



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

29 August 2012

FIRST SECTION

Application no. 49290/06
Yevgeniy Vladimirovich MARSHALOV
against Russia
lodged on 13 October 2006

STATEMENT OF FACTS

The applicant, Mr Yevgeniy Vladimirovich Marshalov, is a Russian national, who was born in 1963 and lives in Kazan.

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

A. Alleged torture at the Vysokogorskiy Police Department

On 12 July 2006 the applicant was apprehended by police officers near his house in Kazan, handcuffed and taken by car some 40 kilometres away from the city to the Vysokogorskiy District Police Directorate (“*RUVD*”). He was then brought to the Justice of Peace of the Vysokogorskiy District who found the applicant guilty of a minor administrative offence and ordered his administrative arrest.

The applicant was then immediately taken back to the Vysokogorskiy RUVD where he was ill-treated in presence of the senior investigator of the District Prosecutor’s Office, Mr R. Sh., and later in presence of the District Prosecutor himself, Mr F. G. The police officers allegedly beat and tortured the applicant using gas masks and electric shocks in order to obtain a confession that he had murdered a certain G. in April 2001. The applicant had already been detained as a suspect in that criminal case between 15 May and 30 July 2001 but then released for lack of evidence.

On 14 July 2006 the applicant was transported with a black plastic bag over his head to the Kazan Police Department. During transportation he lay on the bottom of the car with the police officers kicking him on his back.

Once in police station, the applicant was again beaten up and electrocuted on his fingers. He was then taken back to the Vysokogorskiy RUVD.

On the same date the applicant was examined by a surgeon of the Vysokogorskiy district hospital, who reported bruises on the applicant's front and nose. According to the report No. 98 established shortly after by a forensic expert, the applicant suffered from various physical injuries, including a scar on his forehead and nose, hematomas on his shoulders and hips and abrasions on his knees and elbows.

On an unspecified date the applicant was again taken to the same police station in Kazan where he was tortured by similar methods and then transported back to the Vysokogorskiy RUVD.

On 20 July 2006 the applicant confessed of G's murder and remained in detention. It is not clear from the file when his detention status changed from administrative arrest to detention as suspect in a criminal case.

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

On 19 July 2006 the applicant complained of torture to the Vysokogorskiy District Prosecutor's Office but the senior investigator R. Sh. refused to institute criminal proceedings.

On 26 July 2006 the applicant challenged the police's and the investigator's R. Sh. acts before the Vysokogorskiy District Prosecutor F. G. He also complained of the absence of a lawyer during his questioning by police. Both complaints were dismissed on 7 August 2006.

On an unspecified date the applicant lodged a new complaint with the District Prosecutor's Office that he was subjected to torture, that his administrative detention at the police station was unlawful and that the subsequent criminal proceedings brought against him were unfair as some 148 pages of his criminal file opened in 2001 had been destroyed. On 15 August 2006 the senior investigator R. Sh. dismissed the applicant's complaint.

On an unspecified date the applicant's lawyer complained against the above decisions to the Prosecutor's office of the Republic of Tatarstan. The Prosecutor of the Republic of Tatarstan *ad interim* responded on 17 August 2006 that the impugned decisions were quashed and the applicant's complaints referred back to the District Prosecutor's Office for further investigation.

However, on 30 August 2006 the senior investigator R. Sh. again refused to bring criminal proceedings on account of the applicant's allegations of torture. He found that the applicant had been transported to the Kazan police department to undergo a polygraph test and that no illegal method had been used in his regard. The investigator concluded that the injuries reported by the medical and forensic reports were inflicted to the applicant by himself while he stayed in his cell in Vysokogorskiy RUVD.

On 28 August 2006 the Vakhitovskiy District Court dismissed the applicant's complaint under Article 125 of the Code of Criminal Procedure against the prosecutors' failure to institute criminal proceedings on account of torture. On 22 September 2006 the Supreme Court of the Republic of Tatarstan upheld that decision on appeal, stating *inter alia* that the alleged

abuses during the investigation and possible exclusion of evidence so obtained should be assessed later by the competent court which would examine the merits of the criminal case against the applicant.

COMPLAINTS

Referring to Articles 3 and 13 of the Convention, the applicant complains of torture by police and lack of effective investigation in that respect. He also complains under Article 6 of unfairness of criminal proceedings in that he was unable to consult his criminal file in its entirety.

QUESTIONS TO THE PARTIES

1. When exactly was the applicant apprehended (*фактически задержан*) in Kazan on 12 July 2006? What were the legal grounds and reasons for the applicant's apprehension? When exactly was he brought to the Vysokogorskiy RUVD? Please submit the detailed custody records from 12 to 21 July 2006 hour by hour with precise information about the applicant's location and his transfers to the police station in Kazan and back to the Vysokogorskiy RUVD (including the relevant extracts from the register of persons brought to a police station, visitors' records, etc.).

2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by police officers between 12 and 21 July 2006, 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 his rights? If so, when, and what rights was he informed about?

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

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

(iv) Were his medical/forensic examinations of 14 July 2006 and later on conducted out of the hearing and out of sight of police officers and other non-medical staff?

(b) What police and investigative activities were conducted by the authorities in respect of the applicant from 12 to 21 July 2006? If they were carried out at night, was this lawful? Was the applicant given access to a lawyer before and during each such activity?

(c) What was the applicant's procedural status and when did it change from administrative arrest to detention as a criminal suspect?

(d) 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)?

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 they take and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(b) Did the police and prosecution officers involved in the investigation enjoy the necessary independence from those who had allegedly tortured the applicant? Had the senior investigator Mr R. Sh. and the District Prosecutor Mr F. G. been present during the applicant's questioning by police between 12 and 21 July 2006?

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

(a) the decision by the Justice of Peace of the Vysokogorskiy District finding the applicant guilty of a minor administrative offence and ordering his administrative arrest;

(b) the decision by which the applicant's detention status was changed from administrative arrest to detention as suspect in a criminal case;

(c) the records of all applicant's interviews conducted at the Vysokogorskiy ROVD and Kazan police station from 12 to 21 July 2006, including the records of the polygraph test of 14 July 2006;

(d) the medical report of 14 July by the surgeon of the Vysokogorskiy district hospital and the subsequent forensic report No. 98;

(e) the applicant's confession statement of 20 July 2006;

(f) all judicial decisions delivered in the applicant's criminal case No. 109861