



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

FIRST SECTION

Application no. 8306/07
Radzh Khadisovich BULATOV and
Magomed Khadzhimuratovich DAMBEGOV
against Russia
lodged on 25 January 2007

STATEMENT OF FACTS

The first applicant, Mr Radzh Bulatov, was born in 1978 and resides in the town of Ivanovo. The second applicant, Mr Magomed Dambegov, was born in 1966 and resides in the town of Nalchik. Both applicants are Russian nationals.

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

A. The circumstances of the case

1. The applicants' arrest and alleged ill-treatment

On 27 September 2006 the applicants were helping the first applicant's sister to do the cleaning in her house at 55 Proletarskaya Street in the town of Prokhladny, the Kabardino-Balkariya Republic (hereinafter also "the KBR").

At about 6.20 p.m. on the same day a group of armed men in camouflage uniforms and masks burst into the courtyard. They pushed the applicants to the ground, hitting them with their gun butts, cuffed their hands and put dark plastic bags on their heads. The intruders then threw the applicants in their van where they continued beating them up and brought them to the so-called "centre T" of the Ministry of the Interior of the Kabardino-Balkariya Republic ("центр Т" МВД КБР" – a counterterrorist department with the regional ministry of the interior, hereinafter also "the counterterrorist department"). As the applicants subsequently found out, they had been arrested by officers of that authority.

At the counterterrorist department senior officer E., officer A. and other police officers continued ill-treating the applicants with a view to having

them confess to unlawful possession of arms and other crimes. They beat them up and administered electric shocks to their bodies.

It appears that the applicants did not confess.

On 28 September 2006 the second applicant's relatives complained to the Prokhladny Town prosecutor and the KBR prosecutor that at 6 p.m. on 27 September 2006 unknown persons, presumably members of law-enforcement authorities, had abducted the second applicant from Prokhladny. His relatives stated that they had managed to find out about the second applicant's whereabouts only on 28 September 2006.

According to the first applicant's arrest record dated 28 September 2006, he was arrested at 6.25 p.m. on the same date. The second applicant's arrest record of 28 September 2006 indicates that he was arrested on that date at 6.40 p.m. There is no indication that the applicant's complained about their arrest to the national courts.

On 29 September 2006 the Prokhladnenskiy District Court of the KBR authorised the applicants' placement in custody. It does not appear that the applicants challenged that decision on appeal. Subsequently, the courts regularly extended the applicants' detention.

2. Investigation into the applicants' alleged ill-treatment

(a) The applicants' medical expert examination

On an unspecified date in September 2006 the deputy head of the investigating department of the Prokhladnenskiy Town Department of the Interior (hereinafter also "the GOVD") ordered the applicants' medical expert examination.

On 29 September 2006 an expert of Forensic Medical Bureau of the KBR examined the applicants.

(i) As regards the first applicant

According to expert report no. 603 of 3 October 2006, the order for the first applicant's forensic examination stated that he had been arrested at about 6.20 p.m. on 27 September 2006 by officers of the counterterrorist department, who had applied physical force.

The first applicant stated to the expert that at about 6 p.m. on 27 September 2006 a group of armed men in uniforms and masks had emerged from a Gazel vehicle with shaded windows and had burst into the courtyard where he had been together with the second applicant. The intruders had pushed the applicants to the ground, cuffed their hands and kicked them. They then dragged the applicants into their vehicle, put a black plastic bag on the first applicant's head and drove him to the counterterrorist department, kicking him on the head and body. Upon arrival, the first applicant, who had been bleeding, had been brought to an office and made squat down. The police officers had fixed a cord to his left ear and started passing electric current through it. They had also continued hitting and kicking him on his back. At about 5 a.m. on 28 September 2006 they had brought him to the GOVD.

The report went on to state that the first applicant had numerous bruises and abrasions on his nose, forehead, shoulders and shoulder blades, wrists,

right leg and left foot. The first applicant was also found to have an abrasion on the lobe of the left ear and wounds on the left forearm and the left wrist. According to the report, the first applicant's examination by a traumatologist and a radiologist had been ordered on an unspecified date with a view to establishing whether he had had broken ribs. However, the conclusions of those specialists' examinations had not been submitted to the expert.

The expert concluded that bruises, abrasions and the wound on the first applicant's wrists could have been sustained as a result of impact of solid blunt objects with longish impact surface. The abrasion on his left ear could have been caused by impact of high-frequency current, possibly an electro shock device. The remaining bruises and abrasions could have been sustained as a result of blows of blunt solid objects with limited impact surface. Overall, the expert concluded that the first applicant could have sustained his injuries at the time and in the circumstances described by the latter. Lastly, the expert noted that it was impossible to establish whether the first applicant had broken ribs because of the absence of the conclusions of the specialist doctors mentioned above.

(ii) As regards the second applicant

According to expert report no. 602 dated 3 October 2006, the order for the second applicant's forensic examination stated that he had been arrested at about 6.20 p.m. on 27 September 2006 in the town of Prokhladny by officers of the counterterrorist department, who had applied physical force.

The second applicant stated to the expert that at about 6 p.m. on 27 September 2006, when he had been at 55 Proletarskaya Street in Prokhladny with a friend, a group of armed men in uniforms and masks had emerged from a Gazel vehicle, had burst into the court yard and pushed him to the ground. They had then twisted his arms behind his back, handcuffed him and dragged him into their Gazel vehicle. There they had put the second applicant with his face on the floor, had thrown his friend on his legs and had put a black plastic bag on the first applicant's head. After that they had several times jumped on his back and feet and had taken him to an unknown destination which subsequently turned out to be the counterterrorist department in Nalchik. At the department they had continued hitting and kicking him to various parts of his body and had brought him into a room where they had tried to make him hold an object looking like a grenade. After a while they had requested that the second applicant signed some papers. Faced with his refusal, they had connected an electrode to his right ear and the handcuffs and had passed electric current through it. The second applicant had not fainted. While being examined by the expert he complained, among other things, about pain in the thorax region and the spine and painfulness in the areas of bodily injuries.

The expert noted that the second applicant had numerous bruises and abrasions located on his front, temple, cheeks, right eye socket, thorax, abdomen, back, forearms, shoulders and the right thigh. The second applicant was also found to have abrasions on his right and left ear auricles. According to the report, on an unspecified date the expert requested the second applicant's examination by a traumatologist, a radiologist and a neurologist with a view to establishing whether he suffered from a closed

craniocerebral injury, a brain concussion, a contusion of the thorax region or fractured ribs. On 29 September 2006 the second applicant was examined by a traumatologist and a radiologist and underwent several X-rays. The X-ray of his nose did not reveal any “changes of traumatic origin”. The traumatologist also recommended a spot film radiography of the 5th and 6th ribs with a view to excluding the possibility of their fracture. There is no indication that it was performed.

The expert concluded that the injuries to the second applicant’s wrists and forearms could have been caused by handcuffs and the abrasions on his ears – by impact of high-frequency current, possibly an electro shock device. The remaining bodily injuries could have been sustained as a result of blows of solid blunt objects with limited impact surface. Overall, the expert considered that the second applicant could have sustained his bodily injuries at the time and in the circumstances described by him. Lastly, the expert noted that it was impossible to establish whether the second applicant suffered from a closed craniocerebral injury or fractured ribs because the relevant X-ray was of bad quality and the second applicant had not been examined by a neurologist.

(b) The investigation

By letter of 16 November 2006 head of the internal security department of the KBR Ministry of the Interior replied to the second applicant’s relative that they had conducted an inquiry (“*служебная проверка*”) into her complaint about unlawful acts of the officers of the counterterrorist department in connection with the second applicant’s arrest and that her allegations in that respect proved to be unfounded. The letter further stated that the town prosecutor’s office had refused to institute criminal proceedings in respect of those allegations.

On 24 November 2006 the town prosecutor’s office opened a criminal investigation into the applicants’ alleged ill-treatment under Article 286 § 3 of the Criminal Code (abuse of official powers involving the use of violence and special means). The decision stated that at about 7 p.m. on 27 September 2006 unidentified officers of the counterterrorist department had arrested the applicants on suspicion of unlawful possession of arms and had ill-treated them on the premises of the counterterrorist department with a view to obtaining their confessions to the imputed crime. The case-file was assigned the number 21/249-06.

On 12 February 2007 the applicants were granted victim status in the proceedings in case no. 21/249-06. The decision stated, among other things, that at about 7 p.m. on 27 September 2006 A., E. and “other unidentified officers of the counterterrorist department” had arrested the applicants on suspicion of unlawful possession of arms and brought them to the premises of that authority. The police officers had unlawfully held the applicants in detention until 28 September 2006, during which time they had physically abused them by hitting and kicking them and using electro shockers with a view to obtaining their confessions.

On 2 May 2007 the first applicant requested the town prosecutor’s office to allow him access to the materials of criminal case no. 21/249-06.

By decision of 6 May 2007 the deputy town prosecutor dismissed the first applicant’s request for access to the case file and his complaint about

the procrastination of the investigation. The decision noted that the investigators had carried out “a number of investigative steps” aimed at identifying the perpetrators and had interviewed several witnesses and police officers of the counterterrorist department.

On an unspecified date in May 2007 the first applicant complained to the prosecutor of the KBR that on 6 May 2007 the town prosecutor’s office had unlawfully dismissed his request for access to the case file. He stressed that his request had been prompted by the fact that the investigators had failed to follow up on the applicants’ statements during their interview on 12 February 2007 to the effect that they would identify the perpetrators. Instead, they had extended the time-limits for investigation without taking the necessary investigative steps. Furthermore, on 12 February 2007 the investigators had taken the applicants’ blood samples with a view to carrying out an expert examination. However, the applicants were not aware of its results.

On 4 June 2007 the deputy town prosecutor dismissed the first applicant’s request for access to the case file and his complaint about the investigation. His decision stated that, under the applicable rules of criminal procedure, the applicant could be granted access to the case-file only if the investigation was suspended or terminated or if the case was sent to a court for trial. Accordingly, the applicant had no right to have access to the case-file materials.

On 27 November 2007 the second applicant complained to the prosecutor of the KBR that the investigation in case no. 21/249-06 had been suspended and that he had been advised by the town prosecutor’s office that it could remain in that state for an unlimited period of time.

On 6 December 2007 the town prosecutor’s office dismissed the above complaint. The decision stated that on 24 June 2007 the investigation had been suspended owing to the impossibility of taking investigative steps with the participation of suspected police officers E. and A., who were on mission in the Chechen Republic. The investigation would be resumed following their return.

On 26 November 2009 the KBR Investigating Committee with the Prosecutor’s Office of the Russian Federation forwarded the first applicant’s request for access to the case file, dated 11 November 2009, to investigator T. of the Nalchik Investigating Department of the KBR Investigating Committee with the Prosecutor’s Office of the Russian Federation (hereinafter also “the investigating department”). The outcome of the request remains unclear.

On an unspecified date in November 2009 the first applicant complained to the Supreme Court of the KBR that the investigating authorities were delaying the investigation in case no. 21/249-06 under various pretexts. He asserted that, under the relevant regulations of the Ministry of the Interior, the police officers’ official mission could not take more than a year, whilst the investigation on the ground of the police officers’ absence from KBR on mission had been suspended three years ago.

On 29 November 2009 the KBR Supreme Court returned the first applicant his complaint on the ground that it had not been signed by him.

By letter of 17 December 2009 the deputy prosecutor of the KBR forwarded to the head of the investigating department the first applicant’s

further request for access to the case file concerning the investigation into his alleged ill-treatment. It is unclear whether that request was ever replied to.

On 7 March 2010 the first applicant complained to the Nalchik Town Court that on 24 June 2007 the investigation into the applicants' ill-treatment had been suspended with reference to the absence of two of the suspects from the KBR – allegedly owing to their mission. However, the impugned decision neither indicated the start and end dates of their mission, nor the source of that information. Moreover, according to the relevant instruction of the Ministry of the Interior, police officers could not be sent on mission for a period exceeding one year. Two and a half years had lapsed since that decision and it was implausible that the police officers had not returned home. The applicant asserted that the authorities deliberately delayed the investigation and that, owing to their persistent refusal to provide him with any information on its course, he was not even aware of the person who was in charge of his case. The applicant relied on Article 125 of the Code of Criminal Procedure (hereinafter also "the Code").

On 28 July 2010 the first applicant complained to the President of the Nalchik Town Court that a hearing on his complaint of 7 March 2010, received by the court on 21 March of the same year, had been fixed for 26 March 2010. The applicant's lawyer had requested the court to proceed with its examination in her absence. Pursuant to Article 125 § 3 of the Code, a court was under an obligation to examine the applicant's complaint not later than five days after its receipt by the judge. However, as of July 2010 the applicant had neither received a decision nor originals of the documents enclosed with his complaint. He was left in a vacuum as to whether his complaint was examined at all and if so, deprived of an opportunity to appeal against any decision taken. The applicant requested to be informed about the outcome of the proceedings without delay. It is unclear whether he received a reply.

It seems that the investigation into the applicants' alleged ill-treatment is pending.

3. The applicants' conviction

(a) The trial judgment

By judgment of 5 April 2007 the Prokhladnenskiy District Court of Nalchik found the applicants guilty of unlawful acquisition, storage and possession of arms. The first applicant was sentenced to one year and six months' and the second applicant – to seven months' imprisonment.

The applicants denied having committed the crimes imputed to them.

In finding the applicants guilty the trial court referred, among other things, to testimonies of E., A., M., Sh. and K., officers of the counterterrorist department, interviewed by it. It follows from the trial judgment that at the material time E., A. and M. were senior officers of the counterterrorist department. The police officers stated, among other things, that on an unspecified date the counterterrorist department had received operational information that the applicants had been involved in religious extremism and in trafficking in arms in the KBR, following which a

decision had been taken to arrest them. Apart from the above-mentioned police officers, a FSB officer and officers of the Consolidated Rapid Reaction Unit (*Сводный Отряд Быстрого Реагирования*, hereinafter the “SOBR”) and the Special Police Forces Unit (*Отряд Полиции Особого Назначения*, hereinafter also “OMON”) had participated in the arrest. The group was driving a Gazel vehicle, a VAZ-2107 vehicle and a Audi vehicle. Furthermore, two attesting witnesses, Kon. and T., were present during the arrest.

In E.’s submission, at about 6 p.m. the applicants got outside the house at 55 Proletarskaya Street in Prokhladny, following which the SOBR officers pushed them to the ground and immobilised them. The first applicant was found to have a pistol, and the second – a grenade in his pocket. Those objects seized, the applicants were brought to Nalchik, where all relevant documents were compiled. After that the applicants were brought to the GOVD.

According to officer A., he and E. arrived in Prokhladny in a VAZ-2107 vehicle, accompanied by SOBR officers who were driving a Gazel vehicle. While the applicants were walking along a street, the SOBR officers emerged from the Gazel vehicle, pushed them to the ground and immobilised them at about one metre distance from one another. E. discovered the pistol on the first applicant and A. – a grenade in the second applicant’s pocket. At the time of the arrest the FSB officer, as well as officers M. and K., were in the Audi vehicle.

M. stated that he had been in charge of the operation aimed at the applicants’ arrest. The arrest itself had been carried out by the OMON officers wearing masks and the applicants’ personal inspection (*личный досмотр*) – by officers of the counterterrorist department, subordinate to M. During the operation M. had stayed in the Audi vehicle together with the FSB officer and K., surveying the arrest, which had taken some ten to fifteen minutes.

Sh. submitted that he had not arrested the applicants but had participated in the escorting. On the day of the applicants’ arrest he had arrived in Nalchik in a Audi vehicle together with “Nazir” and an officer of the counterterrorist department.

K. stated that he had participated in the applicants’ arrest in Prokhladny, where he had gone with M., E. A. and a FSB officer whose name had been “Anzor”. Following the arrest, K., M. and the FSB officer had left.

In citing the testimony of attesting witness T. the trial court noted that at the hearing on 5 December 2006 he had submitted that at the time of the applicants’ arrest he had seen a black plastic bag on the head of one of them. However, at the hearing on 18 January 2007 T. had retracted that statement, submitting that he had given it under pressure from unidentified persons who had visited him before the court hearing.

Witness P., interviewed on the request of the defence, stated that at about 11 p.m. on the night of the applicants’ arrest he had received a call from the second applicant, telling him that he had been arrested and brought to the counterterrorist department in Nalchik. Having arrived at that authority, P. had asked the on-duty officer about the second applicant but he replied that there had been no such person on the premises. At that moment the second applicant had lent out of the window, shouting “I am here!”. At the same

time, on-duty officer Kh. and the deputy on-duty officer continued to assert that the second applicant was not detained at the counterterrorist department.

(b) The appeal judgment

On 22 June 2007 the Supreme Court of the KBR upheld the trial judgment on appeal.

B. Relevant Domestic Law

Under Article 78 of the Russian Criminal Code a person is released from criminal responsibility upon the expiry of a two-year limitation period in respect of a minor offence; a six-year period in respect of an offence of medium gravity; a ten-year period in respect of a grave offence; and a fifteen-year period in respect of a particularly grave offence.

Article 15 provides that a grave offence is an intentional act subject to a maximum penalty of deprivation of liberty for not more than ten years.

Article 286 § 3 states that the abuse of official powers entailing (a) the use of violence or the threat of violence; (b) the use of arms or special implements; or (c) grave consequences is punishable by deprivation of liberty for a term of between three and ten years, together with deprivation of the right to hold certain posts or to carry out certain activities for a term of up to three years.

COMPLAINTS

The applicants complain under Article 3 of the Convention that during and after their arrest on 27 September 2006 they were subjected to ill-treatment and that the national authorities failed to carry out an effective investigation into it.

Under Article 5 of the Convention they complain about the unlawfulness of and the lack of reasons for their arrest and the insufficiency of the reasons for their continued detention.

Relying on Articles 6 §§ 1, 2 and 3 (c), 7, 9 and 14 of the Convention the applicants submit that they were deprived of access to legal advice following their arrest and that in convicting them of the offences they had never committed the national courts incorrectly assessed the evidence.

With reference to Article 8 of the Convention, the first applicant also complains that the police officers had entered the house at 55 Proletarskaya Street without a judicial warrant.

Under Article 4 of Protocol No.7 the first applicant submits that in April 2007 the national courts convicted him of a crime similar to that of which he had been acquitted in 2002.

Lastly, the applicants complain under Article 13 of the Convention that they were deprived of effective remedies in respect of their grievances under Article 3.

QUESTIONS TO THE PARTIES

1. Having regard to the applicants' submissions, was there a violation of Article 3 of the Convention on account of the first and second applicant's alleged ill-treatment during and after their arrest on 27 September 2006?

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

(a) In the period between 5 p.m. on 27 September and midnight on 29 September 2006:

(i) What were the (detention) facilities or law-enforcement authorities on whose premises the first and second applicants were held in detention?

(ii) In respect of each and every facility/law-enforcement authority:

- What was the time of the applicants' admission to the facility/law-enforcement authority?

- Were the applicants examined upon admission to each facility by the medical staff with a view to assessing their state of health, recording any eventual injuries and possible health complaints? If so, when? Were their medical examinations conducted out of the hearing and out of sight of police officers and other non medical staff?

- Were they given access to a lawyer? If so, when?

- Were they given the possibility of informing a family member, friend, etc. about their detention and location and, if so, when?

(b) What activities involving each of the applicants were conducted in the above-mentioned time span and at which times of the day? What was the applicants' procedural status? What confessions and/or statements did the applicants give during that period (please submit relevant documents, in particular, records of the applicants' statements/confessions, on-site verifications of their statements/investigating experiments, if any, which are legible/provide their typed copies, where necessary)? Were the applicants given access to a lawyer before and during each such activity?

3. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into these applicants' allegations of ill-treatment? In particular:

(a) Were the investigating authorities in charge of criminal case no. 21/249-06 independent from the authorities who were responsible for investigating the criminal case against the applicants?

(b) Which officers from which law-enforcement authorities were involved in the investigation of the applicants' complaints of ill treatment? What operational and other activities did they carry out in the course of the investigation and were those sufficient to ensure its thoroughness and effectiveness?

(c) Taking into account the limitation period for the offence of abuse of the official powers (Article 286 of the Criminal Code) and the applicants' allegations that the authorities were unduly delaying the investigation, can the national authorities be considered to have acted with the requisite promptness and diligence (see *Lenev v. Bulgaria*, no. 41452/07, § 124, 4 December 2012, with further references, and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III)?

In response to each the above questions the Government are requested to submit relevant legible documents and, if need be, their typed copies, including, but not limited to:

- an entire copy of the investigation file in case no. 21/249-06;
- a copy of the hearing record (протокол судебного заседания) in connection with the applicants' trial resulting in the judgment of 5 April 2007;
- excerpts from logbooks of detainees admitted to the detention facilities in which the applicants were held between 5 p.m. on 27 September and midnight on 29 September 2006 for the relevant dates and in respect of each of the applicants;
- excerpts from logbooks of primary medical examination of persons admitted to facilities in which the applicants were held in the above mentioned time span for the relevant dates and in respect of each of the applicants.

4. Did the applicants have at their disposal effective domestic remedies for their complaints under Article 3 of the Convention about their alleged ill-treatment, as required by Article 13 of the Convention?