



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

FIRST SECTION

Application no. 48023/06
Yevgeniy Igorevich VASENIN
against Russia
lodged on 3 November 2006

STATEMENT OF FACTS

The applicant, Mr Yevgeniy Igorevich Vasenin, is a Russian national, who was born in 1973 and lived in the town of Vsevolzhsk, Leningrad Region.

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

As it follows from the case file, on 8 January 2002 the Moscow District Court of St. Petersburg found that the applicant had bought and carried drugs. The District Court, however, relieved him of criminal responsibility in view of his mental illness and authorised his involuntary placement in a psychiatric hospital. A similar decision regarding the applicant's admission to the psychiatric hospital was taken by the Dzerzhinskiy District Court of St. Petersburg on 30 October 2002. That court found that the applicant had committed an aggravated robbery and had destroyed a monument.

On 30 January 2005 the applicant escaped from the Druzhnoselskiy psychiatric hospital in the Leningrad Region.

According to the applicant, on 28 November 2005 he was arrested during a random check of identity documents carried out by police officers in the town of Belgorod. The applicant did not have a stamp in his passport showing his place of residence. He was brought to police station no. 3 where the officers allegedly beat him up and stole his mobile phone. On the following day he was transferred to Belgorod District police department where police officers forced him to confess to a series of car arsons in August and October 2005, including that on 5 October 2005. As a consequence of the applicant's confession, criminal proceedings were instituted against him on charges of aggravated arson, arms possession and two counts of robbery.

In the beginning of December 2005 the applicant was admitted to detention facility no. 31/1 in Belgorod.

In the early morning, on an unspecified day in December 2005, the same police officers who had allegedly ill-treated and robbed the applicant following his arrest took him to police station no. 3 for questioning. On arrival to the station, the applicant was allegedly handcuffed to a heating unit in an office and was left in that position until the late evening. He was allegedly not given food during the entire day and was only allowed to use a lavatory room twice. Legal aid counsel whom the applicant met for the first time observed three confrontation interviews and identification parades performed on that day.

On 15 February 2006 the applicant was subjected to a psychiatric examination by an expert commission which diagnosed him with continuously progressing paranoid schizophrenia. Having considered that the applicant presented a danger to himself and others as he was unable to control and appreciate the impact of his antisocial behaviour, the commission advised his placement in a psychiatric hospital for mandatory intensive treatment.

On 10 March 2006 a senior investigator from the Belgorod Town Prosecutor's office dismissed the applicant's request for institution of criminal proceedings against the police officers who had interrogated him after the arrest. The senior investigator found no criminal conduct in the officer's actions.

The applicant lodged a complaint with the Oktyabrskiy District Court, having argued that the inquiry into the events following his arrest was superficial. He stressed that the investigator only questioned the police officers who had unsurprisingly denied any part in the ill-treatment. No other witness, including his alleged accomplice Mr Z. who had witnessed the events in the police station, had been heard.

On 3 April 2006 the pre-trial investigation in the applicant's case was closed and the applicant was committed to stand trial before the Oktyabrskiy District Court of Belgorod.

Ten days later, in a hearing attended by the applicant, his legal aid counsel and an appointed legal representative from the Belgorod Town Health Commission, Ms K., whom the applicant met for the first time in the courtroom, the Oktyabrskiy District Court extended the applicant's detention in view of the gravity of the charges against him and his liability to abscond and reoffend. The District Court also noted that the applicant's state of health did not preclude his detention. The applicant was to continue being detained in detention facility no. 33/1 where he had to be provided with assistance by a psychiatrist.

The applicant lodged an appeal statement against the extension order, having complained that his health continued deteriorating, that, in addition to a mental illness, he suffered from a number of serious chronic conditions, including pulmonary tuberculosis, that he did not benefit from any medical assistance in the detention facility and that the facility did not employ a psychiatrist. He sought his release and admission to a psychiatric institution. The applicant also pointed to his inadequate representation in the proceedings.

On 14 April 2006 the Oktyabrskiy District Court dismissed the applicant's complaint against the investigator's decision of 10 March 2006. The District Court reasoned as follows:

“In the course of the inquiry it was objectively established that police officers T. and Ka. had not exceeded the limits of their official powers, which they confirmed in their explanations, and therefore [the applicant’s] complaints were not corroborated in the course of the court hearing.

As it follows from report no. 162 of the forensic psychiatric examination performed on 15 February 2006 [the applicant] suffered and suffers at the present time from a chronic mental illness in the form of continuously progressing paranoid schizophrenia... Given the intensity of the psychotic symptomatology and antisocial tendencies in [the applicant’s] behaviour, as well as the resistance of the condition to the treatment, it is recommended to send [the applicant] for involuntary treatment in a psychiatric hospital of a special type of intensive care.

Moreover, [the applicant] together with Mr Z. is charged with crimes proscribed by Article 161 § 2 (a) and (g) of the Russian Criminal Code.

Having regard to the above considerations ... [the applicant’s] complaint ... should be dismissed.”

The District Court also noted that the decision could be appealed against within ten days after it had been issued. As follows from a stamp of the detention facility on a copy of the District Court’s decision, it was only served on the applicant on 3 May 2006.

By a letter received by the applicant on 25 April 2006 the acting president of the Oktyabrskiy District Court returned the applicant’s appeal statements against the detention order of 3 April 2006, having noted that the applicant did not have legal capacity to complain and it was for his lawyer or the legal representative to raise those issues before the appeal court.

On 25 April 2006, at 10. a.m., the Oktyabrskiy District Court opened a trial hearing. The hearing was held in the presence of a prosecutor, the victims and their lawyers and the applicant’s legal aid counsel and his legal representative Ms K. The applicant was not brought to the courthouse. The District Court heard witness testimony, read out statements by the victims and witnesses made during the pre-trial investigation, examined the applicant’s confession statements written after his arrest and studied material evidence. As follows from a copy of the court minutes submitted by the applicant, at no point during the trial hearing either the applicant’s lawyer or his representative had any question to the witnesses or victims, raised any objection or made any motion. They always consented to the prosecutor’s requests and had no evidence to present in the applicant’s defence. It is impossible to establish what was the lawyer’s and the representative’s position during the pleadings as the respective page of the court minutes is missing. The trial was closed on the same day, at 3.10 p.m.

On 3 May 2006 the District Court announced the judgment. It found that the applicant had committed criminal offences with which he had been charged, but considered that he was unable to bear the criminal responsibility in view of the state of his mental health. The District Court authorised the applicant’s placement in a psychiatric hospital for mandatory treatment.

The applicant filed a request with the Oktyabrskiy District Court asking to provide him with a copy of the court minutes. On 12 May 2006 he sent a complaint to the Belgorod Regional Court, arguing that he had been unlawfully convicted of the crimes he had not committed and that his defence, by the legal aid counsel and legal representative appointed against

his will, was manifestly ineffective as neither of them had lodged an appeal against the judgment of 3 May 2006. He also submitted that he should have been afforded an opportunity to defend himself in person. At the same time, the applicant asked the Regional Court to re-examine his case as he had alibi, having been detained from 22 September to 6 October 2005 in Ukraine, and that his confession after the arrest had been extracted by the police with the use of force. He also noted that the authorities had never properly examined his complaints of ill-treatment.

The applicant filed a similar complaint with the Belgorod Regional Prosecutor's office. He insisted that his confession had been extracted under duress, and that the investigators had ignored his requests for appointment of another lawyer or his mother to act as his legal representative.

The judgment of 3 May 2006 became final on 13 May 2006 with no appeal being lodged against it by the applicant's lawyer or Ms K.

On 17 May 2006 a deputy president of the Oktyabrskiy District Court informed the applicant that only his lawyer or his legal representative had the legal standing to appeal against the judgment of 3 May 2006. The applicant's complaint of 12 May 2006 was attached to the letter. In a separate letter sent on 15 May 2006 the deputy president dismissed the applicant's request for a copy of the court minutes.

A similar response arrived from the prosecutor's office on 26 May 2006. A prosecutor explained to the applicant that by virtue of Article 444 of the Russian Code of Criminal Procedure he had no right to appeal against the judgment of 3 May 2006.

The applicant provided the Court with the letter of the head of the Lvov Department of the Ukrainian Border Service, confirming that the applicant had been serving administrative detention from 21 September to 6 October 2005 for an attempt of illegal crossing of the Ukrainian boarder with Poland. He also attached a copy of the administrative decision by the Lichakovskiy District Court of Lvov authorising his administrative detention.

On 11 June 2006 the applicant was admitted to the Oryol Psychiatric Hospital. On admission to the hospital he tested positive for hepatitis C and focal tuberculosis of the upper lobe of the left lung in the infiltration stage. As follows from a medical certificate issued by the Oryol Psychiatric Hospital on 24 January 2007 the applicant was diagnosed with tuberculosis in December 2005, on his admission to the detention facility in Belgorod.

The applicant argues that he contracted hepatitis C during dental treatment in the detention facility in Belgorod

The attempts of the applicant's mother to obtain a copy of his medical record, as well as copies of documents from the applicant's criminal file, were to no avail. On 2 October 2006 the head of the Oryol Psychiatric Hospital replied to her that doctors, hospital administration, representatives of State health authorities, prosecutors and judicial bodies have exclusive access to medical files of persons subjected to involuntary psychiatric treatment.

COMPLAINTS

The applicant complained under Articles 3, 5, 6 and 13 of the Convention that he had been unlawfully arrested and detained, that he had been unable to challenge the detention orders, that he had been ill-treated following his arrest and that the authorities' response to his complaints had been inadequate, that his detention in the psychiatric hospital was unlawful, that he had not been afforded an opportunity to attend the trial against him, that his defence by legal aid counsel and legal representative had been manifestly ineffective, that he had not been allowed to study the criminal case file, including the court minutes, that he had not been able to appeal against the judgment of 3 May 2006, that the courts had incorrectly assessed evidence and had not established the relevant facts, and that he had contracted tuberculosis and hepatitis C in detention and that he had not received effective medical care in detention.

QUESTIONS TO THE PARTIES

1. The Government are invited to submit a typed copy of the applicant's medical history and other relevant reports which describe the state of his health from the early months of his detention in a psychiatric hospital following the judgment of the Moscow District Court of St. Petersburg on 8 January 2002 to the present day. The Government are particularly requested to submit:

- records of tests for the presence of the viral hepatitis and tuberculosis infection performed on the applicant's admission to the psychiatric hospital in 2002;

- a copy of the employees' log (*штатное расписание*) for detention facility no. 31/1 in Belgorod showing the qualifications of the medical personnel employed by the facility at the time of the applicant's detention there;

- records of the psychiatrist's observations of the applicant in detention facility no. 31/1 in Belgorod, as well as a detailed description of the psychiatric assistance provided to him following his arrest in November 2005 until his transfer to Oryol Psychiatric Hospital in June 2006.

2. The Government are invited to inform the Court of the applicant's current state of health, including details of the state of advancement of his hepatitis C and tuberculosis infections and the drugs being provided for them.

3. Do the Government bear responsibility under the Convention for the applicant's infection with hepatitis C and tuberculosis?

4. Irrespective of the answer to question 3 above, have the Government met their obligation to ensure that that applicant's health and well-being are being adequately secured by, among other things, providing him with the

requisite medical assistance, including psychiatric care (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V), as required by Article 3 of the Convention, in the present case?.

5. As regards the events on 28 and 29 November 2005 following the applicant's arrest, was he subjected to torture or to inhuman or degrading treatment, in breach of Article 3 of the Convention? 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?

The Government are requested to produce the complete investigation file pertaining to the events on 28 and 29 November 2005.

6. Was the applicant's detention from 3 May to 11 June 2006 compatible with the requirements of Article 5 § 1 of the Convention? In particular, was the detention "in accordance with a procedure prescribed by law" and was it "lawful" in view of the facts that the applicant was not detained in a psychiatric hospital (see *Aerts v. Belgium*, 30 July 1998, § 49, *Reports of Judgments and Decisions* 1998-V, with further references)?

7. The Government are asked to produce copies of the detention orders issued by the Oktyabrskiy District Court after the applicant's arrest on 28 November 2005 and until his conviction.

8. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the principle of equality of arms respected given the lack of access on the applicant's part to the case file materials and the trial court minutes?

9. Having regard to the applicant's absence at the trial hearing, was the applicant able to defend himself, as required by Article 6 § 3 (c) of the Convention? In particular, does the Russian law on criminal procedure set out specific rules regulating presence of a mentally ill defendant at trial?

10. Was the applicant afforded an opportunity to appeal against the conviction in compliance with the requirements of Article 6 of the Convention? In particular, does the Russian law on criminal procedure set out specific rules regulating access of a mentally ill defendant to the appeal procedure? Was the applicant afforded legal assistance for representing his interests on appeal? If so, the Government are asked to produce documents confirming the lawyer's or representative's mandate to act in the applicant's interests in the appeal proceedings.

11. Was the applicant afforded effective representation, within the meaning of Article 6 § 3 (c) of the Convention? In particular, the Government are requested to produce a detailed account on the number and duration of the applicant's meetings with his lawyer and legal representative, Ms K. They are also asked to provide the Court with copies

of records of pre-trial procedural actions with the lawyer's participation, the complete record of the trial court hearing on 25 April 2006, as well as extracts from detention facility registration logs on the dates of the lawyer's visit to the facility no. 33/1 to see the applicant, if those visits took place.