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

Communicated on 3 February 2014

FIRST SECTION

Application no. 586/08
Sergey Borisovich YANCHURKIN
against Russia
lodged on 11 November 2007

# STATEMENT OF FACTS

The applicant, Mr Sergey Borisovich Yanchurkin, is a Russian national, who was born in 1960 and lives in Novosibirsk.

## A. The circumstances of the case

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

### *1. Alleged ill-treatment and criminal proceedings against the applicant*

On 14 May 2006 the applicant was stopped by the police officers. They considered that the applicant was drunk and told him to follow them to the police station. The applicant complied.

According to the applicant, after their arrival in the police station the officers asked him whether he had any prohibited items on him. He had a firearm in his bag and tried to hand it over to them. Allegedly, seeking the firearm, the officers beat him up so that he fainted. When he recovered his hands were cuffed behind his back and he remained cuffed for a long time. In the applicant's submission, his head was bleeding, he had injuries on his hand/arm and leg, a fracture of a hip, pain in his kidneys and a headache. Allegeldy, the officers also took his money and belongings, and put weapon cartridges in his bag. No medical assistance was provided to the applicant.

On 15 May 2006 the applicant was taken to town hospital no. 2 where the following injuries were recorded: bruised elbow and heel as well as a scratch on his face. It appears that an X-ray was carried out but did not disclose any fractures or alike.

The criminal case against the applicant was assigned to investigator V. in the Oktyabrskiy Investigations Department.

The officers made reports about the circumstances of the applicant's arrest and use of force and handcuffing in respect of him. On an unspecified date, the applicant sought institution of criminal proceedings against the police officers. A preliminary inquiry was opened on an unspecified date.

It appears that the applicant was heard and stated that the officers had made him fall down on the floor, had then handcuffed him and that "no further violence had been used against him". On 2 June 2006 investigator Ya. of the Oktyabrskiy Investigations Department refused to institute criminal proceedings against any officers. On an unspecified date, the applicant obtained a copy of the refusal to prosecute.

In June 2006 advocate Sh. started to assist the applicant in the criminal proceedings against him. On 27 June 2006 he requested investigator V. to order forensic examination in order to assess the applicant's injuries and psychological condition.

It follows from a forensic medical report of 3 July 2006 that on that date the applicant had no visible injuries on his body and that he had refused to make any statement in the absence of his counsel.

On an unspecified date, the criminal case against the applicant was submitted for trial. By a judgment of 9 November 2006 the Novosibirsk Regional Court convicted the applicant of handling firearms and ammunitions, and of assault against a law enforcement officer. The court sentenced him to 9 years and 6 months of imprisonment. The court considered that the applicant had suddenly threated the officers with a gun shouting "I am going to kill you!"; that the officers' ensuing actions had been lawful.

On 26 July 2007 the Supreme Court of Russia upheld the trial judgment in substance.

*2. Correspondence with the Court*

The applicant's first letter to the Court is dated 11 November 2007. It was dispatched by prison no. 8 situated in Novosibirsk. The envelope bears a stamp of the detention facility: "Colony no. 8. Censorship".

On 12 January 2008 the applicant completed and signed an application form. It bears a handwritten note by the prison official and the prison stamp indicating that it was registered in the prison logbook on 21 January 2008.

On 4 March 2008 the applicant completed an additional application form, which also bears a handwritten note and the prison stamp indicating that it was registered in the prison mail logbook on 11 March 2008. Similarly, the applicant's subsequent letters to the Court (dated 1 September, 16 October 2008, 16 and 31 May 2009) bear the same note and stamp.

In addition, the applicant's correspondence was accompanied by notes complied by the prison staff, indicating, *inter alia*, the nature of the correspondence and the number of pages.

## B. Relevant domestic law and practice

Article 125 of the CCrP provides for judicial review of the decisions or (in)actions on the part of an inquirer, investigator or a prosecutor, which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the

following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia considered that it was incumbent on the judges to verify before processing an Article 125 complaint whether the preliminary investigation has been completed in the criminal case (point 9). If the criminal case has already been set for trial or has been completed, the complaint should not be examined unless it was brought by a person who was not a party to the main case or if such complaint was not amenable to judicial review at the trial stage of the proceedings. In all other situations, the complaint under Article 125 should be left without examination and the complainant be informed that he or she can raise the matter before the trial or/and appeal courts in the criminal case.

In the same vein, according to the interpretation given by the Constitutional Court, a complaint under Article 125 cannot be brought or pursued after the criminal case, to which this complaint is connected, has been submitted for trial. However, when it is established that a party to the proceedings (including a judge or a witness) has committed a criminal offence, thus seriously affecting the fairness of the proceedings, the Code exceptionally allows for a separate investigation of the relevant circumstances leading to a re-opening of the case (see Decision no. 1413-O-O of 17 November 2009; see also Ruling no. 20-P of 2 July 1998 and Ruling no. 5-P of 23 March 1999).

## COMPLAINTS

The applicant complains under Article 3 of the Convention that he was ill-treated on 14 May 2006 and was threated thereafter.

He also complains that his correspondence addressed to the Court was inspected and read by the prison staff.

## QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies in respect of his complaints under the substantive and procedural limbs of Article 3 of the Convention? In particular:

- Did the applicant lodge any hierarchical appeals against the decision not to institute criminal proceedings in relation to his complaints of ill-treatment ("refusal to prosecute")? Was any such appeal successful? If yes, has he thereby complied with the exhaustion requirement?

- Was any such refusal issued in the framework of the file relating to the criminal charges against the applicant or in separate proceedings? Did the applicant institute review proceedings under Article 125 of the Code of Criminal Procedure (CCrP) in respect of any such refusal to prosecute (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003)? Had the applicant received access to texts of the refusal to prosecute well before his trial started? If not, given the intertwined nature of the charge against him and the subject-matter of the refusal to prosecute, was the remedy under Article 125 of the CCrP no longer available to him because his own criminal case was already pending before a trial court (see "Relevant domestic law and practice") (see also *Nikolay Fedorov v. Russia*, no. 10393/04, § 46, 5 April 2011)? Did the procedure under Article 125 of the CCrP lose any prospect of success, following the applicant's conviction in respect of the related facts?

- Was the above judicial procedure an effective remedy to be exhausted, noting that the reviewing court was not empowered to require any specific investigative measures to be carried out; there was no time-limit for lodging the complaint under Article 125 of the CCrP; there was no procedure for ensuring compliance with the court's order issued under Article 125 of the CCrP; this remedy is, arguably, rendered devoid of purpose as soon as the criminal case in respect of the person concerned has been submitted for trial? Did the applicant have a privately-retained or legal-aid counsel during the preliminary investigation against him? Did the mandate of such counsel require him to bring review proceedings under Article 125 of the CCrP in respect of the alleged ill-treatment and ineffective investigation of the related complaint (cf. *Dedovskiy and Others v. Russia* (dec.), no. 7178/03, 12 October 2006, and *Belevitskiy v. Russia*, no. 72967/01, §§ 64 and 65, 1 March 2007)?

- Were the issue of ill-treatment (use of force) and the issue of an effective investigation of the related complaint examined in substance during the applicant's trial and on appeal against the trial judgment? Was the trial court empowered to afford any adequate redress in respect of these two issues? If yes, has the applicant thereby complied with the exhaustion requirement (see *Belevitskiy*, cited above, §§ 62-67; *Vladimir Romanov v. Russia*, no. 41461/02, §§ 50-52, 24 July 2008; *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008; *Samoylov v. Russia*, no. 64398/01, §§ 43-44, 2 October 2008; *Vladimir Fedorov v. Russia*, no. 19223/04, §§ 44-50, 30 July 2009; *Toporkov v. Russia*, no. 66688/01, §§ 28-35, 1 October 2009; and *Lopata v. Russia*, no. 72250/01, § 107, 13 July 2010)?

2. With due regard to the parties' submissions in relation to the questions under section 1 above, did the applicant comply with the six-month time-limit for complaining before the Court under the substantive and procedural limbs of Article 3 of the Convention?

If yes:

3. Has the applicant been subjected to inhuman or degrading treatment on 14 May 2006, in breach of Article 3 of the Convention?

4. Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular:

(a) When did the authorities become aware or ought to be aware of the presence of injuries on the applicant's body, use of force against him or possible ill-treatment? When did these authorities open a preliminary inquiry (*доследственная проверка*)?
(b) Was the "effectiveness" of this inquiry undermined in the absence of a decision to initiate criminal proceedings (*возбуждение уголовного дела*) in reply to the applicant's allegations? Was the official or authority, who carried out the inquiry, independent of the alleged authors of ill-treatment? Did Article 3 of the Convention also require that the above official or authority be independent of the authority which was responsible for investigating the criminal case against the applicant?
(c) Was the applicant, any officer or other persons interviewed during the inquiry? Were those persons liable for perjury or for the refusal to give evidence? Was any medical evidence obtained and assessed during the inquiry?
(d) Was the applicant given a possibility to participate effectively in the inquiry (for instance by lodging motions, obtaining copies of procedural decisions, including a possibility to seek judicial review of the refusal to prosecute the officers)?
(e) Did the authorities adequately assess the proportionality of the force used against the applicant in the circumstances of the case?

Having regard to Article 38 of the Convention, the respondent Government are requested to submit a copy of the file(s) relating to the inquiry in relation to the applicant's allegations of ill-treatment.

5. Did the applicant submit his correspondence for dispatch *to the Court* in sealed envelopes? Was he required to do so under Russian law? Did he clearly identify the Court as the addressee on the envelopes? Was there a violation of Articles 8 and 34 of the Convention, on account of the apparent inspection and reading of such correspondence by the prisons staff (cf. *Yefimenko v. Russia*, no. 152/04, §§ 157-165, 12 February 2013)?