



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

29 August 2012

FIRST SECTION

Application no. 41151/09
Nailya Mirasovna RAKHMANOVA
against Russia
lodged on 6 May 2009

STATEMENT OF FACTS

The applicant, Ms Nailya Mirasovna Rakhmanova, is a Russian national, who was born in 1988 and lives in Kazan.

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

A. The applicant's apprehension in Kazan and alleged ill-treatment at the Zelenodolsk police station

In September 2007 the applicant was questioned at the Zelenodolskiy Investigation Department of the Republic of Tatarstan as a witness in a criminal case No. 514442 opened against her friend A. I. for causing a serious bodily injury. Considering that her witness statement was not accurately recorded by the investigator M. G., the applicant made a legal agreement with a lawyer who requested a new interview to be held by another investigator in charge of the criminal case.

On 18 October 2007 at around 15.00 the applicant was approached in Kazan by two men wearing plain civil clothes. They introduced themselves as police officers from the Vasilyevo village, but failed to specify their identity. They invited her to go to the Zelenodolskiy District Police Department (*ROVD*) for a conversation (*для беседы*). She refused, suggesting that they take contact with her lawyer, but one of the men took her by force into a white car "Niva" without any special mark on it. She

attempted to call her lawyer or mother, but the police officer prevented her to do so and withheld her mobile phone.

On their way from Kazan to Vasilyevo the police officers questioned the applicant about her decision to take a lawyer and shouted at her as she refused to answer without assistance of her lawyer. The applicant was eventually brought to the Zelenodolskiy ROVD where other police officers continued her questioning. They demanded her to withdraw her request for a new interview in connection with A. I.'s criminal case. After two hours of oral pressure, one of the officers struck at her eyes with a roll of magazine paper while another one punched twice in the back of her head.

The applicant did not resist the pressure and signed a statement waiving her right to be assisted by a lawyer. At that point the investigator R. S. came in and provided the applicant with a text that she had to read out slowly, imitating an oral statement to the investigator. The applicant complied with the request and her fresh statement was taped by police.

At 21.30 the applicant was released and returned home at around 23.00. At 00.54 of the next day she was examined by a nurse at the local casualty centre who reached a preliminary conclusion that the applicant was apparently suffering from concussion.

On 19 October 2006 the applicant was examined by a doctor at the Medical Emergency Centre of Kazan who confirmed the diagnosis of concussion and delivered a medical certificate to that effect (No. 2168).

On the same date the applicant was also examined by a forensic expert. In his report (No. 2413) the expert found that the applicant suffered from concussion and light contusion of the right eyeball, while finding no visible signs of bodily injuries.

On an unspecified date, a new forensic report was delivered on the basis of the previous medical reports and without a fresh examination of the applicant. The expert concluded that the diagnosis of concussion could not be forensically established in view of some contradictory data contained in the previous medical reports.

B. Refusal to open criminal proceedings in respect of the applicant's allegations of ill-treatment by police

The applicant lodged repeated complaints about the police's abuses during her detention at the Zelenodolskiy ROVD on 18 October 2007.

On 8 November 2007 the deputy chief of the Zelenodolskiy Investigation Department refused to open criminal proceedings in respect of the applicant's complaint.

The applicant challenged this decision under Article 125 of the Code of Criminal Procedure. Her complaint was dismissed on 10 December 2007 by the Zelenodolskiy Town Court. However, the Supreme Court of the Republic of Tatarstan granted the applicant's appeal on 22 January 2008 and quashed the Town Court's decision. On 11 February 2008 the latter found the decision of the Zelenodolsk Investigation Department of 8 November 2007 unlawful.

On 1 March 2008 the same deputy chief of the Zelenodolsk Investigation Department delivered a new decision refusing to open criminal proceedings on account of the alleged ill-treatment.

On 21 May 2008 the criminal proceedings against A. I. were discontinued. In reaching his conclusion the investigator noted, *inter alia*, the applicant's allegation that her witness statement against A. I. had been done under duress.

On 17 December 2008 the Zelenodolskiy Town Court upheld the decision not to institute criminal proceedings against police officers. It stated that the applicant was lawfully apprehended by the police officers D. K., R. M. and A. D. with a view to conducting investigative activities in accordance with the order of 16 October 2007 by the investigator R. S. The court's conclusion was also based on a forensic report No. 102 of 25 February 2008 finding it impossible to establish a causal link between the injuries recorded by the previous medical reports and the events of 18 October 2007.

The applicant appealed against the Town Court's decision of 17 December 2008, emphasising that her apprehension by the police officers had no basis in the Investigative Activities Act (*закон об ОПД*) and was, therefore, unlawful. On 3 February 2009 by the Supreme Court of the Republic of Tatarstan dismissed the appeal without responding to the applicant's arguments.

COMPLAINTS

The applicant complains under Article 5 about unlawfulness of her apprehension and detention by police. She also complains under Articles 3 and 13 about her ill-treatment by police and the authorities' failure to conduct an effective investigation in that respect.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of her liberty in breach of Article 5 § 1 of the Convention on 18 October 2007 from approximately 15.00 to approximately 21.30?

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

(a) When exactly was the applicant apprehended (*фактически задержана*) by police and brought to the Zelenodolskiy ROVD? Please submit the detailed custody records for 18 October 2007 hour by hour with precise information about the applicant's location (including the relevant extracts from the register of persons brought to a police station, visitors' records, etc.);

(b) What provision from (a) to (f) of Article 5 § 1 did this deprivation of liberty fall within?

(c) What were the legal grounds and reasons for the applicant's apprehension on 18 October 2007 in Kazan, her forcible transfer to the Zelenodolskiy ROVD for a conversation (*для беседы*) and her ensuing detention and questioning? In particular, was the investigator's order of 16 October 2007 a permissible ground under Russian law for apprehension and detention of the applicant while she was merely a witness in criminal proceedings?

(d) Did the police officers who apprehended the applicant and took her to the police station act lawfully, given that they wore plain clothes, failed to identify themselves, forcibly put her in an unmarked car and withheld her mobile phone, thus preventing her from calling her lawyer and family?

2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by police officers on 18 October 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) Once in the hands of the police:

(i) Was the applicant informed of her rights? If so, when, and what rights was she informed about?

(ii) Was she given the possibility of informing a third party (family member, friend, etc.) about her detention and her location and, if so, when?

(iii) Was she given access to her lawyer and, if so, when? If not, why her access to the lawyer was denied?

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

(b) What activities were conducted in the applicant's respect at the Zelenodolskiy ROVD on 18 October 2007? What was the applicant's procedural status?

3. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), did the investigation conducted by the domestic authorities into the present case comply with the requirements of Article 3 of the Convention (see, among many others, *Mikheyev v. Russia*, no. 77617/01, §§ 108-110 and 121, 26 January 2006)? In particular:

(a) What investigative actions did the investigator of the Zelenodolskiy Investigation Department take and were those sufficient to ensure that the investigation into the applicant's ill-treatment be thorough and effective?

(b) Did the investigator of the Zelenodolskiy Investigation Department who refused to open criminal proceedings enjoy the necessary independence from those who allegedly ill-treated the applicant?

4. In answering each of the above questions the Government are requested to submit the relevant documents in support, and in particular the following:

(a) the investigator's order of 16 October 2007 to bring the applicant to the police station for conversation (*для беседы*);

(b) the records of the applicant's interview conducted at the Zelenodolskiy ROVD on 18 October 2007;

(c) all medical and forensic reports concerning the injuries allegedly resulting from the applicant's ill-treatment by police on 18 October 2007;

(d) the documents and decisions showing the outcome of the criminal case No. 514442 in which A. I. was a suspect.