



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

FIRST SECTION

Application no. 21770/07
Danila Aleksandrovich BABAN against Russia
and 3 other applications
(see list appended)

STATEMENT OF FACTS

The applicants are Russian nationals.

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

1. Application no 21770/07 lodged on 28 February 2007 by Danila Aleksandrovich BABAN who was born on 19 October 1979 and lived until his arrest in the town of Chelyabinsk. He is now serving his sentence in the correctional colony in the town of Magnitogorsk, Chelyabinsk Region.

A. Facts

On 31 October 2006 the Kopeysk Town Court of the Chelyabinsk Region dismissed the applicant's tort action against the administration of correctional colony no. 1 in the Chelyabinsk Region. The applicant had argued that he had contracted tuberculosis as a result of the poor conditions of detention in the colony. Having examined the case in the applicant's absence despite his leave to attend, the Town Court did not find any evidence in support of his arguments. The judgment was upheld on appeal on 23 January 2007 by the Chelyabinsk Regional Court which fully endorsed the Town Court's reasoning. Having addressed the applicant's complaint about his absence from the hearings, the Regional Court noted that the applicant who had been duly notified of the date and place of the hearings could have appointed a representative or could have submitted written evidence in support of his arguments. The appeal court also stressed that the Russian law on civil procedure did not provide for a possibility to transport inmates to hearings in civil cases.

The applicant lodged another action against the Federal Service of Execution of Sentences, the Russian Ministry of Finance and the Chelyabinsk Regional penitentiary authorities, having argued that his

detention with inmates suffering from an open form of tuberculosis had led to his having been infected. The applicant claimed compensation for damage, including for the failure to provide him with timely and adequate medical assistance in detention. He also sought leave to attend. On 26 December 2006 the Tsentralniy District Court of Chelyabinsk examined the action in the applicant's absence and dismissed it as unfounded. In letters to the applicant the presiding judge noted that there were no grounds to transport him to the courthouse.

The applicant appealed, having complained, *inter alia*, about his absence from the hearings. He claims that he is unaware of the outcome of the appeal proceedings.

B. Complaint(s)

The applicant complained, among other matters, under Article 6 of the Convention about the authorities' failure to ensure his presence at the court hearings.

2. Application no 4708/09 lodged on 15 October 2008 by Vasilii Arkadyevich BOGATYREV who was born on 11 March 1959 and lived until his arrest in the town of Yelabuga, Tatarstan Republic. He is serving his sentence in the correctional colony in the village of Startsevo, Krasnoyarsk Region.

A. Facts

The applicant lodged an action against the administration of the correctional colony, seeking the withdrawal of disciplinary sanctions imposed on him for a violation of the colony internal order rules and the annulment of decisions to place him in a punishment ward or to change the detention regime to a stricter one. The applicant also sought leave to attend.

On 17 April 2008 a judge from the Sovetskiy District Court of Krasnoyarsk scheduled the first hearing. He also informed the applicant of it and summoned several colony officials and an inmate as witnesses.

On 4 July 2008 the District Court dismissed the applicant's claims as unfounded, having based its decision on the statements by several witnesses heard in open court and on material evidence. The District Court also noted that the applicant had not been summoned to the hearings as he was serving a sentence of imprisonment.

The District Court's decision became final on 3 September 2008 when the Krasnoyarsk Regional Court upheld it on appeal, having found no violations of either material or procedural norms. The appeal hearing was also held in the applicant's absence.

In another set of the proceedings the applicant attempted to challenge the conditions of his labour in the correctional colony. In particular, he argued that his working day was too long, that the additional work hours were not remunerated and that compensation for regular work hours was in any case too small. That complaint was also examined in the applicant's absence and was dismissed as unsubstantiated after the Zheleznodorozhniy District

Court had heard the representative of the colony administration. On 2 June 2008 the Krasnoyarsk Regional Court upheld the judgment on appeal, having stated that the case had been examined in full compliance with the domestic legal requirements, including those which concerned the party's presence at the hearings.

The applicant's another complaint about the disciplinary sanctions and his transfer to the punishment ward was dismissed in the final instance by the Krasnoyarsk Regional Court on 9 June 2008. Hearings both before the first-instance and the appeal courts were held in the applicant's absence although the colony officials attended and made oral submissions.

B. Complaint(s)

The applicant complained under Article 6 of the Convention about the authorities' failure to ensure his presence at the court hearings in all sets of the proceedings.

3. Application no 43594/11 lodged on 18 April 2011 by Andrey Nikolayevich YAKOVLEV who was born on 24 June 1967 and lived before his arrest in the town of Turinsk, Sverdlovsk Region. He is now serving his sentence in a correctional colony.

A. Facts

1. Criminal proceedings against the applicant

By the final judgment of 7 September 2006 the applicant was found guilty of having made murder threats and having verbally assaulted a police officer. He was sentenced to two months of imprisonment and a fine.

In 2009 the applicant was found guilty of rape and also received a prison sentence.

On 18 July 2012 the Sverdlovsk Regional Court, in the final instance, found the applicant guilty of aggravated abuse of office and sentenced him to two years and ten months of imprisonment.

2. Civil proceedings

In 2010 a private company lodged an action seeking the annulment of a number of sales-purchase and loan agreements concluded between the company and the applicant. The company also sought title to a list of premises which served as the basis for the contracts with the applicant.

Having heard the parties, on 20 September 2010 the Nevyansk Town Court accepted the action in full.

The applicant appealed. Having been placed in custody in the meantime, he also sought leave to attend.

On 20 January 2011 the Sverdlovsk Regional Court upheld the judgment on appeal, having fully endorsed the Town Court's reasoning. The applicant was not transported to the appeal hearing, while the company's representative attended and made oral submissions.

In 2010 the applicant was also involved in another court dispute involving the same company. Having lost the action, he missed the time-limit to lodge an appeal statement. The court refused to restore the limit, having found no valid reasons for the applicant's failure to comply with that procedural requirement.

B. Complaint(s)

The applicant complained, among other matters, under Article 6 of the Convention about the authorities' failure to ensure his presence at the appeal hearing.

4. Application no 43852/12 lodged on 16 June 2012 by Vladimir Ivanovich BELYAYEV who was born on 3 March 1968 and lived before his arrest in St. Petersburg. He is represented before the Court by Mr V. Kommisarov, a lawyer practicing in Lipetsk. The applicant is serving a sentence of imprisonment.

A. Facts

1. Ill-treatment by warders, criminal charges against the applicant and investigation of an ill-treatment complaint

On 14 November 2003 the St. Petersburg City Court found the applicant guilty of aggravated murder and possession of firearms and sentenced him to twenty-one years of imprisonment. The judgment became final on 1 November 2004 when it was upheld on appeal.

The applicant was transferred to medical detention facility no. 3 in the Chelyabinsk Region. On 28 September 2007 he was transported by a prison van. On arrival to the colony the applicant and four other inmates were taken out of the van and were forced to squat down, to place the hands on the head, to face the ground and to stay in that position. A warder approached the applicant and twice hit him to the jaw with a fist.

On 3 October 2007 the applicant was ordered to leave the cell. He entered the corridor, turned to the wall and took an eagle-spread position leaning against the wall. Having refused to strip naked for a body search, the applicant was immediately subjected to the beatings. A warder hit him a number of times to the legs with a rubber truncheon. At the same time another warder started kicking and hitting the applicant to the back and head. Having tried to protect himself from a more serious damage, the applicant turned and faced his assailants. He raised his arm and inadvertently hit the warder's face. The beatings intensified and the applicant was pushed to the floor. The warders continued kicking and hitting him with fists and truncheons. The applicant lost consciousness. A warder dragged him to the cell and the applicant was left there on the floor.

Several hours later a number of warders entered the cell and took the applicant to a deputy head of the colony, Mr M. The applicant was left lying on the floor when Mr M. approached and put his foot on the applicant's face. While whipping his boot against the applicant's face, Mr M. promised

vengeance for the assault on the warder. The applicant was again beaten up, handcuffed and dragged to the cell. His pleas for medical assistance were to no avail.

At night a group of three warders came to the applicant, placed him on a bunk, stripped the applicant naked, held his legs and arms and started kicking and hitting him, having explained that it was done in revenge for their fellow officer. When the officers had left, the applicant, unable to get up, spent the rest of the night naked on the floor.

On 5 October 2007 criminal proceedings were instituted against the applicant on suspicion of assault on a warder and disruption of the order in the detention facility. The prosecution's case was that on 2 October 2007 the applicant had refused to subject to a body search and had waived his hands to prevent the search. Warder B. had warned the applicant about the intention to use force should the latter failed to comply with the order. In response the applicant had hit with a fist another warder, Mr L., to the face and broke L.'s lip.

On 2 September 2008 the Chelyabinsk Regional Court, by a jury verdict, acquitted the applicant. Having established that the applicant had hit warder L. once and had broken his lip, the jury, nevertheless, concluded that the applicant had caused the injury in an attempt to protect himself. The relevant part of the judgment read as follows:

“The jury established in a verdict that two injuries to Mr L.'s lower lip were caused by [the applicant] with a single blow by a hand to Mr L.'s face after [the applicant] who had refused to strip naked and to submit clothes to a check-up, had asked to give him a copy of a decision by the head or deputy head of the facility authorising a full body search; [the applicant] who had stayed with his face to the wall had been subsequently kicked and hit with fists and rubber truncheons a number, at least ten, of times to various parts of his body, head, [and] limbs; [the beating] had been accompanied by verbal assaults; in an attempt to prevent further beatings and to protect his health [the applicant], while falling down, had turned and made an aimless punch in the direction of the persons who had continued hitting him.”

The Regional Court also informed the applicant of his right to rehabilitation, including the right to claim damages.

On 18 November 2008 the Supreme Court of the Russian Federation upheld the judgment on appeal.

In the meantime, the applicant lodged a complaint with a prosecutor's office providing his version of the events on 2 October 2007 and complaining about the ill-treatment.

On 28 January 2008 a senior investigator of the Investigative Department of the Metallurgicheskii District of Chelyabinsk opened a criminal case in the events on 2 October 2007. On 28 September 2009 the senior investigator adjourned the proceedings, having reasoned that it was impossible to identify perpetrators of the offence. The applicant did not provide the Court with a copy of the latter decision.

The applicant's representative appealed against the decision of 28 September 2009, having argued that following the jury verdict of 2 September 2008 all persons who had assaulted the applicant were known and that therefore there was no reason to adjourn the criminal proceedings.

On 10 February 2011 the Metallurgicheskii District Court of Chelyabinsk dismissed the complaint, having found as follows:

“As follows from the case file materials, on 28 September 2009 a senior investigator of the Investigative Department, Mr V., refused to open a criminal case against the officers of [medical colony no. 3], Mr M., Mr B. and Mr L., who, as follows from that decision, had lawfully used force against [the applicant]. That decision remains in force.

In those circumstances, the decision by which the criminal proceedings were adjourned is lawful and well-founded; there are no grounds to consider it unlawful.”

On 9 April 2012 the Chelyabinsk Regional Court quashed that decision on appeal and sent the case for re-examination.

It appears that the proceedings are now pending.

2. Tort proceedings

The applicant brought an action against the Chelyabinsk Regional prosecutor’s office, the Regional Treasury and the Ministry of Finance claiming compensation for non-pecuniary damage caused by the unlawful institution of the criminal proceedings. He also sought apologies from the implicated officials. The applicant asked to ensure his presence at the court hearing.

On 11 August 2011 the Tsentralniy District Court of Chelyabinsk awarded the applicant 15,000 Russian roubles in compensation for non-pecuniary damage and dismissed the remaining claims. The District Court held the hearings in the applicant’s absence, having noted that he was an inmate and that he was provided with an “effective” opportunity to submit his observations in writing.

The judgment was upheld on appeal on 6 February 2012 by the Chelyabinsk Regional Court. Having fully endorsed the District Court’s reasoning, the Regional Court also noted that the applicant, an inmate, had been duly notified of the court hearing but had failed to attend it.

B. Complaint(s)

The applicant complained, among other matters, under Article 6 of the Convention about the authorities’ failure to ensure his presence at the hearings in the tort proceedings. He further complained under Article 3 of the Convention about his ill-treatment on 2 October 2007 and the ineffective investigation into the events in question.

COMMON QUESTIONS

1. Having regard to the fact that the applicant was not brought to the first-instance and/or appeal hearings in civil proceedings, do the circumstances of the case disclose an infringement of his right to a fair hearing as guaranteed by Article 6 § 1 of the Convention? In particular, was the applicant afforded an opportunity to attend the above mentioned hearings?
2. Having regard to the fact that the applicant's adversaries were present at the above mentioned hearings and made submissions to the courts, has there been an infringement of the applicant's right to equality of arms enshrined in Article 6 § 1 of the Convention?

CASE SPECIFIC QUESTIONS

Application no. 43852/12

Having regard to the events on 2 October 2007, was the applicant subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present instance by the domestic authorities in breach of Article 3 of the Convention?

The Government are requested to produce the complete investigation file pertaining to the events on 2 October 2007.

APPENDIX**List of applications**

21770/07	BABAN v. Russia
4708/09	BOGATYREV v. Russia
43594/11	YAKOVLEV v. Russia
43852/12	BELYAYEV v. Russia