



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

Communicated on 18 March 2015

FIRST SECTION

Application no. 10825/09
Aleksandr Petrovich OLISOV against Russia
and 2 other applications
(see list appended)

STATEMENT OF FACTS

1. The applicants are Russian nationals (see a list of the applicants set out in the appendix). The facts of the cases, as submitted by the applicants, may be summarised as follows.

2. The applicants allege that they were subjected to ill-treatment in police custody, in order to force them to confess to crimes. No criminal cases were opened to carry out investigations into their allegations.

A. The application of Mr Olisov

1. The applicant's apprehension and alleged ill-treatment

3. On 16 May 2006 at midnight the applicant was apprehended on a street in Orenburg by six men in plain clothes and taken to the Department for Fight against Organised Crime of the Orenburg regional police department (UBOP). At the request of the head of the UBOP K., several police officers including M., G. and O. questioned him, demanding that he confess to ordering a murder. They handcuffed him, punched him and subjected him to suffocation, by use of a plastic bag, so that he lost consciousness several times. They split his legs apart until he fell and then lifted him by his hands shackled behind. They tied his head to his legs with a belt and pulled up his shackled hands. They lifted the applicant, so tied, and let him fall down on his coccyx. One of them stepped on his head.

4. At 7.30 a.m. the applicant was placed in a cell in which he stayed until 3 p.m. of 17 May 2006. He was then taken to various offices and signed an "explanation". His arrest was not recorded and his requests for access to a lawyer and a possibility to inform his family of his detention were ignored.

5. At about 6 p.m. police officers took the applicant home. After a search at his home, on the basis of the Leninskiy District Court's order of

the same day in relation to a suspicion of the applicant having committed robbery, they went away.

6. Next day, on 18 May 2006, the applicant was taken by his father to the Pirogov hospital in Orenburg. He was diagnosed with fractures of the spine and hospitalised. According to the hospital records (dated 20 and 21 June 2006), the applicant had closed fractures of three vertebrae and contusions of his head and torso.

7. According to a forensic medical expert report of 19 May 2006, the applicant had bruises and abrasions on his torso, upper and lower extremities which could have been inflicted by hard blunt objects at the time as alleged by the applicant. A forensic medical expert report of 13 July 2006 contained the same conclusions and also noted a fracture of a vertebra which could have been inflicted as a result of an impact with a hard blunt object in May 2006.

2. Pre-investigation inquiry into the applicant's alleged ill-treatment

8. On 18 May 2006 the applicant lodged an application with the police complaining of his ill-treatment. Three decisions by an investigator of the Promyshlenniy district prosecutor's office dispensing with prosecution (taken on 31 July 2006 and found unlawful by the Promyshlenniy District Court's decision of 14 May 2008, on 24 July and 4 August 2008) were revoked by the investigative authority as unlawful and unfounded and an additional pre-investigation inquiry was ordered.

9. In the latest decision of 23 October 2008 an investigator of the investigative committee at the Orenburg regional prosecutor's office ordered, pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure (CCrP), that no criminal case be opened into the applicant's allegations for absence of elements of a crime under Articles 285 and 286 of the Criminal Code in the acts of police officers. It follows from that decision that police officers who were interviewed about the events of 17 May 2006, in particular G. and O., stated that the applicant had been apprehended on suspicion of having ordered a murder, taken to the UBOP and interviewed. They denied any violence on their part.

10. That decision was found lawful by the Orenburg Promyshlenniy District Court's decision of 15 January 2009, as upheld by the Orenburg Regional Court on 12 March 2009.

3. Criminal proceedings against the applicant

11. On 12 July 2006 the applicant was arrested on suspicion of having committed an attempted murder. On 14 October 2008 the Orenburg Regional Court found him guilty as charged.

B. The application of Mr Danishkin

1. The applicant's arrest and alleged ill-treatment

12. On 25 December 2010 between 8.43 a.m. and 11.50 a.m. the police searched the applicant's flat, pursuant to the Kanavinskiy District Court's decision of 14 December 2010, and found explosives and bomb making material. Once the search had been completed, they took the applicant to the

Center for Combating Extremism at the Nizhniy Novgorod regional police department.

13. Between 4 p.m. and 5.08 p.m. the applicant was questioned as a witness by investigator A. of the Kanavinskiy district investigative committee, who stated later that at the time of the questioning the applicant had had no injuries on visible parts of his body. The investigator ordered that the case concerning illegal possession of arms be transferred to an investigator at police station no. 1.

14. Then the applicant was taken to another room on the second floor and questioned by the head of the Centre for Combating Extremism T. and four other police officers including A. and Sh. They demanded that he confess to preparing a terrorist act. They beat him up, punching and kicking him. They tied the applicant, whose hands were handcuffed behind his back, with a two meter long orange rope so that his crossed legs were pressed to his torso. When pulling the rope and lifting the applicant above the floor, they made him suffocated. When they were loosening the rope, the applicant was falling with his buttocks hitting the floor which caused him strong pain. The applicant lost consciousness. At some point two other police officers Ch. and K. joined the others. K. punched the applicant in the face and made his lip bleed. The applicant's ill-treatment lasted approximately until 8 p.m.

15. At about 9 p.m. the applicant was taken to police station no. 1 of the Nizhniy Novgorod town police department, formally arrested and questioned by investigator T. as a suspect and then taken to a temporary detention facility IVS. The IVS officer on duty saw the applicant's injuries and refused to admit him without his prior medical examination.

16. At 2.45 a.m. on 26 December 2010 police officers took the applicant to Kstovo town hospital no. 40, where a doctor recorded "contusions and bruises" on his face and assessed his condition as compatible with detention (certificate no. 228 dated 24 March 2011). The doctor did not carry out the applicant's complete examination. On the applicant's arrival at the IVS, the officer on duty examined the upper part of his body above the waist and recorded bruises and abrasions. He also obtained an explanation from the applicant who stated that he had been ill-treated by the police.

17. On 27 December 2010 at 11.55 p.m. the applicant was transferred from the IVS to pre-trial detention facility IZ-52/1, where the following injuries on his body were recorded: a bruise on the right part of the abdomen, a bruise in the left axillary region and multiple bruises on the face and neck (the number of the bruises on the face and neck and their exact localisation were not noted). The applicant reiterated that he had been ill-treated by the police.

2. Forensic medical expert's reports

18. According to a forensic medical examination report of 24 February 2011, prepared on the basis of the applicant's medical records at IZ-52/1 of 27 December 2010, the applicant's injuries could be qualified as a blunt trauma. Though the description of the injuries in the report made it impossible to determine reliably the time of their origin, the expert suggested that the bruises on the right part of the abdomen and multiple bruises on the face and neck could have been inflicted within three days

before the examination; and the bruise in the left axillary region could have been inflicted more than three days before the examination.

19. According to an additional forensic medical examination report of 2 September 2011, prepared on the basis of the applicant's medical documents and explanations as to the origin of the applicant's injuries received from the applicant and police officers in the course of a pre-investigation inquiry, the applicant's injuries could have originated either as a result of the applicant's alleged ill-treatment, or as a result of the use of force by police officers, as alleged by them, in order to prevent his escape.

3. Pre-investigation inquiry into the applicant's alleged ill-treatment

20. The applicant repeatedly complained to investigative authorities about his unlawful detention and torture. The Kanavinskiy district investigation division of the investigative committee at the Nizhniy Novgorod Region (*Следственный отдел по Канавинскому району г. Н.Новгород СУ СК России по Нижегородской области*) refused to bring criminal proceedings into the applicant's alleged ill-treatment on six occasions (decisions of 28 February, 8 April, 19 August, and 5 September 2011, 22 February and 1 July 2012). The first five decisions were revoked as based on incomplete inquiry (by decisions of 10 March, 20 July and 22 August 2011, 30 January and 22 June 2012).

21. According to the latest decision of 1 July 2012 to dispense with prosecution, pursuant to Article 24 § 1 (2) of the CCRP, for lack of elements of a crime under Article 286 of the Criminal Code in the actions of police officers Sh., A. and T., the applicant tried to escape during his transfer from the Center for Combating Extremism to police station no. 1 on 25 December 2010; and police officers Sh. and A. used force, which was not excessive, in order to stop him; the applicant fell down and as a result sustained the injuries on his head, face and neck. That conclusion was based on statements by police officers T., K., Ch., G., M. and S. who had interviewed the applicant with a view to establishing his possible accomplices and denied any wrongdoing on their part.

22. The applicant's appeal against the latest decision was rejected by the Kanavinskiy District Court's decision of 16 May 2013, as upheld by the Nizhniy Novgorod Regional Court on 5 August 2013.

C. The application of Mr Zontov

1. The applicant's arrest and alleged ill-treatment

23. On 27 August 2011 the applicant was arrested on a street of Podmayachnyy village of the Orenburg Region by nine police officers in plain clothes (Sh., R., P., G., S., M., Kh., Z. and A.S.) on suspicion of having committed robbery. The applicant tried to flee because he had not realised that those arresting him were police officers. Police officers Sh. and R. stopped him and tied his hands behind his back with his belt. The applicant was taken to the Orenburg town police department. He was led through an entrance for staff only to an office on the first floor where he

was handcuffed. Police officers, in particular O., demanded that he confess to having attacked a woman and stolen her golden chain and mobile phone.

24. O. punched the applicant twice in the chest. Then the applicant was being hit by O. on his feet with a rubber truncheon for about forty minutes, while other police officers, in particular A., were keeping him on the floor. After that he was requested to stand on his feet. Unable to stand, he fell and was hit by the truncheon on the left side of his torso. He was being stepped on his feet and suffocated with a plastic bag. During suffocation which lasted three or four hours he lost consciousness several times.

25. The applicant wrote a confession statement, as requested. O. threatened him with new torture if he did not reiterate his confession to investigator M. The applicant gave self-incriminating statements when questioned as a suspect.

26. On 28 August 2011 at 12.25 a.m. the applicant was placed in a temporary detention facility IVS at the Orenburg town police department where the following injuries on his body were recorded: bruises on the left side of his chest, abrasions on both wrists from handcuffs, abrasions on his face and waist, and scars on his left forearm. The applicant stated that those injuries had been inflicted during his apprehension.

27. On 29 August 2011 the applicant was taken to a traumatology center where he was diagnosed with contusion of the left side of his chest and both wrists.

28. On the same day he was placed in pre-trial detention facility IZ-56/3 where bruises on the left side of his chest, his both wrists and both feet were recorded.

29. On 30 August 2011 the applicant's lawyer Ms A. saw injuries on the applicant when visiting him in the detention facility.

30. According to the applicant's mother and brother and his acquaintance Zh., the applicant had no injuries before his arrest.

2. Pre-investigation inquiry into the applicant's alleged ill-treatment

31. On 5 September 2011 the applicant complained of his ill-treatment by police officers to the Orenburg town investigative committee. The investigative committee's nine decisions refusing prosecution were revoked, some of them following the applicant's successful court appeals, as based on incomplete inquiries. According to the latest decision by the Orenburg north administrative circuit investigative committee of 8 November 2013, two forensic medical expert reports were prepared on 11 September and 18 October 2013 based on the applicant's medical documents. The experts concluded that the applicant's injuries – the bruises on his chest and both feet and numerous abrasions on his face, waist and both wrists – could have been inflicted as a result of more than one impact with a hard blunt object shortly before his medical examination at the IVS. The investigative committee found that the applicant had received the injuries at the time of his arrest, when trying to escape from police officers and resisting his arrest. The police officers' use of handcuffs and force had been lawful and justified by the applicant's conduct. The investigative committee refused to initiate criminal proceedings pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure for absence of elements of a crime under Articles 285 and 286 of the Criminal Code in the acts of the police officers.

32. The applicant's court appeal against one of the investigative committee's decisions of 27 February 2012 was not examined in view of the annulment of that decision by the investigative committee before a court hearing (the Promyshlenniy District Court's decision of 17 September 2012). In other decisions taken on the applicant's appeals the District Court acknowledged various flaws in the inquiry, such as the failure to carry out the inquiry within reasonable time (decision of 21 November 2012) and the failure to inform the applicant of the results of the inquiry (decision of 23 May 2013).

3. Criminal proceedings against the applicant

33. On 28 December 2012 the Promyshlenniy District Court of Orenburg convicted the applicant of robbery.

COMPLAINTS

The applicants complain under Article 3 of the Convention that they were subjected to torture by the police. They also complain under Articles 3 and 13 of the Convention that the State failed to institute criminal proceedings and conduct effective investigations into those events.

QUESTIONS TO THE PARTIES

1. Having regard to:

(a) the applicants' questionings by police officers at the various police departments about their alleged involvement in crimes, before they were recognised as suspects in criminal proceedings,

(b) the injuries found on the applicants after the questionings, and

(c) the forensic medical experts' conclusions that the injuries could have originated as a result of the acts and at the time, which corresponded to the applicants' ill-treatment in the course of their questionings, as alleged by them,

have the applicants been subjected to torture or inhuman or degrading treatment in breach of Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; and, among many other authorities, *Polonskiy v. Russia*, no. 30033/05, §§ 122-123, 19 March 2009; *Gladyshev v. Russia*, no. 2807/04, § 57, 30 July 2009; *Alchagin v. Russia*, no. 20212/05, §§ 53-54, 56, 17 January 2012; *A.A. v. Russia*, no. 49097/08, §§ 75, 77 and 80-81, 17 January 2012; *Yudina v. Russia*, no. 52327/08, §§ 67-68, 10 July 2012; *Ablyazov v. Russia*, no. 22867/05, §§ 49-50, 30 October 2012; *Tangiyev v. Russia*, no. 27610/05, §§ 53-55, 11 December 2012; *Markaryan v. Russia*, no. 12102/05, §§ 60-61, 4 April 2013; *Nasakin v. Russia*, no. 22735/05, §§ 52-53, 18 July 2013; *Aleksandr Novoselov v. Russia*, no. 33954/05, §§ 61-62, 28 November 2013; *Velikanov v. Russia*, no. 4124/08, § 51, 30 January 2014)?

2. What was the investigating authority's explanation, in its latest decision on the applicant's complaint, as to how the applicants' injuries were caused? Have the authorities discharged their burden of proof by providing a plausible or satisfactory and convincing explanation (see *Selmouni*, cited above, § 87, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII)?

3. Having regard to:

(a) the investigative committees' refusals to open criminal cases and carry out investigations into the applicants' alleged ill-treatment by the police,

(b) the revocation of those numerous refusals by the investigative committees' superiors as based on the incomplete pre-investigation inquiries, and

(c) the investigative committees' inability to carry out the investigative measures within the framework of the pre-investigation inquiries, e.g. confrontations, identification parades, searches,

was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention (see *Lyapin v. Russia*, no. 46956/09, §§ 125-140, 24 July 2014)?

4. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3, as required by Article 13 of the Convention?

5. The Government are invited to submit documents containing the following information in respect of the applicants' alleged ill-treatment in police custody:

(a) the time of their arrival and stay at the police departments, cells for administrative offenders at the police departments, the temporary detention facilities (IVS), the pre-trial detention facilities (SIZO), the medical institutions (ambulance, traumatology centre, hospital, forensic medical examination bureau, etc.), where applicable;

(b) the applicants' injuries and/or their state of health, as recorded in the places listed above in paragraph "a";

(c) the applicants' self-incriminatory statements or explanations to the police officers in any form, e.g. a "voluntary surrender and confession" (*явка с повинной*), an explanation, etc., if applicable;

(d) the time when the applicants were recognised as suspects in the criminal proceedings, informed of their rights as suspects, informed their families or other third parties about their detention, and had access to a lawyer;

(e) the forensic medical experts' conclusions about the applicants' injuries, investigators' decisions ordering the applicants' forensic medical examinations in respect of each forensic medical expert's report, and explanations by the applicants and the police officers as to the origin of the injuries, on the basis of which the experts' opinions were sought;

(f) the summary of the information from the above list (paragraphs from "a" to "e") in respect of each applicant.

6. As regards the inquiry into the applicants' alleged ill-treatment, the Government are invited to submit:

(a) the numbered list of all decisions by investigating authorities in each of three cases in chronological order (name of the relevant authority, date, the ground for the refusal to open a criminal case, i.e. Article 24 § 1 (2) of the Code of Criminal Procedure, and – in relation to each decision – the relevant decision to revoke it or set it aside (with the name of the relevant authority, date, and the reason for the revocation or setting aside);

(b) the numbered list of all court decisions on the applicants' appeals against the investigators' decisions in each of three cases in chronological order (court, date and outcome);

(c) copies of the above decisions by the investigating authorities and the courts in the same order.

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	10825/09	03/02/2009	Aleksandr Petrovich OLISOV 12/02/1973 Orenburg	V.A. Dyundin, a lawyer practising in Orsk, Orenburg region
2.	12412/14	05/02/2014	Nikita Yevgenyevich DANISHKIN 28/04/1985 Krasnoturyinsk, Sverdlovsk region	Committee against Torture, Nizhniy Novgorod
3.	35192/14	16/04/2014	Yuriy Anatolyevich ZONTOV 24/04/1981 Orenburg	Committee against Torture, Nizhniy Novgorod