



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

FIRST SECTION

Application no. 44071/06
Andrey Petrovich PORTNYAGIN
against Russia
lodged on 13 September 2006

STATEMENT OF FACTS

The applicant, Mr Andrey Petrovich Portnyagin, is a Russian national, who was born in 1979 and lived in Chita before his conviction.

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

A. Criminal proceedings concerning assault on the applicant

According to the applicant, on 1 November 2002 at about 9 p.m. he was beaten up in his flat in Chita by three unknown persons in police uniforms. There was allegedly blood everywhere in his kitchen. He was then taken in a baggage compartment of their Volga car to a lake near the settlement of Naklonniy where the beatings continued. He was subsequently thrown out of their car in one of the streets of Naklonniy where he was found by Ms E.P., her mother Ms M.P. and Mr A.G. He was hospitalised in the same evening and diagnosed with a spine injury which resulted in a disability. Subsequently he required a walking stick to move around.

Next day he was questioned by the police in the hospital. He stated that his assailants had been in police uniforms with a stripe on a sleeve bearing an inscription in yellow.

On 12 November 2002 investigator Zh. of the Kadalinskoe police station at the Chernovskiy district police department of Chita (*Кадалинское ОМ при Черновском РОВД г. Читы*, “Chernovskiy ROVD”) brought criminal proceedings no. 17779 under Article 111 § 3 (a) of the Criminal Code (intentional infliction of grievous bodily harm by a group of persons) based on a report of 5 November 2002 by senior operative officer Mr M. The decision was approved by deputy prosecutor of Chernovskiy district, Ms K., on the same day. On 25 November 2002 the applicant received victim status in the proceedings.

The applicant was taken to the Chernovskiy ROVD for a number of investigative actions. During an identification parade on an unspecified date in 2003 he identified two men - S. and V. - who turned out to be police officers of a security service (tasked with guarding buildings, apartments and other property) of the Kadalinskoe police station at the Chernovskiy district police department of Chita (*ОВО при Кадалинском ОМ Черновского РОВД г. Читы*, “Chernovskiy OVO”). The applicant identified the third assailant – Mr T., a driver from Chernovskiy OVO, – during a confrontation with him. He also identified his assailants’ Volga car which belonged to the Chernovskiy OVO. It was established that all three - S., V., and T. - were one team on duty in the evening of 1 November 2002. They denied the applicant’s allegations.

On an unspecified date the Chernovskiy ROVD investigator suspended the criminal proceedings for lack of person to be charged (under Article 208 § 1 (1) of the Code of Criminal Procedure) considering that the total of evidence collected as a result of the investigation was insufficient to level charges against police officers S., V., and T.

Subsequently, as a result of the applicant’s persistent complaints the investigation was reopened and suspended again on numerous occasions throughout 2003-2011 by authorities in charge of the investigation at the relevant times, in particular the Chita Chernovskiy ROVD investigation division (*Следственный Отдел при ОВД Черновского р-на г. Читы*), the Chita Chernovskiy district prosecutor’s office investigators (*следователи прокуратуры Черновского р-на г. Читы*), and the Chernovskiy district investigation department at the prosecutor’s office of the Zabaykalskiy region (*Следственный Отдел по Черновскому р-ну г. Читы Следственного Управления Следственного Комитета при прокуратуре РФ по Забайкальскому краю*). The decisions to suspend the proceedings were annulled by the investigators’ superiors as unlawful in view of incomplete investigation and the investigators’ failure to correct the deficiencies previously identified. The Chernovskiy district prosecutor and the investigator from her office were subject to internal inquiry and disciplinary proceedings. As a result the prosecutor was deprived of her salary bonus in 2007.

The applicant’s appeals under Article 125 of the Code of Criminal Procedure against the suspension of the criminal proceedings were not subject to judicial examination, as the challenged decisions had, by the time of the court hearings, been annulled by the investigators’ superiors (the Chita Regional Court’s decisions of 26 February and 15 October 2007).

The applicant was denied access to the materials of the investigation, other than the decisions to suspend and reopen the proceedings, for the reason that by virtue of Article 42 § 2 (12) of the Code of Criminal Procedure the access to the entire case-file would only be available as soon as the preliminary investigation would end. This never happened in the applicant’s case.

B. Criminal proceedings concerning the applicant’ assault on S.

In October 2005 the applicant committed intentional infliction of bodily harm on Mr S. He was convicted in a judgment of the Justice of the Peace

of the 12th circuit of Chernovskiy district of Chita of 29 August 2007, which was upheld by the Chita Regional Court on 11 February 2008.

C. Criminal proceedings concerning the applicant's assault on G. and the latter's death

On 21 December 2006 the Chernovskiy District Court of Chita convicted the applicant of Mr G.'s robbery and intentional infliction of grievous bodily harm on Mr G. causing the latter's death, committed in January 2006. It sentenced the applicant to twelve years' imprisonment in a strict regime colony.

On that day the District Court held its hearing in a hospital at penitentiary establishment IK-5 where the applicant had been undergoing in-patient treatment since 13 December 2006. At the hearing, judge T. of the District Court read out the judgment in the presence of an assistant prosecutor, the applicant and his co-defendant, in a procedure unit of the hospital.

On 26 February 2007 the Chita Regional Court upheld the judgment on appeal.

D. Imprisonment under the 2006 judgment

During the first half of 2007 the applicant was detained in the Zabaykalskiy region penitentiary establishments IK-5, IK-2, IK-7 and IZ-75/1. He was allegedly transported from one detention facility to another in prison vans designed for transportation of 20 detainees but used for 30-35 detainees. Each transportation was allegedly preceded by six-eight hours' waiting time in cells together with about 40 people.

During his imprisonment the applicant received medical treatment for his spine injury and tuberculosis. His numerous requests for earlier release on the ground of his health condition were dismissed by courts because his diseases did not make him eligible for release and because he was under permanent medical supervision and received necessary treatment. Medical experts called to assess his condition were of the opinion that his complaints about his state of health were incoherent with the objective data.

The applicant brought proceedings for damages against IZ-75-1 alleging that he had contracted tuberculosis during his detention in that detention facility in December 2008 - February 2009. On 6 November 2009 the Ingodinskiy District Court of Chita established that the applicant had been diagnosed with tuberculosis during his imprisonment back in 1997 and had been operated in 1999. His allegation that in IZ-75-1 he had been placed in a cell together with persons ill with tuberculosis had been untrue. It rejected the applicant's complaint. On 30 December 2009 the Zabaykalskiy Regional Court upheld the District Court's judgment on appeal.

The applicant brought proceedings against IK-4 seeking damages for alleged deterioration of his health as a result of his placement in a disciplinary cell in January – February 2010. On 11 August 2010 the District Court examined the applicant's complaint and rejected it as unfounded. It established that his health condition had been compatible with his placement in a disciplinary cell and that he had received medical

treatment there. On 15 September 2010 the Regional Court upheld the District Court's judgment on appeal.

E. Provision of wheelchair and walking stick

On 19 August 2010 the applicant's regular medical examination confirmed his disability category II for one year. According to an individual rehabilitation programme set up for the period from August 2010 to August 2011, he was to be provided with an indoor wheelchair and a walking stick. As the applicant had not received them from the authorities, his family provided him with a wheelchair. The Chita prosecutor supervising law observance in Zabaykalskiy region penitentiary establishments brought proceedings in his interests. On 25 July 2011 the Tsentralniy District Court of Chita ordered the Social Defence Ministry for the Zabaykalskiy region to provide the applicant with a wheelchair and a walking stick.

As of 27 February 2012 the judgment remained unenforced.

COMPLAINTS

1. The applicant complains under Articles 3, 5, 6, 13 and 17 of the Convention that on 1 November 2002 he had been beaten up by police officers S., V. and T. who remained unpunished because their crime had not been properly investigated.

2. He complains under Article 6 of the Convention that he did not receive a fair trial in the proceedings concerning G.'s death, and that the judgment was delivered in the hospital and not in the courtroom.

3. The applicant complains that his requests for earlier release on health grounds were dismissed; that he contracted tuberculosis in IZ-75-1; and that his health deteriorated as a result of his placement in a disciplinary cell in IK-4. He also complains about the conditions of his transportation between detention facilities in the first half of 1997.

4. In his additional application form of 11 February 2011 the applicant complains that he did not receive a fair trial in the proceedings concerning infliction of bodily harm on S.

5. In his additional application form of 27 February 2012 the applicant complained that he had not been provided with a wheelchair and a walking stick despite the Tsentralniy District Court's judgment of 25 July 2011.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected on 1 November 2002 to treatment in breach of Article 3 of the Convention by police officers? What injuries, other than the spine injury, if any, did he sustain?

2. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV, and *Mikheyev*

v. Russia, no. 77617/01, §§ 108-110 and 121, 26 January 2006), including in cases concerning violence inflicted by private individuals (see, among other authorities, *Mățăsară and Savițchi v. Moldova*, no. 38281/08, § 86, 2 November 2010), did the domestic authorities' investigation of the assault on the applicant comply with Article 3 of the Convention? In particular:

(a) Was it thorough, expeditious and effective?

(b) Given that it was conducted by investigators of the Ministry of the Interior where the alleged assailants worked, notably of the Chernovskiy ROVD, was such an investigation independent?

(c) Given that the applicant was denied access to the materials of the investigation for the reason that by virtue of Article 42 § 2 (12) of the Code of Criminal Procedure the access to the case-file would only be available as soon as the preliminary investigation would end which never happened in the applicant's case, was the investigation subject to public scrutiny?

(d) Which investigating authorities were in charge of the investigation and during what time? What investigative actions did they conduct and when?

The Government are invited to submit the materials of the investigation including the decisions to suspend and reopen the proceedings, the orders to annul the decisions suspending the proceedings, records of the investigative actions and any other investigation materials relevant to the questions above, as well as the materials of the disciplinary proceedings against the Chernovskiy district prosecutor in 2007, against the investigators and other officials in charge of the investigation, and decisions of first and second court instances on the applicant's complaints under Article 125 of the Code of Criminal Procedure.

3. Was the judgment of the Chernovskiy District Court of Chita of 21 December 2006 pronounced publicly, as required by Article 6 § 1 of the Convention? If it was read out by the judge in the presence of the applicant, his co-defendant and the prosecutor at the hearing in the hospital at colony IK-5 to which the public had no access, was the publicity ensured by other means (see *Ryakib Biryukov v. Russia*, no. 14810/02, ECHR 2008)? The Government are invited to submit a copy of the court records of the hearing on 21 December 2006, the Chita Regional Court's judgment of 26 February 2007 and the court records of the hearing before the Chita Regional Court, and any other relevant documents concerning the adoption, delivery, preparation of the reasoned judgment and its publicity.

4. Has the judgment of the Tsentralniy District Court of Chita of 25 July 2011 in the applicant's favour been enforced in due time? Did the non-enforcement or delayed enforcement violate Article 6 § 1 of the Convention? When did the judgment come into force?