



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

FIRST SECTION

Application no. 46248/07
Anton Sergeyevich SHESTOPALOV
against Russia
lodged on 16 October 2007

STATEMENT OF FACTS

The applicant, Mr Anton Sergeyevich Shestopalov, is a Russian national, who was born in 1986 and lives in Nizhniy Novgorod. He is represented before the Court by Mr A.G. Ryzhov, a lawyer with The Committee Against Torture, an NGO based in Nizhniy Novgorod.

The circumstances of the case

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

1. The applicant's alleged ill-treatment at the Nizhniy Novgorod police station

On 15 May 2004 the applicant's former classmate was raped.

On 24 May 2004 at about 10.30 a.m. two policemen arrived at the applicant's flat and invited him to follow them to the Sovetskiy district police station of Nizhniy Novgorod for a "talk". The applicant was a minor at the time. His mother agreed that he would go with the police officers.

At the police station the applicant was asked by police officers if he knew the victim and about his whereabouts on 15 May 2004. The applicant stated that he hadn't seen his classmate for two years.

Six or seven police officers handcuffed him and tied his head to his legs while he was sitting on the floor. They beat him, sat on his back, and strangled him with two sticks and by putting a plastic bag over his head.

The applicant signed a statement in which he acknowledged a voluntary sexual intercourse with the victim on 15 May 2004. Then he was taken to prosecutor Mr S. for further questioning during which he confirmed his earlier statement.

At around 2 p.m. the applicant's mother, who was anxious about the lengthy absence of her son, came to the police station and inquired about

her son's whereabouts. She was informed that the applicant had been released several hours ago. She came back again at around 5 p.m., since the applicant had still not appeared at home. The same police officers, who took the applicant to the police station in the morning, informed her that the applicant had been released two hours ago.

At around 9 p.m. the applicant returned back home.

On 25 May 2004 the applicant was examined by a doctor in hospital no. 39 of Nizhniy Novgorod. He was found to have closed craniocerebral injuries, brain concussion, multiple bruises and abrasions on his chest and knees.

The applicant's forensic medical examination at the Nizhniy Novgorod Regional Forensic Medical Centre on 26 May 2004 revealed, in addition to the above-mentioned injuries, multiple bruises and abrasions on his ears and both hands. According to the expert's report, the injuries could have been received two or three days before the examination.

On 26 May 2004 the victim gave a written statement (*pacnucka*) to the applicant's family that the applicant was not the person who had raped her.

2. The authorities' response to the applicant's complaint of police ill-treatment

On 26 May 2004 the applicant's mother filed a complaint with the Sovetskiy district police department of Nizhniy Novgorod.

On 28 May 2004 her complaint was transferred to the Sovetskiy district prosecutor's office.

Between 28 May and 7 June 2004 an investigator questioned the victim, the applicant, his mother, police officer Mr F. and prosecutor Mr S.

On 7 June 2004 an investigator at the district prosecutor's office refused to bring criminal proceedings against police officers for no case to answer, relying on Article 24 (1) § 2 of the Code of Criminal Procedure. The investigator found that the applicant's and his mother's statements were controversial. The applicant's allegations against the police officers were found to be aimed at avoiding criminal liability.

On 19 June 2004 the district prosecutor annulled, of his own motion, the decision of 7 June 2004 and ordered an additional inquiry.

Five more refusals to bring criminal proceedings followed. They were likewise annulled by the supervising prosecutor for a failure to carry out a comprehensive inquiry.

On 20 February 2006 the Nizhniy Novgorod regional prosecutor's office instituted criminal proceedings under Article 286 § 3 (a) of the Criminal Code (abuse of authority with the use of violence).

On 28 February 2006 the investigator granted the applicant victim status.

Between 15 March 2006 and 6 April 2007 a number of investigative measures were taken.

On 14 April 2006 the investigator ordered the applicant's forensic medical examination. It was carried out between 17 April and 2 May 2006 on the basis of medical documentation. It confirmed the conclusions of the previous forensic report of 26 May 2004.

On 14 July 2006 the applicant identified on a photograph police officer Mr F. as one of those who had ill-treated him. On the same date the investigation was suspended on the grounds that it was impossible to

identify the guilty person and that all possible investigation measures had been carried out.

On 27 July 2006 the applicant identified Mr F. during an identification parade.

On 24 August 2006 a confrontation was carried out between the applicant and Mr F. The applicant confirmed that Mr F. had taken part in his beatings and that he had dictated him the confession statement. The applicant was not able to give further details as to Mr F.'s exact actions during his ill-treatment.

On 25 August 2006 the criminal proceedings against police officer Mr F. were closed on the ground that he had not been implicated in the crime relying on Article 27 (1) § 1 of the Code of Criminal Procedure.

On 10 January 2007 an examination of the crime scene, office no. 306 at the Sovetskiy district police station, was carried out. It appears that no evidence of crime was found.

On 26 January 2007 a confrontation was held between the applicant and police officers Mr Sh. and Mr A. The applicant stated that Mr Sh had not beaten him, however had witnessed his ill-treatment. The applicant stated that Mr A. had taken part in his beatings. The applicant was not able to provide any further details as to Mr A.'s exact behavior. The criminal proceedings against police officer Mr A. were closed on the same day for want of some elements of the offence, on the ground of Article 24 (1) § 2 of the Code of Criminal Procedure.

On the same date photographs of six other police officers were shown to the applicant. He did not identify anybody.

On 19 April 2007 the criminal proceedings were suspended on the grounds that it was not possible to identify those responsible and that all possible investigation measures had been carried out.

3. Compensation proceedings in respect of the alleged ill-treatment

On 29 September 2008 the applicant brought proceedings against the Ministry of Finance and the Sovetskiy district police department of Nizhniy Novgorod for damages allegedly sustained as a result of his ill-treatment by police. He claimed 500,000 Russian rubles in compensation for non-pecuniary damage, relying, in particular, on Article 3 of the Convention and the Court's case-law.

On 17 November 2008 the Sovetskiy District Court of Nizhniy Novgorod partially granted the applicant's claim, acknowledged that the applicant's injuries had been caused during his detention at the police station on 24 May 2004 and awarded him 50,000 rubles as compensation for non-pecuniary damage relying, in particular, on the Court's case-law.

The District Court agreed with the applicant's account of events. It held that as a result of the ill-treatment the applicant had suffered morally and physically, had received injuries, in particular brain concussion, bruises and abrasions to his hands, ears and knees, inflicted by the police officers of the Sovetskiy district police department of Nizhniy Novgorod.

It noted that the investigation had not identified the individual guilty State officials. However, under Article 1064 of the Civil Code, this did not prevent the court from awarding the applicant compensation for moral harm suffered by him.

The applicant appealed against the judgment, challenging the low amount of compensation and pointing out that he was a minor at the time of the ill-treatment.

On 3 March 2009 the Nizhniy Novgorod Regional Court dismissed the appeal considering that the amount awarded was proportionate to the damage sustained.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention that he had been tortured in police custody and that no effective investigation into his complaint was carried out.

He also complains under Article 13 that the compensation he received in respect of non-pecuniary damage was insufficient to redress the infringement of his rights and thus to deprive him of victim status.

QUESTIONS TO THE PARTIES

1. Can the applicant claim to be a victim of the alleged violation under Article 3 of the Convention (see *Kopylov v. Russia*, no. 3933/04, §§ 127-150, 29 July 2010)?
2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by police officers on 24 May 2004, in breach of Article 3 of the Convention?
3. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular:
 - (a) Did the domestic authorities' refusals to bring criminal proceedings in 2004-2006 and, hence, to conduct a preliminary investigation, according to Part VIII, Articles 150-226 of the Code of Criminal Procedure, breach the State's obligation to conduct an effective, thorough and expeditious investigation?
 - (b) Were investigators and police officers, who were involved in the preliminary inquiry and investigation into the applicant's allegations of police ill-treatment, independent of the police department and those of its officers who were allegedly implicated in the applicant's ill-treatment?
4. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 3, as required by Article 13 of the Convention?