



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

FIRST SECTION

Application no. 11800/06
Igor Vitalyevich OSHCHEPKOV
against Russia
lodged on 6 February 2006

STATEMENT OF FACTS

The applicant, Mr Igor Vitalyevich Oshchepkov, is a Russian national, who was born in 1968 and lived until his arrest in the town of Kirov. He is serving his sentence in the correctional colony in the village of Kotchikha, Kirov Region.

The circumstances of the case

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

On 6 January 1999 the Kirov Regional Court convicted the applicant of aggravated murder, aggravated robbery, theft, manufacturing and possession of firearms, disorderly behaviour, intentional and false defamation and destruction of documents and sentenced him to seventeen years of imprisonment, with the first five years to be served in a prison.

1. Ill-treatment of the applicant

According to the applicant, on 6 April 2004, while serving his sentence in a correctional colony in the village of Kotchikha in the Kirov Region, he was placed for fifteen days in a punishment ward. In the morning on the same day a group of officers of a special-purpose unit arrived at the colony for the purpose of performing cell searches. Approximately twenty officers and wardens entered the punishment ward. The applicant and other inmates were taken from cell no. 2 to a corridor where they were ordered to take an “eagle-spread” position against a wall. While the inmates, including the applicant, were attempting to comply with that order, officers started kicking them to force them to spread their legs as wide as possible. Unable to bear the pain or to stand up straight certain inmates fell to the floor, only to have been dragged up and again forced to face the wall. The detainees

were taken from the corridor back to cell no. 2 where a colony head assistant on duty, Mr G., and an officer from the special-purpose unit started severely beating them up. When the applicant had entered the cell, Mr G. attempted to hit him with a hand rapped in a towel. The applicant turned and ran away from the cell. He was caught and dragged back to the cell by Mr G. The inmates were stripped naked and, while the officers searched their clothes and underwear, they were forced to do sit-ups over and over again. The applicant alleged that the execution had continued for two hours following which two inmates, Mr Ko. And Mr Ga., were taken to a medical unit. The remaining inmates were locked in cell no. 2. The applicant stated that after he and his co-detainees had been locked, they had heard terrible screams coming from inmates in cell no. 3. They had also later found out that inmates in cell no. 6, unwilling to wait for their turn to be tortured by the wardens and officers, broached veins and were taken to the medical unit in the unconscious state.

In the evening on 6 April 2004 officers again entered cell no 2 where the applicant stayed and started taking the inmates to the corridor. Being afraid of further beating the applicant and other inmates broached the veins. The beating, however, did not stop. Wardens and officers hit and kicked inmates, forcing them down to the floor, and continued beating them even when the detainees were already lying on the floor. The beating only stopped when an inmate, Mr K., collapsed, stopped moving and the half of his face became a deformed bloody bruise. The inmates were allowed to go back to the cell and to take inmate K. with them. A doctor arrived at the cell an hour later, following numerous requests from inmates. He did not record any injuries. The detainees tore a bed sheet and used it to bandage their wounds from the self-cutting and beating. Medical assistance was only provided to them two days later.

The applicant and a number of other inmates wrote complaints to a prosecutor's office. They described the ill-treatment at the hands of the wardens and the officers from the special-purpose unit. The applicant understood that his complaint had not been dispatched by the administration when he had not received any response from the prosecutor's office.

It was not until 12 October 2004, when a supervising prosecutor, Mr D. visited the punishment ward, when the applicant was finally able to serve him with a complaint about the events on 6 April 2004. Several days later an officer from the town prosecutor's office visited the applicant, interviewed him about the events and inquired about the delay in raising the matter with the prosecution authorities. The officer allegedly told the applicant that a number of other inmates had lodged similar complaints about the events on 6 April 2004 and that the prosecutors had performed an inquiry into the complaints in May 2004.

On 19 November 2004 the applicant received a decision of 10 November 2004 by which a deputy prosecutor of the Kirov Town prosecutor's office dismissed his ill-treatment complaints having considered them to be unsubstantiated. The deputy prosecutor relied on statements by inmates, including Mr Ko. and Mr Ga., statements by the colony head assistant, Mr G., testimony by other wardens and officers who had witnessed the events on 6 April 2004, and statements by staff members of the medical unit. Mr Ko. had fully supported the applicant's complaints, albeit having

noted that the wardens, and not the officers from the special-purpose unit, had used force against the inmates. He had also confirmed that a number of inmates had broached veins and had cut the skin on stomachs as a way of preventing a further beating and that the medical personnel had refused to provide them with medical assistance. Another inmate, Mr F., had noted that the complaints raised by the applicant had been discussed with the colony administration on a number of occasions and that he had had no intention to raise them again. At the same time, he had stated that inmates who had performed the self-mutilation had been promptly provided with medical assistance. Similar statements had been made by inmate Ga. The colony head assistant, Mr G., insisted that no force had been used against the applicant and his co-detainees either by the wardens or by the officers. He had confirmed that four inmates, the applicant, Mr F., Mr Ko. and Mr Ga., had broached veins in support of the similar act carried out earlier by inmates in cell no. 6. They had all been provided with necessary medical aid. The remaining wardens and medical staff members had given similar statements, having all disputed the use of force against the inmates, save for Mr K., and having insisted on the version of self-mutilation. Inmates from other cells in the punishment ward submitted that they had not heard any screams, had not witnessed the beating and had not seen any injuries, save for cuts, on the applicant and his co-detainees.

Following the applicant's appeal to the Kirov Regional prosecutor's office, on 21 April 2005 he was informed that the decision of 10 November 2004 had been quashed and that the new round of the inquiry into the events on 6 April 2004 had been opened.

Merely two weeks later the applicant received a copy of a decision issued by an investigator of the Kirov Town prosecutor's office on 4 May 2005. The investigator refused to open criminal proceedings having found no evidence of a criminal conduct. In addition to statements by officials or inmates which had served as the basis for the decision of 10 November 2004, the investigator relied on statements by other inmates which he considered contradictory. In particular, at least five inmates had testified to having seen injuries on the applicant's face or body following the alleged beating on 6 April 2004 and having heard that the applicant had been beaten up by the wardens and the officers. Those inmates had also complained about having themselves been victims of the ill-treatment on 6 April 2004 at the hands of the colony officials. Three inmates denied the use of any force against the detainees by the colony officials but had confirmed that the inmates had broached veins and had committed self-mutilation having been afraid of the special-purpose unit which had been called to the colony. Seven detainees stated that they had not heard or witnessed the beatings.

The applicant's appeal against the decision of 4 May 2005 was dismissed by the acting prosecutor of Kirov. A similar outcome awaited the applicant's complaint to the Kirov Regional prosecutor's office in December 2005.

On 20 February 2006 the applicant lodged a complaint with the Omutninsk District Court of the Kirov Region, arguing that the prosecutors' decisions were unlawful and manifestly ill-founded. The applicant also sought leave to attend.

On 30 March 2006 the District Court scheduled the first hearing for 17 April 2006, having noted that the Russian criminal procedural law did not provide for a possibility to ensure a detainee's attendance in a court hearing. At the same time, the District Court invited the Kirov Town Prosecutor supervising penitentiary facilities and the colony head assistant Mr G. to the hearing.

The applicant appealed against the District Court's refusal to ensure his presence in the hearings.

In the meantime, on 17 April 2006 the District Court, having examined the case file materials and having heard a representative of the prosecutor's office, upheld the decision of 4 May 2005. It held that the investigator's finding that the applicant's injuries had resulted from an act of self-mutilation was well-founded. The District Court pointed to the absence of any evidence of improper conduct on the part of the colony officials or officers of the special-purpose unit.

The applicant appealed against the decision of 17 April 2006, having at the same time sought his appearance before the appeal court.

On 16 May 2006 the Kirov Regional Court upheld the decision of 17 April 2006, having fully endorsed the District Court's reasoning. The applicant was not brought to the hearing while the prosecutor attended and made comments.

On 2 August 2006 the Presidium of the Kirov Regional Court, acting upon the applicant's request for a supervisory review, quashed the decision of 16 May 2006, having found that the Regional Court had mistakenly upheld the decision of 17 April 2006 in the absence of the applicant's appeal statement. The Regional Court had incorrectly interpreted the applicant's appeal statement against the District Court's refusal to obtain his attendance on 30 March 2006 as the appeal statement against the decision of 17 April 2006.

In the course of the new appeal hearing, on 17 August 2006 the Kirov Regional Court again upheld the decision of 17 April 2006, having repeated its findings laid down in the decision of 16 May 2006. By a separate decision the Regional Court discontinued the examination of the applicant's complaint concerning his attendance, having found that the decision of 30 March 2006 was not amenable to appeal.

The applicant provided the Court with copies of complaints of other inmates to the prosecutor's office about the beating on 6 April 2004. Their complaints were dismissed for reasons similar to those which governed the prosecutor's decision in respect of the applicant's complaint.

2. Other proceedings involving the applicant

In 2005 the applicant complained to a court about the new amendments to the amnesty law making him, as the applicant interpreted the new provisions, ineligible for early release. The applicant also sought leave to appear before the courts. By the final judgment of 30 August 2005, of which the applicant was only informed in November 2005, the Moscow City Court disallowed his claims. The proceedings were held in the applicant's absence.

Since February 2010 the applicant was involved in a housing dispute concerning the termination of his rights to a room in a dilapidated municipal

house which had been demolished. By the final judgment of 5 May 2011 the Kirov Regional Court ordered that Kirov town municipal authorities should provide the applicant with a room of no less than 11.5 square metres satisfying all sanitary norms and requirements. The courts dismissed the applicant's claims for compensation of damage. The applicant attended the hearings and made oral submissions. It appears that he was also represented.

In 2011 the applicant lodged a claim for compensation of damage caused to him by the excessive length of the proceedings in the abovementioned housing dispute. The claims were dismissed by the domestic courts as unfounded.

COMPLAINTS

1. In the application forms lodged with the Court on 6 February and 20 May 2006 the applicant complained under Article 6 of the Convention about the outcome of the proceedings concerning the amendments to the amnesty law and his inability to attend hearings in those proceedings.

2. In the application form lodged on 12 January 2007 the applicant complained under Article 3 of the Convention about the beating on 6 April 2004 and the authorities' failure to effectively investigate the events. He further complained under Article 6 about his absence from the hearings when the courts had examined his complaint about the prosecutor's refusal to open a criminal case.

3. In the application form submitted on 1 November 2011 and the subsequent letter of 2 March 2012 the applicant complained under Articles 6 and 13 of the Convention about the outcome of the housing dispute.

4. In the application form received by the Court on 11 April 2012 the applicant complained about his failure to obtain compensation for, in his view, excessive length of the proceedings in the housing dispute.

QUESTIONS TO THE PARTIES

1. As regards the events on 6 April 2004, has the applicant been subjected to torture or to inhuman or degrading treatment by wardens and officers of the special-purpose unit, in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present instance by the domestic authorities in breach of Article 3 of the Convention?

2. The Government are requested to submit the entire investigation file pertaining to the applicant's ill-treatment complaints. They are also asked to provide the Court with extracts from medical records drawn up in respect of the applicant and other inmates from the punishment ward for the months of April and May 2004; copies of complaints lodged before Russian investigating authorities by other inmates who had been detained in the

punishment ward on 6 April 2004 and the authorities' replies to those complaints.

3. Having regard to the fact that the applicant was not brought to the first-instance and appeal hearings in the proceedings concerning his complaint about the investigator's decision of 4 May 2005, do the circumstances of the case disclose an infringement of the applicant's right to a fair hearing as guaranteed by Article 6 § 1 of the Convention? In particular, was the applicant afforded an opportunity to attend the above mentioned hearings?