



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

29 August 2012

FIRST SECTION

Application no. 7319/11
Rishat Rifgatovich KHA KOV
against Russia
lodged on 9 January 2011

STATEMENT OF FACTS

The applicant, Mr Rishat Rifgatovich Khakov, is a Russian national, who was born in 1980 and is currently detained pending trial in Kazan, Republic of Tatarstan.

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

A. Alleged torture at the Naberezhniye Chelny Police Department

On 5 December 2008 the applicant arrived at the temporary detention facility (*IVS*) of the Naberezhniye Chelny Police Directorate (“*UVD*”) from the correctional colony IK-8 where he had been serving his criminal sentence, in order to take part in the investigation of new charges pending against him.

On the following day the applicant met with his lawyer. According to the applicant, he did not complain about his health, nor did he have any injuries on him.

In the morning of 7 December 2008 the applicant was taken out of his cell and brought into an office. He was placed into an iron-barred cage, and someone behind him put a hat or a hood over his head pulling tight the strings so that he could not see anything. He was handcuffed and led out of the room, put into a car and driven for a while in an unknown direction.

After the car stopped, the applicant was taken into a building, where he mounted the stairs to the fourth or fifth floor, and brought into a room.

There he was put onto the floor and had his legs cuffed. He was asked a question about the crime(s) he had committed, which he did not answer. Then he was electrocuted, with the wires attached to his genitals and buttocks.

According to the applicant, he was tortured by three or four persons as he identified them by their voices. They urged him to confess to a crime that he had not committed. He had a sexual aid inserted in his anus and then was again electrocuted. He inadvertently relieved himself and was given clothes to change into. The applicant broke down and told that he would confess. According to the applicant, the torture and the subsequent process of taking evidence continued until 4 or 5 a.m. of 9 December 2008.

In the morning of 9 December 2008 the applicant was returned to the IVS of the Naberezhniye Chelny RUVD. On the same day he demonstrated his injuries to the investigator A. A. of the Naberezhniye Chelny Interdistrict Department of the Investigation Committee, who recorded his complaint of torture articulated in a way that is identical to his complaint to the Court.

On 13 December 2008 the applicant was examined by a forensic expert in the absence of his lawyer. In his report No.8277 the expert quoted the applicant stating that on 5 December 2008 he had been beaten by the police officers who had also inserted a sexual aid in his anus and that he had remained conscious. The findings included bruises around his right eye and on the lower stomach dating back no more than seven days; abrasions on both wrists dating back no more than two days; and abrasions on his knees dating back no more than four or five days. According to the applicant the forensic expert distorted his statement as to the date of torture (5 December instead of 7-9 December 2008) and failed to document certain injuries.

The applicant provided two statements of 12 January 2009 addressed by his IVS cellmates to the investigation authorities confirming that he had been taken out of the cell in the morning of 7 December 2008 and remained absent on 7 and 8 December 2008. The authors of the statements requested to be interviewed in this respect by the investigation authorities.

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

On 19 December 2008 the Naberezhniye Chelny Interdistrict Department of the Investigation Committee refused to institute criminal proceedings in respect of the applicant's complaint of ill-treatment.

After that decision was quashed on 25 January 2009, a new similar refusal was issued on 7 February 2009. The investigator R. M. studied the custody records according to which the applicant had left the cell only on 6 and 9 December 2008 to see his lawyer. Analysing the forensic report and the applicant's statements during the interview, the investigator detected contradictions between the dates and the injuries reported. He concluded that the applicant had falsely incriminated the police officers to escape criminal responsibility.

Another decision refusing institution of criminal proceedings in respect of the applicant's allegation of torture was issued by the investigator R. M. on 21 May 2009.

The applicant unsuccessfully requested institution of criminal proceedings against the head of the detention centre and the forensic expert who had allegedly forged the relevant reports and against the investigator in the criminal case who had allegedly been complicit in the torture. Investigating his complaints, the authorities interviewed the officers and the head of the investigative-and-search unit, the investigator in the criminal case, the head of the IVS and the forensic expert who all denied any wrongdoing. The applicant also unsuccessfully requested a confrontation with a nurse who in any event does not appear to have been present during his forensic examination.

After the repeated refusals of his complaints by the Head of Naberezhniye Chelny Interdistrict Department of the Investigation Committee and by the Deputy Prosecutor of Naberezhniye Chelny on 13 and 26 October 2009 respectively, the applicant challenged them in court. By a decision of 19 April 2010 the Naberezhniye Chelny Town Court allowed his complaint and found both above decisions unlawful for failure to interview the applicant's cellmates at the IVS.

Following a long period of inaction, on 9 December 2010 the First Deputy Prosecutor of Naberezhniye Chelny quashed the impugned decisions.

However, on 26 December 2010 the investigator R. M. of the Naberezhniye Chelny Investigation Department again refused to institute criminal proceedings in respect of the applicant's complaint of ill-treatment. This decision merely reiterated the previous findings. The applicant's cellmates had not been questioned.

COMPLAINTS

The applicant complains under Article 3 of the Convention of torture. He also complains that the investigation into his complaints was not effective. In particular, it was not independent and did not attempt to collect certain evidence, including a confrontation with the nurse and interviewing witnesses of his injuries.

He also complains in generic terms under Article 13 of the Convention of lack of effective remedies.

QUESTIONS TO THE PARTIES

1. Where was the applicant held on 7, 8 and 9 December 2008? Please submit the detailed custody records from 7 to 9 December 2008 hour by hour with precise information about the applicant's location at each moment. What were the legal grounds and reasons for bringing and questioning the applicant at the Naberezhniye Chelny UVD on those dates?

2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by police officers between 7 and 9 December 2008, in breach of Article 3 of the Convention?

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

(a) What activities were conducted in the applicant's respect by the Naberezhniye Chelny Interdistrict Investigation Department (*Набережночелнинский МРСО СУ СК при прокуратуре РФ*) or by the Investigation-and-Search Unit no. 1 at the Police Department (*ОРЧ № 1 при УВД*) or by the Tsentralniy Police Department (*Центральный ОВД*) on 7, 8 and 9 December 2008, and during what periods? If they were carried out at night, was this lawful?

(b) What was the applicant's procedural status in the context of the criminal case he was questioned about on those dates?

(c) 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) If the applicant was held in custody at the IVS of the Naberezhniye Chelny Police Department on 7, 8 and 9 December 2008, how do the Government explain the origin of the injuries recorded in the forensic report of 13 December 2008 which describes them as dating back from two to seven days, that is falling within the period when the applicant was in the hands of police?

(e) How do the IVS custody delivery records (*копии листов книги выводов следственно-арестованных*) reconcile with the statements of the applicant's cellmates of 12 January 2009?

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? Have the applicant's cellmates at the IVS been ever interviewed by the investigative authorities following the court decision of 19 April 2010?

(b) What are the reasons for delay between the latter order by the court and the decision of 9 December 2010 by the First Deputy Prosecutor of Naberezhniye Chelny to quash the impugned decisions?

(c) Did the police and prosecution officers involved in the investigation enjoy the necessary independence from those who had allegedly tortured the applicant?

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) a copy of the forensic report of 13 December 2008;

(b) a copy of the decision of 19 December 2008 not to open criminal proceedings in response to the applicant's complaint of ill-treatment;

(c) all decisions by the administrative or judicial bodies that have been taken in respect of the applicant's complaint of ill-treatment after 26 December 2010.

(d) all judicial decisions in the criminal case in respect of which the applicant was questioned on 7, 8 and 9 December 2008.