



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

FIRST SECTION

Application no. 13173/07
Andrey Yevgenyevich PONOMAREV
against Russia
lodged on 12 February 2007

STATEMENT OF FACTS

The applicant, Mr Andrey Yevgenyevich Ponomarev, is a Russian national, who was born in 1977 and lives in Ivanovo.

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

A. Alleged ill-treatment

As established in the domestic proceedings (see below), on 5 March 2006 the applicant and another person forced Ms T. to follow them to the applicant's flat; the applicant's accomplice and then the applicant committed a rape in respect of the victim.

Apparently, on 6 March 2006 the police came to the applicant's flat. The applicant refused to let them enter the flat. The police forced the door, carried out a search and seized some evidence. There is no allegation that any physical force was used against the applicant during the arrest. There is no indication that any related reports were drawn. The applicant was taken to a police station where he was retained until midnight. Allegedly, a police officer or police officers hit him in the stomach and kidneys. Around midnight the applicant was told that he could leave and was ordered to come to the police station on 7 March 2006.

The applicant complied and was then taken into police custody. Thereafter, he was kept in a temporary detention centre.

On 9 March 2006 the applicant was transferred to Ivanovo remand centre no. 1. It appears from the available material that the applicant was subjected to an examination there and it was concluded that he had no bodily injuries (see, however, the conclusions of the forensic report of 24 March 2006 below).

According to the applicant, during his detention in the remand centre in March 2006 “he was beaten up by police officers, taken from the cell to the investigating authority where operational officers or officials of the prosecutor’s office ... beat him up and humiliated him”. The applicant specified that he had sustained blows to his stomach and kidneys.

It is unclear whether the applicant was interviewed (with or without legal assistance) between 7 and 14 March 2006.

On 14 March 2006 an investigator of the prosecutor’s office of the Leninskiy District interviewed him, in the presence of a lawyer, about the circumstances of the rape case. The applicant decided not to make any statement.

Also in March 2006 the applicant brought court proceedings complaining about the investigator and the interview on 14 March 2006, because it had been carried out in the absence of the applicant’s second lawyer. On 5 May 2006 the Leninskiy District Court of Ivanovo dismissed this complaint.

In the meantime, according to the applicant, on or around 23 March 2006 he made a written complaint informing the investigator (in charge of the criminal case against him) of beatings and intimidation on the part of unspecified public officials. However, this complaint was not registered and enclosed in the case file. Also, the applicant submits that, on unspecified dates, he and his lawyers lodged complaints before the regional prosecutor’s office and the Prosecutor General’s Office.

On 24 March 2006 the applicant was subjected to an examination by a forensic expert. The expert concluded that the applicant had scratches, *inter alia*, on his left hand, on his left shoulder, his left foot and his neck. The expert considered that the injuries had been sustained between one day and three weeks before.

By a judgment of 23 October 2006 the applicant was convicted of rape and sentenced to six years’ imprisonment.

On an unspecified date, the prosecutor’s office of the Leninskiy district opened an inquiry (*доследственная проверка*) in relation to the applicant’s allegation of beatings. The subject-matter of the inquiry was limited to the alleged beatings “at night from 6 to 7 March 2006”.

On 14 December 2006 an acting district prosecutor issued a refusal to initiate criminal proceedings thus refusing to prosecute police officers.

On 18 December 2006 an investigator of the same prosecutor’s office issued a refusal of prosecution in relation to the same circumstances. On 28 December 2006 he issued a new refusal to initiate criminal proceedings.

On 16 January 2007 the Ivanovo Regional Court upheld the trial judgment of 23 October 2006.

On 22 January 2007 the acting district prosecutor revoked the decisions of 18 and 28 December 2006 as being premature. He considered that the investigator should have identified and interviewed the officers who had arrested the applicant and who had placed him in the temporary detention centre on 7 March 2006. At the same time, the prosecutor noted that the applicant had previously refused to provide further details as to his assailants, requesting the presence of a lawyer and seeking a prior access to the inquiry file.

On 1 February 2007 the investigator issued a new refusal decision. The investigator admitted that on 10 March 2006 the applicant had had no

injuries; that, having regard to the expert's conclusions (see above), the applicant could have sustained some scratches between 10 and 14 March 2006. The investigator considered that the expert report of 24 March 2006 did not confirm the applicant's allegation of blows to the stomach or kidneys since no hematomas, bruises or alike had been detected by the expert.

On 5 March 2007 the acting district prosecutor revoked this refusal decision, considering that the investigator had not taken any proper action to identify the officers who had taken the applicant to the police station on 7 March 2006.

The inquiry was subsequently resumed and terminated on several occasions.

On 19 January 2008 an investigator in the Town Investigations Department issued a refusal to initiate criminal proceedings against police officers. On 14 February 2008 the deputy district prosecutor confirmed this refusal.

The applicant's mother sought judicial review of these refusals.

On 5 May 2008 the District Court considered that the refusals were unlawful and lacked sufficient reasons. The court stated that, despite numerous instructions on numerous occasions, the inquiring authority failed to take measures to identify and interview inmates who had been kept with the applicant in the remand centre in March 2006. The inquiring authority should have interviewed the investigator who had been in charge of the criminal case against the applicant in March 2006. The court concluded that the inquiry had not been sufficiently thorough.

B. Criminal proceedings against the applicant

The applicant was charged with violent rape. The rape victim, Ms T., was interviewed by an investigator during the preliminary investigation. The victim stated *inter alia* that, after having been forced to follow the applicant and his accomplice to the flat, she tried to resist their attempts to undress her.

According to the applicant, he unsuccessfully sought a face-to-face confrontation (*очная ставка*) with the victim during the investigative stage of the proceedings.

On an unspecified date, the victim complained that she had received threats from the applicant's next of kin or acquaintances compelling her to withdraw her complaint for a sum of money.

The authorities obtained a judicial authorisation to monitor her telephone conversations. It was subsequently concluded that she had not received any threatening calls.

The case against the applicant was set for trial before the Leninskiy District Court of Ivanovo.

The victim attended the trial hearing on 8 June 2006. However, she had left the courthouse before the defence had a possibility to cross-examine her.

Thereafter, she left her flat and Ivanovo; ceased to use her mobile phone number; her parents could not provide any information about her

whereabouts. She sent a letter to the court expressing her unwillingness to testify at the trial.

The court heard the victim's flatmate who expressed her opinion that the victim had been afraid. The court also heard investigator B., who had investigated the case against the applicant.

The trial court concluded that there were "exceptional circumstances" in which it was appropriate to allow the reading out of T.'s pre-trial statement.

The court also examined a forensic report which concluded that "it could not be excluded" that the genetic material on the victim "could originate from the applicant".

By a judgment of 23 October 2006 the District Court convicted the applicant of violent rape and sentenced him to six years' imprisonment. The trial court relied on T.'s pre-trial statement, as well as some physical evidence and the above forensic report.

On 16 January 2007 the Ivanovo Regional Court upheld the judgment.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention that he was beaten up by police officers and that the authorities' inquiry was not effective.

The applicant also alleges under Articles 5, 6 and 13 of the Convention that his right to legal assistance was not respected on 14-16 March 2006; that he was not charged within the statutory time-limit and he was thus unlawfully detained during the investigation.

Lastly, he argues that he was deprived of any opportunity to examine the rape victim both before and during the trial in breach of Article 6 §§ 1 and 3 (d) of the Convention, and that it was unfair to convict him on the basis of the victim's pre-trial statement.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment in March 2006, in breach of Article 3 of the Convention? Reference is made, in particular, to the applicant's allegations of beatings and intimidation by police officers.

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

Once in the hands of the authorities:

(a) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(b) Was he given the possibility of informing a family member, friend, etc. about his detention and his location and, if yes, when? Was he given access to a lawyer and, if yes, when?

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

(d) Did the arresting officers make any reports concerning use of force during the applicant's arrest?

2. Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular:

(a) When did the authorities become aware or ought to be aware of the presence of injuries on the applicant's body or possible ill-treatment (including threats or intimidation)? When did the authorities launch a preliminary inquiry (доследственная проверка)?

(b) Was the applicant or other persons interviewed during the inquiry? Were those persons warned of liability for perjury or for the refusal to give evidence? Was the applicant given a possibility to participate effectively in the inquiry (for instance by lodging motions, putting questions to experts or obtaining copies of procedural decisions)?

(c) Were the officials or authorities, who carried out the inquiry, independent of (i) the officials or authority who were responsible for investigating the criminal case against the applicant; (ii) the alleged authors of ill-treatment?

(d) Was a forensic medical examination (судебно-медицинская экспертиза) carried out in order to establish, inter alia, harm to the applicant's health or psychological suffering, as well as the possible origin and time of infliction of injuries? Was such forensic examination carried out speedily? Did the forensic or other medical examinations deal with the applicant's specific allegation of blows to the stomach and kidneys?

Having regard to Article 38 of the Convention, the respondent Government are requested to submit a copy of the inquiry file and medical documents such as the medical record of the remand centre in March 2006 and the forensic report of 24 March 2006.

2. (a) Was there a good reason for admitting the pre-trial evidence of an absent witness, the rape victim Ms T. (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 119-147, 15 December 2011)? Were all reasonable efforts made to secure her attendance? If not, did this failing on the part of the national authorities was sufficient to amount to a violation of Article 6 §§ 1 and 3 (d) of the Convention?

(b) Was the applicant afforded an effective opportunity to challenge the evidence against him, including the truthfulness and reliability of Ms T.'s statements? What was the reason for refusing a face-to-face confrontation

during the preliminary investigation? Was any identification procedure carried out (опознание)? Considering, on arguable grounds, that the applicant's conviction was mainly based on evidence provided by Ms T., were the defence rights unduly restricted, in breach of Article 6 §§ 1 and 3 (d) of the Convention (see for comparison *Štefančič v. Slovenia*, no. 18027/05, §§ 36-47, 25 October 2012)?