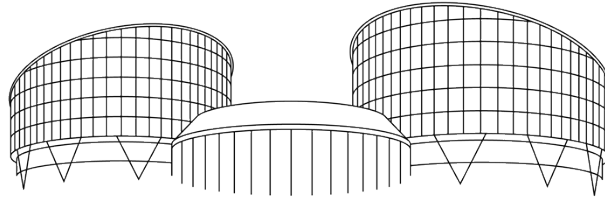

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 3627/07
Andrey Mikhaylovich SOKOVNIN
against Russia
lodged on 10 November 2006

STATEMENT OF FACTS

The applicant, Mr Andrey Mikhaylovich Sokovnin, is a Russian national, who was born in 1969 and serving a sentence of imprisonment in the Sverdlovsk Region.

A. The circumstances of the case

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

1. The applicant's arrest and criminal proceedings against him

On 2 October 2000 investigator B. in Nizhniy Tagil issued a decision considering the applicant as an accused in a criminal case. The investigator also issued a detention order against the applicant under Articles 89, 91-92 and 97 of the RSFSR Code of Criminal Procedure (the RSFSR CCrP).

As the applicant's whereabouts could not be established, on 2 October 2000 the applicant's name was added to the list of wanted persons.

On 18 March 2006 the applicant was arrested in the town of Perm. Apparently, the applicant was not informed of the reasons for his arrest.

On 27 April 2006 investigator B. appointed Mr N. as legal-aid counsel and the applicant was informed of the charges against him (murder and robbery). The applicant sought release arguing that the information about the charges had been given to him belatedly. Apparently, the investigator did not reply to this application for release.

The applicant was not given a copy of the detention order of 2 October 2000.

The applicant brought court proceedings complaining of the arrest and the investigator's inaction. By a judgment of 23 May 2006, the Dzerzhinskiy District Court of Nizhniy Tagil rejected the applicant's complaint. The court considered that the applicant had been informed of the charges against him "as soon as he had been brought before the investigator on 27 April 2006".

In the meantime, on 18 May 2006 the district court extended the applicant's detention beyond the two-month period authorised under the prosecutor's order of 2 October 2000. On 16 June 2006 the regional court upheld this detention order.

On 7 July 2006 the Sverdlovsk Regional Court examined the applicant's appeal against the judgment of 23 May 2006 and concluded that the complaint was lodged under Article 125 of the current CCrP which did not allow judicial review of issues relation to arrest or detention. Thus, the appeal court discontinued the appeal proceedings.

A further detention order was issued on 17 July 2006. On 16 August 2006 the Regional Court upheld it, noting that it was immaterial that the initial detention order had been issued by a prosecutor in 2000. Before the entry into force of the new CCrP in July 2002, it had been lawful for a prosecutor to issue detention orders in a criminal case.

On an unspecified date in late 2006, the criminal case against the applicant was submitted for trial before the Regional Court.

On 2 November 2006 the Regional Court convicted the applicant of murder and sentenced him to twenty years' imprisonment.

On 16 April 2007 the Supreme Court of Russia upheld the judgment.

2. *Alleged ill-treatment*

(a) Alleged ill-treatment in Perm

According to the applicant, during his arrest on 18 March 2006 in the town of Perm police officers entered his flat and beat him up severely using their boots and butt stocks. It is unclear whether the officers made any reports concerning the (legitimate) use of force against the applicant.

After his arrest the applicant was taken to a police station and, later on, to Perm detention centre no. 59/1. There, a medical professional examined the applicant and, apparently, recorded certain injuries. According to the applicant, he was told that a copy of the record could be provided only at a request from a public authority.

On 17 April 2006 an investigator in Perm issued a refusal to institute criminal proceedings in relation to the circumstances of the applicant's arrest on 18 March 2006. The investigator concluded that there had been a legitimate case of using physical force during the arrest on account of the applicant's resistance.

It appears that the applicant was given a copy of the decision of 17 April 2006 on 31 May 2006. On an unspecified date, the applicant wrote to the Prosecutor General's Office complaining of the allegedly ineffective investigation.

On an unspecified date in September or October 2006, the criminal case against the applicant was submitted for trial before the Regional Court. Thereafter, judicial review in respect of the matters pertaining to the

pre-trial stage of the criminal proceedings in his case was to be carried out by the trial court in his own criminal case (see “Relevant domestic law and practice” below).

(b) Alleged ill-treatment during the applicant’s transfer to Nizhniy Tagil and inquiries in relation to the applicant’s allegations of ill-treatment

On 23 March 2006 the applicant was taken by train from Perm to Yekaterinburg detention facility no. 66/1.

On 26 March 2006 the applicant was taken to a train where he was beaten up. On 27 or 28 March 2006 the applicant attempted to cut his veins with a razor blade.

After his arrival in Nizhniy Tagil (on 28 March 2006), he was beaten up again. He was taken to medical facility LIU-51. It follows from a medical certificate issued by LIU-51 that on 28 March 2006 the applicant had various injuries, including haematomas and fractures.

On 31 March 2006 an investigator in Nizhniy Tagil issued a refusal to institute criminal proceedings in relation to the applicant’s attempted suicide on 27-28 March 2006. This refusal also mentioned that there had been no indication of ill-treatment, despite the presence of fractures and haematomas on the applicant’s body. It is unclear when the applicant was given a copy of this decision.

On 5 April 2006 the applicant was taken to detention centre no. 66/3.

Until 27 April 2006 the applicant had no legal assistance.

The applicant also submits that on numerous occasions between 14 April and 6 September 2006 he was taken to the Dzerzhinskiy police station, whilst no investigative measures were carried out. Instead, he was threatened and incited to co-operate with the investigating authority. Apparently, no lawyer was present during these meetings.

Also, allegedly, on 11 July, 15 and 23 August 2006 the applicant was exposed to some kind of nerve gas, with the aim of extracting a confession. He was provided with the related medical treatment in detention facility no. 66/3. According to the applicant, his co-detainees would be able to confirm his allegations. The medical staff refused to give him, with an official request, any document relating to his state of health. The applicant alleges that as a result of the gas exposure, his bronchial asthma aggravated into chronic obstructive pulmonary disease.

In February 2007 the applicant was informed that a preliminary inquiry had been carried out by the Nizhniy Tagil authorities in relation to his complaint of ill-treatment and that his complaint had been dismissed. The contents and conclusions of this inquiry are unclear.

On 18 April 2009 an investigator issued a refusal to institute criminal proceedings against investigator B. Without reference to any specific provision of the CCrP, the investigator concluded that the applicant’s arrest and his subsequent detention had been lawful.

Similar refusals (albeit without any formal decision amenable to judicial review) were issued later on in 2009 by the regional prosecutor’s office.

B. Relevant domestic law and practice

1. Detention pending investigation

A new Code of Criminal Procedure (CCrP) entered into force on 1 July 2002. Under Article 108 of the CCrP, a court was empowered to order detention of an accused pending investigation.

Under the Transitional Law no. 177-FZ of 18 December 2001, detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them (section 10 of the Law).

The Constitutional Court of Russia stated with reference to the Transitional Law that non-judicial decisions relating to deprivation of liberty ceased to be applicable after 1 July 2002 (see, among others, ruling no. 6-P of 14 March 2002; decision no. 119-O-O of 19 January 2010 and decision no. 3-O-P of 18 January 2011).

2. Pre-trial judicial review in respect of decisions or (in)actions imputable to investigating authorities or officials

Article 125 of the CCrP provides for judicial review of the decisions or (in)actions on the part of an inquirer, investigator or a prosecutor, which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia considered that it was incumbent on the judges to verify before processing an Article 125 complaint whether the preliminary investigation has been completed in the main case (point 9). If the main case has already been set for trial or has been completed, the complaint should not be examined unless if was brought by a person who was not a party to the main case or if such complaint was not amenable to judicial review under Article 125 at the pre-trial stage of the proceedings. In all other situations, the complaint under Article 125 should be left without examination and the complainant be informed that he or she can raise the matter before the trial or/and appeal courts in the main case.

In the same vein, according to the interpretation given by the Constitutional Court, a complaint under Article 125 cannot be brought or pursued after the criminal case (to which this complaint is connected) has been submitted for trial. However, when it is established that a party to the proceedings (including a judge or a witness) has committed a criminal offence, thus seriously affecting the fairness of the proceedings, the Code exceptionally allows for a separate investigation of the relevant circumstances leading to a re-opening of the case (see Decision no. 1412-O-O of 17 November 2009; see also Ruling no. 20-П of 2 July 1998 and Ruling no. 5-П of 23 March 1999).

C. Reservation issued by the Russian Federation

The instrument of ratification of the Convention deposited by the Russian Federation on 5 May 1998 contained the following reservation:

> "In accordance with Article 64 of the Convention, the Russian Federation declares that the provisions of Article 5 paragraphs 3 and 4 shall not prevent ... the temporary application, sanctioned by the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation, of the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence, established by Article 11 paragraph 1, Article 89 paragraph 1, Articles 90, 92, 96, 96-1, 96-2, 97, 101 and 122 of the RSFSR Code of Criminal Procedure of 27 October 1960, with subsequent amendments and additions..."

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was beaten up during his arrest in Perm, during his transfer to and detention in Nizhniy Tagil; that he was threatened on numerous occasions, with the aim of extracting a confession; that he was exposed to nerve gas which entails serious health damage. The applicant argues that none of the above allegations received an effective investigation.

The applicant argues under Article 5 § 1 of the Convention that his arrest and detention on the basis of the prosecutor's detention order were unlawful. He also alleges that he was not promptly informed of the reasons for his arrest or of any charge against him. Furthermore, he complains that he had no possibility to obtain review of lawfulness of his detention in March-May 2006, in breach of Article 5 § 4 of the Convention.

The applicant complains under Article 6 of the Convention that he was not promptly informed of the nature and cause of the accusation against him and that for this reason he could not prepare his defence; that the trial judge refused to call defence witnesses; that he was wrongly convicted.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment between March and September 2006, in breach of Article 3 of the Convention? Reference is made, in particular, to the applicant's allegations of beatings during his arrest; subsequent beatings, exposure to nerve gas, intimidation and threats.

In addressing the above question the parties are requested to deal, *inter alia*, with the following points:

(a) Once in the hands of the authorities:

- Was the applicant informed of his rights? If so, when, and what rights was he informed about?

- Was he given the possibility of informing a family member, friend, etc. about his detention and his location and, if yes, when? Was he given access to a lawyer and, if yes, when?
- Was he given access to a doctor and, if yes, when? Was his medical examination conducted out of the hearing and out of sight of officers and other non-medical staff?
- Did the arresting officers make reports concerning use of force during the applicant's arrest on 18 March 2006?

(b) What activities involving the applicant were conducted during the relevant periods of time in Perm and then in Nizhniy Tagil? Was the applicant given access to a lawyer before and during each such activity? What were the reasons for taking the applicant to the Dzerzhinskiy police station between April and September 2006?

2. 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? In particular:

(a) When did the authorities become aware or ought to be aware of the presence of injuries on the applicant's body or possible ill-treatment (including threats or intimidation)? When did the authorities launch preliminary inquiries (*доследственные проверки*)?

(b) Was the "effectiveness" of these inquiries undermined in the absence of initiated criminal proceedings (*возбуждение уголовного дела*)? Was the applicant or other persons interviewed during the inquiries? Were those persons liable for perjury or for the refusal to give evidence? Was the applicant given a possibility to participate effectively in the inquiries (for instance by lodging motions, putting questions to experts or obtaining copies of procedural decisions)?

(c) Were the officials or authorities, who carried out the inquiries, independent of (i) the officials or authority who were responsible for investigating the criminal case against the applicant; (ii) the alleged authors of ill-treatment?

(d) Was the applicant refused access to medical certificates or information concerning him? Were such certificates or information thoroughly examined by the authorities dealing with the applicant's complaints of ill-treatment?

(e) Was a forensic medical examination (судебно-медицинская экспертиза) carried out in order to establish, inter alia, harm to the applicant's health and psychological suffering, as well as the possible origin and time of infliction of injuries? If yes, was it carried out speedily?

Having regard to Article 38 of the Convention, the respondent Government are requested to submit all documents relating to the pre-trial

stage of the proceedings in the criminal case against the applicant; a copy of the file(s) relating to the inquiries in relation to the applicant's allegations of ill-treatment; all medical certificates and information concerning the applicant for the period from March to September 2006, in particular from Perm detention centre no. 59/1, Yekaterinburg detention centre no. 66/1, LIU-51 and detention centre no. 66/3 in Nizhniy Tagil.

3. From 18 March to 18 May 2006, was the applicant deprived of his liberty in breach of Russian law (see "Relevant domestic law and practice") and Article 5 § 1 of the Convention? Did the deprivation of liberty during this time fall within paragraphs (b) and/or (c) of this provision?

4. Was the applicant informed promptly and sufficiently of the reasons for his arrest and of any charge against him, as required by Article 5 § 2 of the Convention?

5. (a) Should the applicant's detention fall within the scope of Article 5 § 1 (c) of the Convention, was he brought promptly before a judge or other officer authorised by law to exercise judicial power, as required by Article 5 § 3 of the Convention?

(b) Did the applicant have at his disposal an effective procedure by which he could challenge his detention in March and April 2006, as required by Article 5 § 4 of the Convention?

(c) Having regard to the position of the Russian Constitutional Court (see "Relevant domestic law and practice"), was the Russian reservation under Article 5 of the Convention applicable in the circumstances of the applicant's case (see *Romanova v. Russia*, no. 23215/02, § 119, 11 October 2011)?

6. Was the applicant informed promptly and in sufficient detail of the nature and cause of the accusation against him, as required by Article 6 § 3 (a) of the Convention? Was the applicant afforded adequate time and facilities to prepare his defence, as required by Article 6 § 3 (b) of the Convention at the pre-trial stage of the proceedings?