



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

FIRST SECTION

Application no. 31880/08  
Konstantin Ivanovich VECHERSKIY  
against Russia  
lodged on 3 June 2008

**STATEMENT OF FACTS**

1. The applicant, Mr Konstantin Ivanovich Vecherskiy, is a Russian national, who was born in 1975 and lived until his arrest in Astrakhan.

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

3. On 19 January 2007 a partly skeletonised decomposing corpse of a man was found in Astrakhan and a criminal investigation was initiated in this regard.

4. On 9 April 2007 at approximately 3.30 p.m. the police apprehended the applicant on suspicion of murder. During his arrest the applicant was hit by the policemen in his chest and placed in a police car with the use of coercion techniques.

5. The applicant was subsequently taken to the Kirovskiy District Police Department of Astrakhan (Kirovskiy ROVD). At the police station he was taken to a room, where the policemen Mr K., Mr N., Mr S., Mr Ch., and Mr U. 1) cuffed his hands behind the back and beat him on the head and other parts of the body using rubber truncheons, hands, and feet, 2) smothered him with a plastic bag, and 3) repeatedly applied electric shock. After about an hour of beating the applicant was told to confess to murder in writing. He refused to do so. Approximately after two more hours of such treatment the applicant agreed to sign the forced confession.

6. The text of the confession was dictated to the applicant by the policeman Mr N., who in process repeatedly hit the applicant on the head with a rubber truncheon.

7. Around 11.00 p.m. he was taken by the policemen to the Prosecutor's Office of Kirovskiy District of Astrakhan for questioning by the investigator Mr D. in presence of assistant district prosecutor Mr G. and defence counsel Ms I. The applicant's defence counsel advised him on his right to silence, which the applicant intended to use. However, after Ms I.

has left the interrogation room for a phone call, the applicant was once again beaten by the policemen and told to repeat the content of the confession statement.

8. After being questioned the applicant was transferred back to the Kirovskiy ROVD, where he was beaten up again in his cell by policemen.

9. On 10 April 2007 at 10.00 a.m. the applicant was taken to the crime scene for verification of his statement in presence of the investigator Mr D., assistant district prosecutor Mr G., and defence counsel Ms I.

10. Later on the same day, he was taken to a medical facility for an examination. The examination established existence of soft tissue bruises on the back and legs and hematomas around the eye and on the chest. While being under duress the applicant stated that he received these injuries by falling down the stairs. Subsequently he was transferred to a temporary detention facility.

11. On 11 April 2007 the Kirovskiy District Court of Astrakhan ordered pre-trial detention of the applicant and he was taken to the pre-trial detention facility SIZO-1 of Astrakhan. The staff of the pre-trial detention facility refused to accept the applicant due to presence of the physical injuries, which were revealed during the medical examination. The applicant was taken by Kirovskiy ROVD police officers outside of SIZO-1 and coerced with the threat of use of firearms to sign the statement confirming that the injuries were incurred by falling down the stairs.

12. Subsequently, the applicant was admitted to SIZO-1. The staff of the pre-trial detention facility produced a medical examination report, which listed the injuries mentioned in paragraph 10 above.

13. On 16 April 2007 the medical examination report, the applicant's statement and other materials were forwarded by SIZO-1 to the Prosecutor's Office of Kirovskiy District of Astrakhan for inquiry.

14. On 19 April 2007 the assistant district prosecutor Mr G. visited the applicant in pre-trial detention facility and with the threat of use of violence coerced him to sign the text of a statement that the injuries were incurred by falling down the stairs.

15. On the same day the deputy prosecutor of the Prosecutor's Office of Kirovskiy District of Astrakhan refused to initiate criminal investigation concerning the applicant's injuries.

16. On 1 November 2007 the Kirovskiy District Court of Astrakhan gave the judgment of conviction. The applicant was found guilty of murder and sentenced to eight years' imprisonment. Both the prosecution and the defence appealed against the judgment. The judgment was annulled on appeal by the Astrakhan Regional Court on 10 January 2008, because the trial court failed to duly assess the forensic medical examination report and to reason its opinion as to the guilt of the applicant.

17. On 3 April 2008 after the new set of trial proceedings the Kirovskiy District Court of Astrakhan gave the judgment of conviction. The applicant was found guilty of murder and sentenced to eight years' imprisonment. The conviction and the sentence were upheld on appeal by the Astrakhan Regional Court on 22 May 2008.

18. While the applicant confessed to homicide of the victim during trial, he insisted that his actions were necessitated by self-defence. His arguments

were dismissed and his conviction was partly based on his initial statements to the police in April 2007.

19. The applicant and his defence counsel consistently raised the issue of ill-treatment by police and the use of evidence obtained by it during trial and appeal proceedings, but their arguments were dismissed with reference to refusal of the investigation authorities to initiate a criminal investigation.

20. In the course of 2008 the applicant lodged a number of complaints with the national authorities demanding criminal investigation of an alleged ill-treatment by police. The complaints were dismissed as unsubstantiated.

## COMPLAINTS

21. The applicant complained under Article 3 of the Convention about ill-treatment by the police with the aim to coerce confession and under Article 6 § 1 of the Convention about the use of his confession for the conviction. The applicant also submitted a number of other complaints under Article 6 of the Convention.

## QUESTIONS TO THE PARTIES

1. Did the applicant exhaust the available domestic remedies regarding his complaints under Article 3 of the Convention? (see Vladimir Romanov v. Russia, no. 41461/02, §§ 46-52, 24 July 2008)

2. Was the applicant subjected to torture, inhuman or degrading treatment by police officers on 9-11 April 2007, in breach of Article 3 of the Convention?

In answering that question the Government are requested to address, inter alia, the following points:

(a) Did the police use force during apprehension of the applicant on 9 April 2007 and, if yes, was such use of force reasonably justified?

(b) Was the applicant subjected to torture, inhuman or degrading treatment by police officers on 9 April 2007 while being held in Kirovskiy ROVD and the Prosecutor's Office of Kirovskiy District of Asktrakhan?

(c) What activities involving the applicant were conducted by the Kirovskiy ROVD on 9-11 April 2007? What confessions and/or statements (явка с повинной; показания) did the applicant give during that period (please submit relevant documents, in particular, written, audio or video records containing the applicant's statements/confessions)?

(d) Was he given access to a lawyer and, if so, when?

(e) Was he given access to a doctor and, if so, when and was his medical examination conducted out of the hearing and out of sight of police officers and other non medical staff?

3. Was the applicant's conviction based on the evidence obtained by the police as a result of treatment contrary to Article 3 of the Convention? If yes, did the use of such evidence violate the applicant's right to a fair trial under Article 6 § 1 of the Convention?

In answering that question the Government are requested to address, *inter alia*, the following points:

(a) Was the applicant afforded a genuine opportunity to present before the domestic courts his claim regarding the use of torture, inhuman or degrading treatment with the aim of extracting his confession?

(b) If yes, were these claims duly reviewed by the domestic courts during criminal proceedings against him?

4. The Government are further invited to submit the following documents:

(a) a typed copy of the applicant's medical records for April and May 2007;

(b) a full copy of the prosecutorial inquiry regarding the applicant's injuries as established in the medical examination report forwarded by SIZO-1 to the Prosecutor's Office of Kirovskiy District of Asktrakhan on 16 April 2007;

(c) a typed copy of the trial and appeal proceedings transcript (протокол судебного заседания) in the relevant part concerning judicial review of the applicant's allegations of ill-treatment by the police.