



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

FIRST SECTION

Application no. 50863/06  
Dmitriy Alekseyevich ROGAL against Russia  
lodged on 31 October 2006

**STATEMENT OF FACTS**

The applicant, Mr Dmitriy Alekseyevich Rogal, is a Russian national, who was born in 1982 and lives in the town of Pavlovskiy Posad, Moscow Region.

**The circumstances of the case**

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

*1. Ill-treatment of the applicant and investigation of the events*

On 6 May 2006, the day of the applicant's transfer from correctional colony no. 1 in the Kirov Region to remand centre no. IZ-43/1 in the town of Kirov, the head of the colony security department, Mr G., took the applicant from cell no. 7 of the special type punishment ward and ordered him to put on a uniform. The applicant, dressed in a sport suit, refused to comply with the order as the uniform was dirty. According to the applicant, officer G. threatened him with violence, transferred him and three other inmates, Mr Ch., Mr Gor. and Mr Gol., to the checkout area, but placed the applicant in a separate room. He then forced the applicant to turn his face to the wall and to place the hands behind his back. He handcuffed the applicant's hands behind his back and started beating him.

The applicant provided a detailed description of the blows and kicks sustained. In particular, he submitted that officer G. had kicked his right leg, had hit him in the chest and the right cheek under the eye. When the applicant fell on the floor, officer G. allegedly stepped on his head. Three

warders witnessed the beating and assisted Mr G. in undressing the applicant. However, their actions were interrupted by the head of the convoy service who helped the applicant to get up and removed his handcuffs. He then escorted the applicant and the other three inmates to a train. The applicant submitted that he had only been dressed in underpants and had been dragging his right leg on the way to the train. The inmates helped him to walk.

In the train, the head of the convoy service examined the applicant and drew up a report, recording an injury under his right eye. The applicant noted in the record that officer G. had beat him up in the colony. The head of the convoy service also promised the applicant that a full medical examination would be performed on admission to the remand centre. The applicant wrote a statement that he had had no complaints about the actions of the convoy servicemen. He asked to call an ambulance. However, he was explained that there was no doctor in the train and that the ambulance could not be called to a convict.

On 7 May 2006 the applicant was admitted to remand centre no. 1 in Kirov. On admission, a medical assistant examined the applicant, having recorded his injuries from the beating and handcuffing. His chest and leg were X-rayed. The applicant was given a sedative, his right leg was placed in a tight bandage and his bruises were treated. The medical assistant explained that the applicant did not have any fractures, but that he had serious bruises and sprained ligaments. For a week the movement of the applicant's right leg was extremely restricted and in the following two weeks the applicant limped while walking and suffered a serious pain in the leg and the left side of his body when breathing and turning. According to the applicant, the entire period of his recovery took approximately a month and a half.

Three or four days after the alleged beating the applicant sent a complaint to a prosecutor's office, asking to institute proceedings against officer G.

On 26 May 2006 an investigator of the Kirov Regional prosecutor's office dismissed the complaint, having found no evidence of a criminal conduct.

On 17 July 2006 the Omutninskiy District Court supported the investigator's findings, having considered them to be lawful and correct. That decision was quashed on appeal on 29 August 2006 by the Kirov Regional Court and the case was sent for a fresh examination to the District Court.

On 13 September 2006 the Omutninskiy District Court discontinued the proceedings, having noted that on 12 September 2006 a higher-ranking prosecutor annulled the decision of 26 May 2006 and had opened a new round of inquiry.

Ten days later the investigator closed the inquiry, having found that there was no *prima facie* case of ill-treatment.

Following the applicant's appeal, on 12 October 2006 the Omutninskiy District Court scheduled the first hearing and dismissed the applicant's leave to appear. The applicant appealed against the District Court's decision, having argued that he should be provided with an opportunity to participate in the proceedings on an equal footing with a prosecutor.

On 23 October 2006 the Omutninskiy District Court, in the applicant's absence, examined his complaint against the investigator's decision of 22 September 2006 and annulled it as "unlawful and unreasonable". The District Court's reasoning was as follows:

"... the court does not consider it possible to agree with the [investigator's decision] of 22 September 2006 as the [investigator's] finding that [the applicant] committed self-mutilation is a mere assumption which is not based on undisputable materials of the inquiry; the inquiry did not establish the circumstances in which [the applicant] had sustained his injuries. Moreover, [the investigator] did not check [the applicant's] arguments that member of the convoy service and warders from [the remand centre] could have seen his injuries when he had been handed to the convoy service and that convoy servicemen had drawn up a report recording the injuries; the content of the statements made by inmate Go. does not correspond to [the investigator's] conclusion made on the basis of those statements. As follows from inmate G.'s explanations he learned from [the applicant] that a colony officer had dropped him [on the floor] but as follows from the [investigator's] decision – the officer had threatened [the applicant]."

On 28 November 2006 the Kirov Regional Court disallowed the appeal against the decision of 12 October 2006, having noted that the merits of the applicant's complaint about the investigator's decision had already been examined by the District Court and that the applicant could raise an issue of his absence in the appeal against the latter decision.

There is no indication that the applicant appealed against the decision of 23 October 2006.

Following the District Court's decision of 23 October 2006, the prosecutor's office reopened the inquiry into the applicant's complaints. However, on 8 December 2006 the inquiry was closed with a finding that the applicant's complaint was an attempt to damage the officer's reputation.

On 30 January 2007 the Omutninskiy District Court examined the applicant's appeal against the decision of 8 December 2006 and quashed it as the decision contained contradictory conclusions. The District Court ordered the prosecutor's office to eliminate the identified defects.

On 9 March 2007 an investigator of the Kirov Regional prosecutor's office again found no evidence of a criminal conduct. The decision was based on statements by the applicant, officer G., six colony warders, six convoy servicemen, including the head of the convoy service, and inmates Ch. and Go. The applicant insisted that he had been ill-treated and stressed that a medical assistant had recorded his injuries on his admission to the remand centre in Kirov. The colony staff members denied that violence or moral pressure had been used against the applicant and pointed that the applicant had warned the warders of his intention to make false complaints to a prosecutor as they had tried to force him to wear the uniform. According to the warders, the applicant had only worn underpants when he had been taken to the train as he had refused to dress up. Inmate Go. stated that he had not witnessed the beating and had only heard that the applicant had talked loudly in the separate room in the colony. He had not seen any injuries on the applicant, save for a black eye which, as the applicant had explained to Mr Go., he had sustained when "a warder had dropped him". The convoy servicemen testified to having seen a sole injury on the applicant, that under his right eye, and to having noticed it only five to ten minutes after he had been brought to the train. They also stressed that the

swelling of the eye had intensified which could mean that the injury had been very recent. Inmate Ch. denied any knowledge of the incident.

The investigator also noted that it became known that the applicant had tried to force inmate G. to make false statements concerning the events on 6 May 2006. On the basis of the statements made by the convoy servicemen he further concluded that the applicant had injured himself as the eye injury had only been noticed five to ten minutes after his arrival to the train and as the swelling had been increasing. A record that the applicant was prone to making complaints and false accusations against officials supported, in the eyes of the investigator, that conclusion. The investigator finally stressed that in addition to the statements by Mr Go., there was no evidence in support of the applicant's allegations of ill-treatment.

## *2. Conditions of the applicant's detention*

Relying on statements by several co-detainees, the applicant complained about the conditions of his detention in the punishment ward in correctional colony no. 1. In particular, he submitted that on 1 November 2006 he was transferred for two months to the ward and placed in cell no. 0. However, his two-month detention was further extended on two occasions, each time for fifteen days for minor disciplinary offences, such as a refusal to sign a record. The applicant submitted that on 31 January 2007 he had again been placed for fifteen days in cell no. 0 and then on 21 February 2007 to the same cell where he remained at least until 19 April 2007. On a number of occasions the applicant was taken to cells nos. 7 and 5. The transfer was effected on visits by supervising authorities, including those from the Kirov Regional prosecutor's office. As soon as the officials left, the applicant was transferred back to cell no. 0. The accumulated length of his detention in those two cells did not exceed seven days.

The applicant explained that cell no. 0 had measured no more than four square metres. He was detained there alone at all times. However, he did not have sufficient personal space as the bed occupied a large part of the cell and at least one fifth of the space was taken by a construction on which a lavatory pan was installed. A concrete stub installed near the bed served as a chair and a metal plate of twenty to thirty-five centimetres welded to the bed was used as a table. The lavatory pan was not separated from the rest of the cell and the applicant was therefore forced to eat merely fifty centimetres from a grimy toilet spreading unpleasant odour. The cell did not have a sink and a tap with cold water was installed directly above the lavatory pan. The cell did not have a ventilation shaft. A small bulb of 36 watts did not produce sufficient lighting. The situation was further exacerbated as the window was not glazed and the applicant had to cover it with newspapers. At the same time, the window was separated from the cell by a metal net. On the outside the window was covered with metal bars. From 20 to 25 December 2006 the applicant did not have any lighting in the cell as the bulb had fused. The cell was damp and very cold. It was so cold in winter that the applicant had to sit on a blanket and cover himself with a mattress. He became ill. The bed was too short for his height and he therefore was not getting enough sleep as his back started to hurt. At 5.00 a.m., during a wake-up call, warders took the bedding and "belted up" the bed to the wall so that inmates would not sleep during the day. The shower room was dirty,

swamped with insects and barely had any warm water. Rats were frequent guests in the cell. They were so used to people that a number of times they crawled into the applicant's bed. On one occasion, a rat bit the applicant. The food was poor. For a month the applicant, who suffers from hepatitis B and C and cannot eat fatty food, was given pork either for lunch or for dinner. His complaints to the administration were to no avail.

The applicant complained to the prosecutor's office and the penitentiary authorities about the conditions of his detention.

On 10 August 2007 he received a letter from a deputy head of the Kirov Regional Service for Execution of Sentences which read as follows:

"It was established in the course of the inquiry that [the applicant's] complaints [about the conditions of his detention in the punishment ward in colony no. 1] are manifestly ill-founded.

On his transfer to the [punishment ward] [the applicant] was provided with clothes which [inmates are supposed to wear] in the punishment ward.

Bedding and underwear are washed regularly [in the punishment ward], once a week; [the applicant's] request to wash his uniform was accepted.

In compliance with a schedule of reconstruction works in [the punishment ward] in July 2007 the works were carried out in the correctional colony in order to bring the [conditions] in the cells up to the requirements of legal documents. Those works were performed under the control of the colony administration, including the medical personnel.

The sanitary conditions in the cells [in the punishment ward] are daily checked by the medical personnel and are satisfactory.

Equipment, the ventilation and lighting in the cells [of the punishment ward] satisfy the established requirements.

On each request [the applicant] was provided with necessary medical assistance in the medical unit of the correctional colony.

Writing and postal utilities of inmates detained [in the punishment ward] are kept by an on-duty junior officer and are given to inmates when they need to correspond.

The inquiry did not establish any violations of the law or of prejudicial attitude against [the applicant] on behalf of the colony administration."

On 22 November 2007 the applicant received a letter from the Kirov Regional prosecutor supervising penitentiary institutions. The prosecutor found the applicant's complaints of inadequate conditions of detention in the punishment ward to be unsubstantiated. The reasoning was as follows:

"[The applicant's] arguments about the unsanitary conditions and poor living conditions in cell no. 7 in [the punishment ward] were not confirmed. The cell is equipped according to the established norms, with a table, a bench and a sleeping place. There is a sink with a tap of cold water and a lavatory pan. There is no obligation to provide [inmates] in that cell with a hot water ... The lighting in the cell complies with the legal requirements. A change of fused bulbs is performed when on-duty warders discover that [the bulb was fused]. The walls in the cell are covered with plaster and whitewash; the plaster and whitewash are not cracked and the brickwork is solid. The cell has two glazed windows equipped with casements. Metal bars on the windows were installed according to the established requirements. Reconstruction works were, in fact, carried out in [the punishment ward]. Those works were

performed under the supervision by the colony administration, including medical personnel, in order to avoid the excessive concentration of paint and lacquer vapour. The sanitary condition in the cells [of the punishment ward] is checked by the medical personnel on the daily basis; they make reports in a respective log. The disinfection is performed regularly in the cells of [the punishment ward], there are no mice and insects in the cells.

[The applicant's] argument that inmates are given pork is true. The provision of meat for the purpose of feeding inmates is centralised and corresponds to the food standards, prescribed by the Ministry of Justice ...

[The applicant's] argument that he was not provided with medical assistance in the colony is far-fetched. On admission to the colony and following an examination, [the applicant] was placed on a register for regular medical supervision in the medical unit, having been diagnosed with viral hepatitis B and C, and biliary dyskinesia ... He is on enriched food regimen. Twice a year he receives prophylactic treatment.”

### *3. Other aspects of the applicant's detention*

At least on two occasions during the applicant's detention in the special type punishment ward, warders sprayed tear gas in his cell. Having no opportunity to open the door or window, the applicant started experiencing shortness of breath. At the same time, he began screaming, complaining about the inability to breathe and threatening the colony administration with a hunger strike. The applicant was convinced that officer G. had sprayed the gas canister as he had learned that the prosecutor's office had reinitiated the inquiry into the events on 6 May 2006.

On 4 November 2007 an investigator of the Omutninskiy District Investigative Department found that the applicant's complaint of the use of tear gas was not supported by any evidence.

## COMPLAINTS

Without citing any Convention provisions, the applicant complained about the ill-treatment on 6 May 2006, ineffective investigation into the events, the appalling conditions of his detention on a number of occasions in the punishment ward, the use of tear gas against him and various procedural violations committed by the courts which had examined his ill-treatment complaints, including their refusal to ensure his presence at the hearings.

### **QUESTIONS TO THE PARTIES**

1. Was there a violation of Article 3 of the Convention on account of the applicant's conditions of detention in the punishment ward, on each occasion of his detention there? The Government are requested to comment on the specific grievances raised by the applicant and support their submissions with documentary evidence, including ward inmate population registers, floor plans, colour photographs of the sanitary facilities, etc., reports from supervising prosecutors or regional ombudspersons concerning the conditions of detention in that facility, if available.

2. As regards the applicant's submissions that he was ill-treated by colony warders on 6 May 2006, has he been subjected to torture or 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 case by the domestic authorities in breach of Article 3 of the Convention?

3. The Government are asked to produce a complete investigation file pertaining to the events in question, including medical records of the applicant's examinations at the train on his way to remand centre no. IZ-43/1 and on his admission to the remand centre, as well as extracts from his medical history for the period from 1 May to 1 August 2006.