



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

FIRST SECTION

Application no. 46349/09
Andrey Vladimirovich SMOLENTSEV
against Russia
lodged on 8 August 2009

STATEMENT OF FACTS

The applicant, Mr Andrey Vladimirovich Smolentsev, is a Russian national who was born in 1976 and lives in Barnaul. He is disabled since childhood and legally incapacitated. The application was brought on his behalf by his mother.

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

A. Applicant's arrest, alleged ill-treatment and criminal proceedings against him

On 28 August 2007 the applicant was arrested on suspicion of robbery and brought to the police station (*Индустриальный РОВД г. Барнаула*), where he was beaten up by police officers K., S. and Ch. Then an ambulance was called for him.

The applicant alleged that while the investigator was questioning him as a suspect, police trainee I. took the keys from his flat, went there and searched his room. The applicant further alleged that a golden bracelet worth 10,500 Russian roubles (RUB) had gone missing after this search.

The applicant was taken to the temporary detention facility. The police officers A. and B. allegedly threatened the applicant not to reveal that he had been beaten at the police station and to tell instead that he had injured himself several days before in a fight.

In view of his injuries, the applicant was not admitted to the temporary detention facility. Instead, another ambulance was called for him and he was hospitalised and diagnosed with closed fracture of the bones of the nose with displacement of fragments and chest contusion.

On 30 August 2007 the applicant was admitted to the temporary detention facility. Among other things, a pledge ticket for a silver chain and

a silver cross in pawn until 5 September 2007 (worth RUB 4,840 and RUB 990 accordingly) found on the applicant were seized from him.

On the same day the Industrialniy District Court of Barnaul ordered the applicant's arrest for additional forty-eight hours, until 2.30 p.m. on 1 September 2007.

The applicant was released on 1 September 2007.

On the same day the Industrialniy District Court granted the investigator's request for the applicant's placement in psychiatric hospital for carrying out of the in-patient psychiatric forensic examination.

On 4 September 2007 the applicant was admitted to the psychiatric hospital where he stayed until 4 October 2007.

On an unspecified date the preventive measure – an obligation to appear, – was imposed on the applicant.

On 11 October 2007 the pledge ticket was returned to the applicant.

On 17 March 2008 the criminal proceedings against the applicant were discontinued due to his non-involvement in having committed the crime. The preventive measure was lifted.

B. Investigation of the alleged ill-treatment

On 29 August 2007 the applicant's mother complained about the applicant's beatings to the prosecutor's office.

On 19 September 2007 the forensic medical expert held that the closed fracture of the applicant's nose bones was caused by a blow administered by a hard blunt object with limited impact surface and resulted in moderately severe health damage. The report went on to say that the injury was caused shortly before he was given medical assistance, i.e. 28 August 2007. The possibility of the injuries having been caused by the applicant's fall from his own height was excluded. It appears, however, that the latter conclusion was subsequently withdrawn.

On 4 October 2007 the applicant was subjected to a forensic psychiatric examination which established that at the material time he could understand and engage in responsible actions.

On 4 October, 25 November and 24 December 2007, 1 February and 15 March 2008 the prosecutor's office refused to institute criminal proceedings against the police officers who allegedly ill-treated the applicant, for lack of *corpus delicti* in their actions. Regard was had, in particular, to the statements of police officers K., S. and Ch., who took part in the applicant's arrest, to the effect that the applicant tried to run away from them and fell down and that he already had injuries at the moment of his arrest.

In the meantime, on 13 December 2007 the criminal proceedings were instituted against unidentified persons under Article 112 § 1 of the Criminal Code (intentional infliction of moderately severe health damage).

On 17 April 2008 the applicant was given victim status in the proceedings. On the same day the applicant's mother stepped into the proceedings as the applicant's legal representative.

On 12 January, 11 April, 26 June, 14 September and 14 November 2008, 12 March and 15 June 2009, 19 July and 26 October 2010, and 17 February 2011 the investigation was suspended due to the impossibility to identify

those responsible for the applicant's beatings. All the above decisions were taken regardless of the medical evidence, the applicant's statement that he had been beaten by police officers K., S. and Ch., statements by several witnesses who saw the applicant prior to and at the moment of the arrest having no bodily injuries, being dressed neatly, behaving calmly, not resisting the arrest and not running away, and statements by witnesses who knew about the beatings from the applicant.

All the above decisions, save for the most recent one, were found to be unlawful and unsubstantiated.

On 30 June 2011 the Industrialniy District Court of Barnaul held that the decision on suspension of the proceedings of 17 February 2011 was lawful and justified.

On 11 August 2011 the Altay Regional Court upheld the District Court's decision on appeal.

C. Applicant's attempts to have criminal proceedings instituted against police trainee I., police officers A. and B.

Starting from 2008 the applicant's mother sought to have criminal proceedings instituted against police trainee I. and police officers A. and B. on account of abuse of office.

The investigator on several occasions refused the institution of the criminal proceedings.

The most recent refusal to institute criminal proceedings against I. is dated 15 October 2009. On 10 December 2009 the Altay Regional Court in the final instance found the above decision lawful and justified. It has been established that the applicant's mother let I. in the flat, answered his questions, then let him in the applicant's room and helped him inspect it. It has also been established that the disappearance of a golden bracelet had been alleged long after the events complained of and for that reasons it could not have reasonably been expected to be investigated.

The most recent refusal to institute criminal proceedings against A. and B. is dated 31 May 2010. The conducted inquiry did not find evidence to support the applicant's allegations. There is no information in the case-file as to whether the applicant challenged before the court the lawfulness of this decision.

D. Civil proceedings for damages

The applicant's mother brought civil proceedings against the Ministry of Finance on behalf of herself and the applicant seeking to recover non-pecuniary damage caused by the applicant's unlawful prosecution and resulting medical treatment, pecuniary damage representing the cost of the silver chain and the cross which could not be recovered from the pawnshop, as well as other costs and expenses.

On 10 March 2010 the Industrialniy District Court of Barnaul granted the claim partly and obliged the Ministry of Finance to pay the applicant RUB 15,000 in non-pecuniary damage caused by his unlawful prosecution. In refusing the claim for recovery of the cost of the silver chain and the

cross, the court held that, being the applicant's legal representative, the applicant's mother could have recovered them from the pawnshop herself.

On 21 April 2010 the Altay Regional Court upheld the above judgment on appeal, having increased the amount of the non-pecuniary damage to be recovered from the Ministry of Finance to RUB 40,000. The court further held that the applicant's mother failed to submit any evidence to the effect that she asked the investigator to return the pledge ticket and that her request was refused.

COMPLAINTS

1. Invoking Article 5 of the Convention the applicant complained about the alleged unlawfulness of his arrest on 28 August 2007, his beatings by the police officers, his questioning and participation in an identification parade in the absence of his legal representative, extension of his arrest until 1 September 2009 and his subsequent in-patient psychiatric forensic medical examination.

2. Relying further on Articles 6 and 13, he complained about the failure of the domestic authorities to conduct a prompt and efficient investigation into the unlawful actions by the police officers.

3. Finally, the applicant complained under Article 1 of Protocol No. 1 about having sustained pecuniary damages as a result of unlawful actions by the police. He referred to the late return of the pledge ticket resulting in the impossibility to recover a silver chain and a cross from the pawnshop and the alleged disappearance of a golden bracelet after the visit of police trainee I.

QUESTIONS TO THE PARTIES

1. As regards the events of 28 August 2007, was the applicant subjected to inhuman or degrading treatment by police officers K., S. and Ch. of the Industrialny District Department of the Interior of Barnaul, in breach of Article 3 of the Convention?

2. Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present instance by the domestic authorities in breach of Article 3 of the Convention?