks) and Article 222 § 3 (illegal arms traffic in connection with the participation in the group).

C. The trial and appeal proceedings

By judgment of 3 August 2005 the Supreme Court of the Republic of Ingushetiya, sitting in the jury composition, examined the charges against the applicant and found the applicant guilty as charged. The applicant was given a sentence of fourteen years of imprisonment in a prison of a strict regime.

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

The applicant's counsel complained about the ill-treatment repeatedly throughout the trial and appeal proceedings, having mentioned various pieces of evidence confirming the applicant's ill-treatment on 23 and 24 June 2004.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that he was heavily and continuously beaten by the policemen following his arrest on 23 June 2004. He relies on medical records from his a remand prison and video records of his early interview allegedly in possession of the respondent Government to substantiate his claims of ill-treatment.

2. Under Article 14 of the Convention the applicant complains that he was discriminated against because of his Chechen ethnicity.

3. Lastly, relying on Article 6 and Article 4 of Protocol No. 7 the applicant complains about his conviction for various terrorism-related crimes as unfair and unjustified.

QUESTIONS TO THE PARTIES

1. Was the applicant subject to a treatment contrary to Article 3 of the Convention? The Government are invited to comment on the applicant's allegations, regard being had to prison record of 28 June 2004 confirming various injuries on the applicant's body. Under the domestic law, was the prison administration under an obligation to report the detected injuries to the relevant law enforcement officials and, if so, were such officials under the obligation to react by conducting an inquiry of some kind?

2. The Government are invited to submit all interrogation, arrest and search records of the applicant (including any video footage) 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 the applicant's statements during the trial.

3. 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 a copy of the entire investigation file.

4. 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?

5. 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 and 6 of the Convention) the applicant had an effective remedy within the meaning of Article 13 of the Convention to complain about the relevant events?