



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

FIRST SECTION

Application no. 19816/09
Tseren Anatolyevich BAMBAYEV
against Russia
lodged on 12 March 2009

STATEMENT OF FACTS

The applicant, Mr Tseren Anatolyevich Bambayev, is a Russian national, who was born in 1985 and lives in the town of Elista, the Republic of Kalmykiya.

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

Following his conviction in 2007, the applicant served the sentence in settlement colony OL-27/3 situated in Vakhtovo in the Republic of Kalmykiya.

A. The events of 1 January 2009 and the following investigation

On 1 January 2009 two prison guards accused the applicant and a number of other inmates of drinking alcohol. When the latter denied, the guards beat them up with truncheons and placed them in a punishment cell, where they were beaten once again.

On 2 January 2009 the applicant's parents, who visited him in the colony, learned from him about the incident and witnessed his corporal damage. On the same day the applicant's mother requested the local prosecutor's office to institute criminal proceedings regarding the incident.

On 4 January 2009 the applicant was examined by a forensic expert, who noted that:

“According [to the applicant], on 1 January 2009 was injured by [settlement colony's] employees.

At the moment of the examination Mr Bambayev has the following injuries: bruises on the back of his thorax (multiple), on the inside of the left forearm (1), on the back of the left forearm (2), on his buttocks (multiple), around his coccyx (1), on the back of his left thigh (1), on the back side of his right thigh (1), on the projection of his patellae (1 each) and an abrasion on the front side of his right shin, which were inflicted by a blunt solid object(-s), possibly at the time and in the circumstances

described by the examined [person] and [these injuries] do not qualify as having caused harm to a human's health.”

On 12 and 24 January 2009 an investigator of the Yashkulskiy Interdistrict Prosecutor's Office of the Republic of Kalmykiya (“the investigator”), having questioned the applicant, his fellow inmates, their relatives, the prison guards and the director of the colony, and having studied the results of the applicant's forensic examination, established that the use of force by the guards was lawful and proportionate. The investigator decided not to open criminal proceedings regarding the ill-treatment.

On 14 and 26 January 2009 a supervising prosecutor quashed the above decisions and ordered to perform an additional inquest into the incident.

On 5 February 2009 the investigator refused to open a criminal case once again. The applicants challenged the refusal by way of judicial review.

On 18 February 2009 the Yashkulskiy District Court of the Republic of Kalmykiya (“the District Court”) discontinued the proceedings as the decision of 5 February was already quashed by the supervising prosecutor on 14 February 2009.

On 21 February, 12 March and 18 April 2009 the investigator issued three further refusals, which were quashed by the supervising prosecutor on 27 February, 1 April and 6 May 2009, accordingly. On 7 May 2009 the applicant's judicial complaint against the refusal of 12 March was dismissed by the District Court on that account.

On 9 May 2009 the investigator took another decision not to open a criminal investigation into the applicant's complaints of ill-treatment.

On 3 June 2009 the supervising prosecutor quashed the above decision and ordered a further inquiry.

It appears that the investigation is still pending.

B. The events of 10 March 2009

On 10 March 2009 the applicant was placed in a penitentiary cell of the colony, where several prison guards allegedly filmed him on camera. It appears that no complaints were lodged in that regard.

C. The civil compensation proceedings

On an unspecified date the applicant sued the regional penitentiary administration and the Ministry of Finance of Russia, claiming non-pecuniary damages for the ill-treatment of 1 January 2009.

On 1 October 2009 the Elista Town Court of the Republic of Kalmykiya allowed the claim in part, awarding the applicant 20,000 Russian roubles (around 450 euros at the time), and found that:

“... The respondents claimed that the use of special means by prison guards against Mr Bambayev was lawful; however, they failed to submit any evidence that it was proportionate.

...

Taking into account the above, the court considers that [the respondents] did not prove the lawfulness of actions of the prison guards, who used truncheons and

physical force against the claimant. The claimant's allegations that he had been [subsequently] beaten [by the guards] ... were not refuted as well.

...

Thus, it has been established that the prison guards used physical force and special means against the claimant, and consequently inflicted him non-pecuniary damage.”

On 12 November 2009 the Supreme Court of the Republic of Kalmykiya upheld the judgment on appeal.

D. The proceedings regarding the applicant's transfer to another colony

On 11 March 2009 the administration of the applicant's colony lodged a request seeking his transfer to a facility with a stricter regime. A legal aid lawyer was appointed to represent him in the proceedings.

On the next day the court proceedings began. The applicant claims that he was informed of them just a few hours before they commenced.

On 27 March 2009, after several adjournments of hearings on the applicant's demand, the Yashkulskiy District Court allowed the administration's request and ordered to transfer the applicant from the settlement to a correctional colony.

On 2 June 2009 the Supreme Court of the Republic of Kalmykiya upheld the judgment on appeal.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the ill-treatment by the prison guards on 1 January 2009.

2. Relying on the same Convention provision, he claims that no effective investigation was conducted into this incident.

QUESTIONS TO THE PARTIES

1. In regard to the incident of 1 January 2009 and in the light of the judgment given on 12 November 2009 by the Supreme Court of the Republic of Kalmykiya, could the applicant still claim to be a victim under Article 3 of the Convention in its material aspect in respect of the events of 1 January 2009?

2. Was the investigation into the applicant's complaints of ill-treatment effective, as required by Article 3 of the Convention?