



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

FIRST SECTION

Application no. 27052/07
Aleksey Sergeyevich STEPANOV
against Russia
lodged on 16 June 2007

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Aleksey Sergeyevich Stepanov, is a Russian national who was born in 1979 and who is currently detained in Tomsk. He was initially represented before the Court by Ms A. Yepisheva, a lawyer practising in Tyumen. He is now represented by Mr E. Kasumov, a lawyer practising in Tyumen.

A. The circumstances of the case

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

1. Investigation into the applicant's allegations of ill-treatment upon arrest

On 30 January 2003 the applicant was arrested on suspicion of murdering a policeman. According to the applicant, on the same day he was severely beaten by the police. He complained about ill-treatment to the investigator who ordered a medical examination.

On 31 January 2003 the applicant was examined by a medical expert to whom he described the circumstances of his ill-treatment. The expert noted bruises on his forehead, cheekbone, right ear and chest. The applicant also complained that his left hip ached when touched. The medical expert found that the injuries had been caused by the impact of blunt objects between one and three days before the examination.

According to the applicant, the beatings continued on the next days. The policemen hit him by fists and truncheons and kicked him in the groin. They

also administered electric shocks to his fingers, toes and ears through wires connected to a dynamo and put a gas mask on him. They threatened to harm his relatives if he did not confess.

On an unspecified date the applicant confessed to membership of a criminal gang, unlawful possession of arms, murder of a policeman, several counts of robbery, theft and car theft.

On 6 February 2003 the applicant complained about the continuing ill-treatment to the investigator, who ordered a new medical examination. On the same day the applicant was examined by a medical expert who noted a bruise on his back and the swelling of his wrists. The wrists were purple and painful and the movement of the fingers limited. The expert found that the bruise had been inflicted one day before the examination. It was not possible to establish the cause of the swelling of the wrists.

On an unspecified date the applicant was questioned by the prosecutor about the circumstances of his ill-treatment. He stated that he had been beaten by officers of the Tyumen Regional Department of the Fight against Organised Crime and officers of the Interdistrict Department of Criminal Police, whose names he did not know.

On 22 May 2003 the prosecutor's office of the Leninskiy District of Tyumen refused to open criminal proceedings into the applicant's allegations of ill-treatment. The prosecutor relied on the statements by the arresting police officers who denied having beaten the applicant. He also found that the applicant's allegations that he had been ill-treated on 30 January 2003 had been disproved by the expert report of 6 February 2003, according to which his injuries had been inflicted on 5 February rather than on 30 January 2003.

On 4 September 2003 the applicant and his counsel were allowed to study the medical expert report of 6 February 2003. The applicant asked the investigator to order an additional inquiry into his ill-treatment. On the same day the investigator ordered an additional inquiry.

On 30 October 2003 the prosecutor's office of the Kaliniskiy District of Tyumen refused to open criminal proceedings into the applicant's allegations of ill-treatment. The prosecutor found that the injuries noted in the medical certificates did not correspond to the applicant's description of the injuries that he had allegedly received as a result of ill-treatment. According to the statements by the investigator in charge of the applicant's criminal case, during the questioning of 31 January 2003 the applicant had not had any visible injuries and had not complained about ill-treatment. The prosecutor found that the applicant had lied with the aim of avoiding criminal liability.

On 13 November 2003 the applicant and his counsel were allowed to study the medical expert report of 31 January 2003. The applicant again asked to open criminal proceedings against the police officers who had ill-treated him. On 14 November 2003 the prosecutor's office of the Tyumen Region replied that an inquiry was pending.

On 9 February 2004 the applicant inquired about the results of that inquiry. On 18 February 2004 the prosecutor's office of the Tyumen Region replied that the applicant had been informed about all refusals to open criminal proceedings into his allegations of ill-treatment.

On 5 April 2004 the applicant complained about ill-treatment and ineffective investigation to the Kalininskiy District Court of Tyumen.

On 25 April 2005 the Kalininskiy District Court discontinued the judicial proceedings, finding that the prosecutor's decision of 30 October 2003 had been annulled by a deputy head of the prosecutor's office of the Kalininskiy District on 20 April 2004 and a new inquiry had been ordered.

On 29 April 2005 the prosecutor's office of the Kalininskiy District refused to open criminal proceedings into the applicant's allegations of ill-treatment. The applicant learnt of that decision in September 2005. On an unspecified date he lodged a complaint with the Prosecutor General's office, claiming that the investigation into his allegations of ill-treatment had been ineffective.

On 26 December 2005 the prosecutor's office of the Tyumen Region informed the applicant that the decision of 29 April 2005 had been annulled and a new inquiry had been ordered.

The prosecutor questioned the applicant who described the circumstances of his ill-treatment. He however could not name the police officers who had beaten him. The prosecutor also questioned the arresting officers who denied having ill-treated the applicant. One of them stated that on 30 January 2003 the police had employed Sambo techniques to arrest the applicant because there had been reasons to believe that he had been armed and aggressive. None of the police officers had however hit him. The prosecutor then questioned the medical expert who had examined the applicant on 6 February 2003. The expert stated that the swelling of the applicant's wrists could not be caused by handcuffs. Finally, he questioned the police officer who had escorted the applicant to the medical examination. The officer stated that the applicant had not complained of ill-treatment.

On 5 January 2006 the prosecutor's office of the Kalininskiy District again refused to open criminal proceedings. The prosecutor found that the applicant had not complained of ill-treatment when questioned by the investigator on 31 January 2003. He did not moreover remember the names of the police officers had allegedly beaten him. He was therefore lying to avoid criminal liability.

On 6 January 2006 the applicant challenged that decision before the prosecutor's office of the Tyumen Region, the Prosecutor General's office and the Kalininskiy District Court. He submitted, in particular, that since February 2003 he had consistently complained about ill-treatment to the investigator, the prosecutor's offices of various levels and to the court. He had repeated his earlier statement that he had been ill-treated by the officers of the Tyumen Regional Department of the Fight against Organised Crime and officers of the Interdistrict Department of Criminal Police.

On 9 June 2006 a deputy head of the prosecutor's office of the Kalininskiy District annulled the decision of 5 January 2006 and ordered a further inquiry.

On 14 June 2006 the prosecutor's office of the Kalininskiy District again refused to open criminal proceedings into the applicant's allegations of ill-treatment for the same reasons as in the decision of 5 January 2006.

On 31 July 2006 the Kalininskiy District Court discontinued the proceedings on the applicant's complaint of 6 January 2006, finding that the

decision of 5 January 2006 challenged in that complaint had been annulled and a new decision refusing to open criminal proceedings had been issued on 14 June 2006.

The applicant challenged the decision of 14 June 2006 before the Kaliniskiy District Court. On 11 September 2006 the Kaliniskiy District Court discontinued the judicial proceedings, finding that the decision of 14 June 2006 had been annulled by the prosecutor's office on 24 August 2006 and a new refusal to open criminal proceedings had been issued on 3 September 2006.

By letter of 6 October 2006 a deputy head of the prosecutor's office of the Kaliniskiy District annulled the decision of 3 September 2006 and ordered an additional inquiry. The applicant was not informed about the results of that inquiry.

On 10 November 2006 and 30 March 2007 the applicant lodged complaints about ineffective investigation with the Prosecutor General's office.

2. Criminal proceedings against the applicant

On 5 June 2006 the Tyumen Regional Court convicted the applicant and nine other persons of membership of a criminal gang, unlawful possession of arms, murder, several counts of robbery, theft and car theft and sentenced the applicant to seventeen years' imprisonment. The court relied on the applicant's confession and on the confessions of his co-defendants, statements by witnesses, expert reports and physical evidence. The Regional Court examined the applicant's and the co-defendants' allegations of police brutality. It noted that the prosecution authorities had conducted an inquiry into their complaints about the beatings and had decided not to institute criminal proceedings because the allegations had not been proven. It further referred to the statements made during the trial by the police officers who had denied having ill-treated the defendants. The Regional Court rejected the defendants' request to declare the confessions inadmissible evidence, finding that they had been given in the presence of counsel and had been recorded on video, which excluded a possibility of ill-treatment or pressure to confess.

The applicant appealed, complaining, in particular, that the Regional Court had based the conviction on the confession statements given by him and his co-defendants as a result of ill-treatment.

On 22 December 2006 the Supreme Court of the Russian Federation upheld the judgment on appeal. It reiterated the reasoning of the Regional Court in respect of the admissibility in evidence of the defendants' confession statements and their allegations of police brutality.

3. The applicant's allegations of ill-treatment in the correctional colony

On 2 May 2007 the applicant's counsel Ms Yepisheva visited him in correctional colony no. IK-2 in the Tomsk Region where he was serving his sentence. The applicant was accompanied by a warder who remained in the room throughout the visit. The applicant was limping badly and had difficulty walking. He was very pale and had a disoriented look. He had

several plasters on his forehead. When she asked what had happened, the applicant replied that he had fallen.

On 3 May 2007 Ms Yepisheva visited the applicant again. This time they were left alone in the room. The applicant told Ms Yepisheva that he had been ill-treated by the warders. He had been kicked and beaten with truncheons, tortured with electricity and subjected to splitting of legs. He had bruises on his legs and forehead.

On the same day Ms Yepisheva asked the director of the correctional colony for a medical examination of the applicant. On 4 May 2007 she lodged the same request with the prosecutor's office of the Tyumen Region. She also asked for an official inquiry.

By letter of 10 May 2007 the director of correctional colony no. IK-2 informed Ms Yepisheva that the applicant had arrived in the correctional colony on 25 April 2007. He had been examined by a doctor who had not noted any injuries. On 27 April 2007 the applicant had injured himself by bumping his head against the wall. He had received medical treatment, in particular his wound had been stitched. A decision refusing to open criminal proceedings had been issued after that incident. It was not possible to carry out a medical examination because on 7 May 2007 the applicant had been transferred to correction colony no. IK-3 in Tomsk.

On 11 May 2007 Ms Yepisheva asked the director of correction colony no. IK-3 for permission to visit the applicant. The colony director refused permission, stating that the applicant did not request to see his counsel. On 16 May 2007 Ms Yepisheva again asked for permission to visit the applicant. The colony director refused the permission relying on the applicant's written statement that he did not need to see his counsel.

By letter of 25 May 2007 the prosecutor's office of the Tomsk Region informed Ms Yepisheva about a refusal to open criminal proceedings into the allegations of ill-treatment in correctional colony no. IK-2. That decision had been given to the applicant who had been informed of possible avenues of appeal.

COMPLAINTS

1. The applicant complains under Articles 3 and 13 of the Convention that he was ill-treated upon arrest in 2003 and in the correctional colony in 2007 and that the investigations into his allegations of ill-treatment were ineffective.

2. The applicant also complains under Article 6 of the Convention that he was convicted on the basis of his confession given under duress.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to torture or inhuman or degrading treatment in the period between 30 January and 6 February 2003, in breach

of Article 3 of the Convention? Was the investigation into the allegations of ill-treatment thorough and effective?

2. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 3, as required by Article 13 of the Convention?

3. In the determination of the criminal charge against him, did the applicant have a fair hearing as required by Article 6 § 1 of the Convention? In particular, was his right to remain silent and not to incriminate himself respected, having regard to the fact that the confession statements made by the applicant during the investigation served as the ground for his conviction?