



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

FIRST SECTION

Application no. 35973/07
Anton Olegovich KALAYDA
against Russia
lodged on 27 July 2007

STATEMENT OF FACTS

The applicant, Mr Anton Olegovich Kalayda, is a Russian national, who was born in 1978 and is detained in Norilsk, Krasnoyarsk Region.

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 ensuing detention

On 28 June 2007 the applicant had an altercation with a taxi driver, G., who allegedly refused to take him to the requested destination. The applicant then held a knife to G.'s neck ordering him to bring him to there. When the car stopped, two men, Boch. and Bog. – G.'s acquaintances, ran up to it. The applicant got out of the car. The men threw him to the ground. The applicant saw a police car approaching. He broke free and started running, tripped and fell down hurting his nose and scratching his palms. The police officers caught up with him, handcuffed him and brought him to the police station at about 4 a.m.

At 5 a.m. an ambulance arrived. The applicant was diagnosed with drug intoxication. Police officer M. took the applicant to office no. 221 on the second floor of the police station. M. told the applicant that he had attacked three taxi drivers and should confess. He also accused the applicant of some thefts. The applicant refused to comply.

Police officers M. and B. handcuffed the applicant and started beating him. They kicked him in the back, legs, arms and the head. The applicant

felt dizzy and nauseous. He agreed to make a confession statement and wrote what the police officers told him to.

At 6 p.m. the applicant was brought to the investigator's office. The investigator drew up the arrest record and questioned the applicant who confessed to the crimes.

When the police officer brought the applicant to the temporary detention centre, its administration refused to accept the applicant. He was then taken to a medical centre and examined by a medical practitioner. His injuries included multiple contusions on his head and left hip, a contusion of the left kidney, brain concussion and haematuria (the presence of red blood cells in the urine). The applicant stated to the medical practitioner that his injuries had resulted from an altercation with the taxi drivers.

On 29 June 2007 the applicant was taken to hospital. The surgeon who examined him did not confirm the diagnosis of the kidney contusion. He considered that the applicant had suffered from renal birth defects. The surgeon also noted multiple bruises and contusions on the applicant's chest, back and head. The applicant underwent an X-ray examination which did not confirm a brain concussion diagnosis.

The applicant was then held in a temporary detention centre until 30 June 2007, where he received medical assistance.

On 30 June 2007 the Norilsk Town Court authorised the applicant's pre-trial detention. It appears that he did not appeal against the relevant court order.

On the same day the applicant was taken to remand prison no. IZ-24/4 in Norilsk where he was detained pending investigation and trial.

On 1 July 2007 the applicant consulted the prison's doctor. He complained about headache and nausea. During the examination the doctor noted multiple contusions and bruises on the applicant's chest, back and head.

On 22 August 2007 the applicant underwent a forensic medical examination. The expert noted a contusion in the lumbar area.

It appears that on 6 September 2007 a forensic medical expert examined the applicant and documented his injuries noting that they had not caused any damage to his health.¹

On 17 January 2008 the applicant underwent a new forensic medical examination. He complained of some pain in the lumbar area. Having regard to the medical documents in the applicant's case-file and the results of the examination, the expert concluded that the applicant might have sustained the injuries in the course of the arrest. The expert excluded the possibility of the injuries to be self-inflicted.

2. The applicant's complaint about G.

On 18 July 2007 the applicant asked the police department to open a criminal case in respect of G., who had allegedly injured him in the altercation on 28 June 2007.

On 26 July 2007 the police department dismissed the applicant's complaint. The prosecutor's office quashed the said decision on 29 August 2007 and remitted the matter for further inquiry.

¹ The applicant did not submit a copy of the forensic medical report.

On 9 September 2007 the police department dismissed the applicant's complaint. The officer in charge of the inquiry noted that the applicant had sustained injuries as a result of the use of force against him by Boch. and Bog. who had tried to put an end to the applicant's assault on G.

3. The applicant's complaint about police officers B. and M.

On an unspecified date the applicant lodged a complaint against police officers B. and M alleging that they had subjected him to ill-treatment while he was in police custody on 28 June 2007.

On 16 August 2007 the town prosecutor ordered the inquiry into the applicant's allegations. On 26 August 2007 senior investigator D. at the prosecutor's office dismissed the applicant's allegations as unsubstantiated. The acting town prosecutor quashed the said decision on 5 September 2007 and ordered further inquiry.

Senior investigator D. questioned the applicant, who confirmed that his injuries had been inflicted by police officers B. and M.

When questioned by the investigator, both police officers denied the applicant's allegations. They submitted that, upon arrest, the applicant had already had the injuries inflicted by the persons who stopped his assault on G.

On 15 September 2007 senior investigator D. dismissed the applicant's complaint.

On 25 October 2007 the Town Court dismissed, *inter alia*, the applicant's appeal against the decision of 15 September 2007. The court questioned police officers B. and M., investigator Ch. who had questioned the applicant on 28 June 2007, investigator D. who had conducted the inquiry into the applicant's allegations of ill-treatment and taxi drivers G. and R. whom the applicant had allegedly assaulted.

4. Complaints about allegedly unlawful arrest and detention on 28 June 2007

On 29 October 2007 a senior investigator with the prosecutor's office dismissed the applicant's complaint that he had been unlawfully detained for fourteen hours on 28 June 2007. The court did not discern any unlawfulness in the fact that on that day the applicant had been detained for fourteen hours noting that "[the applicant] had been in an inebriated state ... and had to be held at the police station pending his detoxification".

On 30 October 2007 the acting head of the investigative department with the prosecutor's office quashed the decision of 29 October 2007 and ordered further inquiry.

On 9 November 2007 an investigator with the prosecutor's office dismissed the applicant's complaint noting as follows:

"The fact that [the applicant] ... , prior to his arrest, spent approximately 14 hours at the police station does not amount to a violation of the [his] rights. [The applicant] was in an inebriated state and had to be held at the police station pending his detoxification. The police officers conducted operative activities with [the applicant's] participation in order to establish ... the circumstances of the crimes committed by [him].

[The applicant] when at [the police station] was not *de facto* deprived of his freedom of movement. He was not placed in a cell ... or another room in order to restrict his freedom. In such circumstances, [the applicant] could have freely left [the police station]. However, he chose not to.”

It appears that the decision of 9 November 2007 was quashed and the investigator conducted further inquiry into the applicant’s allegations. On 23 November 2007 the investigator again dismissed the applicant’s complaint reiterating verbatim his earlier reasoning of 9 November 2007.

Subsequently the prosecutor’s office repeatedly re-opened the applicant’s case ordering further inquiry into his allegations. The latest relevant decision was taken on 28 April 2008.

On 30 June 2008 the Town Court considered the applicant’s appeal against the decision of 28 April 2008. The court established that the applicant had been brought to the police station at about 4 a.m. on 28 June 2007 and that the arrest record had been drawn up at 6 p.m. on the same day. On the basis of the testimonies made by the applicant and police officers B. and M., the court found that the applicant had spent considerable time in the hallway of the police station without attempting to leave it. The court concluded as follows:

“It follows from the [rules of criminal procedure] that detention should be understood as the restriction of movement of a person placed in a special room under the constant control of law enforcement personnel.

Such restrictions have not been applied in respect of [the applicant]. He became a suspect in a criminal investigation only after the investigator Ch. drew up his arrest record at 6 p.m. on 28 June 2007.

Regard being had to the above and on the basis of the inquiry conducted, the investigator K. has rightfully concluded that [the applicant] when being present at [the police station] was not restricted in movement and that he had been able to leave the premises. However, he had not done so which fact should be interpreted as his staying at [the police station] of his own free will.”

5. The applicant’s conviction

On 9 June 2008 the Town Court found the applicant guilty of several counts of theft and robbery and sentenced him to 11 years and 10 months’ imprisonment. It appears that the Regional Court held an appeal hearing in respect of the applicant’s conviction on 9 July 2008 and 19 February 2009.¹

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment in police custody on 28 June 2007.

The applicant complains under Article 5 §§ 1 (c), 2 to 5 of the Convention about his arrest on 28 June 2007. In particular, he alleges that, in contravention of the domestic rules of criminal procedure, the record of his arrest was drawn up fourteen hours after the actual arrest; that he was

¹ The applicant did not inform the Court about the outcome of the criminal proceedings against him.

not brought before the judge within forty-eight hours following arrest as required by domestic law and that he was not informed promptly about the reasons for his arrest.

QUESTION TO THE PARTIES

Did the applicant's presence at the police station from 4 a.m. to 6 p.m. on 28 June 2007 amount to deprivation of liberty under Article 5 § 1 of the Convention? If so, did such deprivation of liberty fall within paragraphs (a) - (e) of this provision (see *Creangă v. Romania* [GC], no. 29226/03, §§ 84-110, 23 February 2012)?