



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

Communicated on 12 June 2014

FIRST SECTION

Application no. 16310/08
Andrey Aleksandrovich IVANOV
against Russia
lodged on 18 February 2008

STATEMENT OF FACTS

1. The applicant, Mr Andrey Aleksandrovich Ivanov, is a Russian national, who was born in 1978 and lives in Yoshkar-Ola. He is represented before the Court by The Committee Against Torture, a non-governmental organisation based in Nizhniy Novgorod.

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

A. Arrest and alleged ill-treatment of the applicant

1. Arrest of the applicant

3. On the night from 14 to 15 July 2005 a woman was robbed on a street of Yoshkar-Ola. Later that night, at about 12.30 a.m., according to the applicant, and at about 2 a.m., according to the police, a police patrol stopped the applicant and his two friends Ms P. and Mr G. near the crime scene. The applicant and Mr G. were invited to proceed to the Central police office of Yoshkar-Ola in order to take part in an identification parade. According to the applicant, at the police station they were held in a cell for administrative detention from 1 a.m. to 3 a.m.

2. Alleged ill-treatment of the applicant

4. At 3 a.m. a police officer took the applicant to a room. Mr G. was in a corridor near that room, handcuffed. In the room one of the police officers introduced himself as Mr Ch. The applicant was asked if he had committed any crime during that night. He denied having committed any crime. The police officers kicked him and hit his head with a rubber stick three times. The applicant fainted. When he regained consciousness, he found himself lying outside the room with his head bleeding.

5. A police officer called an ambulance. The ambulance staff provided the applicant with first aid and left. According to ambulance records, the ambulance arrived at the police station at 5.50 a.m.; and the applicant's head was bandaged.

6. Police officers asked the applicant and Mr G. to give explanations (*объяснения*) in relation to the robbery. They denied their participation in the robbery. The victim did not identify them as her robbers. At 11 a.m. the applicant was questioned as a suspect in the presence of a lawyer. The applicant felt very weak and refused to make any statements. A police officer took him to a traumatology centre, where the wound on his head was stitched up. He was then transferred to a hospital for treatment. In the evening he left for home.

3. Police version

7. According to the police, the applicant's injuries were self-inflicted: he attempted to jump out of a window at 5 a.m. when being interviewed by police officer S.P. In order to prevent his escape S.P. grabbed the applicant by his hand. The applicant broke away and hit his head against a safe.

8. The police version was recorded in the following documents of 15 July 2005: explanations (*объяснения*) by police officers Ts. and D.P., who apprehended the applicant; explanations and reports by police officers S.P. and Ch., who were in the room at the moment when the applicant received his injuries; explanations (*объяснения*) by police officers K., E., and Z. who were present at the police office at the time of the events. Police officer S.P. stated in some of those documents that no physical force had been used on the applicant.

B. The applicant's injuries

9. On 18 July 2005 the applicant was examined by a medical expert and on the same date a forensic medical expert report (*заключение медицинской судебной экспертизы*) was prepared. According to the report, the applicant had the following injuries: an injury on his head, abrasions on his forehead (above right eyebrow), hand, right elbow, left forearm, and bruises on his right eye, left forearm and shoulder. The expert found that all the injuries had been inflicted by a blunt object three or four days before the examination.

10. The applicant submitted statements by Mr G. and Ms P., according to which the applicant had not had any injuries before his apprehension by the police on 15 July 2005.

C. Inquiry into the applicant's allegation of police ill-treatment

1. First refusal to open a criminal case

11. On 16 July 2005 the applicant complained of his ill-treatment to the Yoshkar-Ola prosecutor's office. On the same day investigator S. received explanations from the applicant. The investigator also received explanations from Mr G. who stated as follows: he had been apprehended together with the applicant at 12.30 a.m. on 15 July 2005; the applicant had been beaten

up in room 307 at the Central police station by two police officers one of whom had a rubber stick; they had kicked the applicant and hit him with a chair; then they had dragged him to the corridor and called the ambulance which had arrived 20 minutes later. Mr G. also stated that one of the police officers had introduced himself as Mr Ch.

12. On 18 July 2005 the investigator ordered the applicant's forensic medical examination which was held on the same day (see paragraph 9 above).

13. On 26 July 2005 the investigator refused to open a criminal case pursuant to Article 24 § 1 (1) of the Code of Criminal Procedure ("CCrP"). He stated that in the absence of the results of the forensic medical expert examination it was impossible to make any conclusions about the circumstances in which the applicant had received his injuries. On this ground he concluded that the alleged offence had not been committed.

2. Article 125 review of the first refusal to open a criminal case

14. On 7 October 2005 the applicant appealed against the investigator's decision of 26 July 2005 to the Yoshkar-Ola City Court.

15. On 10 October 2005 the Yoshkar-Ola City deputy prosecutor revoked that decision. On 12 October 2005 the City Court terminated the proceedings on the ground that the decision had been revoked.

3. Second refusal to open a criminal case

16. On 14 October 2005 the investigator ordered, pursuant to Article 24 § 1 (2) of the CCrP, that no criminal case be opened for lack of the elements of a crime, under Article 286 § 3 (a) of the Criminal Code, in the acts of the police officers. The investigator noted that during his interrogation on 15 July 2005 at 11.00 a.m. as a suspect the applicant had not complained of any ill-treatment and had refused to make any statements. The investigator referred to the statements made by six police officers that the applicant had hit his head against a safe himself. The investigator concluded that the nature and localisation of the applicant's injuries were at odds with his allegations.

4. Article 125 review of the second refusal to open a criminal case

17. The applicant appealed against the investigator's decision of 14 October 2005 to the Yoshkar-Ola City Court, arguing *inter alia* that the ambulance staff who had examined him at the police station had not been questioned, and that the police version of his head injury being self-inflicted was not convincing and offered no explanations for his other injuries.

18. On 29 June 2006 the City Court held that the applicant's complaint should not be examined because it related to criminal proceedings in which he had been found guilty. On 23 August 2006 that decision was quashed by a higher court as erroneous: the applicant had never been found guilty in that case and his alleged ill-treatment had never been examined by any court.

19. On 3 October 2006 the City Court upheld the investigator's decision of 14 October 2005. The court indicated among other reasons that there had been no need to question the ambulance staff as they had not been eye

witnesses to the events in question. On 13 November 2006 the Supreme Court of the Mariy El Republic quashed that decision for the following reasons: the investigator had not explained how the applicant had received his other (than the head) injuries; the police version relied on by the investigator that the injuries had been received before the applicant's apprehension had no grounds; and the ambulance staff and the medical expert should have been questioned.

20. On 1 December 2006 the City Court found the investigator's decision unlawful and unreasonable for the same reasons as those cited by the higher court. On 26 December 2006 the Yoshkar-Ola deputy prosecutor revoked the investigator's decision and ordered an additional pre-investigation inquiry.

5. Third refusal to open a criminal case

21. In the course of the additional inquiry, the investigator examined the ambulance records (see paragraph 5 above) and received explanations from doctor V. who had examined the applicant. She stated that the applicant had not answered her questions and had probably been drunk. She had not noticed any injuries apart from the one on his head.

22. On 30 December 2006 the investigator ordered, pursuant to Article 24 § 1 (2) of the CCrP, that no criminal case be opened for lack of the elements of a crime in the acts of police officers S.P. and Ch. He relied on the same reasons as in his previous decision and added that the statements by doctor V. corroborated his conclusion that the applicant's allegations were ill-founded.

23. That decision was served on the applicant after 23 July 2007, after he had obtained a court order to that effect.

6. Article 125 review of the third refusal to open a criminal case

24. On 3 August 2007 the applicant appealed against the investigator's decision of 30 December 2006 to the City Court.

25. On 13 August 2007 the Yoshkar-Ola deputy prosecutor revoked that decision and ordered an additional inquiry.

26. On 21 August 2007 the City Court held that the applicant's complaint should not be examined in view of the pending inquiry.

7. Fourth refusal to open a criminal case

27. Investigator P. unsuccessfully tried to receive explanations from the expert who had carried out the applicant's forensic medical examination. The expert refused to provide any clarifications about his report.

28. On 18 August 2007 the investigator refused – on the same grounds as before – to open a criminal case. He found that the applicant's all injuries could have been self-inflicted as a result of the applicant hitting a safe.

8. *Article 125 review of the fourth refusal to open a criminal case*

29. The applicant's appeal against the investigator's decision of 18 August 2007 was dismissed in the City Court's decision of 27 October 2009, as upheld on appeal on 21 December 2009.

COMPLAINTS

30. The applicant complains under Article 5 § 1 (c) of the Convention that he was deprived of his liberty unlawfully, without any records.

31. The applicant complains under Articles 3 and 13 of the Convention that he was subjected to ill-treatment by the police officers at the Central police station of Yoshkar-Ola on 15 July 2005 and that the State failed to conduct effective investigation into those events.

32. The applicant also complains under Article 13 that in the absence of effective investigation into his allegations a civil claim for damages would have no prospects of success.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to torture or inhuman or degrading treatment on 15 July 2005, in breach of Article 3 of the Convention?

2. Have the authorities provided a satisfactory and convincing explanation to the applicant's injuries, as recorded in the forensic medical expert's report of 18 July 2005 (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V)?

3. Having regard to the procedural protection from torture, inhuman or degrading treatment, was the pre-investigation inquiry in the present case by the domestic authorities, which refused to open a criminal case into the applicant's complaint, in breach of Article 3 of the Convention? In particular, was the investigative authority independent from the alleged perpetrators, as well as the authority which investigated the criminal case against the applicant?

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?

5. Was the applicant deprived of his liberty on 15 July 2005 in breach of Article 5 § 1 of the Convention? In particular, did his deprivation of liberty fall within paragraph (c) of this provision?

6. Has the applicant exhausted all effective domestic remedies in relation to his complaint under Article 5 § 1, as required by Article 35 § 1 of the Convention? In particular, did he raise his Article 5 § 1 complaint, at least in substance, together with his criminal complaint about physical violence allegedly applied by police officers?

7. Once at the hands of the police:

- (a) Was the applicant informed of his rights and his procedural status?
- (b) Was he given the possibility to inform his family about his detention and, if so, when?
- (c) Was he given access to a lawyer and, if so, when?

8. The Government are requested to submit a copy of the entire case-file concerning the inquiry into the applicant's complaint of ill-treatment, as well as a copy of the entire investigation file related to the robbery case in so far as it concerned the applicant, including, but not limited to the following documents:

- (a) Arrest record (*протокол задержания*) of 15 July 2005, as well as extracts from the relevant police station records concerning the applicant's presence at the police station on that date;
- (b) Explanations given on 16 July 2005 by the applicant and by Mr G., by Mr L., and police officers S.P., K., Ch., E., and Z. in the course of the pre-investigation inquiry;
- (c) Explanations and reports made on 15 July 2005 by police officers Ts., S.P., and D.P.;
- (d) Forensic medical expert report of 18 July 2005;
- (e) Medical certificates from the traumatology center and the hospital about the medical aid provided to the applicant;
- (f) Decisions of the Yoshkar-Ola City Court of 3 October 2006 and 27 October 2009 and of the Supreme Court of Republic of Mariy El of 21 December 2009 in proceedings brought by the applicant to appeal against the refusals to open a criminal case;
- (g) records of the applicant's and Mr G.'s questioning as suspects;
- (h) records of the identification parade with the applicant's participation;
- (i) decision to discontinue the criminal proceedings against the applicant.