



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

THIRD SECTION

CASE OF MORGUNOV v. RUSSIA

(Application no. 32546/08)

JUDGMENT

STRASBOURG

11 April 2017

FINAL

11/07/2017

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

In the case of Morgunov v. Russia,

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

Helena Jäderblom, *President*,

Branko Lubarda,

Luis López Guerra,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 32546/08) 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 Aleksandr Ivanovich Morgunov (“the applicant”), on 24 April 2008.

2. The applicant was represented by several lawyers, in particular by Mr E.V. Bogryakov, Mr T.S. Arslambekov and Mr A.G. Gladkikh, lawyers practising in the Orenburg region. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that he had been subjected to ill-treatment by police officers and that no effective investigation had been carried out into his complaint.

4. On 14 March 2013 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Orenburg.

6. In June and July 2006 the investigation division of the Leninskiy district police department of Orenburg instituted criminal proceedings into robberies committed by an organised group.

7. On 30 August 2006 the applicant was arrested by the Department for Combating Organised Crime of Orenburg regional police (“the UBOP”) on suspicion of having committed the robberies.

8. On 31 August 2006 he was questioned as an accused in the presence of his lawyer and denied being involved in the crimes.

9. On 1 September 2006 the Leninskiy District Court of Orenburg extended the term of the applicant’s arrest, and on 4 September 2006 ordered that he be detained on remand and placed in pre-trial detention facility IZ-65/1 (“the SIZO”).

10. At an unspecified time on 18 September 2006 the applicant was taken from the SIZO to the UBOP building without his lawyer being present. There are no records of any investigative actions having been carried out that day with his participation.

11. According to the applicant, once he arrived at the UBOP offices five or six police officers, including L. and G., beat him in order to force him to confess to the robberies and subjected him to ill-treatment as follows. They shackled his hands and legs and tied his arms with a belt. They pushed him to the ground and almost suffocated him by putting a plastic bag and a gas mask over his head that cut off his air. They later took him to the basement of the building, which was equipped as a gym. They hung him on the parallel bars and hit him on the kidneys and extremities with a baseball bat. The applicant fainted several times so they burned him with cigarettes to make him come around.

12. At 9 p.m. the applicant was taken back to the SIZO. A routine examination by the medical assistant on duty, in the presence of a duty officer, revealed the following injuries: (i) a haematoma measuring 1 cm by 1 cm on the left frontal bone of the skull; (ii) hyperaemia (redness) measuring 1.5 by 3 cm on the right side of the forehead; (iii) a red and blue haematoma measuring 2 cm by 3 cm on the right shin; (iv) hyperaemia measuring 1 cm by 1 cm on both buttocks; and (v) hyperaemia measuring 2.5 by 4 cm on the right side of the lumbar region (medical report no. 249 of 18 September 2006, *акт медицинского освидетельствования*).

13. According to the additional medical records on the applicant from the SIZO for the period from 19 to 23 September 2006, he complained of headache, nausea, dizziness, vomiting and pain on the left side of his body when breathing. He had twitching eyelids and hand tremors. He was diagnosed with neurocirculatory dystonia of a hypertensive type and received treatment.

14. On 20 September 2006 the applicant went for questioning and his lawyer, Ms S., noticed that he had injuries on his forehead which he had not had before, that he looked unwell and had difficulty moving. The next day she asked for a forensic medical examination.

15. On 23 September 2006, K., an investigator at the investigation division of the Orenburg regional police department in charge of the

applicant's criminal case, ordered a forensic medical expert opinion on the applicant on the basis of medical records after considering the lawyer's request, the report on the examination of the applicant at the SIZO on 18 September 2006, and a report by Officer L. of the UBOP which stated that the applicant had caused the injuries to himself. K. wanted to know whether the applicant had any injuries and, if so, when and how they had been inflicted, whether they could have been inflicted as a result of a fall or as a result of harming himself, as described by Officer L., and whether the injuries were compatible with him being detained and participating in investigative actions in his case.

16. According to L.'s report, the applicant had been brought to the UBOP on 18 September 2006 as part of actions taken under the investigation, and had been taken to L.'s office for an interview. The applicant had jumped up from his chair and "hit his forehead and face on the corner of the chair with some force while shouting that he had to be taken back to the SIZO; he became hysterical, fell on the wooden floor, which had a linoleum covering, and started rolling around on the floor, hitting himself against wooden chairs and tables".

17. On 25 September 2006 the Promyshlennyy district prosecutor's office received a communication from the SIZO concerning the applicant's injuries. According to the applicant's statements to the prosecutor's office, the UBOP officers had subjected him to ill-treatment on 18 September 2006 in order to force him to confess to the crimes. He remembered the name of one of them, L. On 27 September 2006 the applicant lodged a formal complaint with the district prosecutor's office, requesting the prosecution of the police officers.

18. On 6 October 2006, following a pre-investigation inquiry, S., an investigator at the Promyshlennyy district prosecutor's office of Orenburg, found that the applicant's allegations had not been confirmed. Relying on Article 24 § 1 (1) of the Code of Criminal Procedure, he refused to institute criminal proceedings on the grounds that no crime had been committed. The investigator relied on L.'s denial of ill-treating the applicant.

19. On the same day the Promyshlennyy district deputy prosecutor annulled the investigator's decision as unlawful and ordered an additional inquiry.

20. On 25 October 2006 two forensic medical experts found after examining the applicant's medical records that he had haematomas on the left frontal bone and right shin, which had been caused either by hard, blunt objects, or as a result of hitting such objects, one to three days before his examination on 18 September 2006. They could have been caused by the applicant simply falling down or as a result of self-inflicted injuries, as described in L.'s report. The hyperaemia on the forehead, buttocks and lumbar region was not considered as an injury and its gravity could not be

assessed because it was an immediate and reversible reaction to some “irritant effect”, including “mechanical impact”.

21. On 27 October 2006 S. again refused to open a criminal case, citing the same grounds. In addition to L.’s evidence, the investigator relied on similar statements by Officer G., who had also been present at the time the applicant had allegedly injured himself, and on the forensic medical experts’ report of 25 October 2006.

22. The applicant appealed against the decision of 27 October 2006, arguing, *inter alia*, that the inquiry had not been thorough and that the State’s responsibility had been engaged under Article 3 of the Convention because he had received injuries during his detention that had been confirmed by medical evidence. The applicant referred to the Court’s case-law, stating that the burden of proof in such a situation was on the State and that it had to provide evidence which could cast doubt on the applicant’s allegations. The applicant argued that relying on the police officers’ statements was clearly insufficient.

23. On 19 September 2007 a judge at the Promyshlennyy District Court of Orenburg dismissed the applicant’s complaint. The court held that the inquiry had been thorough and comprehensive, it had not found any facts to confirm the applicant’s ill-treatment, the medical experts’ conclusions had been consistent with the police officers’ statements and the refusal to institute criminal proceedings had been lawful and well-founded. On 25 October 2007 the Orenburg Regional Court dismissed an appeal by the applicant and fully endorsed the District Court’s findings.

24. On 6 March 2008 the Orenburg Regional Court convicted the applicant on several counts of robbery and sentenced him to twelve years and four months’ imprisonment. It stated that the applicant’s allegations of ill-treatment were unfounded, relying on the findings of the pre-investigation inquiry and the statements by L. and the other police officers and investigators denying any wrongdoing on their part.

25. On 24 November 2008 a deputy head of the investigation department of the Orenburg town prosecutor’s office dismissed an appeal by the applicant against the investigator’s decision of 27 October 2006, considering that the inquiry had been thorough and objective.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained that he had been ill-treated by the UBOP officers and that no effective investigation into his complaint had been

carried out. He relied on Article 3 of the Convention, which reads as follows:

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

27. The Government submitted that the applicant’s complaint was unsubstantiated and therefore no criminal proceedings had been instituted. If the pre-investigation inquiry had shown that the complaint had been well-founded, the investigating authorities would have opened a criminal case and carried out an investigation.

A. Admissibility

28. The Government expressed doubts as to the compliance of Mr Morgunov’s application with the six-month rule, noting that it should have been dispatched before 25 April 2008.

29. The Court recalls that where competent investigating authorities refuse to institute criminal proceedings an appeal to a court can be considered a substantial safeguard against the arbitrary exercise of powers by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution decided not to investigate the claims (see *Nekrasov v. Russia*, no. 8049/07, § 77, 17 May 2016).

30. In the present case the applicant availed himself of that remedy by appealing against the investigator’s refusal to open a criminal case of 27 October 2006. The six-month period can therefore be counted from the Orenburg Regional Court’s decision of 25 October 2007 in which his appeal was dismissed in the final instance (see paragraph 23 above). The Court further notes that the postmark on Mr Morgunov’s application shows that it was sent to the Court on 24 April 2008, within six months of the Orenburg Regional Court’s decision.

31. The Court notes that the application 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

32. The relevant general principles were summarised by the Court’s Grand Chamber in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015). In particular, where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of

fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the version of events given by the victim. In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that those in custody are in a vulnerable position and the authorities are under a duty to protect them (ibid., § 83).

1. Credibility of the applicant's allegations and presumption of fact

33. The Court observes that the applicant was detained on remand as an accused in criminal proceedings. On 18 September 2006 he was taken to the offices of the Department for Combating Organised Crime of Orenburg regional police ("the UBOP"). On his return to the detention facility he was found to have sustained injuries. According to the forensic medical experts, the haematomas were inflicted by the impact of hard, blunt objects and the hyperaemia was the result of some irritant effect, which could have included "mechanical impact". The Court considers that the injuries could arguably have been received as a result of the applicant's alleged ill-treatment by the police officers, in particular as a result of being physically assaulted and hit with a bat.

34. The above factors are sufficient for the presumption in favour of the applicant's account of events to arise and to satisfy the Court that the applicant has made credible allegations of ill-treatment in police custody.

35. The fact that the applicant, who was detained on remand as an accused, was taken to the UBOP offices and interviewed there by UBOP officers without his lawyer and without any record of that interview, that is, outside the scope of normal investigative activities, attests to the applicant's particular vulnerability *vis-à-vis* the UBOP officers. It weighs in favour of the applicant's account of events and makes the presumption referred to in the previous paragraph stronger.

2. Whether an effective investigation was carried out into the applicant's allegations

36. The Court observes next that the applicant's allegations that his injuries were the result of police ill-treatment were dismissed by the domestic investigating authority, which held that they had been self-inflicted. It relied on the statements of the police officers who had allegedly ill-treated the applicant. The Court also notes that the forensic medical experts' opinion, on which the investigating authority relied, was issued without examining the applicant, despite the authorities' being immediately aware of his credible allegations of ill-treatment, and without assessing his version of the origin of the injuries.

37. The Court observes further that the findings of the investigating authority were based on the results of the pre-investigation inquiry, that is the initial stage in dealing with a criminal complaint under Russian law, which should normally be followed by the opening of a criminal case and an investigation if the information has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). The investigator's second refusal to initiate criminal proceedings was upheld by the domestic courts.

38. The Court reiterates its finding that merely carrying out a pre-investigation inquiry under Article 144 of the Code of Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment in police custody. It is incumbent on the authorities to institute criminal proceedings 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 domestic law (see *Lyapin*,

cited above, §§ 129 and 132-36; *Razzakov v. Russia*, no. 57519/09, §§ 57-61, 5 February 2015; *Gorshchuk v. Russia*, no. 31316/09, §§ 35-38, 6 October 2015; *Turbylev v. Russia*, no. 4722/09, §§ 67-72, 6 October 2015; and *Fartushin v. Russia*, no. 38887/09, §§ 44-45, 8 October 2015, in which the Government acknowledged a violation under the procedural aspect of Article 3).

39. The Court has no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment of which the authorities were promptly made aware. It finds that the investigating authorities have failed to carry out an effective investigation into the applicant's allegations of the police ill-treatment, as required by Article 3 of the Convention.

3. Whether the Government provided an explanation capable of casting doubt on the applicant's version of events

40. The Government supported the conclusions of the investigating authority that the applicant's injuries were not attributable to the conduct of the police officers and could have been self-inflicted, notably by hitting himself against chairs and tables.

41. Given that such an explanation was based on evidence which does not stand up to criticism and was made with reference to an inquiry falling short of the requirements of Article 3 of the Convention, the Court is of the view that it cannot be considered as satisfactory and convincing. It holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's account of events, which can therefore be assumed to have been established in relation to the allegations supported by the medical reports.

4. Legal classification of the treatment

42. The Court finds that the acts of violence to which the applicant was subjected at the UBOP offices on 18 September 2006 amounted to inhuman and degrading treatment.

5. Conclusion

43. There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the claim.

47. The Court awards the applicant the amount claimed in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant also claimed EUR 800 for the costs and expenses incurred before the Court, notably for legal services provided by Mr T.S. Arslambekov, a lawyer with the legal firm Aslanyan and Partners, registered in Orenburg.

49. The Government contested the claim.

50. 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 claimed for the proceedings before the Court.

C. Default interest

51. 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 and procedural limbs;
3. *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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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.

Done in English, and notified in writing on 11 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President