



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

FIRST SECTION

Application no. 7626/08
Aslan Yunusovich ALIYEV
against Russia
lodged on 18 December 2007

STATEMENT OF FACTS

The applicant, Mr Aslan Aliyev, is a Russian national, who was born in 1981 and is currently serving a prison sentence in correctional colony IK-2 in the Kurgan Region. He is represented before the Court by Mr D. Itslyayev, a lawyer practising in Grozny.

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

A. The applicant's arrest and alleged ill-treatment

On 26 September 2005 the applicant was working at a car service centre "Karmen" in Grozny, where he was employed at the material time.

At about 1 p.m. on 26 September 2005 several armed persons wearing camouflage uniforms burst into the service centre. Without introducing themselves or producing any documents and threatening the applicant and other employees of the service centre with their guns they arrested the applicant and took him away. The applicant subsequently learnt that he had been arrested by officers of the special police forces (hereinafter also "the OMON") and police officers of the Groznenskiy District Department of the Interior of the Ministry of Interior of the Chechen Republic (hereinafter also "the Groznenskiy ROVD"). They brought the applicant to the OMON premises in Grozny where OMON officers ill-treated him for three days requesting that he confessed to having committed several crimes. The OMON officers kicked and hit him on his entire body with their hands, truncheons and a spade and passed electric current through his body. During those three days the applicant was given neither food nor water.

On 29 September 2005 the OMON officers brought a special truncheon and a video camera and told the applicant that they would insert the truncheon into his anus, would make a video record of it and would

distribute the recording throughout Chechnya if he refused to confess. Unable to stand the torture and fearing to be disgraced by the dissemination of the video record, the applicant signed the self-incriminating statements they requested from him.

On the same day a formal arrest record in respect of the applicant was compiled. It indicated 29 September 2005 as the date of his arrest. After that the applicant was transferred to the police ward of the Groznenskiy ROVD.

On 30 September 2005 the applicant signed a further confession statement under threats by officers of the Groznenskiy ROVD of further ill-treatment if he refused to cooperate.

On 7 October 2005 the applicant was transferred to remand prison SIZO-20/1 in Grozny. Upon admission the applicant was examined by the facility doctor. The relevant entry in the applicant's medical file, dated 7 October 2005, states that there were two "vertical stripes" on the applicant's back, 25 and 10 cm long, respectively; roundish parallel abrasions covered with crust on the upper part of the applicant's back; swelling of the left shoulder joint, and crust-covered bruises on the front surface of the right lower leg under the knee. According to the entry, the applicant explained that those injuries had been caused by the use of truncheons during his arrest.

Subsequently the applicant was regularly taken from the remand prison to the Staropromyslovkiy Department of the Interior (hereinafter also "the Staropromyslovskiy ROVD") to carry out various investigative steps with his participation.

On 19 February 2006 officers of the Staropromyslovskiy ROVD took the applicant to the village of Sadovoye for an on-site verification of his earlier statements. There the applicant retracted all his earlier statements, claiming his innocence, following which police officers first threatened him with reprisals in the presence of his lawyer B. and immediately after that beat the applicant up in their vehicle. On the same evening the applicant was brought to the Staropromyslovskiy ROVD where its police officers severely ill-treated him by suspending him to a pipe, strangling him and passing electric current through his body. The applicant fainted on two occasions and fearing further ill-treatment signed a statement saying that he had retracted his earlier confessions because he was ashamed of the reaction of the residents of the village of Sadovoye. In the applicant's submission, his co-detainees in the police ward of the Staropromyslovskiy ROVD had witnessed the injuries sustained by him as a result of his ill-treatment.

On 26 February 2006 the applicant was brought back to remand prison SIZO-20/1. According to the applicant, on the same date he was examined by the facility medical staff and the entry of the same date in his medical file stated that he had three bruises on his back, covered with crust and measuring 0,3×2 cm. In the relevant copy of the excerpt from the medical file enclosed by the applicant the date of the entry is partly not legible.

B. Proceedings concerning the applicant's alleged ill-treatment

On 28 February 2006 the applicant's lawyer B. complained to the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office") about his client's ill-treatment, enclosing its

detailed description and the medical documents in his possession. He also stressed that during an on-site verification of the applicant's and his co-accused statements his client had denied his involvement in the imputed crime, following which officers of the Staropromyslovskiy ROVD had threatened him with reprisals in the presence of B. and also M., lawyer of the applicant's co-accused.

On 10 March 2006 investigator D. of the republican prosecutor's office ordered the Forensic Medical Expert Bureau of the Chechen Republic (hereinafter also "the forensic bureau") to carry out the applicant's expert medical examination.

On the same date forensic expert A. examined the applicant on the premises of the remand prison. Expert report no. 215 of 10 March 2006, in so far as relevant, states as follows:

"...

According to [the applicant's] submissions: On 15 February 2006 was beaten up by officers of the Staropromyslovskiy ROVD. [They] kicked [him], hit [him] with their hands, truncheons on the entire body and tortured with electric current, having put electric wires to the fingers on [both] hands. No medical assistance received in that connection. Complaints about headaches and pain fits in the abdomen.

Submitted to the expert: 1. [the applicant's] medical file from SIZO-1. 2.[the applicant] ...

Data of the medical file: ...07.10.05. No complaints. There is a vertical line measuring approximately 25 cm and the second line measuring approximately 10 cm on the back. On the upper part of the back [there are] roundish parallel abrasions covered with crust. Swelling of the left shoulder joint noted. On the front surface of the right lower leg under the knee bruises covered with crust. According to [the applicant's] submissions [those are] traces of beatings with truncheons during arrest.

26.12.05. No bodily injuries. Can be held in SIZO.

26.02.06. No complaints. 3 Bruises 0,3×2cm on the back, covered with crust, without traces of inflammation.

28.02.06. Complaints about pulsating pain in the right side of the body, heartburn. Objectively: skin and visible mucosa clean. ... An examination by a neurologist prescribed.

[Expert] examination data: .. Locally: at the outer surface of the middle third of the left forearm a red scar measuring 1,5×0,5 cm. The scar is soft, floating, at the same level with the surrounding skin, congested. In the left subscapular region a whitish scar measuring 3,5×1,5 cm, hollow and rough (shell wound in 1999). On different parts of the back three red linear scars measuring 2,5×0,2 cm, 3×0,2 cm and 4×0,2 cm. On the outer surface of the upper third of the right lower leg a red oval scar measuring 3×1cm. All scars are red and are at the same level with the surrounding skin. No other injuries detected during examination.

CONCLUSIONS

On the basis of the data from the medical file of SI-1 of Grozny concerning [the applicant] ... , his forensic medical examination ... [I] come to the following conclusions:

1. On the body of [the applicant] were discovered [the following] injuries:

- bruises on the back (according to medical file [entry] of 26.02.06),

- scars on the left forearm and [in] various areas on the back (4) and on the right lower leg.

2. The bruises on the back were caused by a blunt solid object (objects), possibly at the date and in the circumstances described by [the applicant]. The red scars on the left forearm, the back (3 [scars]) and the left lower leg date back 1-3 months before the examination. ...At the present moment it is impossible to determine the mechanism of infliction of injuries, as a result of the healing of which the scars were formed. ...”

By decision of 13 March 2006 investigator D. of the republican prosecutor’s office refused to institute criminal proceedings into the applicant’s alleged ill-treatment. The decision stated that on 29 September 2005 the applicant had been arrested at his place of work in the repair centre by officers of the Groznenskiy ROVD with the participation of OMON officers on suspicion of an assault at law-enforcement officials and brought to the Groznenskiy ROVD. The applicant and his lawyers had not complained about his ill-treatment on the day of his arrest or later. Deputy head of the OMON I.I. stated that the OMON officers had not participated in the applicant’s arrest on 29 September 2005; that the latter had been arrested by officers of the Groznenskiy ROVD to which premises he had been brought after his arrest. The OMON officers had not applied physical force to the applicant and he had never been brought to the OMON premises. Officer S.-Kh.Z. of the Groznenskiy ROVD submitted that he had overseen the special operation aimed at the applicant’s arrest on 29 September 2005, that following his arrest at the service centre the applicant had been brought to the Groznenskiy ROVD where no physical or other pressure had been applied to him by any police officers. On 2 February 2006 the applicant had voluntarily decided to show how he and his accomplices had extorted money from V.D. in the village of Sadovoye but after his arrival there, convoyed by officers of the Groznenskiy ROVD, he had refused to participate in that investigative step. Officers A.D. and R.Sh. of the Groznenskiy ROVD gave statements similar to that of S.-Kh.Z. Officers D.S. and I.M. of the Staropromyslovskiy ROVD explained that they had not brought the applicant to the village of Sadovoye and had not applied physical force against him. Similar statements were obtained from S.S., head of the police ward of the Staropromyslovskiy ROVD, and D.Z., its on-duty officer. Those officials, as well as an on-duty officer of the police ward of the Groznenskiy ROVD submitted that the applicant had not been subjected to ill-treatment on the premises of those law-enforcement authorities, that the applicant had not complained to them about it or sought medical assistance in that connection. The decision further reiterated the findings of the forensic examination no. 215 and the investigator considered that the applicant’s injuries discovered by the forensic expert had not been sustained as a result of use of force against him by police officers of the Groznenskiy or Staropromyslovskiy ROVD or the OMON and noted that it could not be excluded that they might have been sustained prior to his arrest. It further concluded that the alleged ill-treatment of the applicant had never taken place.

On 20 October 2006 the applicant complained to the prosecutor of the Chechen Republic that he had been ill-treated by law-enforcement

authorities into incriminating himself and had been arrested on 26 September 2005 at his place of work and brought to the OMON base where he had been subjected to torture during three days. He also complained about his ill-treatment on 19 February 2006 and requested that his submissions be verified. It is unclear whether that complaint was ever replied to.

On 4 May 2007 the applicant appealed against the refusal to institute criminal proceedings issued on 13 March 2006 to the Zavodskoy District Court of Grozny.

On 25 May 2007 the district court dismissed the applicant's complaint.

By decision of 20 June 2007 the Supreme Court of the Chechen Republic upheld the district court decision on the applicant's appeal.

C. Information concerning criminal proceedings against the applicant

By judgment of 27 July 2006 the Supreme Court of the Chechen Republic found the applicant guilty of participation in an illegal armed group, several concerted terrorist attacks and assaults on law-enforcement officials, an aggravated concerted robbery and unlawful acquisition, possession and carrying of arms and explosives. As regards the applicant's allegations that his pre-trial self-incriminating statements had been obtained under duress and that he had been ill-treated by police officers, the court noted that on 1 February, 13 March and 24 June 2006 the prosecutor's office of the Chechen Republic had dismissed the applicant's and his co-accused' related complaints. The court also noted that it found unreliable statements by witnesses R.I. and R.O. that the applicant had been arrested by unknown men at his place of work on 26 September 2005 because the applicant's arrest record indicated 29 September 2005 as the date of his arrest. The applicant was sentenced to sixteen years' imprisonment. By the same judgment the court convicted the first applicant's co-accused A.N.

The applicant appealed against the trial court judgment, reiterating, among other things, his submissions concerning the alleged ill-treatment and claiming that the authorities' related inquiries had been superficial. He also stressed that the trial court had disregarded not only statements by R.I. and R.O. confirming that he had been, in reality, arrested on 26 September 2005, but also the documents, appended to the case-file, and certifying that on 28 September 2005 the prosecutor's office of the Staropromyslovskiy District had received the applicant's relatives' complaint about his abduction.

On 13 February 2007 the Supreme Court of the Russian Federation dismissed the applicant's appeal against the trial court judgment.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment and that the authorities failed to carry out an effective investigation into his allegations.

He further complains under Article 13 of the Convention that he had no effective remedies in respect of his grievances under Article 3.

QUESTIONS TO THE PARTIES

1. Having regard to the applicant's submissions, was he subjected to a treatment contrary to Article 3 of the Convention in the time-span between 26 September 2005 and 20 February 2006 and, in particular, (i) on 26-29 September 2005 and (ii) between 15 and 20 February 2006? The reference is being made to medical records confirming the existence of injuries on the applicant's body. The Government are invited to address the following factual questions.

(a) As regards the applicant's arrest and the ensuing events:

(i) On what date and at what place was the applicant arrested and what authorities participated in his arrest?

(ii) What persons, besides police officers who arrested the applicant, were present at the time and place of his arrest?

(iii) In what facility/to the premises of what authority was the applicant placed on the day of his arrest?

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

(v) Was he given access to a lawyer and, if so, when?

(vi) Was he given access to a doctor and, if so, when and was his medical examination conducted out of the hearing and out of sight of police officers and other non-medical staff?

(vii) In what facilities was the applicant held after his arrest and until 25 February 2006?

(b) What activities involving the applicant and by what law-enforcement authorities were conducted in the period between 26 September 2005 and 20 February 2006? If they were carried out at night, was this lawful? What was the applicant's procedural status? What confessions and/or statements did the applicant give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions, as well as on-site verifications of his statements)? Was the applicant given access to a lawyer before and during each such activity?

In answering each of the above questions the Government are requested to submit the relevant legible documents, or, where necessary, accompany them by typed copies, in support of their information.

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

(a) Were the investigating authorities who carried out the inquiries into the 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 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 applicant in order to establish the nature and the origin of his injuries?
- when was the applicant questioned/interviewed in respect of his allegations of ill-treatment in the framework of each of the inquiries conducted into it?

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:

- the applicant's medical file;
- entire copies of case-files of all inquiries into the applicant's alleged ill-treatment, leading to decisions refusing to institute criminal proceedings, issued on 1 February, 13 March and 24 June 2006;
- copies of all applicant's and his lawyers' complaints about the ill-treatment;
- copy of the trial record of the Supreme Court of the Chechen Republic concerning its judgment of 27 July 2006 in the applicant's case;
- reply of investigator M.Israpilov of the prosecutor's office of the Staropromyslovskiy District to the applicant's lawyer B. concerning the applicants' relatives' complaint about the applicant's abduction of 28 September 2005 (as referred to on page 1 of the applicant's additional appeal statement against the judgment of 27 July 2006, volume 9 of the criminal case-file, page 43), as well as a copy of the applicants' relatives' complaint of that date.

3. Did the applicant have at his disposal effective domestic remedies for his complaints under Article 3 of the Convention about his alleged ill-treatment in 2005, as required by Article 13 of the Convention?