



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

FIRST SECTION

Application no. 7927/08
Timur Visitovich SATABAYEV
against Russia
lodged on 28 January 2008

STATEMENT OF FACTS

The applicant, Mr Timur Satabayev, is a Russian national, who was born in 1976 and is currently serving a term of imprisonment in correctional colony UShch-349/12 in the Sverdlovsk Region. He is represented before the Court by lawyers of Stichting Russian Justice Initiative, an NGO based in the Netherlands with a representative office in Russia

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

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

In 2002 the applicant, who resided at the material time in Grozny, found a pistol with ammunition in a deserted house in the village of Voykova of the Zavodskoy District of Grozny. He hid the pistol in the vicinity of the house.

On 5 March 2002 the applicant took the pistol from his cache to bring it home. On his way home he saw a group of five to six armed men in masks and uniforms approach him. The applicant knocked on the door of the first house on his way and when the house owner opened it, he came inside. The uniformed men followed him inside the yard and ordered the applicant and the house owner to produce their identity papers. When the applicant was taking out his passport, one of the armed masked men suddenly attacked him from the backside and discovered his pistol, following which he immediately shouted to others that the applicant was armed. Other uniformed individuals immediately started beating the applicant by hitting him with their gun butts on the head and body. The applicant fainted.

On the same day, when the applicant came back to his senses, he found himself inside an office, cuffed to a radiator. The applicant had a severe headache; his left eye to which he had received a gun butt blow did not

open. His right eye was swollen and covered with blood and he could barely see with it. He also had a strong pain in the area above the right eye. Having touched it, he decided that the bone had cracked or was broken. His nose was bleeding and was also broken. The applicant's entire body was aching, the tracksuit he was wearing had been cut with a knife and covered with blood. The police officers who were in the room told him that he was at the Department of the Interior of the Chechen Republic (hereinafter "the Chechen UVD") and that he had been arrested by officers of the special police forces ("the OMON").

On the same day police officers scotched his mouth and beat him up by hitting him with their rubber truncheons on his back, legs and on the groin. They tortured him, asking where he had got the pistol and the ammunition, and also requested that he confessed to having committed a number of crimes, including explosions of military vehicles and murders of people he did not know. Faced with his refusal to confess and unsatisfied with his explanation that he had found the pistol, they continued beating him up. After a while they brought him to the police ward of the Chechen UVD where the medical personnel did not examine the applicant and did not provide him with medical assistance. The beatings continued for the next two days, the police officers hitting him with their truncheons, kicking him on his entire body and requesting that he confessed. When he was brought to his cell after the beatings the applicant had difficulty breathing because his ribs were broken. He was constantly dizzy and vomited several times.

On 7 March 2002 the applicant was taken to the Operational and Search Bureau no. 2 of the North Caucasus Department of the Ministry of the Interior in the Southern Federal Circuit (hereinafter also "the ORB-2"; in some of his statements the applicant also refers to ORB-2 as "RUBOP", the latter being the earlier title of the authority in question) where officers of that authority took him to an office on the fourth floor and severely beat him up by hitting him with their fists and plastic bottles filled with water and kicking him on his entire body. They also suspended him by handcuffs and put a gas mask on his head and cut airflow so as to induce suffocation. They also administered electric shocks to his ears and fingers on the right hand.

At about 2 a.m. on 7 March 2002 the officers brought him to a cell where inmates I.D., R.I., I.A. and M.A. told him that they had also been ill-treated and that he would be tortured every day if he refused to confess, as requested by police officers.

The applicant was held in ORB-2 for about a month and was repeatedly tortured by police officers. The interrogations accompanied by torture usually started in the evening, at about 8 p.m., and continued until early in the morning. The police officers tortured him with electric shocks administered to different parts of his body, including the genitals. They also strangled him, burnt cigarette butts against his body, in particular, twice on his back and once on his forehead and left him hang suspended with handcuffs fixed to the door. They also told him that they had killed his brother T. Unable to stand the torture, around 15 March 2002 the applicant signed some of the papers they gave him without reading their content. On an unspecified date after that a certain investigator V. visited the applicant and also made him sign some papers. On an unspecified date in April 2002 the applicant was brought to an office where investigator V. and investigator

G. of the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office") were present. G. was dissatisfied with the fact that the applicant had confessed to having committed several specific murders because G. had already "solved" them and found out that they had been committed by another person, I.Ch. After that conversation the police officers stopped insisting that the applicant confessed to having committed those murders.

On 13 April 2002 the applicant was taken in a trunk of a Niva vehicle to the Temporary Department of the Interior of the Oktyabrskiy District of Grozny (hereinafter also "the Oktyabrskiy VOVD"). There he was handcuffed to a grid and several men wearing masks beat him up without asking anything of him, after which he was placed in a cell in the VOVD police ward. The applicant stayed at the VOVD police ward for the next ten days.

About ten days later a certain prosecutor B. responsible for supervision of detention facilities visited the applicant in the Oktyabrskiy VOVD and asked him if he had any questions. The applicant asked B. to inform his relatives about his arrest, following which the latter instructed the police ward on-duty officer to do so. B. told the applicant that he was considered missing and that his name was on a wanted list.

On 24 April 2002 the applicant was transferred to the police ward of the Chechen UVD and on 30 April 2004 – to a remand prison in Chernokozovo (hereinafter also "the Chernokozovo remand prison") where he was visited, along with other inmates, by members of the International Red Cross to whom he confirmed that the detainees were ill-treated but did not tell anything about his own ill-treatment, fearing reprisals.

On 20 May 2002 the applicant was transferred to the Temporary Department of the Interior of the Leninskiy District in Grozny (hereinafter also "the Leninskiy VOVD"). There he was ill-treated during two days, the police officers cuffing him to a shower and beating him up.

On 6 June 2002 the applicant was returned to the Chernokozovo remand prison.

On 5 July 2002 the applicant was transferred to the Chechen UVD from where he was regularly taken to ORB-2.

On 10 July 2002, while the applicant was on the premises of ORB-2, he was interrogated by investigator Kh.G. who told him that, according to the documents in his possession, the applicant was implicated in an explosion of a UAZ vehicle. The applicant denied his involvement, submitting that he had been tortured by ORB-2 officers into incriminating himself. He pointed at G.I. and A.M., officers of ORB-2 who were present in the room and who immediately beat the applicant up in the presence of the investigator. After that Kh.G. left the room, G.I. and A.M. put a gas mask on the applicant's head and cut the air flow, inducing his suffocation, hit and kicked him on his body and also administered electric shocks to his body by connecting electric wires to his ear and a finger of his hand. They continued torturing him in that way on 11, 12, 15 and 16 July 2002.

On 22 August 2002 judge K. held a hearing concerning an extension of the applicant's detention on the premises of the police ward of the Chechen UVD in the presence of the applicant, investigator Kh.G and the applicant's lawyer Mrs M.Ya., whom the applicant saw for the first time. The applicant

told the judge that he was not guilty, that he had been tortured to incriminate himself and that investigator Kh.G. had been present during his torture. The judge refused to extend the applicant's detention for two months, as requested by Kh.G., and ordered the latter to terminate the preliminary investigation in one month "without humiliating" the applicant. Kh.G. complied with that instruction and dropped some of the charges against the applicant, keeping only the charge of unlawful possession of arms (the pistol), in respect of which the applicant admitted his guilt.

On 20 September 2002 the applicant was transferred to the Chernokozovo remand prison.

On 24 September 2002 the applicant and three other persons (Yus., Yun. and Ba.) were transferred to the police ward of the Chechen UVD from where they were immediately taken to ORB-2. There they were brought to the fourth floor, put with their faces against the wall and hit and kicked on their bodies because they refused to confess to the crimes, as requested by ORB-2 police officers. The applicant was also specifically beaten up for his complaint about the ill-treatment to the town prosecutor of 2 September 2002 (see below). After a while the applicant was brought to a room where he saw his lawyer and a number of plain-clothes people, ORB-2 officers being also present. The lawyer told the applicant that one of the persons was a judge and the latter told him that an unspecified criminal case against him had been closed for lack of evidence of his involvement in the crimes. The applicant told the judge that he was unwell and the judge instructed a prosecutor, also present in the room, to provide the applicant with medical assistance. One of the ORB-2 officers put a hand on the applicant's shoulder and told the judge, laughing, that they "would heal the applicant with a shock therapy this evening". After that the applicant stayed in ORB-2 for the next two days and his ill-treatment continued, the officers requesting that he signed further confession statements.

On 27 September 2002 the applicant and other persons (apparently the same individuals with whom he had been allegedly beaten up in ORB-2 on 24 September 2002) were transferred back to the police ward of the Chechen UVD from where they were brought to the Chernokozovo remand prison.

On 4 October 2002 the applicant and the three individuals mentioned above were transferred back to the Chechen UVD.

On 7 October 2002 the applicant and his co-detainees were against transferred to ORB-2. The applicant was brought there in a trunk of a Niva vehicle. Between 7 and 9 October 2002 officers of ORB-2 continued to torture the applicant by hitting him with their fists and rubber truncheons and kicking him on his entire body. They also put a gas mask on his head, cut the air flow, strangled him and administered electric shocks to his body. Unable to stand the ill-treatment, the applicant signed the documents requested of him by investigator D. During the same period of time, on advice by his lawyer and under pressure of officers of ORB-2, he also signed the documents confirming that he had participated in an explosion of a UAZ vehicle with police officers. After that the applicant was transferred to the police ward of the Chechen UVD where he was not examined by its medical personnel on admission, as on all previous occasions.

On 11 October 2002 the applicant was sent to the Chernokozovo remand prison. Upon admission to that facility he was examined by the staff of its medical unit who compiled a record of his medical examination (*акт судебно-медицинского освидетельствования*). According to that document, the applicant had a bruise measuring approximately 14×10cm on the right shoulder; a bruise measuring approximately 10×5cm on the left shoulder; a bruise measuring 7×4cm on the right shoulder-blade, and a bruise measuring approximately 14×10cm in the collar bone region. All bruises had a purple-reddish colour.

In the applicant's submission, he is still suffering from the after-effects of the torture inflicted on him in the circumstances described above. In particular, he submits that he has a broken nose and a broken bone near the temple on the right side of the head, as well as broken ribs on both sides; his spine is damaged; he still has scars on his head as a result of the blows of pistol butts and also scars on both hands as a result of handcuffs with which he was suspended; he has a roundish scar on a finger of the right hand after administration of electric shocks; his frontal bone over the right eye is damaged, and he has traces of burns on the back side of the neck after police officers had burnt cigarettes against it. He is also constantly suffering from severe headaches, pain in the heart, kidneys, knees and stomach and needs an operation for his broken nose.

B. Proceedings concerning the applicant's alleged ill-treatment and the criminal case against him

On 2 September 2002 the applicant complained in writing to the Grozny Town Prosecutor about his ill-treatment by officers of ORB-2. In reply he was informed that the town prosecutor was aware that the applicant had been held in ORB-2 but since the officers who had beaten him up had worn masks, the prosecutor's office was not able to do anything in connection with the applicant's complaint. No copies of the complaint or replies to it were furnished.

On an unspecified date in 2003 the criminal case against the applicant, Yun., Yus. and Ba. was sent for trial to the Rostov Regional Court. The case against the applicant concerned the charges of banditry, several episodes of concerted terrorist attacks and assaults on law-enforcement officials, several counts of murder and unlawful possession and carrying of arms.

1. The applicant's forensic medical examination ordered by the trial court

By decision of 25 April 2003 the regional court granted the applicant's request and instructed the Forensic Medical Expert Bureau of the Rostov Region (hereinafter also "the forensic bureau") to carry out the applicant's medical examination.

Report no. 2466 of two experts of the forensic bureau dated 29 April 2003, in so far as relevant, states as follows:

"...

According [to the applicant]: In the period from 5 March to October 2002 in the RUBOP of Grozny officers of RUBOP and UVD hit [him] with truncheons, a bottle

filled with water and kicked on different parts of body, [administered electric] current to the left ear, right hand and genitals.

Did not apply for medical assistance.

No medical documents were furnished to the experts.

The examination part.

At present complains about pain in the kidneys region, heart and left subcostal area.

Objectively: at 12.43 on 05.05.03: On the lower front surface of the right shoulder-blade – 2 roundish pigmented angles 1cm and 0.4 cm in diameter with clear-cut contours, of bluish colour, without crusting, somewhat drawn-in, wrinkled, with thin epidermis. At the outer surface of the left shoulder-blade a scar [measuring] 1,4×0,4cm, with uneven contours [and] undefined form. In the region of the spinous process of the 7th vertebra [there are] roundish skin areas 1,4cm in diameter with brown surface and somewhat scalloped borders. Analogous scars [measuring]: 0,9 cm at the external edge of the right brow; 1,1cm [over] the left brow; 0,5 cm in the right frontal region of the head; 1,4×0,4cm and 1,6×0,4cm on the inside and outside surfaces of the left and right wrist joints. No other visible injuries discovered.

On 8.05.03 presiding judge Z. of the Rostov Regional Court was requested to submit all medical documents, including X-rays for the period from March 2002 (if any), for [the applicant]. In the absence of medical documents it is necessary to carry out [the applicant's] medical examination by [the following] specialists: cardiologist, urologist, nephrologist, radiologist and surgeon and to submit the results of his examination to the [forensic bureau].

On 17 June 2003 a reply to request [mentioned above] was received, from which it follows: “In reply to your request of 8.05.03 we are sending you medical certificate from UCh IZ-61/1 of Rostov-on-Don for [the applicant], 1 record of medical examination of UCh IZ-20/2 of the village of Chernokozovo [for the applicant]. It is impossible to provide you with any other medical documents, including for the reasons mentioned in the medical certificate.”

From the submitted medical certificate [for the applicant] it follows that: “[The applicant's] personal file contains a certificate of medical examination of 11.10.2002 which states: The examination of the outside surface of the upper third of the right shoulder [revealed] a bruise measuring 14×10cm; on the upper third of the left shoulder [a bruise measuring] approximately 7×4cm; on the right interscapular area [a bruise measuring] approximately 14×10cm. All bruises are of purple-red colour. The medical unit of UCH IZ-61/1 [as of] 16.06.03 is not staffed with a cardiologist, an urologist, a nephrologist, a radiologist or surgeon. A consultation or an examination by [such] specialist doctors can be carried out on a paid basis according to Article 26 of the Federal Law of 15.07.99 ... Certified by the signature of the deputy head of IZ-61/1 ...”

From the certificate of [the applicant's] medical examination: “the examination [revealed] a bruise measuring 14×10cm on the outer surface of the upper third of the right shoulder; [a bruise measuring] approximately 10×5cm in the upper third of the left shoulder; [a bruise measuring] approximately 7×4cm in the area of the left shoulder blade; [a bruise measuring] approximately 14×10cm in the right interscapular area. All bruises are purple-red.”

Conclusions

...

1. [The applicant] have been found to have [the following] injuries:

- bruises: on the outer surface of the right shoulder in the upper third – 1, on the upper third of the left shoulder – 1, in the left scapular area – 1, in the interscapular area on the right – 1

- surface wounds, from whose healing resulted the appearance of scars: on the outer side of the left shoulder – 1, on the outer side of the right brow – 1, on the front region on the left – 1, on the inside surface of the left and right joint wrists – 1

- abrasions, which, as a consequence of their healing, resulted in pigmented skin areas: on the lower outer surface of the right shoulder blade – 2, in the area of the 7th vertebra – 1.

2. The bruises were sustained as a result of application of blow impact force of blunt solid object (objects) or as a result of a blow against such [objects]; the date of infliction is up to three days before the examination in IZ-61/1 (the date of examination is not indicated). The abrasions could have been sustained as a result of rubbing under the impact of a solid object (objects), with uneven contact surface, could have been sustained under impact of an object with high heat level (impact of cigarettes is not included); date of infliction is more than 1 month before the examination in the [forensic bureau] (05.05.03). Surface wounds had been inflicted as a result of blow impact of solid blunt object (objects) or as a result of a blow against such objects; date of infliction is more than one year before the examination in [the forensic bureau] (05.05.03).

...”

2. The applicant's conviction

By judgment of 2 July 2003 the Rostov Regional Court found the applicant guilty of banditry, participation in terrorist attacks and assaults on law-enforcement officials, aggravated murder and unlawful possession of arms and sentenced him to twelve years and six months' imprisonment. By the same judgment it convicted the applicant's co-accused Yun., Yus. and Ba. of similar offences and sentenced them to various imprisonment terms. The trial court noted that the applicant's allegations of ill-treatment at the pre-trial stage had been verified and dismissed as unfounded, without providing any further details in that respect.

On 8 December 2003 the Supreme Court of the Russian Federation upheld the trial court judgment on appeal.

3. The applicant's further complaints about the ill-treatment

It is unclear whether the applicant raised the matter of ill-treatment in the wake of his conviction in the period between 2003 and 2007 or whether any related proceedings were pending during that period of time.

On 26 February 2007 the applicant's mother complained to the prosecutor of the Chechen Republic about her son's alleged ill-treatment, presenting a detailed, 8-page-long description of it and appending a medical certificate of 11 October 2002. She also submitted that the fact of her son's arrest had been hidden from his relatives and that he had not been promptly brought before a judge. She requested that a criminal case be opened into those events.

By decision of 31 March 2007 the prosecutor's office of the Leninskiy District of Grozny (hereinafter also “the district prosecutor's office”) refused to open a criminal case into the applicant's alleged ill-treatment.

The decision noted that, according to an explanation by deputy head of ORB-2, Mr T.B., in March 2002 officers of the Chechen UVD had arrested the applicant and that after his arrest he had been transferred to ORB-2 (at the material time also “RUBOP”). When interrogated, the applicant had given his statements of his own free will. No physical or psychological pressure had been exerted on him. All investigative steps involving the applicant had been carried out with the authorisation of the investigator in charge of the criminal case against him and in the presence of his lawyer. Officer I.D. of ORB-2 made a similar statement. In view of the foregoing, investigator S. of the district prosecutor’s office concluded that there was no evidence that violence had been applied to the applicant or that he had been unlawfully deprived of his liberty.

On 11 April 2007 the applicant’s mother complained under Article 125 of the Code of Criminal Procedure (hereinafter also “the CCP”) to the Leninskiy District Court of Grozny (hereinafter also “the district court”) about the decision of 31 March 2007.

By decision of 9 July 2007 the district court dismissed the complaint. It noted that the applicant’s mother had no standing to lodge a complaint under Article 125 CCP on her son’s behalf. Moreover, he was convicted by a final judgment and was already serving his sentence. The courts which had examined his criminal case had assessed all relevant circumstances, including the issue of admissibility of evidence against him and the alleged ill-treatment.

On 28 August 2007 the Supreme Court of the Chechen Republic upheld the decision of 9 July 2007 on appeal.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to torture and that the domestic authorities failed to carry out an effective investigation into it.

He further submits under Article 5 §§ 1-5 of the Convention that his arrest was unlawful, that he was held in unacknowledged detention and was not promptly brought before a judge.

The applicant complains under Article 6 § 3 (c) of the Convention that he had no access to legal assistance after his arrest on 5 March 2002 and until 22 August 2002.

Lastly, the applicant submits that he was deprived of effective remedies in respect of the above-mentioned complaints, in breach of Article 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted the domestic remedies and complied with the six month requirement laid down in Article 35 § 1 in respect of his complaints under Articles 3 and 5 of the Convention (see *Manukyan*

v. Georgia (dec.), no. 53073/07, 9 October 2012, with further references)? Were any proceedings in this respect pending between September 2002 and February 2007?

2. If so and having regard to the applicant's submissions, was there a violation of Article 3 of the Convention on account of his alleged ill-treatment, threats and intimidation (a) between 5 March and 24 April 2002 in the Chechen UVD, ORB-2 and the Oktyabrskiy VOVD in Grozny; (b) between 20 and 22 May 2002 in the Leninskiy VOVD in Grozny; (c) between 10 and 16 July 2002 in ORB-2; (d) between 24 and 27 September 2002 in the Chechen UVD and ORB-2, and (e) between 7 and 11 October 2002 in the Chechen UVD and ORB-2?

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

(a) In the period between 5 March and 13 October 2002:

(i) What were the (detention) facilities or law-enforcement authorities on whose premises the applicant was held in detention?

(ii) In respect of each and every facility/law-enforcement authority:

- What was the date and time of the applicant's admission to the facility/law-enforcement authority?

- Was the applicant examined upon admission to each facility by the medical staff with a view to assessing his state of health, recording any eventual injuries and possible health complaints? 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

- Was he given access to a lawyer? If so, when?

- 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 applicant were conducted in the above-mentioned time span/on the above-mentioned dates ((i) between 5 March and 24 April 2002 in the Chechen UVD, ORB-2 and the Oktyabrskiy VOVD in Grozny; (ii) between 20 and 22 May 2002 in the Leninskiy VOVD in Grozny; (iii) between 10 and 16 July 2002 in ORB-2; (iv) between 24 and 27 September 2002 in the Chechen UVD and ORB-2, and (v) between 7 and 11 October 2002 in the Chechen UVD and ORB-2), at what facilities/premises of what law-enforcement authorities and at which times of the day? What was the applicant's procedural status? What confessions and/or statements did the applicant give during that period/on those dates (please submit relevant documents, in particular, records of the applicant's statements/confessions, on-site verifications of his statements/investigating experiments, if any, which are **legible**/provide their typed copies, where necessary)? Was the applicant given access to a lawyer before and during each such activity?

3. 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 inquiry into these 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)/other law-enforcement authorities were involved in the inquiry 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 the inquiry conducted into it?

In connection with the above 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:

- excerpts from logbooks of detainees admitted to all detention facilities in which the applicant was held in the time span between 5 March and 13 October 2002 for the relevant dates and in respect of the applicant;
- excerpts from logbooks of primary medical examination of persons admitted to facilities in which the applicant was held in the time span between 5 March and 13 October 2002 for the relevant dates and in respect of the applicant;
- an entire copy of the applicant's medical file;
- all medical certificates/documents mentioned in expert report no. 2466 of 29 April 2003;
- an entire copy of the file concerning the inquiry into the applicant's alleged ill-treatment carried out in the framework of the criminal proceedings against him which ended with the final judgment of 8 December 2003;
- an entire copy of the file concerning the inquiry which ended with the decision of 31 March 2007 refusing to open a criminal case into the applicant's allegations of ill-treatment;
- copies of the applicant's complaints to the domestic authorities about the alleged ill-treatment and replies to them in the period between 1 September 2002 and 25 February 2007, if any, including the complaint to the Grozny Town Prosecutor of 2 September 2002 and the reply to it.

4. Having regard to the applicant's submissions, was there a violation of Article 5 §§ 1-5 in the present case?

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