



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

FIRST SECTION

Application no. 34624/06
Dmitriy Aleksandrovich CHUPIN
against Russia
lodged on 28 July 2006

STATEMENT OF FACTS

The applicant, Mr Dmitriy Aleksandrovich Chupin, is a Russian national, who was born in 1987 and lives in Barnaul.

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 detention and criminal conviction

The applicant was detained at around 11 a.m. on 17 November 2005 in the town of Biysk and brought to the Vostochny District department of the Interior (ROVD). At that time he had not turned 18 years old and was a minor. His detention has been carried out by officers A.G. and Ye. K.

During the day on 17 November 2005 the applicant produced a confession (*явка с повинной*) about aggravated robbery committed by him on 6 November 2005.

At 9.50 p.m. on 17 November 2005 the investigator of the ROVD drew up an arrest record concerning the applicant. According to the arrest record, the applicant had been detained at 9.50 p.m. on 17 November 2005; the prosecutor had been informed of the applicants' detention at 10 p.m. The record also referred to the fact that the applicant's mother had been informed but did not indicate the time of such notification. The reasons for detention were indicated as Article 91 (2-1) of the Criminal Procedure Code and Article 161 (2-g) of the Criminal Code. The record was co-signed by the applicant and his lawyer and two attesting witnesses; none of the persons present had declared any objections to its content. The applicant was transferred for detention to the temporary isolation cell (*изолятор временного содержания, ИВС*) of the Biysk Town Department of the

Interior. On the same day the applicant was identified by the victim during an identity parade.

On 18 November 2005 the applicant was charged with aggravated robbery. Later that day he was questioned in the presence of his lawyer and his mother. He gave detailed submissions about the robbery committed by him in the evening on 6 November 2005.

On 19 November 2005 judge of the Vostochny District Court of Biysk, in the presence of the applicant and his lawyer, granted the prosecutor's request to place the applicant in detention on remand. The decision was not appealed.

On 4 May 2006 the Vostochny District Court found the applicant guilty of aggravated robbery; the court referred, inter alia, to the applicant's confession and statement of 18 November 2005 and the victim's testimony. The court excluded the results of the identity parade from the evidence, in view of procedural irregularities. Three police officers were questioned in the trial court and denied having put any pressure on the applicant on 17 and 18 November, in order to obtain a confession. Officer Ye.K. confirmed in court that the applicant had been detained between 11 a.m. and 12 p.m.

The Altay Regional Court confirmed the trial court verdict on 6 July 2006.

2. Challenges to unlawfulness of detention

The applicant challenged the lawfulness of his de facto detention during the day on 17 November 2005. On several occasions in 2006 – 2007 he received replies from the Biysk Town Prosecutor's Office (the Town Prosecutor's Office) that his complaints about alleged unlawfulness of detention were unsubstantiated.

On 20 July 2006 an investigator of the Town Prosecutor's Office refused to open criminal investigation. He found that there have been no reasons to open criminal investigation upon the applicant's complaint of unlawful restraint, in view of absence of the event of crime. He found no reason to suggest that there had been "knowingly unlawful deprivation of liberty" in the applicant's case (Article 301 of the Criminal Code) on behalf of the police officers since the prosecutor had been timely informed of the applicant's detention. The reason for the applicant's detention had been the victim's identification of him as the perpetrator of the attack.

On 21 August 2006 the prosecutor of the Town Prosecutor's Office quashed and remitted that decision.

On 31 August 2006 the prosecutor of the Biysk Town Prosecutor's Office again ruled not to open criminal investigation.

On 30 November 2006 the prosecutor of the Biysk Town Prosecutor's Office ruled not to open criminal investigation upon the applicant's complaint of unlawful restraint, in view of absence of the event of crime.

The applicant appealed the decision of 31 August 2006 to a court, under Article 125 of the Criminal Procedural Code, and on 27 November 2006 the Vostochny District Court granted his complaint. The court found that the investigator had failed to indicate the reasons for his conclusions and had not disclosed the contents of the previous checks carried out by the prosecutor's office upon the applicant's complaints.

On 18 January 2007 the Altay Regional Court quashed and remitted the decision of 27 November 2006.

On 5 February 2007 the district court refused to consider the complaint about the decision of 31 August 2006 on the substance, since on 30 January 2006 the Biysk Town Prosecutor had already quashed it.

On 26 February 2007 the decision of 30 November 2006 was quashed by the deputy prosecutor of Biysk.

On 8 March 2007 the investigator again ruled not to open criminal investigation. The decision referred to the applicant's conviction and argued that his complaints against the local police had been motivated by personal revenge. It also found that since the applicant's guilt had been confirmed by the court, the police officers' actions related to the applicant's detention and questioning had been lawful. It does not appear that the applicant or the police officers involved had been questioned, nor does it appear that the investigator had found out the exact time of the applicant's detention.

On 14 March 2007 this decision has been forwarded to the applicant; at the same he had been informed that the investigator in charge had been reprimanded for failure to inform him timely of the decisions of 30 November 2006 and 8 March 2007.

COMPLAINT

The applicant complains under Article 5 § 1 of the Convention that his detention between 11 a.m. and 10:00 p.m. on 17 November 2005 had been unlawful.

QUESTION TO THE PARTIES

Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention during the day 17 November 2005?