



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

FIRST SECTION

CASE OF GORSHCHUK v. RUSSIA

(Application no. 31316/09)

JUDGMENT

STRASBOURG

6 October 2015

FINAL

06/01/2016

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



In the case of Gorshchuk v. Russia,

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

András Sajó, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 31316/09) 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 Sergey Petrovich Gorshchuk (“the applicant”), on 30 May 2009.

2. The applicant was represented by the Committee against Torture, an interregional non-governmental organisation based in Nizhniy Novgorod. 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 that he had been ill-treated in police custody and that no effective investigation into his complaint had been carried out.

4. On 31 August 2011 the application was communicated to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969 and lives in Nizhniy Novgorod.

A. The applicant's alleged ill-treatment in police custody

6. In August 2007 the body of a man with multiple injuries was found in a public garden in Nizhniy Novgorod and an investigation started into the murder.

7. On 14 September 2007 the applicant was arrested by police officers of the Kanavinskiy district police department of Nizhniy Novgorod (*управление внутренних дел Канавинского района Нижнего Новгорода* – “the Kanavinskiy RUVD”) at a house in the village of Druzhkovo in the Nizhniy Novgorod region. He was taken to the Kanavinskiy RUVD with Mr M.K., Ms N. and Ms S., who had been at the house with him at the time. They arrived at about 8 p.m. and were interviewed by the same officers about the murder.

8. According to the applicant, M.K. was beaten up and gave statements implicating him in the murder, which he confirmed during a confrontation with the applicant in the presence of an investigator in the murder case. He subsequently retracted them.

9. At about 2.30 a.m. the next morning the officers interviewed the applicant, demanding that he confess to the murder. He refused to do so and was allegedly beaten up.

10. At 5.55 a.m. an official record was drawn up of his arrest as a suspect in the murder case.

11. The applicant's ill-treatment allegedly lasted until the arrival of an investigator from the Kanavinskiy District Investigation Department of the Investigative Committee at the Nizhniy Novgorod regional prosecutor's office (“the Investigative Committee”), who was in charge of the murder case. The investigator arrived at about 6.30 a.m. and questioned the applicant in the presence of a lawyer. He refused to confess.

12. At 9.20 a.m. the applicant was placed in the Kanavinskiy RUVD's temporary detention facility (“the IVS”). According to its records, he wrote two statements concerning the origin of his injuries, notably an abrasion on his chin and bruising to his chest. One of the statements read that he had received the injuries “before [arriving] at the IVS”, while the other said “on 14 September on Sovetskaya Street in the village of Druzhkovo”.

13. At about 7.30 p.m. the applicant was taken to pre-trial detention facility SIZO-52/1. He was examined by a doctor on duty, who reported the following injuries to the head of administration: haemorrhages on the upper chest up to 7cm in size, a haematoma on the left shoulder, an abrasion on the chin and an oedema on the back of the head. The applicant wrote to the head of the SIZO explaining that he had been beaten up by police officers of the Kanavinskiy RUVD on 15 September 2007 and requested that an inquiry be carried out. The information about his alleged ill-treatment was communicated to the Kanavinskiy district prosecutor's office, which transferred it to the Investigative Committee on 26 September 2007.

14. In November 2007 two police officers visited the applicant in SIZO-52/1 and allegedly demanded under threat that he confess to the murder. He signed a confession which he later retracted. He subsequently stood trial for the murder. There is no information in the case file about the outcome of those proceedings.

B. Inquiry into the applicant's alleged ill-treatment

1. Investigative Committee's refusal to open criminal proceedings

15. An investigator of the Investigative Committee carried out a pre-investigation inquiry, in the course of which he interviewed operative officer K. of the Kanavinskiy RUVD, who had arrested the applicant and taken him to the police station for questioning by the investigator in the murder case. K. asserted that no physical violence had been used by the police against the applicant.

16. On 3 October 2007 the investigator, relying on K.'s explanation and referring to Article 24 § 1 (2) of the Code of Criminal Procedure ("CCrP"), refused to institute criminal proceedings under Article 286 § 1 of the Criminal Code (abuse of power) on the grounds that the constituent elements of a crime were missing.

17. On 8 April 2008 the head of the Investigative Committee revoked the investigator's decision on the grounds that the inquiry had been incomplete and the decision premature. He ordered, in particular, that the applicant be interviewed, along with the other police officers who had arrested him, the investigator in the murder case and the IVS officers. He also ordered that the IVS records concerning the applicant's state of health be obtained and the gravity of harm to the applicant's health be assessed.

18. Ms N. stated in the course of an additional inquiry that she had not noticed any injuries on the applicant at the police station. Police officer M. said that the police had been in possession of information that the applicant may have been involved in the murder, so his whereabouts had been established and he had been taken to the police station and interviewed. The investigator in the murder case and M. both stated that they had not noticed any injuries on the applicant, maintaining that no violence had been used against him.

19. On 17 April 2008 the investigator, referring to Article 24 § 1 (1) of the CCrP, decided that no criminal case could be opened under Article 286 of the Criminal Code since no crime had been committed. That decision was revoked on 27 May 2008 on the grounds that the inquiry had been incomplete.

20. In the course of an additional inquiry the investigator interviewed operative officers K. and A., who both gave statements similar to those of M. (see paragraph 18 above).

21. On 2 June 2008 the investigator again decided that no criminal case could be opened as no crime had been committed. The applicant's allegations were refuted by the statements of the investigator in the murder case, police officers K. and M. and Ms N., as well as the one he had made on his arrival at the IVS that he had received the abrasion on his chin and bruising to his chest "on 14 September on Sovetskaya Street in the village of Druzhkovo" (see paragraph 12 above).

2. Judicial review of the refusal to open criminal proceedings under Article 125 of the Code of Criminal Procedure

22. On 3 October 2008 a judge of the Kanavinskiy District Court dismissed an appeal by the applicant against the investigator's decision of 2 June 2008, holding that it could not be examined in review proceedings under Article 125 of the CCrP as it concerned matters to be examined at the hearing of the applicant's case which had been referred for trial and was now pending before the District Court.

23. On 1 December 2008 the Nizhniy Novgorod Regional Court quashed that decision and terminated the proceedings on the grounds that an examination of the applicant's appeal against the investigator's decision in proceedings separate from his trial could have prejudiced the legal assessment of his confession as evidence. Such an assessment had to be carried out at the hearing of the applicant's criminal case.

3. Medical experts' opinions

24. The applicant's representative obtained the following medical experts' opinions regarding the applicant's injuries on the basis of the description recorded in SIZO-52/1 on 15 September 2007.

25. Doctor M. stated on 16 February 2009 that the oedema on the back of the applicant's head could have been caused as a result of being hit by a hard object. It could not be excluded that all the injuries had been caused on 14 or 15 September 2007.

26. Forensic medical expert Y. from the Nizhniy Novgorod Regional Forensic Medical Bureau concluded in a report of 13 March 2009 that the haemorrhages on the chest, haematoma on the left shoulder and abrasion on the chin could have been inflicted by a blunt object on 14 or 15 September 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment in police custody, and under Article 13 that no effective investigation had ensued.

28. The Court will examine both aspects 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.”

A. Admissibility

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

B. Merits

1. The applicant's ill-treatment in police custody

30. The Government acknowledged a violation of the applicant's rights guaranteed by Article 3.

31. After spending time in police custody the applicant showed signs of injury (see paragraphs 12 and 13 above for a description and 25 and 26 above for the relevant medical opinions).

32. Having regard to the detention facilities' medical records and the medical experts' opinions, the injuries to the applicant's head, chin, chest and shoulder are consistent with his allegations that he had been hit by police officers. Unaccounted for within the domestic proceedings and acknowledged by the Government, they must be considered attributable to a form of ill-treatment for which the authorities should bear responsibility.

33. Thus, the Court finds it established that the applicant was subjected to ill-treatment while in police custody. The ill-treatment was intentional and caused him considerable fear, anguish and mental suffering. Having regard to the nature and circumstances of the ill-treatment, the Court finds that it amounted to inhuman and degrading treatment (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 87-93, ECHR 2010; *Nasakin v. Russia*, no. 22735/05, §§ 51-55, 18 July 2013; and *Mostipan v. Russia*, no. 12042/09, §§ 58-61, 16 October 2014).

34. There has therefore been a violation of Article 3 under its substantive limb.

2. The State's obligation to conduct an effective investigation

35. The applicant, who showed signs of injury after spending time in police custody, stated on his arrival at the SIZO that he had been beaten up by police officers of the Kanavinskiy RUVD on 15 September 2007 (see paragraph 13 above). The authorities were thus made promptly and sufficiently aware of his allegation of ill-treatment. This was supported by the detention facilities' records of his injuries (see paragraphs 12 and 13 above). It was therefore credible and gave rise to the State's obligation to carry out an effective investigation.

36. The Court has previously found that in the context of the Russian legal system in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it is incumbent on the authorities to open a criminal case and conduct a proper criminal investigation in which the whole range of investigative measures are carried out and which constitutes an effective remedy for victims of police ill-treatment under the domestic law. The mere fact of an investigative authority's refusal to open a criminal investigation into credible allegations of serious ill-treatment in police custody is indicative of the State's failure to comply with its obligation under Article 3 to carry out an effective investigation (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014).

37. The Government have acknowledged that no effective investigation took place. The Court has no reason to hold otherwise in the present case. It finds that the authorities' refusal to open a criminal case and conduct a criminal investigation into the applicant's alleged ill-treatment in police custody amounted to a failure to conduct an effective investigation.

38. Accordingly, there has also been a violation of Article 3 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government did not comment.

42. Making its assessment on an equitable basis, the Court awards the applicant EUR 17,000, plus any tax that may be chargeable.

B. Costs and expenses

43. The applicant also claimed EUR 6,379.88 for legal costs and expenses incurred before the Court.

44. The Government did not comment.

45. 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 considers it reasonable to award the sum of EUR 3,000 for the proceedings before it, plus any tax that may be chargeable to the applicant. This amount is to be paid into the bank account of the applicant's representative, as requested by the applicant.

C. Default interest

46. The Court considers it appropriate that the default interest rate 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 application admissible;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 17,000 (seventeen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative;
- (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 6 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

András Sajó
President