



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

FIFTH SECTION

CASE OF SPINOV v. UKRAINE

(Application no. 34331/03)

JUDGMENT

STRASBOURG

27 November 2008

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Spinov v. Ukraine,

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

Rait Maruste, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 34331/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Vitaliy Volodymyrovych Spinov (“the applicant”), on 6 September 2003.

2. The applicant was represented by Ms L. Spinova, his mother. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that there had been no effective investigation into his complaints on that account.

4. On 24 May 2005 the Court decided to communicate to the respondent Government the complaints under Article 3 of the Convention concerning alleged ill-treatment of the applicant by the police and effectiveness of the relevant investigation to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Donetsk.

A. Events of 29-30 November 2001 and subsequent conviction of the applicant

6. According to the police report, at about 7.30 p.m. on 29 November 2001 the applicant, who was drunk, grabbed a bag out of Ms C.'s hands and attempted to run away. Two uniformed police officers, Mr M. and Mr K., who were patrolling the area, heard Ms C.'s cry for help and saw the applicant running with the bag in his hands. They chased the applicant, caught him in the street, restrained him and took him to the nearby police station.

7. The applicant alleged that when passing Ms C. in the street he had slipped on the ground and grabbed her bag unintentionally. After that he stood up and moved away. Shortly afterwards he had been knocked down by a heavy blow to the head, lost consciousness and regained it only at the police station.

8. According to the applicant, some six police officers at the police station handcuffed him to the window frame and demanded that he confess. When he refused to do so he was beaten. The applicant states that he was allowed to phone his sister only after he had signed a confession. He also alleges that his sister and mother had to bribe a police officer to ensure that he was not detained pending trial.

9. On 30 November 2001 the applicant was released from the police station.

10. On 10 February 2003 the Kalininsky District Court of Donetsk convicted the applicant of an attempted robbery on 29 November 2001 and fined him 850 Ukrainian hryvnas (UAH). The applicant did not appeal against that judgment.

B. Medical examinations of the applicant and official investigation into the alleged ill-treatment

11. On 4 December 2001 a forensic medicine expert examined the applicant, on whom he found bruises on the body, abrasion of the left wrist joint and established that the applicant was suffering from concussion. The expert further concluded that these injuries, taken together, were minor.

12. According to a certificate issued on 5 December 2001 by a doctor at the local hospital, the applicant was suffering kidney pain as a post-traumatic effect of blows to his back.

13. Between 10 December 2001 and 2 January 2002 the applicant underwent medical treatment at the local hospital for the effects of concussion. According to his medical records, he was suffering from headache, general weakness and nausea. On admission to the hospital he alleged that he had been beaten by unknown persons.

14. On 14 January 2002 the applicant complained to the Prosecutor's Office of Kalininsky District of Donetsk ("the District Prosecutor's Office") about the ill-treatment allegedly suffered by him.

15. On 24 January 2002 the District Prosecutor's Office refused to institute criminal proceedings against police officers for the lack of any *corpus delicti* in their acts.

16. On 12 February 2002 the Donetsk City Prosecutor's Office quashed the decision of 24 January 2002 as unfounded and remitted the materials for further inquiry.

17. On 25 February 2002 the District Prosecutor's Office refused to open criminal proceedings against the police officers, finding that there was nothing to suggest that they had committed any crime.

18. On 18 March 2002 the Donetsk Region Prosecutor's Office overruled the decision of 25 February 2002, stating that the inquiry had been conducted unsatisfactorily and remitted the case for further examination.

19. On 21 March 2002 the forensic medical expert issued an additional report in which he repeated his previous conclusion that the applicant had received bruises to the body, abrasion of the left wrist joint and had suffered concussion, which amounted to minor bodily injuries, and assumed that they could have probably been caused as alleged by the applicant.

20. On 15 April 2002 the Donetsk City Prosecutor's Office refused to institute criminal proceedings against police officers due to the lack of any *corpus delicti*. This finding was based on the discrepancies in the applicant's testimonies as to the number of police officers involved and the exact place where the beating had allegedly taken place. The fact that the applicant on admission to the local hospital had not indicated the police officers as the source of his injuries had also been mentioned.

21. On 13 June 2002 the Voroshylovsky District Court of Donetsk found that the inquiry was flawed, quashed the decision of 15 April 2002 and ordered a further inquiry. The court indicated, *inter alia*, that the investigative authorities had failed to establish or question persons who had seen the applicant before and after his detention in the police station and to scrutinise the circumstances surrounding the infliction of bodily injuries on the applicant.

22. On 8 August 2002 the Donetsk City Prosecutor's Office decided not to institute criminal proceedings against the police officers, stating, *inter alia*, that the applicant's allegations were inconsistent and unfounded.

23. On 10 October 2002 the Voroshylovsky District Court of Donetsk quashed the decision of 8 August 2002 and ordered further inquiry. The court specified, *inter alia*, that the authorities had failed to make a proper assessment of the testimonies of Ms C., who had seen the applicant on his arrival at the police station on 29 November 2001, bearing no noticeable signs of beating, and to the usher of the police station and Mr L., who had talked with the applicant next day when he was released.

24. On 13 December 2002 the Donetsk City Prosecutor's Office refused to open criminal proceedings against the police officers, finding that the applicant's allegations about ill-treatment at the police station had been inconsistent and that the injuries complained of could have been sustained at the scene of crime.

25. On 31 January 2003 the Donetsk Regional Prosecutor's Office quashed the decision of 13 December 2002 and remitted the case for further inquiry into the circumstances in which the applicant received his injuries.

26. On 22 February 2003 the Donetsk City Prosecutor's Office further questioned Mr K. and Mr M., who explained in detail, as far as they could remember, how they had arrested the applicant on 29 November 2001 and the injuries they might have inflicted on him. They admitted that when catching the applicant they had knocked him to the ground, inflicted several blows to restrain him and then handcuffed him.

27. On 3 March 2003 the forensic medical expert issued a supplementary report, in which he concluded on the basis of the additional material that the bodily injuries referred to could have been inflicted on the applicant by Mr K. and Mr M. on 29 November 2001 in the course of his detention at the scene of crime. He stated, in particular, that the bruises on the body as well as the concussion could have been received by the applicant when he was knocked to the ground and restrained by the officers; the abrasion of the wrist joint could have been caused by his being handcuffed.

28. On 25 March 2003 the Donetsk City Prosecutor's Office refused to institute criminal proceedings against the police officers, stating in particular that the bodily injuries could have been caused to the applicant by Mr K. and Mr M. when catching him at the scene of crime but not at the police station.

29. On 30 June 2005 the prosecutor of the Donetsk Region Prosecutor's Office quashed the decision of 25 March 2003, finding that the inquiry had been flawed, and remitted the case for further examination. He stated, *inter alia*, that the investigatory authorities had failed to question all the witnesses who saw the applicant on 29-30 November 2001. He further ordered that the relevant room of the police station be inspected with the participation of the applicant and a medical expert be appointed, who would be able to carry out an additional medical examination and clarify thereby the way the applicant received his bodily injuries.

30. On 20 July 2005 the General Prosecutor's Office instituted criminal proceedings against the police officers for exceeding their powers combined with the ill-treatment of the applicant. It admitted that the inquiry into the applicant's complaints about ill-treatment had not been conducted thoroughly, and that the instructions given by the courts and the higher prosecutors had not been followed.

31. By a letter of 30 July 2007 the District Prosecutor's Office informed the applicant that on 29 March 2007 the criminal proceedings against the police officers had been closed for lack of *corpus delicti* in their acts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant provision of the Constitution reads as follows:

Article 28

"Everyone has the right to respect for his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity. ..."

33. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 4

The obligation to institute criminal proceedings and investigate a crime

"The court, prosecutor or investigator must, to the extent that it is within their power to do so, institute criminal proceedings in every case where evidence of a crime has been discovered, take all necessary measures provided by law to establish whether a crime has been committed and the identity of the perpetrators and punish them."

Article 94

Grounds for instituting criminal proceedings

"Criminal proceedings shall be instituted on the following grounds:

(1) applications or communications from ... individuals;

...

(5) direct detection of signs of a crime by a body of inquiry or investigation, a prosecutor or a court.

A case may be instituted only when there is sufficient evidence that a crime has been committed."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment by police officers and that there had been no effective investigation into his complaints. In his complaints concerning the lack of effective investigation the applicant also relied on Article 13 of the Convention. The Court, however, considers it appropriate to examine these matters solely 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

35. The Government contended that these complaints had been lodged outside the six-month period which, in their opinion, had started to run on 24 January 2002, that is from the date of the first decision of the prosecutor’s office not to institute criminal proceedings under the applicant’s allegations.

36. The applicant disagreed, claiming that he had challenged this refusal at the national level upon which it had been quashed and a further inquiry had been ordered. It was later, within the six-month period, however, that he realised that the domestic inquiry into his allegations had turned out to be ineffective.

37. The Court reiterates that the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies (see *D.P. and J.C. v. the United Kingdom* (dec.), no. 38719/97, 26 June 2001). However, special considerations can apply in exceptional cases where applicants first avail themselves of a domestic remedy and only at a later stage become aware, or should have become aware, of circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Devrim Turan v. Turkey*, no. 879/02, §§ 32-33, 2 March 2006).

38. The Court observes that in the present case the applicant firstly put his complaint about ill-treatment to the national authorities, thereby availing himself of a domestic remedy which is normally considered effective. It is quite probable, however, that later he became doubtful as to the effectiveness of the remedy relied on, given the way the domestic authorities carried out the inquiries. Meanwhile, the Court cannot agree with the Government that the six-month period has to be calculated from

24 January 2002, when the domestic authorities refused to institute criminal proceedings for the first time. The Court has already held that such a refusal could be effectively challenged at the national level (see *Yakovenko v. Ukraine*, no. 15825/06, §§ 70-73, 25 October 2007). Indeed, the decision of 24 January 2002, as well as subsequent similar decisions, was quashed on appeals by the applicant, and further inquiries were ordered. These remittals, at least initially, could have made the applicant more trustful of the domestic procedure.

39. The Court further observes that the investigating authorities continued to take decisions on the merits of the applicant's allegations throughout the six-month period before the application was submitted to the Court (see paragraph 27) as well as after that submission (see paragraphs 28 and 29).

40. In view of these circumstances the Court cannot definitely conclude that the applicant had made up his mind about the ineffectiveness of the remedy employed earlier, before the six-month period started to run. In any event the applicant's attempts to make use of ordinary domestic remedies should not be held against him in calculating the six-month time-limit for lodging the application. It finds therefore that the Government's preliminary objection must be dismissed.

41. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The submissions of the parties

42. The Government admitted that the applicant had indeed sustained some minor bodily injuries. They stressed, however, that he underwent a medical examination four days later, after his release from the police station. Accordingly, the injuries could have been inflicted on him somewhere else. The Government still accepted that some of these injuries could have been caused to the applicant in the course of his arrest at the scene of crime, but emphasised that the use of force was necessary because of his own conduct. No excessive force had been used against him and no beating had taken place in the police station. The Government finally maintained that the investigation into the applicant's allegation about ill-treatment had been carried out effectively. In particular, the victim and all important witnesses were duly questioned and forensic medical examinations were held. Therefore, there had been no violation of Article 3 of the Convention in any regard.

43. The applicant contested the Government's submissions. He pointed out that some physical force had been used against him while he was being arrested. However, most of the injuries revealed had been sustained by him in the police station when the officers were beating him to make him confess to the crime. The applicant further claimed that the investigation into the ill-treatment had been superficial and ineffective.

2. *The Court's assessment*

a. *Concerning the alleged ill-treatment*

44. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. 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 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 *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, §§ 119-20, ECHR 2000-IV).

45. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as lying with the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

46. Turning to the facts of the case, the Court considers that there is sufficient evidence (see paragraphs 11-13, 19 and 26) that the applicant sustained injuries which were serious enough to amount to ill-treatment within the meaning of Article 3. It remains to be considered whether the State should be held responsible under Article 3 for inflicting those injuries.

47. The Court observes that it is not disputed between the parties that the police officers used force to arrest the applicant at the scene of crime and that he could have sustained some injuries as a result of that action. The parties disagree, however, on whether the applicant was beaten at the police station. Accordingly, the Court will examine two separate issues:

- (i) whether the physical force used against the applicant in the course of his apprehension was compatible with the requirements of Article 3 of the Convention;
- (ii) whether the applicant was ill-treated at the police station.

i. Recourse to physical force during the apprehension

48. The Court observes that in the course of inquiries into the applicant's allegations the domestic authorities advanced a plausible account of the origin of the applicant's injuries, explaining that the injuries had been sustained by him in the course of his arrest at the scene of crime and that the police officers therefore could not be blamed for having inflicted them (see paragraphs 24 and 26-28). In view of this explanation, advanced by the domestic authorities themselves, the Court will assess whether the use of force during the applicant's arrest was excessive presuming that that use of force resulted in all the injuries at issue.

49. In this respect the Court observes that the applicant was arrested in the street when he attempted to rob a passer-by. Therefore the police officers were under an obligation to catch the applicant, who was in the process of committing a crime of which he was subsequently convicted, and apparently tried to run away. These circumstances count heavily against the applicant, with the result that the Government's burden of proof that the use of force was not excessive in this case is less stringent (see, *mutatis mutandis*, *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002).

50. Considering this version the Court further notes that the cause of the injuries was also plausibly explained by the domestic authorities: the bruises on the body and the concussion could have been received by the applicant when he was knocked to the ground and restrained by the officers when he offered resistance; the abrasion of the wrist joint could have been caused by his being handcuffed (see paragraphs 26-27). It is notable here as well that the injuries at question were always classified cumulatively as minor ones. In addition the Court notes that since there were only two police officers effecting the apprehension they did not excessively outnumber the applicant.

51. In the light of these circumstances the Court finds that even assuming that all the injuries had been inflicted on the applicant solely in the course of his arrest, as suggested by the domestic authorities, the recourse to physical force was made necessary by his own conduct and cannot be held to have been excessive (see, *mutatis mutandis*, *Berliński v. Poland*, cited above, §§ 62-64; *Milan v. France*, no. 7549/03, §§ 46-65, 24 January 2008; and, *a contrario*, *Rehbock v. Slovenia*, no. 29462/95, §§ 65-78, ECHR 2000-XII). Accordingly, there has been no violation of the substantive limb of Article 3 in this regard.

ii. Alleged ill-treatment at the police station

52. The Court observes that neither of the documents submitted to the Court contains reliable information that the injuries were inflicted on the applicant at the police station. Meanwhile, as observed above, there is certain evidence that the injuries could have been caused by the arrest. It is also worth mentioning that the applicant did not ask for a medical examination until four days after the events complained of, which gives some area for speculation as to what could possibly have happened to him in the intervening time, when there was no involvement by State agents. In addition, the Court notes that it took for the applicant about one month and a half to raise this complaint before the domestic authorities.

53. Therefore, given all the information in its possession the Court finds it impossible to establish “beyond reasonable doubt” whether any ill-treatment occurred at the police station as alleged by the applicant.

54. It follows that there has been no violation of the substantive limb of Article 3 of the Convention in this respect either.

b. Concerning the effectiveness of the investigation

55. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102, and *Labita v. Italy* cited above, § 131). The minimum standards as to effectiveness defined by the Court’s case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-...).

56. The Court observes that the decisions not to institute criminal proceedings against the police officers had been taken for seven times. All these decisions, however, had been quashed by the higher prosecutors or by the court following which the case was remitted for further inquiries. As a result, it took more than four years and seven months since the alleged ill-treatment that the authorities eventually commenced the criminal proceedings. This protraction, however, significantly diminished the prospect of success of these proceedings. The Court further reiterates that, since remittal is usually ordered because of errors committed by lower authorities whose decisions are appealed against, the repetition of such orders within one set of proceedings discloses a serious deficiency (see,

mutatis mutandis, *Kozinets v. Ukraine*, no. 75520/01, § 61, 6 December 2007).

57. The Court also notes that on several occasions the domestic court as well as the higher prosecutors found that there had been serious omissions in the course of the inquiries into the applicant's allegations upon which the investigative authorities were given clear instructions as to the way the inquiry should have been held. In particular, the authorities were ordered to establish and question all the witnesses who saw the applicant before and after his detention in the police station and to inspect the relevant room of the police station with the participation of the applicant and medical expert for the purpose of specifying medical conclusions. It appears that those instructions were not followed diligently.

58. In the light of the above considerations the Court concludes that the domestic authorities failed to carry out a prompt and thorough investigation into the applicant's allegations about his alleged ill-treatment at the police station. Therefore, there has been a violation of the procedural limb of Article 3 of the Convention.

II. REMAINDER OF THE APPLICATION

59. The applicant complained that the alleged ill-treatment by the police and lack of effective investigation constituted violations of his rights under Articles 1, 2, 13, 14, 6 §§ 1 and 3 (d) of the Convention. He further complained under Article 5 § 1 (c) of the Convention alleging that his detention by the police officers had been effected unlawfully. Relying on Article 6 § 2 of the Convention the applicant complained that the State authorities had failed to honour the presumption of innocence in the course of criminal proceedings against him. He complained finally under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair and had lasted an unreasonably long time.

60. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of were within its competence, they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 70,000 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

63. The Government submitted that there was no causal link between the alleged violations and the pecuniary loss allegedly sustained as long as the applicant failed to submit documents supporting such claims. As regards the claims for non-pecuniary damage the Government maintained that these had been exaggerated by the applicant and asked the Court to decide on an equitable basis if any violation had been found.

64. 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, having regard to its case-law in comparable cases and making its assessment on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic authorities and the Court as well as for the translation without providing any relevant vouchers or bills.

66. The Government pointed out that the applicant had failed to submit relevant documents or vouchers in support of these claims.

67. The Court observes that the applicant has not lodged any particular evidence in support of his claims for costs and expenses. It therefore decides not to award any sum under this head.

C. Default interest

68. 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 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no 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, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable at 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 amount 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 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President