

Detained man tortured by police to extract his confession

In today's Chamber judgment in the case [Shishkin v. Russia](#) (application no. 18280/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Three violations of Article 3 (prohibition of inhuman and degrading treatment), one violation of Article 6 § 3 (c) (right to legal assistance) and one violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the ill-treatment by police of a detainee suspected of robbery and manslaughter.

Principal facts

The applicant, Sergey Shishkin, is a Russian national who was born in 1963 and lives in Lipetsk (Russia).

Two separate sets of criminal proceedings were opened against him in November 2000 and in January 2001 respectively, on suspicion of three incidents of robbery and theft and on suspicion of manslaughter and robbery. He was arrested on 23 January 2001 and told that he was suspected of manslaughter and robbery.

Given that Mr Shishkin denied involvement in those crimes, he was severely beaten in police custody. Officers hit his soles with a rubber truncheon, suspended him by his arms which were tied behind his back, made him wear a gas mask filled with smoke and with a blocked air-vent, and applied electric shocks onto various parts of his body. As a result of the ill-treatment, Mr Shishkin confessed to the crimes of which he was suspected and waived his right to a lawyer. At the end of January 2001, his relatives hired a lawyer for him who tried unsuccessfully to see him on 30 and 31 January, and only managed to do so on 2 February 2001.

In February 2001, Mr Shishkin complained to the prosecutor that he had been ill-treated by the police to make him confess, which he had done under duress. In May that year, the criminal proceedings for manslaughter and robbery against him were terminated because other suspects were convicted for those offences.

In March 2001, Mr Shishkin asked the prosecutor to open criminal proceedings into his ill-treatment by the police. Following an initial refusal to initiate criminal proceedings, ten officers were ultimately charged and sentenced to different terms of imprisonment. Four of them received suspended sentences and were immediately released, and the other six received sentences ranging between two-and-a-half years and three years and three months.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Mr Shishkin obtained around 2,300 euros (EUR) as compensation for being ill-treated, following civil proceedings which he brought against the officers and the Ministries of the Interior and Finance.

In the context of the remaining charges of robbery and theft against Mr Shishkin, he was, on one occasion in June 2002, brought to court by force. His complaint to the prosecutor asking him to institute criminal proceedings into that was rejected.

In April 2003, Mr Shishkin was sentenced to spend six years in prison, as he was found guilty in respect of the robbery and theft charges. In determining the charges, the domestic courts relied among other things on Mr Shishkin's statements made during the pre-trial investigation. The courts did not accept his argument that he had made those statements under duress.

Mr Shishkin also complained unsuccessfully about the inadequate conditions in which he had been detained before his conviction. He claimed that his cell, poorly ventilated and dark, had been infested with mice and rats, and the toilet had not been separate from the rest of the room.

Complaints, procedure and composition of the Court

Relying in particular on Article 3, Mr Shishkin complained that he was tortured in police custody and was ill-treated while being escorted to court, and that his related complaints had not been investigated properly. Relying further on Article 6, he complained that he had not had access to a lawyer from the moment he had been arrested and that, when convicting him, the courts had relied on evidence obtained from him under duress.

The application was lodged with the European Court of Human Rights on 30 April 2004.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Karel **Jungwiert** (the Czech Republic),
Anatoly **Kovler** (Russia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland),
Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Torture by police (Article 3)

The Court noted that the Russian courts had acknowledged that Mr Shishkin had been repeatedly ill-treated. Given that he had been ill-treated with the purpose of making him confess to a crime he had not committed, and in view of the violence and cruelty to which he had been subjected, the Court concluded that Mr Shishkin had been tortured.

The Court then recalled that, despite the domestic courts having sentenced several police officers for torture and having ordered that Mr Shishkin be compensated, he had remained a victim because neither the investigation into his torture nor the compensation granted to him had been an adequate redress for his suffering.

In particular, the investigation had only been started several months after the events. It had been slow and comprised haphazard measures. The police officers found guilty of ill-treating

Mr Shishkin had only been sentenced about seven years after their acts and to rather lenient sentences, which had been below the minimum envisaged by law and some of which had even been suspended.

As regards the compensation paid to Mr Shishkin, while the Court recalled that there was no monetary standard by which to assess people's suffering and mental distress, the 2,300 euros (EUR) compensation awarded to him for his prolonged suffering as a result of torture had been substantially lower than the amounts the Court awarded in comparable cases in respect of Russia.

Consequently, there had been a violation of Article 3 as a result of Mr Shishkin's ill-treatment by the police and of the failure to investigate that effectively.

Ill-treatment by escorts (Article 3)

The Russian Government and Mr Shishkin did not dispute that physical force had been used against Mr Shishkin in June 2002 during his escort to court. The Court further noted that an investigation into the events had been opened promptly and had been completed fairly speedily. However, there had been serious shortcomings in that investigation. Thus, the investigator had not established the exact sequence of events and had not addressed the discrepancies in the testimony of the different witnesses. The prosecutor's decision not to start criminal proceedings had been scarcely reasoned and there had been no analysis whether the force used by the escorts had been necessary in the circumstances and proportionate to the alleged misconduct of Mr Shishkin. Consequently, there had been a violation of Article 3 as a result of the lack of an effective investigation carried out into these complaints.

Notwithstanding the above, the version of events presented by Mr Shishkin had only been partially supported by the other witnesses. Given the lack of medical records and other evidence, the Court could not conclude that Mr Shishkin had been ill-treated during his escort to court. There had therefore not been another separate breach of Article 3.

Conditions of detention (Article 3)

The Government and Mr Shishkin disagreed about the conditions in which he had been detained. Since his allegations had not been supported by any proof, the Court rejected this complaint.

Absence of lawyer (Article 6 § 3 (c))

The Government had not denied that Mr Shishkin had requested a lawyer during his detention by the police and that a lawyer had only met with him 10 days after his arrest. Given the importance of legal assistance from the very moment of a suspect's arrest, the Court found that having denied legal assistance to Mr Shishkin during his initial detention when he had been interrogated and tortured, had been unacceptable, in violation of Article 6 § 3 (c).

Evidence obtained under duress (Article 6 § 1)

The Court recalled that the use in criminal proceedings of evidence obtained by means found to be in violation of the Convention, always raised serious concerns about the fairness of the proceedings.

Even if it had not been certain whether Mr Shishkin had made any self-incriminating statements in respect of the robbery charges of which he had finally been convicted, the very fact that he had not been assisted by a lawyer while being tortured during the interrogation in parallel criminal proceedings against him on charges of manslaughter and robbery, had tainted the robbery-related proceedings. Accordingly, there had been a violation of Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Shishkin EUR 77,700 in respect of non-pecuniary damage and EUR 260 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.