



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

FIRST SECTION

Application no. 40833/07
Mikhail Aleksandrovich VLADOVSKIY and
Lyubov Said-Aliyevna VLADOVSKAYA
against Russia
lodged on 5 September 2007

STATEMENT OF FACTS

The applicants, Mr Mikhail Vladovskiy and Ms Lyubov Vladovskaya, are Russian nationals, who were born in 1983 and 1955, respectively. The first applicant resides in Austria and the second applicant lives in Grozny. They are represented before the Court by Ms O. Sadovskaya and Mr A. Ryzhov, lawyers practising in Nizhniy Novgorod.

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

Mr Mikhail Vladovskiy, the first applicant, is a son of Ms Lyubov Vladovskaya, the second applicant.

A. The first applicant's conviction in 2004 and the related events

On 7 May 2003 the first applicant was taken from his home in Grozny by unknown persons and brought to Operational and Search Bureau no. 2 of the North Caucasus Department of the Ministry of the Interior in the Southern Federal Circuit (hereinafter also "ORB-2"), where police officers allegedly ill-treated him until 10 May 2003 with a view to obtaining his confession of having committed several crimes. In the applicants' submission, the first applicant's injuries must have been recorded by representatives of the Red Cross organisation. They provided no further details in that respect.

By judgment of 9 February 2004 the Supreme Court of the Chechen Republic found the first applicant guilty of unlawful acquisition and storage of ammunition (an artillery shell) and sentenced him to two years'

imprisonment. As regards the first applicant's alleged ill-treatment, the trial court noted that, upon its instruction, the prosecutor's office had verified the applicant's related submissions and dismissed them as unfounded. The court itself considered that the first applicant had raised the ill-treatment issue to avoid his criminal responsibility. Lastly, the trial court established that the first applicant had been, indeed, arrested on 7 May 2003.

On 23 June 2004 the Supreme Court of Russia dismissed the first applicant's appeal against the trial court judgment.

The first applicant was sent to the Chernokozovo remand prison to serve his sentence.

B. The first applicant's alleged ill-treatment in 2004

1. The applicants' account

On 8 June 2004 the first applicant was taken from the Chernokozovo remand prison to the Leninskiy Department of the Interior in the town of Grozny (hereinafter also "the Leninskiy ROVD").

Upon the first applicant's transfer to the Leninskiy ROVD investigator D. visited him in an office and requested that he confessed to having participated in several terrorist attacks, robberies and murders. He threatened the first applicant that if he refused, they would make him confess anyway. The first applicant denied his involvement in any crimes, after which D. left the office and three police officers entered it. They put a black plastic bag on the first applicant's head and started strangling him and hitting him on his entire body and, in particular, on his legs, using also their truncheons and plastic bottles filled with water and requesting that he confessed to having committed several murders, robberies and terrorist attacks. After the beatings the first applicant was unable to stand upright, his entire body was aching and he had severe pain in both legs.

On 9 June 2004 officers of the Leninskiy ROVD brought the first applicant to the injury care centre (*травмпункт*) of hospital no. 9 in Grozny. The police officers told the doctors that the first applicant had fallen from the stairs. At the time of his admission to the care centre the first applicant's left leg was broken, he had a vascular disruption in the right leg, contusions of ankle-joints in both legs and a partial disruption of ligaments in the right leg. The care centre doctors put the first applicant's right leg in plaster and bandaged his left leg. After that he was brought back to the Leninskiy ROVD.

On the same day the first applicant was visited by investigator D. After his visit, fearing further torture, he wrote a death note naming investigator D. as the person responsible for his death and hid it under the plaster.

On 16 June 2004 the first applicant was transferred to ORB-2 where its officers severely beat him up, applying also electric current to various parts of his body, with a view to obtaining his confessions to murders, terrorist attacks and robberies. After that the first applicant was placed in one of the cells of ORB-2 and, being afraid that the ill-treatment would continue, cut his veins on both arms. Following his fellow inmates' calls for help, staff of ORB-2 provided the first applicant with emergency treatment.

2. Relevant medical documents

By letter dated 29 July 2004 and addressed to the first applicant's lawyer, deputy head of the injury care centre of hospital no. 9 informed the latter that on 9 June 2004 the first applicant had been brought under convoy to the injury care centre and that he had been diagnosed with contusion of ankle joints in both legs, accompanied by a partial disruption of the ligaments in the right leg. The first applicant's right leg had been put in plaster and medical recommendations had been given to him.

C. Proceedings concerning the first applicant's alleged ill-treatment in 2004

On 26 June 2004 the first applicant's lawyer T.U. complained about her client's ill-treatment to the prosecutor's office of the Leninskiy District in Grozny (hereinafter also "the district prosecutor's office"), providing a detailed description of how he had been mistreated in the Leninskiy ROVD and in ORB-2 and requesting that a forensic medical examination of her client be conducted without delay, that his co-detainees in both detention facilities be interviewed and that those responsible for the ill-treatment be prosecuted.

In June 2004 the first applicant's parents lodged further complaints along the same lines with prosecutors of various levels.

By letter of 3 August 2004 the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office") informed the second applicant that the investigating authorities had refused to open a criminal case into the first applicant's alleged ill-treatment. The letter did not indicate the date of the decision and it does not appear that a copy of it was enclosed to the letter.

On 18 August 2004 the first applicant complained about his ill-treatment to the district prosecutor's office, requesting that those responsible for it be brought to justice. On the same date the applicant's lawyer T.U. requested the district prosecutor's office to carry out a further medical examination of the first applicant and to inform him whether a forensic medical examination in respect of his client's injuries sustained on 8 June 2004 had already been conducted.

Further complaints along the same lines were sent to various authorities, including the prosecutor's office of the Chechen Republic and the Prosecutor General of the Russian Federation, by the first applicant's parents in the time span between July and October 2004.

By letter of 25 October 2004 the prosecutor's office of the Chechen Republic informed the second applicant that on 12 September 2004 the district prosecutor's office had refused to institute criminal proceedings into the first applicant's alleged ill-treatment.

By judgment of 30 March 2005 the Supreme Court of the Chechen Republic acquitted the first applicant and his co-accused L.M. and ordered their release from custody (see below). Following his release the first applicant left Russia.

On 6 and 7 June 2005 lawyers of the Chechen branch of the NGO "Committee against Torture" complained on the first applicant's behalf

about his ill-treatment to the district prosecutor's office, seeking institution of criminal proceedings.

By decision of 28 November 2005 investigator I.Kh. of the prosecutor's office of the Chechen Republic refused to institute criminal proceedings into the first applicant's alleged ill-treatment. The decision stated that on 6 August 2004, 10 February and 30 October 2005 the district prosecutor's office had already refused to open a criminal case into the first applicant's allegations of ill-treatment. The decision of 28 November 2005 referred to statements by investigator D., police officers I.A., R.Kh. and I. Abdur. of the Leninskiy ROVD and officers S.A., A.M. and Sh.E. of ORB-2, all those officials denying having ill-treated the first applicant or applied any pressure to him. The decision further referred to the first applicant's own statement of 9 June 2005, in which he submitted that he had broken his leg when falling down the stairs in the Leninskiy ROVD. According to forensic medical examination no. 691 of 7 July 2004, the first applicant stated to the expert that he had cut his veins with a razor and that no "unlawful methods of investigation" had been applied to him. Having regard to the foregoing, investigator I.Kh. concluded that the first applicant's allegations of ill-treatment were unfounded.

On 16 December 2005 the Leninskiy District Court of Grozny dismissed the applicants' complaint about the decision of 12 September 2004 refusing to open a criminal case into the first applicant's alleged ill-treatment.

On 26 January and 2 March 2006 the prosecutor's office of the Chechen Republic issued further decisions refusing to institute criminal proceedings into the first applicant's alleged ill-treatment, endorsing the reasoning of the decision of 28 November 2005.

On an unspecified date in April 2006 the deputy Prosecutor of the Chechen Republic set aside the refusal of 2 March 2006.

On 26 April 2006 the deputy Prosecutor of the Chechen Republic instituted criminal proceedings into the first applicant's alleged ill-treatment under Article 286 § 3 of the Criminal Code and entrusted the investigation to the prosecutor's office of the Chechen Republic. It appears that the case file was given the number 50057.

Following the opening of the criminal case, the first applicant's lawyers and the second applicant repeatedly requested the investigating authorities to provide them with information about the investigation and to grant the first applicant victim status in those proceedings. However, their requests were mostly left without reply.

On 27 November 2006 the first applicant's lawyers complained to the republican prosecutor's office that they received no information about the investigation.

By letter of 28 April 2007 the deputy Prosecutor General of Russia informed the second applicant, in reply to her complaint, that on 26 July 2006 the investigation in case no. 50057 concerning her son's alleged ill-treatment had been suspended and that on 10 April 2007 that decision had been set aside and the investigation had resumed.

By letter of 1 August 2007 the republican prosecutor's office informed the first applicant's lawyers that it was impossible to grant their client victim status because the investigators had sufficient grounds to consider that he would not appear in person to be recognised a victim. The applicants

complained about that decision to the Leninskiy District Court. The outcome of the proceedings remains unclear.

In the applicants' submission, they are unaware of the investigative steps taken by the authorities and have no information about the state of the investigation into the first applicant's ill-treatment.

D. Information concerning criminal proceedings against the first applicant, initiated in June 2004

By judgment of 30 March 2005 the Supreme Court of the Chechen Republic acquitted the first applicant of all charges levelled against him by the prosecuting authorities and including participation in an organised armed group, concerted terrorist attacks, robberies, unlawful possession and fabrication of arms and assault on law-enforcement officials, and ordered his immediate release. By the same judgment it acquitted his co-accused L.M.

The court declared inadmissible, as obtained in violation of the procedural rules, several pre-trial statements by M.L. in which he also incriminated the first applicant, as well as records of crime scene inspection with the former's participation. It further noted that both the first applicant and L.M. had stated before the court that they had been ill-treated during the preliminary investigation and that they had given the names of the officers of the Leninskiy ROVD who had participated in their ill-treatment, namely officers I.A. and R.Kh. It went on to observe that it had at its disposal medical evidence attesting to the fact that L.M. and the first applicant had sustained bodily injuries, referring, in respect of the latter, to a certificate from hospital no. 9. The court also stressed that the investigating authorities had persistently prevented the first applicant's lawyer T.U. from participating in the investigative steps involving his client and from having a possibility to talk to him in private.

The trial court further pointed out that Mr Chudalov, on whose statements the prosecution also relied in pressing charges against the first applicant and L.M., when questioned by the court and accusing the first applicant and L.M. of having committed several crimes in concert with him, "had been brought to the courtroom in a helpless state, with obvious traces of beatings, and had had to be supported by convoy during his questioning". During the court's questioning of Mr Chudalov on the premises of the remand prison at the request of the defence, he submitted to the court that before being brought to that earlier hearing he had been ill-treated by officers "Islam", "Ruslan" and "Ibragim" to testify against the first applicant and L.M. He requested the court to exclude his earlier testimony as given under duress. The trial court noted that Mr Chudalov's allegations that physical force had been unlawfully applied to him while he had been detained for more than a month in the Leninskiy ROVD were objectively justified by certificate no. 7/12/10-225 of 15 February 2005 from the medical unit of remand prison IZ-20/1, according to which he had been admitted to that remand prison on 7 February 2005 with the following diagnosis "a burn-type hyperaemia on the right cheek of the size of a "five-kopeck coin".

The court concluded that the charges against the first applicant were primarily based on L.M.'s confessions and other evidence declared inadmissible and that no other evidence corroborated his guilt in the offences concerned.

On 1 June 2005 the Supreme Court of the Russian Federation set aside the acquittal and remitted the case for a fresh examination, in a different court composition, on the ground that the trial court's judgment contained conflicting findings.

It appears that the related proceedings are pending.

COMPLAINTS

The first applicant complains under Article 3 of the Convention about his ill-treatment in the periods (a) from 7 to 10 May 2003, (b) on 8 June 2004, and (c) on 16 June 2004 and the authorities' failure to carry out an effective investigation into his allegations.

The first applicant further complains under Article 5 about his detention from 7 to 10 May 2003.

The second applicant complains under Article 3 that she had endured mental suffering because of the first applicant's ill-treatment and the authorities' refusal to investigate it.

Lastly, the applicants complain under Article 13 of the Convention that they did not have effective remedies in respect of their above-mentioned grievances under Articles 3 and 5.

QUESTIONS TO THE PARTIES

1. Having regard to the first applicant's specific submissions, was there a violation of Article 3 of the Convention on account of his alleged ill-treatment, threats and intimidation between 8 and 17 June 2004, while he was on the premises of the Leninskiy ROVD and the ORB-2 in Grozny?

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

(a) In respect of both of the above-mentioned facilities:

(i) What were the exact time and dates of the first applicant's admission to and detention in the Leninskiy ROVD and ORB-2?

(ii) Was he given access to a lawyer after his admission to and while detained in both of the above-mentioned facilities, if so, when?

(iii) Was he given access to a doctor, upon admission to each facility and, if so, when and was/were his medical examination/s conducted out of the hearing and out of sight of police officers and other non-medical staff?

(iv) Was he given the possibility of informing a family member, friend, etc. about his detention and his location and, if so, when?

(b) What activities involving the first applicant were conducted at the premises of the Leninskiy ROVD and ORB-2 in the above-mentioned time span (between 8 and 17 June 2004), and at which times of the day? What was the applicant's procedural status? What confessions and/or statements did the first applicant give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions, which are **legible**/provide their typed copies, where necessary)? Was the first applicant given access to a lawyer before and during each such activity?

2. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into the first applicant's allegations of ill-treatment? In particular:

(a) Were the investigating authorities who carried out the inquiries into the first applicant's allegations of ill-treatment independent from the investigating authorities who were responsible for investigating the criminal case against him?

(b) Which officers from which police department(s) were involved in the inquiries into the first applicant's complaints of police ill-treatment? What

operational and other activities did they carry out in the course of the inquiries and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(c) The parties are invited to specify, in particular:

-whether forensic medical examinations/medical expert examinations were performed in respect of the first applicant in order to establish the nature and the origin of his injuries?

-when was the first applicant questioned/interviewed in respect of his allegations of ill-treatment in the framework of each of the inquiries conducted into it?

(d) What is the state and the outcome of the criminal investigation instituted into the first applicant's allegations of ill-treatment (case file no. 50057)?

The Government are requested to submit relevant **legible** documents and, if need be, their typed copies, in response to each of the above questions, including, but not limited to:

- an entire copy of case file no. 50057 concerning the investigation opened into the first applicant's ill-treatment;

- forensic medical report no. 691 of 7 July 2004;

- the logbooks of the police ward of the Leninskiy ROVD (*книга учета лиц, содержащихся в ИВС*) and ORB-2 for the period between 8 and 17 June 2004;

-the medical logbooks of individuals admitted to the police ward of the Leninskiy ROVD (*медицинский журнал первичного учета лиц, поступающих в ИВС Ленинского РОВД*) and ORB-2 for the period between 8 and 17 June 2004;

- similar logbooks in respect of all other detention facilities in which the first applicant was held between 8 and 20 June 2004.

3. Did the first applicant have at his disposal effective domestic remedies for his complaints under Article 3 of the Convention about his alleged ill-treatment in 2004, as required by Article 13 of the Convention?