



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

FIRST SECTION

Application no. 41858/08
Timur Said-Magomedovich IDALOV
against Russia
lodged on 21 July 2008

STATEMENT OF FACTS

The applicant, Mr Timur Said-Magomedovich Idalov, is a Russian national, who was born in 1967 and is serving a prison sentence in Tavda, Sverdlovsk Region. He is represented before the Court by Ms K. Moskalenko, Ms O. Preobrazhenskaya and Mr I. Zeber, lawyers practising in Moscow.

The circumstances of the case

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

1. Criminal proceedings on the drug charges

On 16 July 2008 at 4.50 p.m. the applicant was arrested. According to the arrest record, the applicant “failed to comply with the policemen’s legitimate request to present his ID, resisted them and tried to abscond”. He was later taken to the police station. The police officers searched him and found heroin in his pocket. According to the applicant, it was the police officers who had planted the drug on him.

On 17 July 2008 at 12.45 p.m. investigator S. opened a criminal investigation against the applicant on suspicion of illegal drug possession. At 6.20 p.m. she drew a criminal arrest record.

On 18 July 2008 at 8.30 p.m. the Odintsovo Town Court authorised the applicant’s pre-trial detention. The court noted as follows:

“As it follows from the materials submitted, [the applicant] is suspected of having committed a grievous offence and he has a prior criminal record. If released, he might abscond and interfere with [administration of justice].

The applicant appealed noting that he had been arrested by the police a day prior to the preparation of the record of his arrest and that the Town

Court failed to take his fact into consideration. He also argued that the Town Court had ignored that he had a permanent place of residence in Moscow, that he had been a sole provider for two minor children and his wife, that he had been a fourth-year student at a higher educational establishment by correspondence and that he had employment. Nor had the prosecutor furnished any evidence disclosing the applicants' intent to abscond or to interfere with administration of justice. Lastly, he noted that the arrest order does not indicate the time-limit for his detention.

On 5 August 2008 the Moscow Regional Court upheld the arrest order of 18 July 2008 on appeal.

On 15 September 2008 the Town Court extended the applicant's detention until 17 November 2008. The court reasoned as follows:

"As it follows from the materials submitted, [the applicant] is charged with a grievous offence and has a prior criminal record. Accordingly, if released, he might abscond and interfere with [administration of justice]."

On 12 November 2008 the Town Court extended the applicant's detention until 31 December 2008. The court reasoned as follows:

"Regard being had to the fact that [the applicant] is charged with a grievous offence which he committed when released on parole, that he has a prior criminal record and that he might abscond, continue criminal activities, interfere with administration of justice, it is necessary that [the applicant] remain in custody."

On 16 December 2008 the Town Court fixed the trial for 23 December 2008. The court further ordered that the applicant remain in custody pending examination of the case and noted as follows:

"... According to the materials submitted by the prosecutor, [the applicant] had been earlier convicted. He is charged with a ... offence classified as a particularly grievous during his release on parole. ... The court considers that, if released, [the applicant] might abscond. Furthermore, [the applicant's] release might interfere with the comprehensive and objective examination of the evidence. Accordingly, the earlier imposed on [the applicant] measure of restraint cannot be lifted."

On 18 December 2008 the Town Court opened the trial.

On 22 May 2009 the Town Court extended the applicant's detention until 8 September 2009 noting as follows:

"Having heard the parties' argument, the court concludes that, in view of the fact that [the applicant] is charged with a ... grievous offence ... which he committed while on parole, the court considers that, if released, he might abscond or continue criminal activities. Furthermore, the [applicant's] release might interfere with comprehensive and objective examination of the case. Accordingly, ... the detention imposed on [the applicant] cannot be lifted."

On 25 June 2009 the Town Court returned the case-file to the prosecutor's office for rectification of certain omissions and extended the applicant's detention until 8 September 2009. The court referred to the gravity of the charges against the applicant and noted that the latter was charged with having committed a serious offence when released on parole.

On 16 July 2009 the Regional Court upheld the decision of 22 May 2009 on appeal.

On 23 July 2009 the Regional Court upheld the decision of 25 June 2009 on appeal.

On 17 December 2009 the applicant was removed from the courtroom for the inappropriate behaviour. On the same day the Town Court found him guilty as charged and sentence him to four years' imprisonment.

On 13 April 2010 the Moscow Regional Court upheld the applicant's conviction on appeal.

2. Criminal proceedings on the assault charges

On 25 September 2009 the applicant had an altercation with the warden M. The applicant hit M. in the face.

According to the forensic medical report, M. sustained a concussion and a bruise on the right cheek-bone.

On 7 October 2009 the prosecutor's office opened a criminal investigation into the incident of 25 September 2009.

On 21 January 2010 the Mozhaysk Town Court took into account the fact that the applicant had been convicted and sentenced to imprisonment on 17 December 2009 and authorised his pre-trial detention. On 11 January 2010 the Regional Court quashed the said decision on appeal and remitted the matter for fresh consideration noting that the lower court should justify its decision remanding the applicant in custody.

On 27 February 2010 the Town Court authorised the applicant's pre-trial detention. The court reasoned as follows:

“Regard being had to the gravity of the charges against [the applicant] and his prior conviction for the crime against a person ... , the court considers that [the applicant] might continue his criminal activities or otherwise interfere with administration of justice.

Regard being had to the above and considering that [the applicant] might be transferred to a correctional facility once his conviction of 17 December 2009 becomes final, which fact might prevent the court from ... prompt consideration of the present case, the court grants the [investigator's] request to remand [the applicant] in custody.”

On 5 March 2010 the Regional Court upheld the decision of 27 February 2010 on appeal.

The applicant's pre-trial detention was further extended by the Town Court on 23 April, 4 June, 1 and 7 July 2010. The applicant appealed on against the first three orders in question. On 6 May, 17 June and 10 August 2010 the Regional Court upheld those orders on appeal. The courts' reasoning remained, in substance, unchanged.

On 1 July 2010 the Town Court fixed the preliminary hearing of the applicant's case for 6 July 2010. On 12 October 2010 the Regional Court upheld the said decision on appeal.

On 16 December 2010 the Town Court found the applicant guilty as charged and sentenced him to 10 years' imprisonment. On 17 March 2011 the Regional Court upheld the applicant's conviction on appeal reducing his sentence to seven years' imprisonment.

3. The applicant's placement in a disciplinary cell and ensuing proceedings

On 25 September 2009 applicant refused to leave the cell where his was detained in the remand prison. According to the reports prepared by the

guards, he swore at them and made threats. The warden ordered the applicant's placement in a disciplinary cell for fifteen days.

On 10 January 2010 the applicant brought an action against the warden challenging the lawfulness of his decision of 25 September 2009.

On 30 April 2010 the Mozhaysk Town Court dismissed the applicant's complaint for his failure to comply with the three months' time-limit prescribed in respect of such complaints. On 13 July 2010 the Regional Court upheld the judgment of 30 April 2010 on appeal.

4. Alleged ill-treatment

(a) Incident of 21 May 2009

On 21 May 2009 the applicant was allegedly assaulted by three unidentified persons at the police station. They strangled him pulling his arms behind his back. On 22 May 2009 the applicant's lawyer complained to the police and the prosecutor's office about the incident of 21 May 2009. The applicant did not inform of the outcome.

(b) Incident of 25 September 2009

On 25 September 2009, following an altercation with warden M., the remand prison guards took the applicant to an assembly cell measuring 70 cm x 70 cm. M. repeatedly hit the applicant against the wall administering blows to his head and body. The applicant's nose and lips bled. Then the guards handcuffed the applicant and continued beating him.

The applicant's lawyer lodged a complaint to the prosecutor's office about the beatings. According to the applicant, the prosecutor's office refused to institute criminal proceedings against the alleged perpetrators. The courts at two levels of jurisdiction upheld the prosecutor's decision.

(c) Incident of 29 October 2010

On 29 October 2010 the applicant was detained in remand prison no. IZ-77/4 in Moscow. The prison guards beat him and nine other inmates.

On 3 November 2010 the applicant took part in a court hearing by means of a video link. He complained to the judges about the beatings. On 9 November 2010 the Supreme Court asked the prosecutor's office to conduct an inquiry into the applicant's allegations.

On 23 May 2012 the prosecutor refused to institute criminal investigation into the applicant's allegations. On an unspecified date the applicant appealed against the prosecutor's decision to the court.

On 9 July 2012 the Babushkinskiy District Court of Moscow quashed the decision of 23 May 2012 and ordered further inquiry. The applicant was not informed of the outcome.

(d) Incidents ill-treatment in correctional colonies

On 24 June 2012 the applicant was allegedly beaten up while in detention in correctional colony no. IK-19 in the Sverdlosk Region. On 29 September and 1 October 2012 he was beaten up while in detention in correctional colony no. IK-2 in Yekaterinburg. According to the applicant, he underwent a medical examination, but the authorities refused to issue

him with a copy of the relevant medical report. His complaints about the ill-treatment were left without a response from the authorities.

5. Conditions of detention and transport

(a) Conditions of detention at the temporary detention centre and remand prisons

Between 16 July 2009 and 13 April 2011 the applicant was detained in the temporary detention centre in the Odintsovo, remand prison no. IZ-50/1 in Mozhaysk and remand prison no. IZ-77/4 in Moscow in identical conditions. The cells were overcrowded, dirty, poorly ventilated and insufficiently lit. The toilet offered no privacy. The use of shower was limited.

From 22 November 2012 to 11 January 2013 the applicant was held in remand prison no. IZ-66/1 in Yekaterinburg.

(i) Temporary detention centre in Odintsovo

On 16 July 2009 the applicant was placed in cell no. 6 in the temporary detention centre in Odintsovo, Moscow Region. The cell measured approximately 14-15 square metres. The number of inmates detained with the applicant in the cell was five. The cell did not have access to day light. There were no chairs or table in it. The toilet was not separated from the living area of the cell and offered no privacy.

At all times all the cells in the temporary detention centre were overcrowded and the personal space available to the inmates fell short of the statutory standards of 4 square metres. The cells were dirty. There was no ventilation. The lighting was poor and insufficient for reading. The access to shower facilities was limited.

At the temporary detention centre the applicant received one meal per day. On the days of the court hearings, the applicant did not have any meals at all.

(ii) Remand prisons nos. IZ-50/1 in Mozhaysk and IZ-77/4 in Moscow

The applicant did not provide a description of the conditions in which he was detained in remand prisons nos. IZ-50/1 in Mozhaysk and IZ-77/4 in Moscow alleging that they were identical to the conditions of his detention in the temporary detention centre in Odintsovo.

(iii) Remand prison no. IZ-66/1 in Yekaterinburg

On 22 November 2012 the applicant was placed in cell no. 423 in remand prison no. IZ-66/1 in Yekaterinburg. The cell measured no more than 15 square metres and was equipped with 4 beds. There were from 7 to 9 inmates held in the cell together with the applicant.

From 29 November to 28 December 2012 the applicant was held in cell no. 240. The cell was constantly overcrowded and housed from 18 to 30 inmates.

From 29 December 2012 to 11 January 2013 the applicant was held to cell no. 2. It measured 6.23 square metres and housed two persons.

(b) Conditions of transport

On the days of the court hearings and on the days of the change of the applicant's place of detention, he was woken up early and placed in an overcrowded holding cell. Then he was taken to the place of his destination (a courthouse or a detention facility) in a prison van. On each occasion the number of the persons transported with the applicant exceeded the van's capacity of 24 persons. The vans were dirty and not ventilated. There was no heating system in place. The trip lasted several hours. The van compartments were stifflingly hot in the summer and very cold in the winter.

(c) Conditions of detention at the courthouse

At the courthouse the applicant was placed in a holding cell measuring 5 square metres together with 2-4 other inmates. He was held in such conditions for several hours awaiting the hearing. He was allowed to use the toilet only once. The cell was not ventilated. All the other detainees smoked and the applicant, a non-smoker, was exposed to second-hand tobacco smoke.

(d) Conditions of transport to the correctional colony

On 13 April 2011 the applicant was transported to correctional colony no. IK-19 in the Sverdlovsk Region. The trip lasted from 13 to 27 April 2011. The applicant was held in a train compartment with other 12-14 inmates while the compartment capacity was for 6 persons only. During the stops, the applicant was placed in remand prisons in Moscow, Chelyabinsk and Yekaterinburg. All the cells there were overcrowded. The applicant was not provided with an individual sleeping place.

6. *Proceedings concerning the authorities' refusal to issue a foreign travel passport to the applicant*

On 4 May 2008 the applicant applied for a foreign travel passport. On 3 July 2008 he was informed of the migration service's refusal to issue the passport.

On 6 August 2008 the Timiryazevskiy District Court of Moscow dismissed the applicant's complaint noting that the conditions of parole imposed on him upon release from imprisonment did not permit him to leave the country. The applicant did not appeal.

7. *The applicant's correspondence with his representatives*

On 29 January 2013, while serving a prison sentence in correctional colony no. IK-19, the applicant received two letters from his representatives before the Court. The letters were opened by the administration of the colony.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention about the conditions of his detention from 16 July 2009 to 13 April 2011 and from

22 November 2012 to 11 January 2013; about the conditions of his transport in the course of the criminal proceedings against him and the conditions of his transport from the remand prison to the correctional colony from 13 to 27 April 2011 and from 22 November 2012 to 11 January 2013. He further alleges that on 21 May and 25 September 2009, 29 October 2010, 24 June, 29 September and 2 October 2012 he was subjected to ill-treatment in custody and that the ensuing investigation was not effective.

The applicant complains that his arrest on 16 July 2008 and the subsequent authorisation of his pre-trial detention were in contravention of Article 5 of the Convention. He further alleges that his pre-trial detention was not based on relevant or sufficient reasons.

The applicant complains under Article 6 of the Convention that on 17 December 2009 the trial was conducted in his absence.

The applicant complains under Article 13 of the Convention in respect of the investigation into his allegations of ill-treatment.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention, in respect of his complaint under Article 3 of the Convention as regards the incidents of 21 May, 25 September 2009, 29 October 2010, 24 June, 29 September and 1 October 2012?

2. As regards the incidents of 21 May, 25 September 2009, 29 October 2010, 24 June, 29 September and 1 October 2012, has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?

3. Having regard to the procedural protection from inhuman or degrading treatment, was the investigation by the domestic authorities into the applicant's allegations of ill-treatment of 21 May, 25 September 2009, 29 October 2010, 24 June, 29 September and 1 October 2012 in breach of Article 3 of the Convention?

4. The Government are requested to produce the complete investigation files, if any, in respect of the incidents of 21 May, 25 September 2009, 29 October 2010, 24 June, 29 September and 1 October 2012.

5. As regards the applicant's complaint under Article 3 of the Convention concerning the conditions of his detention in the temporary detention centre in Odintsovo, Moscow Region, remand prison no. IZ-50/1 in Mozhaysk, Moscow Region, and remand prison no. IZ-77/4 in Moscow from 16 July 2009 to 13 April 2011, and in remand prison no. IZ-66/1 in Yekaterinburg from 22 November 2012 to 11 January 2013, the parties are requested to provide the following information in respect of each cell in which the applicant was held:

- (a) The cell number and the dates of the applicant's stay;
- (b) The floor surface of the cell (in square metres);
- (c) The number of bunk beds and/or sleeping places that were available in the cell;
- (d) The exact number of detainees held in the cell (supported by certificates of original documents, such as cell registers or statistical data);
- (e) The number of hours the applicant spent in the cell and the frequency of outdoor exercise;
- (f) The sanitary and hygiene conditions that prevailed in the cells where the applicant was detained (including, lighting, ventilation, heating, access to daylight, location of the toilet, etc.);
- (g) The number of meals the applicant received per day.

6. In the light of the replies to the above questions, were the conditions of the applicant's detention in the said detention facilities compatible with Article 3 of the Convention?

7. Were the conditions of the applicant's detention at the Odintsovo and Mozhaysk Town Courts of the Moscow Region compatible with Article 3 of the Convention? The parties are requested to provide the following information in respect of each cell in which the applicant was held in the courthouses:

- (a) The cell number and the dates of the applicant's detention;
- (b) The floor surface of the cell (in square metres);
- (c) The exact number of detainees held in the cell (supported by official documents);
- (d) The number of hours the applicant spent in the cell;
- (e) Cell furnishings (location and accessibility of the toilet, furniture, etc.).

8. Were the conditions of the applicant's transport between the detention facilities and the courthouse compatible with Article 3 of the Convention? The parties are requested to provide the following information:

- (a) The size of the holding cell and the duration of the period the applicant was held there prior to the transport;
- (b) The number of trips the applicant made;
- (c) The duration of the trips;
- (d) The size and the furnishings of the van compartment (ventilation, furniture, heating, etc.);
- (e) The number of detainees transported in the same van with the applicant.

9. Were the conditions of the applicant's transport from the remand prison to correctional colony no. IK-19 from 13 to 27 April 2011 compatible with Article 3 of the Convention? The parties are requested to provide the following information:

- (a) The dates and duration of the trips;
- (b) The size of the compartment;
- (c) The number of detainees transported with the applicant in the same compartment;
- (d) The applicant's placement in remand prisons during the transfer:
 - The cell number and the dates of the applicant's stay;
 - The floor surface of the cell;
 - The number of beds in the cell;
 - The exact number of the detainees held in the cell together with the applicant.

10. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3, as required by Article 13 of the Convention?

11. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, what was the legal basis for the applicant's deprivation of liberty from 16 to 17 July 2008? Did the deprivation of liberty during the period in question fall within paragraphs (b) or (c) of this provision?

12. As regards the court order of 18 July 2008 authorising the applicant's remand in custody, was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, was the failure of the Odintsovo Town Court to specify a period of the applicant's detention compatible with Article 5 § 1 (*Fedorenko v. Russia*, no. 39602/05, §§ 47-51, 20 September 2011)?

13. Was the applicant's pre-trial detention pending the determination of the illegal drug possession charges against him based on "relevant and sufficient" reasons and has it been compatible with the "reasonable time" requirement of Article 5 § 3 of the Convention (*Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?

14. As regards the applicant's exclusion from the trial on 17 December 2009, was that situation compatible with the requirements of Article 6 §§ 1 and 3 (c) and (d) of the Convention (*Idalov v. Russia* [GC], no. 5826/03, §§ 169-82, 22 May 2012)?