



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

FIRST SECTION

Application no. 49085/09
Pavel Gennadyevich PETRYAYEV and others
against Russia
lodged on 23 August 2009

STATEMENT OF FACTS

The applicants, Mr Pavel Gennadyevich Petryayev (“the first applicant”), Vyacheslav Leonidovich Bogdanov (“the second applicant”) and Igor Vladimirovich Lavrov (“the third applicant”) are three Russian nationals who were born in 1980, 1973 and 1983 respectively and live in the Arkhangelsk Region. They are represented before the Court by Ms O.A. Novikova, a lawyer practising in Arkhangelsk.

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

A. The applicants’ arrest and alleged ill-treatment

On 14 March 2008 the applicants and G., their acquaintance, were arrested on suspicion of drug trafficking.

1. The first applicant’s arrest and his injuries

On 14 March 2008 the first applicant was arrested by the Arkhangelsk Regional Department of the Federal Drug Control Service of the Arkhangelsk Region (“the Drug Control Service”) in his car at railway station Obozerskaya of the Arkhangelsk Region. The first applicant submits that he did not resist the arrest. The officers got into the car and instructed him to drive some 200 km to Arkhangelsk.

On the same date the applicant was transferred to the Drug Control Service’s office in Arkhangelsk and interrogated by several policemen. One officer, identified by the applicant as Gor., allegedly came into the room and threatened the applicant that the policemen would torture him. Then the officers started hitting and kicking him. On several occasions they put a plastic bag on his head. According to the applicant, he was tortured by the officers for almost one day. As a result of the ill-treatment, the applicant lost

consciousness on several occasions. The officers further threatened to sexually abuse the applicant with a truncheon if he refused to confess. The first applicant steadily maintained his innocence.

On 16 March 2008 the first applicant was transferred to remand centre IZ 29/1 of Arkhangelsk. The remand prison doctor examined the applicant and established that he had a bruise of the internal surface of the left leg, a bruise of the chest, bruises of the internal surfaces of his left and right hips and abrasions of the left and right wrists.

2. The second applicant's arrest and ill-treatment

On 14 March 2008 the second applicant was arrested at the Department of Interior of the Obozerskaya railway station of the Arkhangelsk Region ("the Obozerskaya police station"). Unspecified police officers allegedly handcuffed him and beat him up for two hours. Then he was also transferred to Arkhangelsk and brought to the Drug Control Service premises. According to the applicant, the officers severely beat him up. Several times they put a plastic bag on his head. The officers allegedly told the second applicant that "he would be found disabled under a bridge" in case of his refusal to confess. It appears that he wrote a self-incriminating statement (*«явка с повинной»*) prompted by the police officers.

At some point, apparently on 15 March 2008, he was brought to an investigator. He confessed of having been involved in illicit transportation of narcotic drugs in particularly large quantity. A State-appointed lawyer was present at the interrogation.

On 15 March 2008 he was released against an undertaking not to leave his town of residence.

3. The third applicant's arrest

On 14 March 2008 the third applicant was arrested at his place in Obozerskiy, brought to the Obozerskaya police station, handcuffed and severely beaten and kicked in various parts of his body. His nose started bleeding, and his clothes were covered with blood. He was further transferred to Arkhangelsk in the first applicant's car and brought to L.'s office at the Drug Control premises. L. hit him several times, urging him to confess. He also beat him up with a bottle full of water. It appears that after several hours of beatings the third applicant wrote a self-incriminating statement (*«явка с повинной»*)

Thereafter he was brought to the investigator and interrogated as a suspect in the presence of a State-appointed lawyer. He maintained his confession, allegedly out of fear of further ill-treatment. He did not object to the interrogation record.

Then he was brought to an unspecified police unit. He submits that by that moment he had had multiple hematomas which had been clearly visible. However, a policeman only recorded one hematoma on the applicant's back. The examination took place in the presence of one of the officers who had ill-treated the applicant.

On 15 March 2008 the investigator released him and the second applicant against an undertaking not to leave the town.

4. Arrest of G.

The applicants submit that G., also arrested at some point between 13 and 14 March 2008, was ill-treated by the police and threatened with rape.

5. Medical examinations of the second and the third applicant in March-April 2008

Once released on 15 March 2008, the second and the third applicants took pictures of their injuries with the second applicant's camera.

According to the applicants, on the same date they returned to Obozerskiy and asked a doctor of a local out-patient hospital to examine them. The doctor was only able to do so on 17 March 2008. It appears that on that date the doctor admitted both applicants to a local hospital for medical treatment of their injuries. They do not submit a copy of the respective medical record.

A chest X-ray exam of the second applicant performed on 18 March 2008 showed a fracture of the middle third of mesosternum.

On 4 April 2008 the Obozerskiy department of the Plesetsk municipal hospital of the Arkhangelsk Region diagnosed the second applicant with bruises of the chest and the right hip.

B. Medical expert examinations of the applicants and the applicant's injuries

On various dates in 2010 medical expert examinations were held in respect of the applicants in order to establish their injuries' origin. The expert examinations were performed on the basis of the medical certificates issued shortly after the applicants' arrest in March 2008.

1. The first applicant

According to the medical expert examination report no. 3872 drawn up on 13 July 2010, the first applicant had had multiple bruises of the internal surface of the left leg, the left side of the chest and internal surface of the left hip, as well as abrasions on both wrists. The experts concluded that the injuries could have been caused on 14 and 15 March 2008.

2. The second applicant

According to the medical expert examination report no. 4194 drawn up on 28 July 2010 on the basis of the medical certificate of 17 March 2008 and the results of the X-ray exam of 14 July 2010, the second applicant had had the following injuries: a bruise of the internal surface of the right hip and a lesion of the fracture of the middle third of mesosternum. The bruise could have appeared between 2 and 8 days before the date of the first examination (17 March 2008). The lesion had appeared "not less than three months before the date of the X-ray exam" (14 July 2010).

3. The third applicant

It follows from medical expert examination report no.28-02/11 drawn up on an unspecified date, the following injuries were detected on the third applicant: a bruise under the left eye, bruises of the left side of the body and internal surface of both hips. These injuries could have appeared on 14 and 15 March 2008.

C. The applicants' attempts to initiate investigation into their allegations of ill-treatment

1. The applicants' initial ill-treatment complaints

At some point shortly after the events of 14-15 March 2008 the first applicant complained about the ill-treatment to the Investigative Department of the Investigative Committee of the Prosecutor's Office of the Oktyabrskiy District of Arkhangelsk ("the district investigative department") seeking institution of criminal proceedings against the Drugs Control Service officers on account of abuse of official powers (Article 286 of the Criminal Code of the Russian Federation).

On 19 March 2008 the authorities of the remand centre IZ 29/1 forwarded the information about the first applicant's injuries to the district prosecutor's office.

The second and the third applicant submit that they did not complain about the policemen's actions immediately after the events, allegedly out of fear. It transpires from the case materials that at some point before 24 April 2008 the second applicant and G. also raised the duress issue before the authorities.

An investigator of the district investigative department held an inquiry under Article 144 of the Code of Criminal Procedure ("examination of a complaint alleging a criminal offence").

On 24 April 2008 the investigator refused to open criminal proceedings upon the applicants' complaint, due to the lack of indication of a crime.

The investigator referred to the submissions of the applicants and G., who provided detailed accounts of the events. Each applicant confirmed that he had heard the other applicants shouting and screaming at the Obozerskaya police station and subsequently at the Drug Control office. Even though they had been questioned in different offices of the same building, they had seen the other applicants in the corridors and had noticed multiple injuries on them.

The investigator also referred to the depositions of P., the first applicant's friend who eye-witnessed his arrest. On 14 March 2008 P. had been apprehended together with the first applicant. He had waited for the applicants to be questioned at the local police station. Then he had been transferred from Obozerskiy to Arkhangelsk together with the applicants and brought to the Drug Control premises for fingerprinting. He had been waiting at the corridor for some time. Both at the Obozerskiy police station and at the Drug Control office he had heard the applicants shouting screaming and had seen injuries on their bodies.

The investigator's decision also contained a reference to testimonies of the second applicants' neighbours who had seen him in Ozerskiy after the events; the applicant had complained about pain chest.

Finally, several Drug Control officers testified that the applicants had been handcuffed on 14 March 2007 but they denied having used force against them.

The first applicant challenged the refusal in court under Article 125 of the Code of Criminal Procedure. He submitted that the inquiry had not been complete and the investigator's conclusions contradicted the facts of the case.

On 29 May 2008 the Oktyabrskiy District Court of Arkhangelsk upheld the decision of 24 April 2008, having confirmed that the investigator had duly assessed the evidence and that there was indication of a crime.

On 15 July 2008 the Arkhangelsk Regional Court quashed the district court's decision and remitted the case for a fresh examination. The court found, in particular, that the investigator's conclusions were at variance with the facts established during the inquiry and the medical record of the first applicant's injuries had remained without any assessment.

The applicants do not provide further information on the outcome of the new round of examination of the case at the first instance court.

On 25 July 2008 the Head of the Investigative Department of the district prosecutor's office informed the first and the second applicants and G. that on an unspecified date he had quashed the decision not to open a criminal case in respect of the applicants' ill-treatment allegations. At some point the district prosecutor's office held a new inquiry.

2. Refusal to initiate criminal proceedings of 5 August 2008

On 5 August 2008 the investigator of the district investigative department issued a new refusal to initiate criminal proceedings in respect of the alleged ill-treatment. In addition to the previously collected evidence the investigator referred to the medical documents in respect of the applicants (see above) and found as follows:

“[A] number of injuries [on their bodies] manifestly contradict to [the applicants'] explanations, because, according to them, they had received more injuries than established [by the doctors].”

The investigator found no evidence that plastic bags had been put on the applicants' heads. He concluded that the applicants' complaints were a part of the plan to avoid criminal liability for their unlawful actions.

It appears that at some point this decision was quashed by an unspecified authority.

3. Refusal to initiate criminal proceedings of 5 October 2008 and subsequent proceedings

On 5 October 2008 the investigator of the district investigative department refused to initiate criminal proceedings against the Drug Control officers. The applicants do not provide a copy of the respective decision.

It appears that the applicants and G. appealed against the decision.

On 8 October 2008 the Deputy Head of the district investigative department quashed the decision of 5 October 2008 as unlawful and

ill-founded and ordered to hold an additional inquiry. He established, in particular, that the first applicant's explanations had remained without legal assessment.

On 20 October 2008 the Oktyabrskiy District Court discontinued the examination of the appeal against the decision of 5 October 2008, since that decision had been quashed in the meantime.

4. Refusal to initiate criminal proceedings of 18 October 2008 and the applicants' appeal against it

On 18 October 2008 the investigator of the district investigative department discontinued the inquiry having decided not to open criminal proceedings against the Drug Control officers. He maintained his earlier findings and established in addition that the third applicant's and G.'s injuries had been inflicted during their arrest. He concluded that the officers had been obliged to use force because of the third applicant's and G.'s violent resistance.

On 28 October 2008 the Oktyabrskiy District Court quashed the investigator's decision as unlawful and unfounded. In particular, the court noted that the investigator had failed to analyse several witnesses' testimonies which had been merely reproduced in the text of the decision, and that he had omitted to establish the origin of the injuries revealed on the bodies of the applicants and G. The court ordered the officers in charge of the investigation to rectify the revealed shortcomings and complete the inquiry. It appears that the court's ruling was not appealed against.

On 13 November 2008 the Deputy Head of the district prosecutor's office set aside the decision of 18 October 2008 and sent the case back to the investigator for an additional inquiry.

5. Decisions of 23 November and 13 December 2008 and subsequent proceedings

On 23 November 2008 the investigator drew up a new refusal to open a criminal case, which was quashed on 2 December 2008 by a higher-ranking investigative authority.

On 13 December 2008 yet another decision not to initiate criminal proceedings was issued by the investigator. He found that the medical evidence was insufficient to demonstrate that the injuries had been inflicted on the applicants by the policemen, since these injuries "could have been inflicted at different time and at a different place". The investigator further rejected the testimonies of the applicants' friends and relatives having noted that they had been biased.

The first applicant represented by lawyer D., appealed against the decision.

On 22 December 2008 the Oktyabrskiy District Court dismissed the first applicant's complaint. The court found that the applicants' criminal case was pending before the Isakogorskiy District Court of Arkhangelsk in the meantime and that the first applicant's complaint would be examined by that court, since it concerned, in essence, admissibility of the evidence in their criminal case. The court concluded as follows:

“Taking into account the fact that the investigation into the criminal case against [the applicants] was completed and the case is pending before the trial court, there are no grounds to examine the complaint by Mr Myshov D.R. [sic] on its merits.”

The court further found that the applicant had not submitted a duly completed power of attorney. The district court accordingly returned the complaint, apparently containing an error in the claimant’s name, to the first applicant’s lawyer without examination.

It appears that at some point the decision of 13 December 2008 was quashed, apparently a higher-ranking investigative authority.

6. Decisions of 22 January and 10 February 2009

On 22 January 2009 the district investigative department by a fresh decision rejected the applicants’ claim to initiate criminal proceedings as unfounded. It appears that this decision, in its turn, was subsequently set aside on 27 January 2009. However, already on 10 February 2009 the investigator again discontinued an inquiry in respect of the applicants’ complaints, having decided not to open a criminal case against the policemen.

At some point the inquiry was reopened.

7. Refusal to initiate criminal proceedings of 13 May 2009 and the applicants’ appeal against it

On 13 May 2009 the district investigative department by a new decision refused to initiate criminal proceedings against the policemen.

The applicants’ representative before the Court appealed against the decision.

On 2 June 2009 the Oktyabrskiy District Court of Arkhangelsk refused to examine the applicant’s complaint, having found that it had been lodged by an undue person.

It appears that at some point the first and the second applicants, as well as Mr G. reintroduced their appeal against the decision.

On 7 September 2009 the Oktyabrskiy District Court of Arkhangelsk examined the complaint on the merits and quashed the decision of 13 May 2009 as unlawful, since it did not contain any explanation of the second applicant’s injuries. Furthermore, the court noted that the investigator did not assess testimonies of two eye-witnesses of G.’s arrest. The court ordered the investigator to rectify those shortcomings.

It appears that this decision was appealed against and quashed at some point by the appeal court. The applicants do not submit a copy of the respective court’s ruling.

On 19 November 2009 the Oktyabrskiy District Court of Arkhangelsk held that the decision of 13 May 2009 had been unlawful and ordered the investigator to assess the second applicant’s injuries as well as to question a remand prison doctor and to provide analysis of witnesses’ testimonies. Furthermore, it was established that the investigation had not advanced a plausible explanation of the other applicants’ and G.’s injuries.

At some point the policemen appealed against the court’s decision.

On 25 December 2009 the Arkhangelsk Regional Court modified the lower court’s ruling so as to exclude a reference to the order to establish the origin of the applicants’ and G.’s injuries. The appeal court found that the

first-instance court had not been competent to make conclusions on the factual circumstances of the case, assess the evidence and predetermine further actions of an officer who had taken the disputed decision. The appeal court upheld the ruling in the part concerning unlawfulness of the investigator's decision of 13 May 2009.

8. Refusal to initiate criminal proceedings of 5 February 2010

On 5 February 2010 the district investigative department took a new decision not to initiate criminal proceedings against the policemen. On 9 March 2010 that decision was set aside by a higher-ranking investigator.

9. Decision to open criminal proceedings and subsequent developments

At some point the applicants complained to the prosecutor's office of the Arkhangelsk Region about the district investigative department's inaction, having attached to their complaint a copy of their letter to the European Court of Human Rights containing factual information on their application.

On 26 March 2010 the prosecutor's office of the Arkhangelsk Region informed the applicants that on 9 March 2010 the decision of 5 February 2010 had been quashed by a higher prosecutor.

On 27 April 2010 the investigator of the district prosecutor's office decided to initiate criminal proceedings against the Drug Control Service officers. The investigator referred to the applicant's statements as regards violence used against them and noted that the officers had denied the accusations. The investigator further observed that, according to the medical expert examination reports, numerous injuries had been detected on the applicants. They had been "of criminal origin" and had been caused during the applicants' detention at the Obozerskaya police station and Drug Control Service office in Arkhangelsk. The criminal proceedings were opened on suspicion of abuse of power (Article 286 § 3 (a) of the Criminal Code) and the case file was assigned no. 10016019.

On 17 May 2010 the applicants were informed of the above decision.

On 26 June 2010 the first applicant, and on unspecified dates the third and the second applicants, were granted victim status in the criminal proceedings.

On 12 April 2011 the investigator of the district prosecutor's office decided to discontinue the criminal proceedings against the policemen, for the lack of the *corpus delicti* in their actions. In a detailed decision the investigator summarised the statements by the applicants, G., policemen, doctors and several other witnesses, as well as the medical documents and other evidence. He had found that the applicants' and G.'s allegations of ill-treatment were contradictory and were not corroborated by the other witnesses' testimonies. As regards the first and the third applicants' injuries, they must have been caused during the arrest. As regards the second applicant, there was no evidence of any injury caused to him. The investigator rejected his duress allegations with reference to the statements by the policemen.

It appears that the decision was not appealed against.

D. Criminal proceedings against the applicants

On 26 December 2008 the Isakogorskiy District Court of the Arkhangelsk Region convicted the first applicant and G. of attempted sale of narcotic drugs in particularly large quantity and sentenced them to 8 years 6 months' and 7 years 6 months' respectively. The court convicted the second and the third applicant of illicit transportation of narcotic drugs in particularly large quantity without intent to sell and gave them a 4 years' and a 3 years 6 months' conditional sentences, respectively.

During the trial the applicants requested to exclude the self-incriminating statements produced by the second and the third applicants, as well as G., as inadmissible evidence arguing that the co-accused had testified under duress. They made detailed submissions concerning the alleged ill-treatment on 14-15 March 2008.

The trial court excluded as inadmissible the self-incriminating statements (*«явки с повинной»*) produced by the second and the third applicants on 15 March 2008. On the other hand, the court found admissible the records of their interviews of 15 March 2008, when the second and the third applicants' had been questioned as suspects in the presence of the State-appointed lawyers. The conviction was based on the pre-trial and trial testimony of the co-accused, the Drug Control officers and other witnesses, as well as recorded phone conversations between the first applicant and G., several expert examination reports and various items of material evidence.

The applicants appealed against the conviction. The first applicant argued, in particular, that the co-accused had testified at the pre-trial stage under pressure and the inquiry into their allegations of ill-treatment had not been completed. In these circumstances, he challenged the trial court's decision to admit their pre-trial depositions as premature. The second applicant argued that he had written a self-incriminating statement under duress. He further submitted that he had signed a record of his interrogation as a suspect out of fear, since before the interrogation he had been ill-treated and he had received direct threats from officer B. of the Drug Control Service. The third applicant also maintained that the confessions extracted from the co-accused under duress should be declared inadmissible.

On 17 April 2009 the Arkhangelsk Regional Court upheld the conviction. The court distinguished between the "self-incriminating statements" (*«явка с повинной»*) and the applicants' subsequent questioning as suspects. It found that even though the second and the third applicants' confessions contained in their self-incriminating statements had been excluded from the evidence, this fact did not have any bearing on the admissibility of the records of their subsequent interrogations as suspects. In particular, the court pointed out that those interrogations had taken place on 15 March 2008 in the presence of the applicants' lawyers and the applicants were advised of their right not to incriminate themselves. Furthermore, the information obtained as a result of those interrogations had been corroborated by various other items of evidence.

COMPLAINTS

The applicants complain under Article 3 of the Convention that on 14 and 15 March 2008 they were tortured by the officers of the Drug Control Service and the investigation into their allegations of ill-treatment was ineffective.

They complain under Article 6 of the Convention that the conviction was to a decisive extent based on the second and the third applicants' pre-trial depositions, as well as on G.'s statements, all produced under pressure. They submit that they made self-incriminating statements at the pre-trial stage out of fear of new ill-treatment. They further complain under this head that the trial court refused to give weight to the applicants' and unspecified defence witnesses' depositions made in the court room.

QUESTIONS TO THE PARTIES

1. Were the applicants subjected to torture or inhuman or degrading treatment on 14 and 15 March 2008 in breach of Article 3 of the Convention? The Government are invited to address the following factual questions in respect of *each* applicant:

(a) In so far as relevant, was the applicants' apprehension planned beforehand? Did the applicants resist the arrest? Did the police officers use excessive force to arrest them (see *Rehbock v. Slovenia*, no. 29462/95, §§ 71-77, ECHR 2000-XII)? The Government are invited to submit the respective documents and to specify the exact time of the apprehension.

(b) Once in the hands of the police:

(i) Were the applicants informed of their rights? If so, when, and what rights were they informed about?

(ii) Were they given the possibility of informing a third party (family member, friend, etc.) about their detention and their location and, if so, when?

(iii) Were they given access to a lawyer and, if so, when?

(iv) Were they given access to a doctor and, if so, when?

(v) Were the applicants' medical examinations of 15 March 2008 and later on conducted out of the hearing and out of sight of police officers and other non-medical staff?

(c) What activities involving the applicants were conducted at the Drugs Control Service between 14 and 15 March 2008, and during what periods? If they were carried out at night, was this lawful? What was the applicants' procedural status? Where were the applicants held on those dates? What confessions and/or statements did they give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions)? Were the applicants given access to a lawyer before and during each such activity?

The Government are requested to submit relevant documents in answering each of the above questions.

2. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular:

(a) Were the investigators (investigating authority), who carried out the inquiry into the applicants' allegations of police ill-treatment, independent of the investigators (investigating authority) who were responsible for investigating the criminal case against the applicants?

(b) Which officers (police, Drug Control Service, etc.) from which police department(s) were involved in the inquiry into the applicants' complaint of police ill-treatment? What operational and other activities did they carry out in the course of the above inquiry?

3. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3 of the Convention as required by Article 13 of the Convention?

4. Did the applicants have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 § 1 of the Convention? In particular, was the evidence, obtained as a result of the alleged ill-treatment used in any form in the proceedings against the applicants? Did the court rely on any evidence which was obtained as an indirect consequence of the alleged ill-treatment of the applicants or any other witnesses? Reference is being made, in particular, to the confessions produced by the second and the third applicants on 15 March 2008.