



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

FIRST SECTION

Application no. 20933/08
Radzhab Gasayniyevich MAGOMEDOV
against Russia
lodged on 3 April 2008

STATEMENT OF FACTS

The applicant, Mr Radzhab Gasayniyevich Magomedov, is a Russian national, who was born in 1968 and is serving a prison sentence in Samara.

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 alleged ill-treatment

On 26 December 2004 the applicant was arrested when he attempted a car-jacking and brought to the police station. According to the applicant, during the arrest three police officers handcuffed him and kicked him in the face and on the head. Then the applicant was brought to the police station where the beatings continued.

On 28 December 2004 the investigator with the police department noted that, the applicant resisted the arrest and the police officers had to use force against him. The investigator ordered that the applicant undergo a forensic medical examination.

On 30 December 2004 the forensic expert examined the applicant and noted the following injuries:

“Bruises around the right and left eyes and in the right part of the head;

Haemorrhage ... to the left of the lower lip;

Bruises on the nose, right cheek, forehead and right knee joint.”

In the expert's opinion, the injuries were inflicted some 3 to 8 days preceding the examination and did not cause any damage to the applicant's health.

According to the applicant, no inquiry or investigation followed.

2. Criminal proceedings against the applicant

On 28 December 2004 the Leninskiy District Court of Samara authorised his pre-trial detention. In particular, the court noted as follows:

“... [the applicant] is suspected of having committed a criminal offence entailing a custodial sentence which exceeds two years; he does not have a registered residence in Samara; ... ; he is unemployed; he has committed earlier an offence in relation to the transportation of a stolen vehicle. There are grounds to believe, that he might abscond or continue his criminal activities. A measure of restraint, [other than remand in custody], cannot be applied.”

On 30 December 2004 the applicant was charged with multiple car thefts. On an unspecified date he was also charged with an organisation of a criminal gang.

On 25 February 2005 the Oktyabrskiy District Court of Samara further extended the applicant's pre-trial detention until 23 April 2005. The court reiterated the reasoning set out in the previous court order.

On 19 April 2005 the Oktyabrskiy District Court extended the applicant's pre-trial detention until 26 June 2005, stating as follows:

“Regard being had to the [applicant's] character and the gravity of the charges against him, [the court] considers that he might abscond, continue his criminal activities, threaten the witnesses and other parties to the proceedings, destroy evidence and interfere with administration of justice.”

It appears that the applicant's pre-trial detention was subsequently extended on several occasions¹.

On 27 February 2006 the Samara Regional Court fixed the trial hearing for 13 March 2006. The court ordered that the applicant and three other defendants should remain in custody until 28 May 2006 noting that “the measure of restraint imposed [on the defendants] should remain unchanged”.

On 13 March 2006 the Regional Court returned the criminal case-file to the prosecutor's office due to certain inconsistencies in the bill of indictment concerning the description of the offences committed by the defendants.

On 23 August 2006 the Regional Court extended the pre-trial detention in respect of the applicant and five other defendants until 26 November 2006 noting that “regard being had to the defendants' character and the gravity of the charges against them, the court considers that they might abscond or interfere with administration of justice”.

On 22 November 2006 and 26 February 2007 the Regional Court extended the pre-trial detention in respect of the applicant and five other defendants until 26 February 2007 and 26 May 2007 respectively. The court reiterated verbatim the reasoning of order of 23 August 2006.

On 12 March 2007 the prosecution dropped criminal gang charges and several car thefts charges against the applicant. On the same day the Regional Court found the applicant guilty of eleven car thefts and sentenced him to twelve years' imprisonment.

¹ The applicant did not submit relevant court orders.

On 13 November 2007 the Supreme Court of the Russian Federation upheld the applicant's conviction on appeal.

3. Conditions of detention and transport

(a) Detention in a temporary detention centre

From 26 to 31 December 2004 the applicant was detained in a temporary detention centre. The cell where he was held had no windows. The applicant did not receive a mattress or bed sheets. The lighting was dim. The applicant's requests for medical assistance were ignored.

(b) Detention in remand prison no. IZ-63/1 in Samara

On 31 December 2004 the applicant was transferred to remand prison no. IZ-63/1 in Samara. He was detained in cells nos. 8, 14, 58, 60, 61, 121 and 134. All the cells were overcrowded. The number of sleeping places was insufficient and the inmates took turns to sleep. All the inmates smoked and the applicant, a non-smoker, was exposed to second-hand tobacco smoke. The toilet was located some 2 metres away from the dining table. The cells were infested with lice and bedbugs. It was very cold in the winter and stiflingly hot in the summer. In particular, in April 2005 he was detained in cell no. 58 measuring approximately 30 sq. m and housing 25 inmates.

The applicant was not allowed family visits. The letters from his mother not written in Russian were stopped by the administration. The prison library did not contain any legal texts.

(c) Conditions of transport

On the days of the court hearings, the applicant had to get up at 4 a.m. From 6 to 9 a.m. he was held in a holding cell. Then he was transported to the courthouse in a special van where he was placed in a compartment measuring 0.5 * 0.7 sq. m. The journey to the courthouse lasted from 5 to 10 hours. On the way back, the applicant was again placed in a holding cell measuring 12-13 sq. m together with other 15 to 30 inmates.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was beaten up during the arrest and in the police custody on 26 December 2004. He further alleges that he received no medical treatment in respect of the injuries and that the national authorities failed to respond to his complaints about the beatings and ensuing lack of medical assistance. He also complains about appalling conditions of his detention in remand prison no. IZ-63/1 in Samara and the conditions of transport from the remand prison to the courthouse and back.

The applicant complains under Article 5 §§ 1 and 4 of the Convention that his detention from 28 May to 23 August 2006 was unlawful. In particular, he alleges that he was detained during the said period in the absence of a court order.

The applicant complains under Article 5 § 3 of the Convention about the length of his pre-trial detention.

The applicant complains under Article 6 of the Convention that the criminal proceedings against him were unfair; that the courts were not impartial and that his conviction was based on inadmissible evidence. He also complains about the length of the criminal proceedings against him.

The applicant complains under Article 7 of the Convention that he did not have access to the documents authorising his telephone tapping.

The applicant complains under Article 8 of the Convention about his telephone tapping.

The applicant complains under Article 14 of the Convention that, during the criminal proceedings against him, he was not allowed family visits.

The applicant complains under Article 13 of the Convention that he did not have an effective remedy in respect of his complaint about the excessive length of the criminal proceedings against him. He further alleges that his complaint about beatings in police custody was ignored by the prosecutor.

The applicant complains that, as regards the severity of his prison sentence, he was discriminated on the basis of this ethnic origin.

QUESTIONS TO THE PARTIES

1. In respect of each cell in which the applicant was held in remand prison no. 63/1 in Samara the parties are requested to indicate:

- (a) The cell number and the dates of the applicant's stay;
- (b) The floor surface of the cell (in square metres);
- (c) The number of bunk beds and/or sleeping places that were available in the cell;
- (d) The exact number of detainees held in the cell (supported by original documents, such as a population register);
- (e) The placement of the toilet (corner, wall-mounted, etc.) and the distances between (i) the toilet and the dinner table; and (ii) the toilet and the nearest sleeping place.
- (f) Whether there was a partition separating the toilet from the living area of the cell; its height and the material it was made of;
- (g) The frequency and duration of outdoor exercise and the use of the shower facilities by the applicant.

2. In the light of the replies to the above questions, were the conditions of the applicant's detention compatible with Article 3 of the Convention?

3. Were the conditions of the applicant's transport to and from the Samara Regional Court compatible with Article 3 of the Convention?

4. As regards the applicant's allegations of ill-treatment during the arrest on 26 December 2004 and subsequent detention in a temporary detention centre, has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, did the applicant

invoke before the national authorities, at least in substance, the right under Article 3 on which he now wishes to rely before the Court? If so, has the applicant been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention? Was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

5. As regards the applicant's pre-trial detention, has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, did the applicant appeal against any of the court orders authorising his pre-trial detention? If so, has the applicant's pre-trial detention been based on "relevant and sufficient" reasons and has it been compatible with the "reasonable time" requirement of Article 5 § 3 of the Convention (cf. *Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?

6. Did the applicant have a fair hearing in the determination of the criminal charge against him, as required by Article 6 of the Convention? In particular, was the principle of equality of arms and the requirement of adversarial proceedings respected in view of the non-disclosure of the documents authorising interception of the applicant's telephone conversations (cf. *Mirilashvili v. Russia*, no. 6293/04, §§ 194-09, 11 December 2008)?

7. Has there been a violation of the applicant's rights guaranteed by Article 8 of the Convention as a result of the interception of his telephone conversation by the investigative authorities (cf. *Bykov v. Russia* [GC], no. 4378/02, §§ 69-83, 10 March 2009)?