



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

FIRST SECTION

CASE OF BELOBORODOV v. RUSSIA

(Application no. 11342/05)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Beloborodov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11342/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Dmitriy Anatolyevich Beloborodov (“the applicant”), on 13 March 2005.

2. The applicant was represented by Mr S. Kiryukhin, a lawyer practising in Orsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that on 22 April 2004 he had been subjected to ill-treatment while in police custody and that the authorities had failed to conduct a proper investigation into the incident.

4. On 29 January 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lived, prior to his arrest, in Novotroitsk, Orenburg Region.

A. The applicant's arrest and questioning

6. On 22 April 2004, at 9.05 p.m., the applicant was arrested on suspicion of involvement in drug dealing and taken to a police station for questioning. According to the applicant, the police officers handcuffed him and beat him. Then they hung him up by the handcuffs with his legs not touching the floor. In the morning he was left in a tiny cell where he could not even lie down and had to stand.

7. On 23 April 2004, at 8.55 p.m., the applicant was taken to a temporary detention centre. During the questioning which took place on the same date, he complained that he had been beaten by police officers at the police station.

8. On 24 April 2004, at 12.15 p.m., the applicant was examined by a forensic medical expert. The applicant reported that he had been beaten by the police officers on 22 April 2004. They had punched him and hit him with a chair on the head and other parts of his body. He further complained that he was experiencing pain in the lumbar area, in the neck, the buttocks and the right calf. The expert noted abrasions on the applicant's upper lip and wrists, a bruise on the upper left eyelid, and multiple bruises on the left temple. The applicant was also suffering from nausea and dizziness. According to the doctor, the injuries could have resulted from the impact of blunt objects and could have occurred up to one day before the medical examination. They did not cause any impairment to the applicant's general health.

9. On 25 April 2004 a medical emergency team was summoned to see the applicant, who was suffering from diabetes and neurasthenia.

B. The investigation into the applicant's allegations

10. On 26 April 2004 the applicant's counsel complained to the prosecutor's office about the applicant's ill-treatment in police custody.

11. On 29 April 2004 the senior investigator of the Leninskiy District Prosecutor's Office of Orsk dismissed the complaint. The investigator noted that the applicant had sustained the injuries on the afternoon of 23 April 2004, whereas he alleged that he had been subjected to ill-treatment on 22 April 2004.

12. The investigator based his findings on the forensic medical report of 24 April 2004, and the testimony provided by three police officers, who denied the applicant's allegations and claimed that he had actively resisted arrest and even managed to break his handcuffs.

13. On 18 May 2004 the Deputy Prosecutor of the Leninskiy District of Orsk quashed the investigator's decision of 29 April 2004. The prosecutor stated that the investigator's findings were inconclusive and that the inquiry had been incomplete.

14. On 28 May 2004 the investigator dismissed the applicant's complaint. The investigator noted that the applicant had actively resisted arrest and questioning and that the police officers had had to use physical force to restrain him. The investigator further noted that, according to the statement submitted by the temporary detention centre where the applicant had been taken on 23 April 2004, he did not have any injuries upon arrival. As to the injuries documented on 24 April 2004, the investigator decided that the applicant must have sustained them no earlier than 12 noon on 23 April 2004, that is, after his arrest and search, which he had actively resisted.

15. On 7 June 2004 the Leninskiy District Court of Orsk quashed the decision of 28 May 2004. The court noted that the investigator's findings were inconclusive and contradictory. In particular, the court observed as follows:

“According to the materials in the case file concerning the refusal to open a criminal investigation, [the applicant] was not questioned with regard to the injuries he had sustained. The decision not to open a criminal investigation was based on the statements made by M., T., and K., the police officers [accused by the applicant of ill-treatment], a report provided by [the temporary detention centre], and the forensic medical report [of 24 April 2004]. [The investigator's] findings [of 28 May 2004] are manifestly contradictory and inconclusive. On the one hand, the investigator noted that [the applicant's] injuries had resulted from his active resistance to the police officers in the course of his arrest on 22 April 2004. On the other hand, the investigator referred to the forensic medical report, arguing that [the applicant] had sustained the injuries no earlier than 12 noon on 23 April 2004. [Thus, the investigator] failed to elucidate the circumstances under which [the applicant] had sustained the injuries, whether it had happened on 22 April 2004 or no earlier than 12 noon on 23 April 2004, and how those injuries had originated if no one had beaten [the applicant]. [The investigator] only established that the applicant did sustain the injuries, but failed to determine the circumstances of their origin.

Furthermore, M. had stated that [the applicant] had broken his metal handcuffs... However, [the investigator] did not examine the handcuffs. Nor did he verify [M.'s statement].

On the day of the court hearing concerning [the applicant's] remand in custody, [he] submitted that the police officers had torn his shirt. His statement was recorded in the minutes of the hearing... [The applicant] explained that the police officers had torn his shirt when they beat him. [The applicant's allegations] were not verified.

According to the information provided by [the remand prison], [the applicant] is receiving medical treatment; certain tests have been carried out, but his condition is not improving. [The investigator] did not verify whether there was a link between [the applicant's] condition and the injuries he had sustained.

The court subscribes to the opinion of the applicant's representative that the inquiry conducted was incomplete in view of [the investigator's] failure to determine the degree of severity of the [applicant's] injuries.

Having regard to the above, the court considers that an additional and comprehensive inquiry is required in order to reconcile all the discrepancies.”

16. On 13 July 2004 the Orenburg Regional Court found that the District Court had failed to examine properly all the material in its possession and had based its decision mainly on the applicant's testimony. The Regional Court quashed the decision of 7 June 2004 and remitted the matter for fresh consideration.

17. On 13 August 2004 the Leninskiy District Court of Orsk upheld the investigator's decision of 28 May 2004. The court found the police officers' actions to have been lawful and dismissed the applicant's request for them to be subjected to a polygraph test. In particular, the court observed as follows:

“According to the forensic medical report, [the applicant] had injuries only on his face. No injuries were noted in the lumbar area or on the neck or buttocks. According to the information submitted by the [temporary detention centre], [the applicant] complained about heart pains and diabetes; he was examined and no injuries were noted. The court established that [the applicant] had refused to provide any explanation to the investigator in respect of [his allegations of ill-treatment]. As the police officers who had arrested the applicants submitted, [he] had not been beaten...

The material submitted contains information about the place and time of the applicant's arrest. The court discerns no contradiction between this information and the circumstances of the [applicant's] arrest.

[The investigator] indicated in his decision that a criminal investigation should not be opened ... that [the applicant] had resisted arrest and had been handcuffed for that reason. At [the police station] he had resisted again and broken his handcuffs. The investigator did not discern any evidence showing that the police officers' actions *vis-à-vis* [the applicant] had been unlawful.”

18. On 16 September 2004 the Orenburg Regional Court upheld the decision of 13 July 2004 on appeal.

II. RELEVANT DOMESTIC LAW

Investigation of criminal offences

19. In response to a complaint of a criminal offence, the investigator is under obligation to verify the complainant's allegations (Article 144 of the Code of the Criminal Procedure (the “CCrP”)).

20. Should there be sufficient grounds to believe that a crime had been committed, the investigator initiates a criminal investigation (Article 145 of the CCrP).

21. The complainant may appeal against the investigator's refusal to open a criminal investigation to the investigator's superior, a prosecutor or a court (Article 148 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicant alleged that he had been subjected to ill-treatment on 22 April 2004, in contravention of Article 3 of the Convention. He further complained under Article 13 of the Convention that the investigation conducted by the authorities in response to his complaint of ill-treatment had been incomplete and contradictory. The Court will examine the complaints under Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

23. The Government contested the applicant's argument. They stated that his allegations of ill-treatment had been thoroughly examined. It had been established, however, that the police officers had not subjected the applicant to torture or inhuman or degrading treatment. Accordingly, there had been no violation of the applicant's rights set out in Article 3 of the Convention, either under the substantive or the procedural limb.

24. The applicant maintained his complaints.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Alleged ill-treatment*

26. The Court has stated on many occasions that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

27. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such

proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121).

28. Where an individual is taken into custody in good health but is found to be injured at the time of release, the burden of proof may be regarded as resting on the authorities to provide a plausible and convincing explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

29. Turning to the circumstances of the present case, the Court firstly observes that the applicant's allegations that he had been hung up by his handcuffs are not supported by the medical documentation submitted by the parties. Nor did the subsequent inquiry conducted by the authorities elucidate the disputed facts. In such circumstances, the Court finds it impossible to establish "beyond reasonable doubt" whether or not the applicant was hung up by his handcuffs as he alleged.

30. As regards the injuries the applicant complained of, the Court notes that the medical evidence submitted by the applicant conclusively demonstrates that he sustained numerous injuries, including abrasions on his upper lip and wrists, a bruise on the upper left eyelid, and multiple bruises on the left temple.

31. The Court further observes that the parties did not dispute, although they were not in agreement as to the exact date, that the applicant had sustained the injuries in question while he was in police custody, that is between 22 and 23 April 2004. Accordingly, the Court's task in the present case is to ascertain whether the Government have met their obligation to provide a plausible explanation of how those injuries were caused.

32. The Court notes that in response to the applicant's consistent account of the circumstances of his questioning on 22 April 2004 at the police station, the Government made no attempt to account for the cause of the applicant's injuries. They did no more than refer to the findings of the domestic authorities' inquiry, which provided no explanation as to the cause of the applicant's injuries. The inquiry relied on the statements made by the alleged perpetrators, who denied the allegations of ill-treatment, and on the forensic medical report which stated, without further details, that the applicant's injuries must have been inflicted no earlier than 12 noon on the day following the applicant's questioning.

33. While the Court agrees that the applicant's account of the events of 22 April 2004 was not supported by the conclusions of the forensic medical expert or the statements made by the alleged perpetrators, it cannot subscribe to the Government's view that this fact alone, in the absence of any plausible explanation as to the cause of the injuries sustained by the applicant while in police custody, was sufficient to dismiss his allegations of ill-treatment as unsubstantiated.

34. In such circumstances, the Court considers that the Government failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while in the care of the State. Accordingly, the responsibility for them lay with the domestic authorities.

35. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

36. The Court considers that the numerous abrasions and bruises noted by the forensic medical expert who examined the applicant indicate that his injuries were sufficiently serious to amount to inhuman treatment prohibited by Article 3 of the Convention (compare *Assenov and Others*, cited above, § 95).

37. Having regard to the above, the Court concludes that on 22 April 2004 the applicant was subjected to ill-treatment for which responsibility lay with the domestic authorities and which amounted to inhuman treatment contrary to Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. Adequacy of the ensuing investigation

38. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, cited above, § 102).

39. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

40. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

41. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, §§ 133 et seq.). Consideration has been given to delays in the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV), and the length of time taken to complete an initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

42. Turning to the facts of the present case, the Court observes that the authorities did carry out an inquiry into the applicant's allegations. The investigator at the prosecutor's office conducted it promptly and informed the applicant of the result without undue delay. The Court is not convinced, however, that the inquiry was sufficiently thorough to meet the requirements of Article 3.

43. As regards the thoroughness of the investigation, the Court observes that a number of significant omissions capable of undermining its reliability and effectiveness were, in fact, identified by a domestic court at the first level of jurisdiction. The Court accepts the District Court's findings of 7 June 2004 (see paragraph 15 above) that, when arriving at his decision to refuse to institute criminal proceedings against the police officers, the investigator confined himself to questioning the police officers involved. Even assuming that the applicant had indeed refused to talk to the investigator, the Court finds the latter's effort for establishment of the facts insufficient. In particular, at no point did he organise a confrontation between the applicant and the police officers to verify the truthfulness of the testimony provided by the alleged perpetrators.

44. Furthermore, the investigator, as the District Court indicated, failed to determine the cause of the applicant's injuries and to account for the inconsistencies in his own reconstruction of the events of 22 and 23 April

2004. In particular, the investigator's findings that the applicant had actively resisted arrest and questioning and that he had even broken his handcuffs lack any basis in evidence except for the statements made by the alleged perpetrators. As the District Court noted, no attempt was made by the investigator to examine the available physical evidence, such as the broken handcuffs or the torn shirt the applicant was wearing on 22 April 2004.

45. The subsequent judicial proceedings do not seem to have rectified the omissions of the investigator's inquiry. The decision taken by the District Court on 7 June 2004 was quashed on appeal and the court, considering the applicant's complaint anew, did not discern any flaws in the inquiry and validated the investigator's findings.

46. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention in this regard.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. Lastly, the applicant alleged a violation of Article 1 of the Convention. He complained under Article 14 of the Convention that the local authorities had refused to use a polygraph test to verify the testimony of the police officers who had detained and questioned him, whereas such tests were regularly applied in Moscow, and under Article 34 of the Convention that for six months he had been unable to communicate with the Court because his representative had been placed in custody.

48. However, having regard to all the material in its possession, the Court finds that the events complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

50. The applicant claimed 90,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

51. The Government considered the applicant's claim excessive. They further submitted that the applicant had failed to justify it or to produce the relevant calculations.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court observes that it has found that the applicant was subjected to ill-treatment in police custody and that the investigation into his allegations of ill-treatment was ineffective. In such circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated by the mere finding of a violation. However, the Court accepts the Government's argument that the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 21,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

53. The applicant also claimed, without specifying the amount, reimbursement for the services provided by his representative before the Court.

54. The Government submitted that the applicant had failed to demonstrate that he had actually incurred the costs or expenses in question.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court accepts the Government's argument that the applicant did not demonstrate that he had indeed incurred any costs and expenses and rejects the applicant's claim.

C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention concerning the ill-treatment of the applicant on 22 April 2004 and the effectiveness of the ensuing investigation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 21,000 (twenty-one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President