



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

FIRST SECTION

Application no. 27879/05
Yuriy Vasilyevich KVARDAKOV
against Russia
lodged on 11 July 2005

STATEMENT OF FACTS

The applicant, Mr Yuriy Vasilyevich Kvardakov, is a Russian national, who was born in 1961 and lives in Yekaterinburg.

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

A. The applicant's arrest and the alleged ill-treatment

On 9 December 2004 Verkh-Isetskiy District Prosecutor, Yekaterinburg, initiated criminal proceedings into the death of a certain N.

On 14 December 2004 the investigator in charge of the case ordered a post-mortem expert examination. The expert report was issued on 10 January 2005.

The applicant alleges that at around 11.30 am on 7 February 2005 police officers with Verkh-Isetskiy police department, Yekaterinburg, arrested him on suspicion of having inflicted serious bodily harm to N. which had caused his death. They brought him to the police station and have been questioning him there without a lawyer until 6.30 pm. The applicant alleges that police officers beaten him up to extort his confession. As a result he confessed to having inflicted bodily harm and having stolen the victims' belongings.

At 6.30 pm on 7 February 2005 the applicant was brought to the Verkh-Isetskiy district prosecutor's office where an investigator in charge of the case drafted the record of the applicant's arrest in the presence of a state-appointed legal counsel. It followed from the record of arrest that the applicant had been arrested at 4 pm.

The applicant alleges that on 8 February 2005 he was examined by a doctor who recorded bruises on his body. The applicant did not provide the Court with a copy of that certificate.

B. The applicant's detention pending investigation

On 8 February 2005 Verh-Isetskiy District Court ("the District Court"), Yekaterinburg, ordered to place the applicant in detention. In particular, the court held that the applicant had been arrested on suspicion of criminal offence punishable under Article 111 § 4 of the Criminal Code, he did not have any identity documents on him and had no job and therefore, there were grounds to believe that if released he might abscond. The court also noted that the applicant had a criminal record and in 2004 he had finished serving a sentence of imprisonment. Those elements characterised him as a person disposed to commit criminal offences and therefore it was impossible to choose another preventive measure in his respect. The decision did not set any time-limit for the applicant's detention.

The applicant alleges that on 11 February 2005 he handed over to the staff of the temporary detention facility his appeal against the detention order of 8 February 2005. However, his appeal was dispatched on 14 February 2005.

On 15 February 2005 the applicant was charged with inflicting serious bodily harm causing the death of the victim, an offence under Article 111 § 4 of the Criminal Code. This offence was punishable by up to fifteen years' imprisonment and was classified as particularly serious.

On 3 March 2005 the District Court returned to the applicant his appeal against the detention order of 8 February 2005 as lodged out of time.

On 5 April 2005 the District Court extended the applicant's detention until 8 May 2005 referring to the same grounds as in its decision of 8 February 2005. In addition, the District Court held with reference to the applicant's criminal record and lack of registration in Yekaterinburg and Sverdlovsk region, that there was a risk that if released, he might abscond and interfere with the proceedings.

On 8 April 2005 the applicant appealed against the detention order of 5 April 2005.

On 6 May 2005 the Sverdlovk Regional Court ("the Regional Court") upheld the extension order of 5 April 2005, having found that the District Court had extended the applicant's detention on sufficient grounds and in accordance with law and that the applicant's arguments for release were not convincing.

On the same date the District Court extended the applicant's detention until 9 June 2005 on the same grounds as before.

On 2 June 2005 the District Court extended the applicant's detention until 9 July 2005 on the grounds that it was necessary to carry out some further investigative measures and that there were no reasons for changing the measure of restraint.

On 7 June 2005 the applicant was presented with the new version of the charges against him. He was charged with inflicting serious bodily harm causing the death of the victim, an offence under Article 111 § 4 of the Criminal Code and with theft of the victim's belongings, punishable under Article 158 § 2 of that Code.

It follows from the materials of the criminal case that the applicant and his counsel familiarised themselves with the materials of the criminal case on 10 June 2005.

C. Referral of the case for trial

On 14 June 2005 the prosecuting authorities forwarded the criminal case against the applicant to the District Court for trial.

On 29 June 2005 the Regional Court modified the detention order of 6 May 2005 in so far as there was a misprint in its text and upheld the remainder of that decision, having found that the District Court had extended the applicant's detention on sufficient grounds and in accordance with law and that the applicant's arguments for release were not convincing.

On 13 July 2005 the Regional Court upheld the detention order of 2 June 2005.

At the preliminary hearing of 18 July 2005 the District Court dismissed the applicant's request for release having found that the grounds on which the applicant's detention had been ordered initially had not changed.

D. Referral of the case for additional investigation and further extension of the applicant's detention

On 16 August 2005 the District Court returned the case to the prosecutor on the grounds of procedural shortcomings. In particular, the court held that the applicant had to be provided with a possibility to familiarise himself with the materials of the criminal case.

On the same date the District Court dismissed the applicant's application for release and extended his detention until 16 November 2005 on the same grounds as before. On 5 October 2005 the Regional Court upheld that decision.

On 31 October 2005 the applicant was presented with the final version of the charges against him. The applicant was charged with inflicting serious bodily harm causing the death of the victim and with theft of the victim's belongings. It follows from the materials of the case that the applicant was familiarising himself with the materials of the case between 2 and 8 November 2005.

E. Further extensions of the applicant's detention and his conviction

On an unspecified date the prosecuting authorities referred the case to the District Court for trial.

On 16 November 2005 the District Court extended the applicant's detention until 30 November 2005 referring to the same grounds as before.

On 25 November 2005 the District Court set the preliminary hearing of the case for 5 December 2005. On the same date the court held that the measure of restraint applied to the applicant should remain unchanged.

On 5 December 2005, after a preliminary hearing of the case, the District Court set the examination of the case for 27 December 2005. The court further held that the measure of restraint applied to the applicant should remain unchanged because he had been charged with a particularly serious offence, might abscond and interfere with the proceedings.

On 16 December 2005 the Regional Court upheld the detention order of 16 November 2005.

On 16 February 2006 the District Court found the applicant guilty of theft and sentenced him to one year and six months' imprisonment. On the same date the District Court discontinued criminal proceedings against the applicant on charges of inflicting bodily harm causing death of the victim.

In his appeal against the judgment of 16 February 2006 the applicant complained, in particular, that he had confessed to theft under duress and in the absence of a lawyer. It appears that on unspecified date the Regional Court upheld his conviction.

The applicant submitted that during the whole period of his detention he had been deprived of personal contact with his common-law wife. It appears that he did not lodge any complaints in this respect with competent domestic authorities.

F. The applicant's complaints about ill-treatment

On 28 February 2005 the applicant applied to the Regional Prosecutor's office with a request to initiate criminal proceedings against police officers who had allegedly ill-treated him on 7 February 2005. He described in details how he had been beaten up. In particular, police officers had beaten him up on different parts of his body. Then they closed his eyes with a hat, put his arms behind his back, handcuffed him and tied his legs. Then they threw him down on the floor and put a chair on his back. They started pulling together his arms and legs. At the same time they were pressing heavily on his back. The applicant submitted that he had been subjected to such treatment between 12 am and 6 pm on 7 February 2005.

In April and August 2005 the applicant lodged similar complaints with the General Prosecutor's office. The General Prosecutor forwarded them to the Regional Prosecutor for verification and indicated that the applicant had to be informed of its outcome within the deadlines prescribed by law.

On 29 September 2005 the applicant complained to the District Court that he had not received any replies from the Prosecutor's office on his complaints about beatings by police officers. The District Court forwarded his complaint to the Verkh-Isetskiy District Prosecutor's office.

By a decision of 11 October 2005 the Verkh-Isetskiy district prosecutor dismissed the applicant's requests. The decision stated, in particular, that the applicant's complaints of ill-treatment had been joined to the materials of the criminal case, that the verification into those complaints had been carried out during the investigation of the criminal case and the decision had been taken not to institute criminal proceedings against the police officers.

G. Proceedings against remand prison

During the criminal proceedings against him the applicant was detained in remand prison no. 1, Yekaterinburg.

On 11 May 2005 the applicant brought court proceedings against the remand prison for damages sustained as a result of substandard conditions of detention.

On 11 July 2005 the District Court left the applicant's claim without examination on the grounds that the applicant had not indicated whether his complaint had to be examined as a complaint against actions of public

officials or as a civil claim and asked the applicant to provide that information by 20 July 2005.

On 21 July 2005 the District Court returned to the applicant his statement of claim on the ground that the applicant did not comply with its decision of 11 July 2005. The applicant did not appeal against that decision.

COMPLAINTS

1. The applicant complains under Article 3 that on 7 February 2005 he was beaten up by police officers and the authorities did not carry out an effective investigation in that respect.

2. The applicant complains under Article 5 that:

(a) his arrest on 7 February 2005 was unlawful because there was no reasonable suspicion against him;

(b) his detention on the basis of detention order of 8 February 2005 was unlawful because that decision did not specify the term of his detention;

(c) the District Court refused to accept for examination on the merits his appeal against the detention order of 8 February 2005 as lodged out of time;

(d) his appeals against the detention orders of 5 April, 6 May and 2 June 2005 were not examined speedily.

3. He complains under Article 5 § 3 that his pre-trial detention was not sufficiently justified.

4. He complains under Article 6 that criminal proceedings against him were unfair. In particular, he complains that:

(a) on 7 February 2005 he was questioned without a lawyer;

(b) he was provided with the results of the expert study ordered on 14 December 2004 only on 7 February 2005;

(c) he was not provided with the possibility to familiarise himself with the materials of the criminal case.

5. He complains under Article 6 that the District Court refused to examine on the merits his complaint of 11 May 2005 against the remand prison about poor conditions of detention.

6. The applicant complains, without referring to any particular article of the Convention or its protocols that he was not allowed to see his common-law wife during his stay in the remand prison.

QUESTIONS TO THE PARTIES

1. What was the outcome of the criminal proceedings against the applicant on the charges of theft and inflicting bodily harm causing the death to the victim? The Government are required to provide copies of the judgment of the Verkh-Issetkiy District Court of 16 February 2006 and the decision taken by the Sverdlovsk Regional Court on the applicant's appeal against that judgment.

2. As regards the applicant's submissions that he was ill-treated by police officers of the Verkh-Issetkiy police department on 7 February 2005,

was the applicant subjected to torture or to inhuman or degrading treatment, in breach of Article 3 of the Convention? The Government are requested to provide a copy of the medical certificate issued on 8 February 2005.

3. Having regard to the procedural protection from torture and inhuman or degrading treatment, was the investigation by the domestic authorities in respect of the applicant's allegations of ill-treatment on 7 February 2005 in breach of Article 3 of the Convention? The Government are requested to provide copies of the applicant's complaints about the alleged ill-treatment and a copy of the complete investigation file pertaining to the events of 7 February 2005. The Government are also requested to indicate on which date the applicant was provided with a copy of the decision not to initiate criminal proceedings against police officers to which referred Verkh-Isetskiy district prosecutor in his decision of 11 October 2005.

4. Was the length of the applicant's detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? In particular, did the authorities rely on "relevant and sufficient reasons" for the continuing detention of the applicant and were the proceedings conducted with "special diligence"? The Government are requested to provide copies of all orders extending the applicant's detention, his appeals against those orders and decisions of the appeal court.

5. Was the procedure by which the applicant's detention was extended and reviewed in conformity with Article 5 § 4 of the Convention? In particular, were the applicant's appeals against the detention orders of 5 April, 6 May and 2 June 2005 examined speedily by domestic courts?

6. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? Was the applicant able to defend himself through legal assistance of his own choosing on 7 February 2005, as required by Article 6 § 3 (c) of the Convention? Was the applicant afforded free legal assistance, within the meaning of Article 6 § 3 (c) of the Convention? Did the interests of justice require such assistance? In particular:

(a) What were the exact times when police approached the applicant on 7 February 2005 and took him to Verkh-Isetskiy police station? The Government are requested to submit the relevant extracts in respect of the applicant from the register of persons taken to a police station (*«Книга учета лиц, доставленных в дежурную часть органа внутренних дел»*) on 7 February 2005.

(b) What were the legal grounds for taking the applicant to the police station on 7 February 2005? Was the applicant taken to the police station because he was suspected of a criminal offence? If so, was the applicant provided with legal assistance between 11.30 am and 6 pm on 7 February 2005 and did the interests of justice require that such assistance be provided to him free of charge? If not, when was he provided with legal counsel? If the applicant could not benefit from legal assistance between 11.30 am and 6 pm, was the restriction of his defence rights justified? Did that restriction

prejudice the overall fairness of the trial in the applicant's case unduly and irreversibly?