



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

FIRST SECTION

Application no. 6095/09
Igor Aleksandrovich KALYAPIN
against Russia
lodged on 24 December 2008

STATEMENT OF FACTS

The applicant, Mr Igor Aleksandrovich Kalyapin, is a Russian national, who was born in 1967 and lives in Nizhniy Novgorod. He is represented before the Court by Ms O. Sadovskaya, a lawyer practicing in Nizhniy Novgorod.

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

The applicant is the head of the Committee against Torture, a regional non-governmental organisation situated in Nizhniy Novgorod, which assists victims of torture, inhuman or degrading treatment to carry out independent investigations, and monitors human rights violations involving ill-treatment in Russia, in particular, situations where there are high risks of torture being applied to individuals.

A. Events of 24 March 2007

According to the applicant, at some point he found out that the local opposition sought the authorities' authorisation to organise a public manifestation, "Dissenters' March", to be held on 24 March 2007, and that this request was refused. The applicant knew that the event would take place even in the absence of the formal authorisation, and supposed that the authorities would take measures to impede the manifestation by using the police forces, which may lead to human rights violations. In the applicant's submission, he therefore decided to join the manifestation as an observer to be able to assist those individuals who might become victims of such violations.

Having arrived at a square where the manifestation was being held, the applicant saw a group of around twenty participants of the meetings, several

journalists and a large number of police officers who sealed off the square. The applicant was filming the event.

As soon as the protesters started shouting slogans and the journalists approached them, they were all surrounded by police officers who started forcibly taking demonstrators and journalists to police buses parked nearby. The applicant intended to leave but was forced into one of those buses by a police officer. He saw several other detained persons in the bus.

After approximately half an hour, the bus arrived at the Avtozavodskiy District Office of the Interior (“the district office of the interior”). The applicant was taken inside the police station where he was kept for several hours in the absence of any formal record attesting his detention during that period. It does not appear that any procedural actions were taken in the applicant’s respect. He was released later that day. According to the applicant, he spent in detention approximately four hours, from the moment when he had been apprehended at the place of the manifestation until the moment when he was released.

B. The applicant’s complaints about his detention

On 24 March 2007 the applicant complained to the district office of the interior and to the prosecutor’s office of the Nizhniy Novgorod Region (“the regional prosecutor’s office”) about his detention earlier that day. He stated that he had not been an organiser or active participant of the manifestation, but had rather observed it and had not taken any actions in breach of law. Moreover, he had had his identity documents with him, but nevertheless had been forcibly taken to a police station and held there for some time. The applicant also complained that he had not been informed of the reasons for his detention or charges against him, no any formal record attesting his detention had been drawn up.

1. Check by a prosecutor’s office

On 26 March 2007 the regional prosecutor’s office instructed the Nizhegorodskiy District prosecutor’s office of Nizhniy Novgorod (“the district prosecutor’s office”) to carry out a check into the applicant’s allegations.

In a decision of 4 April 2007 the district prosecutor’s office refused to institute criminal proceedings in connection with the applicant’s complaint owing to the absence of evidence that any crime had been committed. The decision referred to an explanation given by the applicant during the check, where he described in detail the events of 24 March 2007. It then stated that, so far, no reply was received to an inquiry sent by that prosecutor’s office to medical institutions as to whether the applicant had sought any medical assistance on the date in question. The decision then concluded that the applicant’s allegations had not been confirmed during the check and that there was no evidence that the police officers had committed a crime punishable under Article 286 of the Russian Criminal Code (abuse of power).

On 18 April 2007 a supervising prosecutor set aside the decision of 4 April 2007 as unfounded, stating that the check had been incomplete. He ordered that a number of steps be taken during an additional check. In

particular, it was necessary to verify whether any report on the applicant's detention had been drawn up, to receive a reply to the inquiry sent to the medical expert body, and to take other necessary steps.

On 24 April 2007 the district prosecutor's office again decided to dispense with criminal proceedings with reference to the absence of evidence of a crime. The decision again referred to the applicant's description of the events of 24 March 2007 given during the check. It went on to note that, as was established, the applicant had not applied for any medical assistance during the relevant period. The decision also referred to an information report (*справка*) submitted by the district office of the interior, which stated that on 24 March 2007 the applicant had been delivered to that office without any accompanying documents, and that the identity of the police officers who had delivered the applicant was unknown with the result that it was impossible to interview them in connection with the events in question. The decision then concluded that the applicant's allegations had not been confirmed during the check and that there was no evidence that the police officers had committed a crime punishable under Article 286 of the Russian Criminal Code (abuse of power).

On 26 April 2007 a supervising prosecutor quashed the decision of 24 April 2007, stating that the check was incomplete. He instructed the investigator in charge to conduct an additional check and to take a number of steps, including examining a video record of the manifestation of 24 March 2007, interviewing officers in command of the police units who had ensured safety during that manifestation and interviewing the applicant.

By a decision of 27 April 2007 the district prosecutor's office refused to institute criminal proceedings for the same reasons as those invoked in its two previous decisions. The decision again referred to the applicant's description of the events of 24 March 2007 which he had made before, to replies from medical institutions that he had not applied for a medical assistance and to the information report of the district office of the interior stating that on the date in question the applicant had been delivered to that office without any accompanying documents. In addition, the decision referred to explanations from some police officers, without providing their names, who stated that they had taken part in apprehending participants of the unauthorised manifestation on 24 March 2007 and taking them to police buses. They denied applying any physical force to those apprehended or hearing any complaints from them. The decision also referred to a video record of the manifestation and stated that it could be seen that the applicant had shown resistance when being apprehended, and, in particular, had attempted to tear himself from police officers holding him. According to the decision, it was also clear from the video record that the police officers had not administered any blows on the applicant. The decision thus concluded that the applicant's allegations had not been confirmed during the check and that there was no evidence that the police officers had committed a crime punishable under Article 286 of the Russian Criminal Code (abuse of power).

2. Proceedings before courts

The applicant's lawyer, acting on the applicant's behalf, challenged the decision of 27 April 2007 before the Nizhegorodskiy District Court of

Nizhniy Novgorod (“the District Court”). He reiterated that there were no reasons for the applicant’s detention on 24 March 2007, that he had never been charged with any offence nor any proceedings had been brought against him in connection with the events on the aforementioned date, and that therefore the applicant’s detention had been unlawful and arbitrary, in breach of Articles 5 of the Convention. He also complained that the applicant had no effective remedies in connection with his complaint concerning his detention, in breach of Article 13 of the Convention.

In a decision of 18 March 2008 the District Court rejected the complaint of the applicant’s lawyer, holding that the decision of 27 April 2007 was lawful, well-founded and motivated, and that the check into the applicant’s allegations had been thorough and those allegations had been carefully examined and found unsubstantiated, therefore the investigating authorities had been justified in concluding that no evidence of the police officers’ illegal conduct or abuse of power had been found.

The applicant’s lawyer appealed against the first-instance court’s decision, complaining, *inter alia*, to the fact that the court had failed to address his arguments concerning the unlawful deprivation of the applicant of his liberty on 24 March 2007.

On 6 May 2008 the Nizhniy Novgorod Regional Court (“the Regional Court”) quashed the decision of 18 March 2008 and ordered that the case be examined anew.

By a decision of 20 May 2008 the District Court again dismissed the applicant’s lawyer’s complaint against the decision of 27 April 2007, stating that it was lawful, well founded and well-reasoned and met the relevant requirements of law, that the check into the applicant’s allegations had been full and all his arguments had been examined. The court also examined the video record of the events of 24 March 2007 and stated that it was clear that the applicant had not been beaten when being apprehended by the police; moreover, he had never sought any medical assistance. The court thus confirmed that the conclusion of the investigating authorities concerning the absence of any evidence that a crime had been committed had been correct, as it had not been established during the check that the police officers had ever applied any physical violence against the applicant.

The applicant’s lawyer appealed against the first-instance court’s decision. He complained, in particular, that the court had not assessed his arguments concerning a violation of the applicant’s right to liberty by the police on account of his unlawful detention on 24 March 2007.

On 4 July 2008 the Regional Court rejected the applicant’s lawyer’s appeal and upheld the decision of 20 May 2008, largely relying on the District Court’s reasoning. The Regional Court did not address the applicant’s lawyer’s argument concerning the lawfulness of the applicant’s detention on 24 March 2007.

COMPLAINTS

The applicant complains under Article 5 § 1 of the Convention that he was unlawfully deprived of his liberty on 24 March 2007. He alleges that

there were no grounds for his detention on that date, as he did not commit any offence, that no formal record attesting his detention was made, and that his detention was arbitrary.

The applicant further complains under Article 5 § 5 and Article 13 of the Convention that the authorities failed to carry out an effective investigation in connection with his complaint concerning his unlawful detention, with the result that he is unable to receive compensation in the above connection, as the fact of his unlawful detention has never been acknowledged.

QUESTIONS TO THE PARTIES

1. (a) Was the applicant deprived of his liberty at any time on 24 March 2007 and, if so, for what period of time?

(b) Was that deprivation of liberty in breach of Article 5 § 1 of the Convention?

(c) In particular, did it fall within subparagraphs (a) to (e) of this provision?

(d) If so, was that deprivation of liberty lawful?

(e) In particular, what was a legal basis for it?

(f) Was a record drawn up to attest the applicant's arrest and/or ensuing detention?

(g) Was that deprivation of liberty justified, within the meaning of Article 5 of the Convention? In particular, was it "in accordance with a procedure prescribed by law" and not arbitrary?

(h) Did the applicant have at his disposal an effective procedure to enable him to challenge the lawfulness of his arrest and ensuing detention? If not, was this compatible with the requirements of Article 5 § 4 and/or Article 13 of the Convention?

(i) Did the applicant have an effective and enforceable right to compensation for his arrest and detention in alleged contravention of Article 5 §§ 1 and 4, as required by Article 5 § 5 of the Convention?

2. (a) Alternatively, was there a restriction on the applicant's right to liberty of movement, guaranteed by Article 2 § 1 of Protocol No. 4, on 24 March 2007? If so, was that restriction in accordance with law and necessary in terms of Article 2 § 3 of Protocol No. 4?

(b) Did the applicant have at his disposal an effective domestic remedy to challenge the alleged violation of his rights secured by Article 2 of Protocol No. 4, as required by Article 13 of the Convention?