



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

FIRST SECTION

Application no. 13408/07
Leonid Leonidovich ZOLOTOREV
against Russia
lodged on 25 January 2007

STATEMENT OF FACTS

The applicant, Mr Leonid Leonidovich Zolotarev, is a Russian national, who was born in 1965 and lives in St Petersburg.

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

A. The criminal proceedings against the applicant

In July 2003 the applicant was arrested and charged with murders, banditry and a number of other particularly grave crimes.

On 9 July 2003 he was detained and transferred to remand prison IZ-47/1 of St Petersburg.

On 30 March 2006 the St Petersburg City Court found the applicant guilty as charged and gave him life sentence.

On 11 January 2007 the Supreme Court of Russia upheld the judgment on appeal.

B. The events of 4 July 2003 and the following investigation

On 4 July 2003 the applicant was arrested and brought to temporary detention facility (IVS) of St Petersburg and the Leningradskiy Region.

He claims that at the IVS two policemen beat him with truncheons, demanding to sign a confession statement.

The next morning the applicant was examined by a prison doctor, who discovered some scratches on his stomach.

On 21 April 2004 the Deputy Prosecutor of the Kalininskiy District of St Petersburg (“the deputy district prosecutor”) rejected the applicant’s request to open criminal proceedings in connection with that incident.

On 17 November 2004 a supervising prosecutor quashed the decision on appeal, ordering an additional inquiry.

On 22 December 2004 the Deputy St Petersburg City Prosecutor, having questioned several policemen, the prison doctor and examined the medical documents, established that there was no evidence that the applicant had been subjected to ill-treatment and refused to open an investigation into the events of 4 July 2003.

It follows that there were no further developments in the case until 2010, when the applicant complained about the inaction of the investigative authorities.

On 18 June 2010 the Kalininskiy District Court of St Petersburg found that:

“[The court] declares that the inaction of the deputy district prosecutor, who has failed to duly examine Mr Zolotarev’s complaint about his ill-treatment by the IVS wardens, is unlawful.”

After a while the applicant decided to challenge the refusal of 22 December 2004 by way of judicial review.

On 28 December 2011 the Dzerzhinskiy District Court of St Petersburg, acting on the applicant’s complaint, quashed that decision as unsubstantiated and ordered the investigation to cure its defects.

It appears that the investigation is still pending.

C. The events of 20 September 2003 and the following investigation

On 20 September 2003 the applicant was apparently again beaten in his remand prison cell by a policeman for refusal to sign a confession. As a result, the applicant, who had suffered from a childhood head trauma, was badly injured and spent eight months in a prison hospital.

On 29 September 2003 an investigator refused a request for the applicant’s forensic medical examination, noting that:

“Mr Zolotarev ... attested that he had received the injuries on the night from 20 to 21 September 2003 in a cell of remand prison IZ-47/1. Mr Zolotarev does not remember the circumstances [of the incident].

Thus, there is nothing to suggest that Mr Zolotarev’s bodily injuries have something to do with the investigation into [applicant’s] criminal case, and the request to establish the circumstances [of how did the applicant receive the injuries] is of no significance to the investigation of the criminal case [against Mr Zolotarev].”

On 15 April 2004 the deputy district prosecutor of the Kalininskiy District of St Petersburg decided not to open criminal investigation into the incident.

On 17 November 2004 a supervising prosecutor quashed the above decision and ordered to perform an additional inquest.

On 9 December 2004 the deputy district prosecutor issued another refusal to institute criminal proceedings. Having questioned the applicant, his cellmates, a prison guard and the prison doctor, he concluded that the applicant had hurt himself when he had fallen from his bunk bed.

It appears that the decision of 9 December 2004 was subsequently quashed.

On 9 February 2007, 30 January, 14 May, 11 June and 31 August 2009 investigators of the Kalininskiy District of St Petersburg issued further refusals to open an investigation into the beatings.

Following the applicant's complaints, these decisions were subsequently quashed, in particular, on 1 and 5 December 2008 by the Kalininskiy District Court of St Petersburg and on 23 January and 20 April 2009 by a supervising prosecutor.

Moreover, in its decisions of 1 and 5 December 2008, as well as in further rulings of 18 and 25 November 2009, the Kalininskiy District Court found the investigation guilty of unlawful procrastination and urged it to take measures to advance the applicant's case.

On 1 February 2010 an investigator of the Prosecutor's Office of the Kalininskiy District of St Petersburg decided that there was not enough evidence that the applicant was beaten by policemen and refused to open a criminal case in that regard.

No further developments seem to have happened in the case since that date.

D. The events of 23 June 2005 and the following investigation

According to the applicant, on 23 June 2005 he was again beaten by guards who escorted him to a hearing in the premises of the St Petersburg City Court.

Upon his return to the remand prison, the applicant was examined by a doctor, who found abrasions and bruises on his forehead and the left wrist.

On 10 August 2005 the Deputy Prosecutor of the Tsentralniy District of St Petersburg refused to open a criminal investigation into the applicant's allegations of ill-treatment.

On 29 January 2007 the Deputy Prosecutor of St Petersburg quashed the refusal and ordered that an additional inquest be performed.

On 13 March 2008 an investigator of the Prosecutor's Office of the Tsentralniy District of St Petersburg rejected the request to prosecute the guards for the alleged beatings of 23 June 2005 again. The applicant challenged that decision by way of judicial review.

On 15 July 2008 the Dzerzhinskiy District Court of St Petersburg discontinued the proceedings as earlier that day the supervising prosecutor had already quashed the decision of 13 March.

On 25 July, 5 and 22 September, 6 October, 26 November, 6 December 2008 and 15 June 2009 further refusals to institute criminal proceedings were issued. On 26 August, 12 and 26 September, 17 and 27 November 2008 and 5 June and 6 November 2009 respectively, they were quashed by the supervising prosecutor. On 8 April 2010 an investigator took another decision refusing a criminal inquiry. On the same day his superior quashed that decision.

On unspecified dates the applicant lodged a number of complaints about procrastination on part of the investigation with the domestic courts.

On 20 November 2008 the Dzerzhinskiy District Court of St Petersburg rejected one of the applicant's complaints, noting, however, that:

“At the same time, the court considers it necessary to point at the facts of red-tapery on behalf of the investigative authority's officials ..., of ignoring the applicable legislation and of systematic and lengthy non-execution of the [supervising prosecutor's] orders by the said officials, making Mr Zolotarev to seek the protection of his rights by courts.”

On 29 March and 13 April 2010 the Dzerzhinskiy District Court entertained two applicant's other complaints and found the investigation guilty of unlawful inaction. In addition to the judgement of 13 April, the court issued a special ruling stating that:

“The court considers the issuing of [another] refusal to institute criminal proceedings ... to be in itself a grave violation of the Code of Criminal Procedure.

The court considers the [investigative authorities'] arguments to be unsubstantiated, not founded on factual circumstances and aimed at concealing their irresponsible attitude towards the due procedure ...

Thus, the court establishes the fact of red-tapery on behalf of the investigation officials and systematic and lengthy non-execution of the [supervising prosecutor's] orders regarding Mr Zolotarev's complaint, making him to seek the protection of his rights by courts.”

In a letter of 17 May 2010 the Deputy Chief Investigator of the St Petersburg City Prosecutor's Office acknowledged the irregularities of the investigation and reprimanded the officials in charge of the applicant's case for gravely violating the procedural legislation.

On 28 April 2010 an investigator of the Prosecutor's Office of the Tsentralniy District of St Petersburg refused to open an investigation in the incident of 23 June 2005 once again.

Apparently, no appeals against that refusal were lodged.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that on 4 July and 20 September 2003 and 23 June 2005 he was ill-treated by policemen.

2. With reference to the same provision, he claims that no effective investigation has been carried out into these incidents.

QUESTIONS TO THE PARTIES

1. Was Mr Zolotarev subjected to treatment contrary to Article 3 of the Convention on 4 July and 20 September 2003 and 23 June 2005?

2. Did the authorities conduct an effective investigation into the applicant's complaints regarding the above incidents, as required by Article 3?

The Government are requested to provide a complete investigation file in respect of each of these cases.