Communicated on 12 July 2019

THIRD SECTION

Application no. 17972/15
Suleyman Sultanovich EDIGOV
against Russia
lodged on 10 April 2015

STATEMENT OF FACTS

The applicant, Mr Suleyman Sultanovich Edigov, is a Russian national, who was born in 1985 and is currently serving his sentence in Irkutsk. He is represented before the Court by lawyers of the Committee Against Torture, an NGO based in Russia.

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

A.  The circumstances of the case

Since 2008 the applicant has lived in Sweden. In February 2012 the applicant came to Chechnya for a short period and then returned to Sweden. On 31 July 2012 he came to Urus-Martan in Chechnya to visit his mother and relatives.

1.  The applicant’s alleged ill-treatment and its inquiry

On 27 August 2012 the applicant’s mother, Ms U., complained to the Memorial human rights centre in Chechnya and the local department of the Investigative Committee that on 3 August 2012 at 11.15 p.m. law‑enforcement officers had abducted him near their house in Urus‑Martan. The applicant’s relatives and neighbours witnessed his abduction. According to her, she was asked by the authorities to withdraw her complaint but she refused.

According to the applicant, on 3 August 2012 he was taken to the Kurchaloyevskiy ROVD where the officers asked him to confess to the murder of police officer Yu. committed in February 2012. They tied down aluminium wires around his fingers through which he received electric shocks. On the next day, the officers took him to Grozny where he stayed until 9 August somewhere in a basement. He was beaten and required to confess but the applicant refused. Then the officers took him to a police department in Grozny where he stayed until 12 September 2012 handcuffed to a bed. The applicant’s fingers started to rot because of the injuries, and between 16 and 18 August 2012 a nurse, Ms Ya., provided him with basic medical aid. No physical violence was used anymore.

On 12 September 2012 around 5.30 p.m. the applicant signed a statement in which he confessed to the murder of Yu.

At 7.55 p.m. investigator T. drew up an arrest record in the presence of appointed lawyer D. and two witnesses. At 8.45 p.m. the applicant was taken to the temporary detention facility (“IVS”) where a medical act that he had no injuries was drawn up.

On 13 September 2012 the applicant was questioned as a suspect. He submitted that on 23 February 2012 he had murdered Yu. in the entrance of his house. On 15 September 2012 in the presence of lawyer D. the investigator conducted on-site verification during which the applicant reiterated his previous statements.

On 21 September 2012 the applicant was transferred to remand prison IZ-1 (“IZ”) in Grozny. A medical act was drawn up according to which the applicant had had burn scars on little fingers of both hands. On the same day a report on the discovery of evidence of crime (“*рапорт об обнаружении признаков преступления*”) was drawn up. The applicant explained to the head of IZ that the burns resulted from electric shock during installation of wires in a house in the city of Argun. The case file was transferred to the Argun police department for investigation.

On 15 October 2012 a junior sergeant of the Argun police department issued a decision not to open a criminal case referring to the applicant’s explanation. On the next day, a deputy prosecutor quashed the decision ordering to conduct a forensic medical examination.

On 29 October 2012 the junior sergeant again refused to open a criminal case as the applicant’s detention in IZ in Grozny prevented conducting a forensic medical examination. On 7 November 2012 a deputy prosecutor quashed the decision.

On 14 November 2012 investigator Z. of the Grozny Depatment of the Investigative Committee ordered a forensic medical examination (completed on 22 January 2013), according to which the applicant had scars on fourth and fifth fingers of both hands. The scars were inflicted within three months before the applicant’s examination. The date of his examination is not indicated.

On 13 March 2013 investigator Z. interviewed the applicant as an accused. As to the injuries, the applicant explained that they had been inflicted before the arrest, in his flat in Sweden, while he was changing a light bulb.

2.  The applicant’s trial

On 15 May 2013 the criminal court proceedings chaired by Judge A. started at the Supreme Court of Chechnya. The applicant pleaded guilty and confessed to the crime.

On 18 June 2013 the applicant retracted his confession statement given during pre-trial proceedings and in court. He stated that he had been detained between 3 August and 12 September 2012 in the police department in Grozny and subjected to electric shocks. He explained that he had agreed to confess because of the threats and police officers had told that if he confessed, the final sentence would be lower.

On the same day, the court ordered an inquiry into alleged ill-treatment and announced a recess until the inquiry was completed.

(a)  Inquiry into the applicant’s ill-treatment

According to the applicant, on 18 June 2013, the day when he had retracted his confession in court, police officers visited him in the pre-trial detention centre and threatened to harm his family if he named persons who had abducted him.

On 28 June 2013 during an interview the applicant refused to make any statements to investigator Sh. and asked for a consultation with his lawyer.

Between 1 and 17 July 2013 forensic expert M. examined the applicant and his medical documentation. According to act no. 466 of 17 July 2013, the applicant had multiple scars on his fingers and one scar on his forehead. The expert considered that due to the lack of data in the medical documents it was impossible to determine the mechanism of infliction of injuries and the period when they had been inflicted. The expert concluded that the injuries could be inflicted within 12-18 months before the examination. The scars could be the result of both the exposure to fragments of hot glass and the contact with electric wires.

On 22 July 2013 investigator Sh. issued a decision not to open a criminal case on the ground that the applicant and his family had not formulated complaints about ill-treatment or threats during the investigation. The decision also referred to the applicant’s statements of 13 March 2013 that the injuries had resulted from the explosion in his hands of a light bulb in Sweden and to act no. 466 that the injuries had been inflicted more than a year before the examination.

On 1 August 2013 this decision was quashed on the grounds, *inter alia*, that the applicant’s statements of unlawful and unrecorded detention in August 2012 and allegations of threats made in the IZ on 18 June 2013 had not been addressed, that the applicant’s family members, forensic experts, and police officers had not been questioned.

On 15 August 2013 the applicant gave explanations to senior investigator R. about his abduction, ill-treatment and threats by the officers who visited him in the pre-trial detention centre.

On 16 August 2013 investigator R. refused to open a criminal case. The investigator considered that the testimonies made by the applicant’s mother and the neighbours about his detention by law-enforcement officers were unreliable and aimed at helping the applicant to evade criminal responsibility. It was impossible to establish with sufficient certainty whether the applicant’s mother complained to the Memorial human rights centre about his abduction. Finally, he referred to the explanations of the police officers who stated that they had arrested the applicant on 12 September 2012 on the street in Grozny and had taken him to the police department where he had signed a confession statement, that they had not ill-treated the applicant. Referring to the applicant’s statements of 13 March 2013 and act no. 466, the investigator found his allegations of ill-treatment unsubstantiated and being part of his defence strategy.

(b)  Judicial inquiry into the applicant’s ill-treatment

On 6 September 2013 the court declared the criminal court proceedings completed allowing the final word to the applicant. In his final word, the applicant reiterated his version of the events, naming police officers who had detained and ill-treated. He stated that he had been threatened for forty days while in detention, that the officers had told him that if he had signed the confession, the charges would be qualified as an ordinary murder and he would be convicted to a short sentence and could eventually be released on parole. When the prosecution had requested twelve years of imprisonment for the murder of a public officer he decided to retract his confession and tell the truth. The applicant provided a detailed description of the events.

Following the applicant’s statement, Judge A. decided to resume proceedings in view of new circumstances.

On 16 September 2013 the court heard Ms Ya. who testified that she had provided medical aid in the police department to a person with bleeding fingers. She did not remember the date when it happened.

Ms U., the applicant’s mother, testified that she had complained to the Memorial human rights centre and the investigative committee about her son’s abduction on 27 August 2012. She explained the delay by her fear for the applicant’s fate. She submitted that the officers of the Investigative Committee and officer I.Kh. had persuaded her to withdraw her complaint but she refused.

On 27 September 2013 the police officers Kh.E., T.I., I.Kh., identified by the applicant as persons who had abducted and ill-treated him, testified in court. They denied any involvement in the arrest of the applicant. I.Kh stated that he could not remember whether he had talked to the applicant’s mother.

Investigator T. who had drawn up the arrest record on 12 September 2012 explained that the applicant had come to his office voluntarily and that no police officers had been present during his interview, he had received the applicant’s confession statement by regular post from the crime investigation department (*Уголовный розыск МВД ЧР*). T. explained that after his interview the applicant was transferred to another department. He did not know why on 21 September 2012 the pre-trial detention centre recorded injuries on the applicant.

On 1 October 2013 the court heard forensic expert Yak. who stated that the version of an explosion of a light bulb was obviously far-fetched. He could not confirm or refute the version of the impact of electric wires, but he explained that the applicant’s scars resulted from the lengthy healing process.

Investigator Z., who was in charge of the investigation into the murder of the police officer, submitted that the applicant confessed to the murder in the presence of a lawyer, no physical violence had been used against him during the investigation. The investigator found out about the injuries from the conclusions of a forensic medical examination that he had ordered in order to exclude the applicant’s possible statements of ill-treatment during the investigation. The applicant explained to the investigator that the injuries were due to the explosion of a light bulb.

On 8 October 2013 a prosecutor requested the recusal of Judge A. from the proceedings. As it follows from the hearing record, the prosecutor in general terms alleged “the court’s interest in the outcome of the case”. The court dismissed the prosecutor’s request.

(c)  Withdrawal of Judge A. from the applicant’s case

On 1 November 2013 Judge A. withdrew from the applicant’s case. The reasoning of the judge’s decision read as follows:

“... A person, who introduced himself as the Minister of Interior of the Chechen Republic, Lieutenant-General Ruslan Alkhanov, ... called me, the judge, and told that he knew in all certainty that defendant Edigov was guilty as charged and warned me against the delivery of an acquittal judgement.

This person is the head of a federal structure, on which the law imposed an obligation to provide state protection of a judge in the event of encroachment on his or her independence in adopting court decisions in any court case.

During the present trial the court was provided with sufficient evidence confirming statements of the defendant that on 3 August 2012 subordinates of Mr Alkhanov, operational police officers, abducted the defendant and deprived him of his liberty until 12 September 2012, subjected him to torture by electric shock wrapping his fingers with aluminium wires, causing rotting wounds on the fourth and fifth fingers of both hands in order to force him to confess to a crime.

The ... warning of Mr Alkhanov is a reaction to the court questionings of his subordinates, who are interested in the outcome of the case, and to an unfavourable for them development of the court proceedings.

In view of an interference by a public official of such level with an ongoing trial of Edigov, in my opinion and against my will, any judgment later delivered by me would be considered as a concession in response to the warning in the case of conviction, or as a demonstration of courage or, in other words, as a protest in the case of acquittal.

In adopting a court judgment concerning the guilt of a person and his sentencing, such doubts in respect of impartiality of a judge are unacceptable.

Since these circumstances questioned my impartiality and disinterest in the outcome of the case, I consider it necessary to withdraw ...”

On 9 December 2013 the Deputy Prosecutor of the Prosecutor General’s Office requested the Chief of the Russian Investigative Committee, Mr Bastrykin, to decide on the issue of criminal prosecution in the case concerning the interference in work of the judge of the Supreme Court of Chechnya. There is no information in the case file concerning the outcome of the prosecutor’s request.

(d)  Further developments of the inquiry into the alleged ill-treatment

On 4 December 2013 the Acting Prosecutor of Chechnya quashed the refusal to open a criminal case of 16 August 2013 on the grounds that it was unsubstantiated and unlawful. The decision referred, *inter alia*, to the fact that not all police officers named by the applicant had been questioned.

On 16 January 2014 the Deputy Head of the Special Investigative Department of the Main Investigative Department of the Investigative Committee for the North Caucasus Federal District (“*Управление по расследованию особо важных дел Главного следственного управления Следственного комитета России по Северо-Кавказскому федеральному округу*”), Colonel So., issued a decision not to open a criminal case. The decision contained explanations of police officers R.A., S.S., M.V., M.Kh., Sh.U., I.Kh., R.P., T.I., Kh.E. who provided explanations similar to those referred to in the decision of 16 August 2013. Investigator T. reiterated his explanations previously at trial. The decision also contained explanations of Mr Alkhanov, who stated that he was unaware of the alleged abduction, detention and use of illegal methods of investigation in respect of the applicant. The decision referred to the IVS medical act of 12 September 2012 in which no injuries of the applicant had been recorded. The fact that Ms U.’s lodged a complaint about the abduction with the Investigative Committee was not confirmed.

On 17 February 2014 the Head of the above-mentioned department, Major General T., quashed the decision referring to the inconsistencies between the decision and the circumstances established during the court proceedings.

On 27 February 2014 Colonel So. issued a decision not to open a criminal case on the same grounds finding that the contradicting statements of the applicant and his mother were motivated by the intention to evade criminal responsibility of the applicant.

On 28 March 2014 the refusal of 27 February 2014 was quashed. It was ordered, among other things, to add the hearing records to the case materials, to question Ms U., the applicant’s family members and neighbours, all police officers identified by the applicant, to add Ms U.’s complaint which she submitted to the court, with the participation of the applicant to inspect the premises of the police department where he had allegedly been detained, to question forensic experts.

On 28 April 2014 Colonel So. again refused to open a criminal case. As to the Ms U.’s complaint the investigator found that her copy of the complaint had not had a stamp of incoming correspondence, therefore, it could not be confirmed that she had complained to the Investigative Committee. The decision stated, among other things, that forensic experts refused to give explanations on the grounds that the Code of Criminal Procedure did not envisage the questioning of experts. The inspection of the police department premises had not been performed due to the applicant’s participation in criminal proceedings in the Supreme Court of Chechnya.

On 6 May 2014 the Deputy Prosecutor General, Mr S., quashed the refusal of Colonel So. He indicated specific inconsistences between the refusal’s conclusions and the circumstances established in the court proceedings. In particular, the reference was made to the statements of Ms Ya. who had identified the applicant as a person whom she had rendered medical aid in the police department, as well as to the statements of investigator T. that the applicant voluntarily came to him, while the police officers had testified that they had arrested the applicant on the street.

In his latest decision not to open a criminal case of 11 July 2014, Colonel So. explained, among other things, that in fact Ms Ya. had not identified the applicant as a person to whom she had rendered medical aid and that investigator T. could not be questioned due to his death.

3.  The applicant’s conviction

On 23 May 2014 the Supreme Court of Chechnya convicted the applicant of murder of a police officer and sentenced him to 14 years of imprisonment to be counted from 12 September 2012, the date of his arrest. The court convicted the applicant on the basis of his confession statements made during the investigation and reiterated at the beginning of the trial.

The court examined, among other things, witness statements of the applicant’s mother, his neighbours, investigators T. and Z., Ms Ya., police officers M.Kh., I.Kh., Kh.E., T.I., given in the previous court proceedings. The court also examined the applicant’s medical documentation as well as forensic medical examination act of 22 January 2013.

The court rejected as unsubstantiated the applicant’s allegations of unrecorded detention between 3 August and 12 September 2012 and ill‑treatment, referring to the refusal of 28 April 2014.

On 17 June 2014 the applicant lodged an appeal with the Supreme Court of Russia complaining, *inter alia*, that the court had been under pressure from the Minister of Interior, that he had been in unrecorded detention for fourty days and ill-treated by the police in order to extract his confession of the murder which had been eventually used in his conviction.

On 7 November 2014 the Supreme Court of Russia dismissed the applicant’s appeal upholding the conviction of the first instance court.

B.  Relevant domestic law

For the relevant provisions of domestic law on the prohibition of torture and other ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014, and *Ryabtsev v. Russia*, no. 13642/06, §§ 48‑52, 14 November 2013.

For relevant domestic law and practice concerning the rights of suspects see *Turbylev v. Russia*, no. 4722/09, §§ 46-49, 6 October 2015.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment by the police officers and that no effective investigation has been carried out in this respect.

He further complains under Article 5 § 1 of the Convention about his unrecorded detention between 3 August and 12 September 2012.

Referring to Article 6 § 1 of the Convention, the applicant complains that his trial was unfair on account of the use of his confession statements obtained under duress for the purposes of his conviction. He also complained under Article 6 § 1 of the Convention about the lack of independence of the trial court.

Finally, the applicant complains under Article 13 of the Convention that there was no effective remedy at his disposal in respect of all aforementioned complaints.

QUESTIONS TO THE PARTIES

1.  Has the applicant been subjected to inhuman and degrading treatment, in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman and degrading treatment, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

2.  As regards alleged unrecorded detention, was the applicant deprived of his liberty, within the meaning of Article 5 § 1 of the Convention? If such detention took place, was they compatible with the guarantees of Article 5 §§ 1–5 of the Convention?

3.  Did the applicant have a fair hearing in the determination of the criminal charges against him in accordance with Article 6 § 1 of the Convention, having regard to the fact that the confession statements made by the applicant during the investigation served as the ground for his conviction?

4.  Was the court which dealt with the applicant’s criminal proceedings independent and impartial, as required by Article 6 § 1 of the Convention? Have the State authorities put undue pressure on the court in the course of the proceedings?

4.1.  Was it compatible with the independence requirement under Article 6 § 1 of the Convention that the Chechen Minister of Internal Affairs contacted judge A. and “warned [him] against the delivery of an acquittal judgment” in respect of the applicant whose guilt the Minister considered verified (see, *mutatis mutandis*, *Salov v. Ukraine*, no. 65518/01, §§ 80 and 83, 6 December 2005; *Khrykin v. Russia*, no. 33186/08, §§ 28 and 35, 19 April 2011)?

4.2. Did the domestic courts had a requisite appearance of independence or the requisite objective impartiality (see, mutatis mutandis, *Agrokompleks v. Ukraine*, no. 23465/03, § 132, 6 October 2011)?

5.  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?