



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

FIRST SECTION

Application no. 17418/08
Igor Vladimirovich BUROBIN against Russia
lodged on 28 February 2008

STATEMENT OF FACTS

The applicant, Mr Igor Vladimirovich Burobin, is a Russian national, who was born in 1970 and lives in Ryazan.

A. The circumstances of the case

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

1. The applicant's arrest and placement in custody

On 26 May 2004 the prosecutor's office of the Oktyabrskiy District of Ryazan opened criminal proceedings into the kidnapping and murder of Mr C.

On 27 April 2007 the applicant was summoned for questioning. When he came to the prosecutor's office, he was arrested on suspicion of kidnapping and robbery of Mr C.

On 28 April 2007 the investigator petitioned the Oktyabrskiy District Court of Ryazan for the applicant's remand. On the same day the Oktyabrskiy District Court rejected the investigator's petition, finding that the applicant's arrest had not been in compliance with Article 91 of the Code of Criminal Procedure (see below). In particular, the investigator had not submitted any materials justifying a reasonable suspicion against the applicant or confirming the risks of him absconding, re-offending, threatening witnesses, destroying evidence or otherwise interfering with the investigation. The court noted, in particular, that the applicant had no criminal record, had a permanent place of residence and employment and

had appeared for questioning without delay when summoned by the investigator.

On 15 May 2007 the Ryazan Regional Court upheld that decision on appeal.

On 25 May 2007 the applicant was formally charged with kidnapping, robbery and murder of Mr C., offences under Articles 105 § 2, 126 § 2 and 162 § 2 of the Criminal Code.

On 15 June 2007 Ms A., the applicant's friend, testified to the investigator that on the night of Mr C.'s disappearance she had stayed in the applicant's flat. The applicant was at home.

On 28 June 2007 another person, Mr Ch., was convicted of kidnapping Mr C. The judgment against Mr Ch. stated that he had acted together with unidentified persons.

It can be seen from a report dated 4 September 2007, that on that day Mr A., Ms A.'s son, was questioned by the investigator Mr K. He told to the investigator that several months before the applicant and his mother had visited Ms A. and had brought a cake. He did not know of what they had talked about.

On 17 December 2007 the charge of murder was dropped.

On 25 December 2007 the Oktyabrskiy District Court ordered the applicant's placement in custody for the following reasons:

"The investigation of this case is particularly complex and exceptional, because the offences against [Mr C.] were committed by [the applicant] and his accomplices in unobvious circumstances and were carefully planned and prepared. [The applicant] is charged with especially serious offences, one of which is punishable by eight to twenty years' imprisonment or life imprisonment. Some of the members of that organised criminal group have been placed on the list of wanted persons and new factors have emerged showing that [the applicant], alone or together with them, might re-offend, threaten witnesses or other participants to the proceedings or interfere with the investigation in some other way."

The applicant appealed, submitting that the District Court's finding that he might abscond, re-offend or interfere with the investigation had not been supported by evidence. No new factors justifying his placement in custody had emerged after the decision of 28 April 2007. He continued to live at his address and to work for the same employer. He had not absconded or threatened witnesses. He had come to the investigator without delay when summoned. He was not in contact with the other persons accused of the same offence because he was not on good terms with them.

On 17 January 2008 the Ryazan Regional Court upheld the remand order on appeal, finding that it had been lawful, sufficiently reasoned and justified.

2. The alleged ill-treatment and the investigation

At about 3.15 p. m. on 31 January 2008 the applicant was transported from the detention facility to the Ryazan Investigations Committee where he was questioned by the investigator Mr K.

The questioning ended at about 4.30 p. m. The applicant was put in a police car together with three police officers, Mr Kn. and two other officers whose names the applicant did know. They were driving about the town for about an hour. During all that time Mr Kn. urged the applicant to confess to

the murder of Mr C. and to other murders. As the applicant refused to confess and protested his innocence, Mr Kn. took out an electroshock gun and administered seventeen electric shocks to his hips. Mr Kn. then said that they were going back to the Investigations Committee and urged the applicant to make a confession to the investigator Mr K. Mr Kn. threatened that if the applicant did not confess, he would be tortured again.

After they arrived at the Investigations Committee, the investigator Mr K. told the applicant that he had two weeks to confess. If he had not confessed by that time, he would be convicted to a long prison term. Mr K. also said that it was useless to complain about ill-treatment because his complaints would not be investigated. The applicant was then transported back to the detention facility where he arrived at about 7.30 p. m. He later discovered injuries on the inside of his left hip and the outside of his right hip.

On 1 February 2008 the applicant was examined by a detention facility doctor who recorded numerous petechiae (red or purple spots on the body, caused by minor hemorrhages, which may be caused, among others, by prolonged straining, certain medical conditions, some types of injuries and some medications) on his hips and high blood pressure. The applicant was diagnosed with contact dermatitis.

On 7 February 2008 the applicant complained of ill-treatment to the Ryazan Investigations Committee.

The Ryazan Investigations Committee opened a preliminary inquiry. The investigator Mr Sh. questioned the applicant who described his ill-treatment in detail.

Mr Sh. then questioned the investigator Mr K. who had questioned the applicant on 31 January 2008 and the police officers Mr Kn. and Mr E. who had escorted the applicant from the detention facility to the Ryazan Investigations Committee and back on that day. They all stated that on the way back to the detention facility the applicant had expressed an intention to confess and had been therefore brought back to Mr K. to whom he repeated his wish to make a confession. Mr K. had explained to him that under Russian law his confession could serve as an attenuating circumstance in the criminal proceedings against him. The applicant had been then transported to the detention facility. Mr K., Mr Kn. and Mr E. all denied possessing an electroshock gun or ill-treating the applicant.

On 20 February 2008 the investigator Mr Sh. of the Ryazan Investigations Committee refused to open a criminal investigation into the applicant's allegations of ill-treatment. He found that there was no evidence of ill-treatment. By complaining about ill-treatment, the applicant attempted to escape criminal responsibility for the offences imputed to him.

The applicant challenged that decision before the Oktyabrskiy District Court of Ryazan.

On 3 March 2008 a deputy head of the Ryazan Investigations Committee annulled the decision of 20 February 2008 and ordered a further inquiry. It ordered, in particular, that Mr G., the third escorting officer, be questioned, that the times of the applicant's departure from and return to the detention facility be established, his medical record studied and the doctor who had examined the applicant questioned.

On the same day the investigator Mr Sh. questioned a forensic expert who, after studying the applicant's medical records, stated that the medical data indicated in the records was insufficient. It was therefore impossible to establish whether the skin eruptions on the applicant's hips were caused by an injury or by some disease, such as dermatitis.

Mr G. was also questioned and gave the same testimony as Mr Kn. and Mr E.

On 12 March 2008 the Oktyabrskiy District Court discontinued the proceedings on the applicant's complaint against the decision of 20 February 2008 because that decision had been annulled.

On 13 March 2008 the investigator Mr Sh. of the Ryazan Investigations Committee refused, for a second time, to open a criminal investigation into the applicant's allegations of ill-treatment. He found no evidence of ill-treatment.

The applicant challenged that decision before the Oktyabrskiy District Court, complaining, in particular, about the failure to perform an expert medical examination to establish the causes of his injuries.

On 28 March 2008 the Oktyabrskiy District Court quashed the investigator's decision of 13 March 2008, finding that the inquiry had been incomplete. In particular, the investigator had not taken the investigative measures enumerated in the decision of 3 March 2008.

During the resumed inquiry, it was established that the applicant had left the detention facility at 2.30 p.m. on 31 January 2008 and had returned there at 7.20 p.m. on the same day.

On 24 April 2008 the investigator Mr T. of the Ryazan Investigations Committee refused to open a criminal investigation into the applicant's allegations of ill-treatment. He found no evidence of ill-treatment.

The applicant challenged that decision before the Oktyabrskiy District Court.

On 20 May 2008 the Oktyabrskiy District Court quashed the decision of 24 April 2008, finding that the inquiry had been incomplete. In particular, the deficiencies in the inquiry identified in the District Court's decision of 28 March 2008 had not been corrected.

On 28 May 2008 a deputy head of the Zheleznodorozhniy Interdistrict Investigations Committee annulled the decision of 24 April 2008 and ordered a further inquiry.

On 6 June 2008 the investigator Mr T. questioned the doctor who had examined the applicant on 1 February 2008. She confirmed that she had examined the applicant and had diagnosed him with dermatitis and high blood pressure. She explained that dermatitis could be caused by many factors, such as exposure to chemicals or allergens or lack of personal hygiene. There is a low probability of it being caused by an electric shock.

On 6 June 2008 the investigator Mr T. of the Ryazan Investigations Committee refused to open a criminal investigation into the applicant's allegations of ill-treatment. He found no evidence of ill-treatment.

The applicant challenged that decision before the Zheleznodorozhniy Interdistrict Investigations Committee and before the Oktyabrskiy District Court. He asked, in particular, for an expert medical examination of his injuries.

On 10 July 2008 the Zheleznodorozhniy Interdistrict Investigations Committee rejected his complaint, finding that the decision not to open a criminal investigation had been lawful, well-reasoned and justified.

On 21 July 2008 the Oktyabrskiy District Court found that the decision of 6 June 2008 had been unlawful. It found that the inquiry had been thorough and complete and the decision of 6 June 2008 had been well reasoned and justified. Given that the applicant's injuries had been cured, it was not necessary to order an expert examination of his person or of his medical records. In any event, a forensic expert had already given his opinion on the basis of the applicant's medical records. However, there were discrepancies in the text of the decision of 6 June 2008 which made it unlawful.

On 21 August 2008 the Zheleznodorozhniy Interdistrict Investigations Committee annulled the decision of 6 June 2008.

On 22 August 2008 the investigator Mr N. of the Zheleznodorozhniy Interdistrict Investigations Committee refused to open a criminal investigation into the applicant's allegations of ill-treatment. He found no evidence of ill-treatment.

On 12 September 2008 the Ryazan Regional Court quashed the decision of 21 July 2008 for procedural defects and remitted the case for a new examination before the Oktyabrskiy District Court.

On 29 September 2008 the Oktyabrskiy District Court discontinued the proceedings, finding that the decision of 6 June 2008 had been meanwhile annulled.

3. Decisions concerning the extension of a custodial measure

On 18 February 2008 the Oktyabrskiy District Court extended the applicant's detention until 27 April 2008, finding that that the grounds for detention mentioned in the remand order of 25 December 2007 persisted. The case was complex and voluminous and it was necessary to conduct further investigative measures.

The applicant appealed, submitting that the District Court had not referred to any facts in support of its findings that he might abscond, re-offend or interfere with the proceedings. Nor had it considered alternative "preventive measures". It had disregarded his arguments, in particular those relating to his permanent place of residence and good conduct.

On 6 March 2008 the Ryazan Regional Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

On 18 April 2008 Mr A. told the applicant that his signature on the questioning report of 4 September 2007 had been falsified and his statements distorted.

On 24 April 2008 the Oktyabrskiy District Court extended the applicant's detention until 27 August 2008. It referred to the gravity of the charges and the complexity of the investigation. It noted that the investigator had submitted evidence, namely written statements by Mr A., showing that the applicant had attempted to put pressure on witnesses. The applicant's arguments about his alibi and about the investigator's alleged pressure on Mr A. could not be examined in the framework of the present proceedings. They would be examined by the trial court. The court

concluded that the applicant might abscond, threaten witnesses or interfere with the investigation in some other way.

The applicant appealed, submitting, in particular, that the investigation had been completed on 12 March 2008 and he could therefore no longer put pressure on witnesses.

On 4 May 2008 the applicant asked the investigator to order an expert examination of Mr A.'s signature on the report of 4 September 2007. He also asked for his release. On 5 May 2008 the investigator Mr K. rejected his request as unsubstantiated.

The applicant challenged the investigator's decision before Mr K.'s hierarchical superior, the head of the Ryazan Investigations Committee. He submitted that Mr A. had stated that his signature on the report of 4 September 2007 had been falsified, which had been orally confirmed by an expert. On 6 May 2008 the head of the Ryazan Investigations Committee rejected his complaint as unsubstantiated.

The applicant challenged that decision before the Oktyabrskiy District Court, submitting that an expert examination was necessary to establish whether Mr A.'s signature on the report of 4 September 2007 had been authentic.

On 15 May 2008 the Ryazan Regional Court upheld the extension order of 24 April 2008 on appeal, finding that it had been lawful, well-reasoned and justified.

On 21 May 2008 the Oktyabrskiy District Court declared inadmissible the complaint against the decision of 6 May 2008, finding that it had no competence to examine it. All evidence would be assessed by the trial court. On 26 June 2008 the Ryazan Regional Court quashed that decision and remitted the case for a new examination before the Oktyabrskiy District Court. There is no information about the new examination.

On 7 July 2008 the applicant lodged an application for release before the Oktyabrskiy District Court. He submitted, in particular, that the investigation had been completed and he had started to study the case file. He could no longer put pressure on witnesses.

On the same day the Oktyabrskiy District Court rejected his application, finding that the grounds for detention mentioned in the extension order of 24 April 2008 persisted. In particular, it had been established that the applicant had attempted to put pressure on a witness. The court could not question that finding or examine whether it had been supported by evidence. On 29 July 2008 the Ryazan Regional Court upheld that decision on appeal.

On 26 August 2008 the Oktyabrskiy District Court extended the applicant's detention until 27 November 2008 for the same reasons as before.

The applicant appealed, complaining, in particular, that the District Court's findings that he might put pressure on witnesses had been based on statements by Mr A. However, that witness had not been questioned by the District Court and the applicant's requests to have him questioned had been rejected. Moreover, his request to study the materials submitted by the investigator in support of his request for an extension had been also rejected.

On 16 September 2008 the Ryazan Regional Court quashed the extension order on appeal. It found that the District Court had unlawfully rejected the applicant's request for access to the materials submitted by the investigator.

On 18 September 2008 the applicant complained to the prosecutor's office of the Ryazan Region that his continued detention had not been based on a court order.

On 22 September 2002 the Oktyabrskiy District Court extended the applicant's detention until 27 November 2008 for the same reasons as before.

The applicant appealed. He repeated his arguments advanced in his previous appeal submissions. He also complained that his detention between 16 and 22 September 2008 had not been based on a court order and had been therefore unlawful.

On 26 September 2008 the prosecutor's office of the Ryazan Region rejected the applicant's complaint of 18 September 2008, finding that his detention had been extended by a court on 22 September 2002. His continued detention was therefore lawful.

On 21 October 2008 the Ryazan Regional Court upheld the extension order of 22 September 2002 on appeal. It found, in particular, that the extension order of 26 August 2008 had been quashed on 16 September 2008 for procedural defects. The fact that the applicant had remained in custody after that had not breached his rights.

On 13 November 2008 the applicant lodged an application for release before the Oktyabrskiy District Court. He asked to be released on bail. On the same day Oktyabrskiy District Court ordered the applicant's release on bail. It found that the investigation had been completed and the witnesses questioned. The applicant could no longer put pressure on them.

On the same day the applicant paid the bail and was released.

4. Discontinuation of the criminal proceedings against the applicant and compensation proceedings

On 25 February 2010 the Investigations Committee of the Ryazan Region discontinued the criminal proceedings against the applicant, finding that there was no evidence of his involvement in the kidnapping and robbery of Mr C.

The applicant sued the Ministry of Finance for compensation in respect of pecuniary and non-pecuniary damage incurred as a result of the unjustified criminal prosecution. He claimed 438,826.71 Russian roubles (RUB) in respect of pecuniary damage, representing legal fees, loss of salary, medical and food expenses and bail expenses. He also claimed RUB 6,000,000 in respect of non-pecuniary damage.

On 22 April 2010 the Moskovskiy District Court declared his claims inadmissible. It found that it had no competence to examine the claims in respect of pecuniary damage because they were to be examined in criminal proceedings. As regards the claims in respect of non-pecuniary damage, they were to be examined in civil proceedings. However, the Moskovskiy District Court had no territorial jurisdiction to examine them. On 26 May 2010 the Ryazan Regional Court upheld that decision on appeal.

The applicant resubmitted the claims in respect of pecuniary damage in accordance with the criminal procedural rules.

On 7 September 2010 the Oktyabrskiy District Court of Ryazan allowed in part his claims in respect of pecuniary damage. It awarded the applicant RUB 240,531.14 (approximately 6,090 euros) for legal fees, loss of salary, medical expenses and bail expenses.

On 14 December 2010 the Supreme Court of the Russian Federation, acting on supervisory review, quashed the decisions of 22 April and 26 May 2010 as unlawful and remitted the case for a new examination before the Moskovskiy District Court.

It appears that the applicant's claim in respect of non-pecuniary damage has not been examined to date.

B. Relevant domestic law

The Code of Criminal Procedure provides that an investigating authority, an investigator or a prosecutor has the right to arrest a person suspected of having committed a criminal offence which is punishable by imprisonment if that person has been caught committing a crime or immediately after having committed a crime; if victims or eyewitnesses have identified that person as the perpetrator of a criminal offence; or if obvious traces of a criminal offence have been discovered on that person's face or body, his or her clothes, or in his or her house. If there are other circumstances giving reasons to suspect a person of having committed a crime, that person may be arrested if he or she has attempted to hide, or does not have a permanent place of residence, or if the person's identity has not been established, or if the investigator has submitted to the court a request for the application of a custodial measure in respect of that person (Article 91).

COMPLAINTS

The applicant complains under Articles 3, 5 and 6 of the Convention that he was ill-treated by the police and that the investigation into his allegations of ill-treatment was ineffective. He also complains about the allegedly inhuman conditions of his detention. He further complains that he was detained despite the absence of a reasonable suspicion of his involvement in the imputed offences, that his detention from 16 to 22 September 2008 was not based on a court order and that the entire period of his detention was not based on relevant and sufficient reasons. His claims for compensation in respect of non-pecuniary damage were not examined. He finally complains that the criminal proceedings against him were unfair.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to torture or inhuman or degrading treatment on 31 January 2008, in breach of Article 3 of the Convention? Was the investigation into the allegations of ill-treatment thorough and effective? Could it be considered independent, taking into account that it was conducted by the Ryazan Investigations Committee and that, according to the applicant, an investigator from that same Investigations Committee, Mr K., had been implicated in the applicant's ill-treatment (see *Kopylov v. Russia*, no. 3933/04, § 138, 29 July 2010)?

2. Was the applicant's arrest and detention based on a reasonable suspicion against him, as required by Article 5 §§ 1 (c) and 3 of the Convention? In particular, on what facts and information was the suspicion against the applicant based? Did new facts or information emerge in the period between 28 April and 25 December 2007 that could provide a basis for a reasonable suspicion against the applicant? Did the Oktyabrskiy District Court of Ryazan examine the issue of reasonable suspicion in the decision of 25 December 2007 or in subsequent decisions extending the applicant's detention?

3. Was the applicant's detention from 16 to 22 September 2008 "lawful" in the meaning of Article 5 § 1 of the Convention? In particular, was his detention based on a valid court order?

4. Was the applicant's detention based on "relevant and sufficient" reasons and were the proceedings conducted with "special diligence", as required by Article 5 § 3 of the Convention?

5. Given that the applicant's claim for compensation in respect of non-pecuniary damage has not been examined, has the applicant have an effective and enforceable right to compensation for his detention in alleged contravention of Article 5 §§ 1 and 3, as required by Article 5 § 5 of the Convention? The parties are requested to submit a copy of the applicant's statement of claim in respect of compensation for non-pecuniary damage.