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

FIRST SECTION

DECISION

Application no. 45599/13
H.P.
against Croatia

The European Court of Human Rights (First Section), sitting on 16 June 2015 as a Chamber composed of:

Isabelle Berro, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 3 July 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Croatian national, who was born in 1981. The President decided that the applicant's identity should not be disclosed to the public (Rule 47 § 4). The applicant was represented before the Court by Mr I. Farčić, a lawyer practising in Zagreb.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant's alleged ill-treatment by the police

4. The applicant worked as a police inspector in one of the local branches of the Z. Police Department.

5. During 2012 and 2013 the Split Police Department (*Policijska uprava Splitsko-dalmatinska*) investigated an organised chain of prostitution in the Split area. The investigation disclosed that the applicant had several contacts with the principal suspect in the investigation, M.H., and that he was one of the clients of the services organised by M.H.

6. In this connection two police inspectors of the Split Police Department, D.Z. and S.K., were ordered to interview the applicant and to obtain from him the available evidence.

7. On 26 March 2013 D.Z. and S.K. came to the premises of the Z. Police Department in order to interview the applicant.

8. In the morning of the same day the Chief of Crime Police of the Z. Police Department invited the applicant to his office. When the applicant arrived at around 9.30 a.m., the secretary of the Chief of Crime Police called M.A., a police inspector at the Z. Police Department, to escort the applicant to a meeting room for an interview with D.Z. and S.K.

9. According to the applicant, while escorting him to the meeting room the inspector M.A. without any reason started pulling his arm saying that he was a "dirty policeman" and that he knew those of his kind very well. The applicant protested against the use of force which made M.A. to press him even harder. The applicant also alleged that during the interview M.A. and the inspectors of the Split Police Department exerted pressure on him forcing him to confess. In particular, S.K. threatened to beat him if he would not confess.

10. According to the Government, the applicant was escorted to a meeting room without any use of force by M.A. or any of the other police officers. There was also no use of force or any other form of ill-treatment or coercion against the applicant during the interview.

11. A note of the applicant's interview dated 26 March 2013 available to the Court shows that the applicant confessed to having one sexual intercourse with a prostitute in Split. The applicant also gave his mobile phone card to the police officers and duly signed a seizure record indicating that he had no objections.

12. After the interview the applicant returned to his work where he resumed with his duties until the end of the working day.

13. On 29 March 2013, at around 7.30 p.m., the applicant saw a doctor in a hospital in Z. concerning the injuries he had allegedly sustained in the premises of the Z. Police Department on 26 March 2013. The relevant part of the medical record reads:

"According to the statement of the injured person ...:

During the performance of his duties a crime inspector at [the Z. Police Department] injured him on his left arm.

Diagnosis:

Contusion on the left side of chest. Contusion and large haematoma on the left upper arm."

14. The relevant part of another medical record of the same day reads:

"Time of the injury: 26.03.2013 9.30 a.m.

Reason for [the examination]: During the performance of his duties a crime inspector at [the Z. Police Department] injured him on the left shoulder.

Main diagnosis: S20 – superficial injuries of chest (torso)."

15. The applicant underwent further medical examinations on 8 and 17 April 2013, which indicated recession of the injuries on his upper arm and chest.

2. The Z. Police Department inquiry into the applicant's alleged ill-treatment

16. Following the applicant's medical examination on 29 March 2013 (see paragraphs 13 and 14 above), the hospital forwarded a copy of his medical record to the Z. Police Department.

17. On 16 April 2013 the applicant was interviewed in the Z. Police Department concerning his alleged ill-treatment of 26 March 2013. The applicant stated that he had been forcefully grabbed by the hand by one of the Z. Police Department inspectors who escorted him to a meeting room. Inside the meeting room the inspector threatened him with ill-treatment saying that he should know very well why he had been summoned to an interview. At one point two inspectors of the Split Police Department had joined them and then he was questioned concerning his alleged contacts with prostitutes. The applicant also explained that following his interview he had said to an on-duty officer at the police station, Z.T., what had happened to him. He also stated that only later he had gone to see his lawyer and then decided that he should lodge an official complaint concerning his alleged ill-treatment.

18. On 18 April 2013 the inspector M.A. was interviewed and he denied any use of force against the applicant. On 23 and 24 April 2013 the inspectors of the Split Police Department D.Z. and S.K. submitted their reports denying any threats or use of force against the applicant.

19. On 25 April 2013 the applicant's colleague Z.T. was interviewed. Z.T. stated that upon the applicant's return from his meeting at the Z. Police Department on 26 March 2013, he had explained to Z.T. that he had been interviewed by the police inspectors concerning his alleged contacts with prostitutes. The applicant had also said to Z.T. that while escorting him to the meeting room one of the police inspectors took him by the hand.

However, Z.T. explained that although the applicant had said that the inspectors were rude he did not say that he was ill-treated or injured nor did he explain in what manner were the inspectors rude. The following day Z.T. went together with the applicant to the internal control department and on their way there the applicant had not mentioned to Z.T. any injuries nor did he complain of any pain.

20. On 17 May 2013 the Z. Police Department forwarded the material obtained during its inquiry to the Z. Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Z.*).

3. The internal control inquiry into the applicant's alleged ill-treatment

21. On 17 April 2013 the applicant sent an email to the Internal Control Unit of the Ministry of the Interior (*Služba za unutarnju kontrolu Ministarstva unutarnjih poslova*; hereinafter: the "Internal Control Unit") complaining about his alleged ill-treatment by a police inspector during his interview in the Z. Police Department on 26 March 2013. He in particular alleged that he had been grabbed by the hand and pulled by a police inspector who escorted him to a meeting room where the same inspector then continued with the threats forcing him to confess to the alleged involvement in prostitution. The applicant also contended that the police inspector had forcefully taken his mobile phone and searched it. There were allegedly some other police officers who laughed at him.

22. Further, on 15 May 2013 the applicant forwarded a photograph to the Internal Control Unit depicting the alleged injuries he had sustained as a result of his ill-treatment of 26 March 2013.

23. During its inquiry the Internal Control Unit obtained a report from the Z. Police Department as well as the applicant's medical records and reports form the inspectors D.Z. and S.K., and it interviewed the applicant, the inspector M.A. and the applicant's colleague Z.T., as well as the Chief of Crime Police of the Z. Police Department.

24. On 18 July 2013 the Internal Control Unit informed the applicant that it considered his allegations unfounded and unsubstantiated.

25. The applicant challenged these findings and the Internal Control Unit informed him on 26 July 2013 that his complaints were forwarded to the Commission for Complaints of the Ministry of the Interior (*Povjerentsvo za rad po pritužbama Ministarstva unutarnjih poslova*; hereinafter: the "Commission").

26. The proceedings before the Commission are still pending.

4. The State Attorney's Office investigation into the applicant's alleged ill-treatment

27. On 26 June 2013 the applicant sent a letter to the Z. Municipal State Attorney's Office complaining about his alleged ill-treatment during his interview in the Z. Police Department on 26 March 2013.

28. On 2 July 2013 the applicant lodged a criminal complaint against the Chief of the Z. Police Department, the Chief for Crime Police of the Z. Police Department and his deputy, the inspectors M.A. and S.K. and the Head of the Internal Control Unit, alleging his ill-treatment during the interview of 26 March 2013 and their abuse of powers by lodging criminal complaints against him in connection with his alleged involvement in the prostitution (see paragraph 36 below). In connection with the alleged ill-treatment, the applicant submitted in general terms that the inspector M.A. had unlawfully used force against him and that the inspector S.K. had threatened him, forcing him to confess to his alleged involvement in prostitution.

29. During the investigation, the Z. Municipal State Attorney's Office interviewed the Chief for Crime Police of the Z. Police Department and the inspector M.A., who denied any unlawfulness or the applicant's alleged ill-treatment.

30. In the further course of the investigation the Z. Municipal State Attorney's Office summoned the applicant's colleague Z.T. for an interview.

31. The investigation before the Z. Municipal State Attorney's Office is still pending.

32. Meanwhile, on an unspecified date the applicant also lodged a criminal complaint against the Chief for Crime Police of the Z. Police Department and his deputy as well as the inspectors M.A. and S.K. before the State Attorney's Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*; hereinafter: the "State Attorney's Organised Crime Office") alleging his ill-treatment during the interview of 26 March 2013 and irregularities in processing the case against him concerning his alleged involvement in prostitution.

33. On 31 October 2013 the State Attorney's Organised Crime Office rejected the applicant's criminal complaint as ill-founded on the grounds that there was no evidence that on 26 March 2013 he had left the premises of the Z. Police Department with any injuries and that the fact that he had sought medical help only three days after the alleged ill-treatment remained fully unexplained. This led to a conclusion that his injuries had not been caused in the course of his police interview. The State Attorney's Organised Crime Office also indicated that it did not find any irregularities in processing of the applicant's case by any of the persons involved.

4. Other relevant facts

34. On 27 March 2013 the applicant was provisionally suspended from the police service.

35. The disciplinary proceedings against the applicant in connection with his alleged involvement in prostitution, and concerning another event of alleged breach of the confidentiality of information, are still pending.

36. On 5 April 2013 the Split Police Department lodged a criminal complaint against the applicant before the State Attorney's Organised Crime Office in connection with a suspicion of his involvement in a prostitution scheme.

37. On an unspecified date the State Attorney's Organised Crime Office rejected the criminal complaint as ill-founded.

B. Relevant domestic law

38. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010 and 85/2010) read as follows:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

COMPLAINTS

39. The applicant complained, under Article 3 of the Convention, about his alleged ill-treatment by the police and lack of an effective investigation in that respect.

40. He also cited Articles 5 and 14 of the Convention and Article 1 of Protocol No. 12.

THE LAW

A. The applicant's complaints under Article 3 of the Convention

41. Complaining about his alleged ill-treatment by the police and lack of an effective investigation in that respect the applicant 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."

1. The parties' arguments

(a) The Government

42. The Government contended that the applicant's complaints were premature since the proceedings before the Z. Municipal State Attorney's Office and the Commission were still pending. Alternatively, the Government argued that his complaints should be declared inadmissible for non-exhaustion of domestic remedies given that he had not properly lodged a criminal complaint before the domestic authorities and had not pursued his case diligently by complaining about the manner of processing of his complaints. Moreover, he had failed to lodge a civil action for damages against the State. The Government also considered that the applicant had abused his right of individual application given that he had failed to inform the Court of all the relevant investigative steps at the domestic level concerning his complaints.

43. The Government further submitted that in any case the applicant's alleged ill-treatment did not reach the minimum level of severity attaining the applicability of Article 3 of the Convention. Moreover, he had not provided any evidence of ill-treatment and his allegations were highly implausible. In particular, the only evidence which the applicant had submitted to the Court were his medical records of 29 March 2013. However, these records had been drafted three days following the applicant's alleged ill-treatment and the applicant provided no explanation why he had waited so long before seeking medical help. Moreover, the medical records referred to injuries on the applicant's torso and left upper arm whereas he only alleged that he had been pulled by the arm. This, in the Government's view, left the injury on his torso fully unexplained. In addition, after his alleged ill-treatment on 26 March 2013, the applicant returned to his work without complaining to anyone about any injuries. In his subsequent complaints he had provided contradictory accounts of the events whereas all those implicated in the alleged ill-treatment coherently explained the circumstances of the applicant's interview of 26 March 2013 rejecting any possibility of ill-treatment or unlawfulness. The Government also stressed that the investigation into the applicant's alleged ill-treatment was effective.

(b) The applicant

44. The applicant maintained his complaints providing no further arguments concerning the Government's submissions.

2. The Court's assessment

45. The Court finds it unnecessary to address all of the Government's objections, as the complaint is in any event inadmissible for the following reasons.

46. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). 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, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 151, ECHR 2012).

47. The Court has held on many occasions that where a person was healthy before being taken into custody and has thereafter sustained injuries, the Government are under an obligation to provide a plausible explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999 V). However, some proof of the existence of injuries is indispensable (see, for example, *Hristovi v. Bulgaria*, no. 42697/05, §§ 73-78, 11 October 2011; *Igars v. Latvia* (dec.), no. 11682/03, § 67, 5 February 2013; and *Povestca v. the Republic of Moldova* (dec.), no. 54791/19, § 33, 18 March 2014).

48. The Court notes that although the applicant alleged that he had been injured as a result of the force used by the police in the context of his interview on 26 March 2013, several elements of the case cast serious doubt on the veracity of his claims.

49. In this connection the Court firstly observes that following his interview on 26 March 2013 in the premises of the Z. Police Department the applicant did not seek medical attention nor did he obtain a medical report regarding his alleged injuries, although he did not argue that there was anything preventing him from doing that (compare *Ertuş v. Turkey*, no. 37871/08, § 29, 5 November 2013). Instead, he requested medical examination only on 29 March 2013, without providing a convincing explanation why he awaited three days before seeking medical help if he was actually injured (see *Svoboda and Others v. the Czech Republic* (dec.), no. 43442/11, § 53, 4 February 2014).

50. The Court further notes that the applicant's medical evidence is inconclusive both with regard to the cause and date of his injuries (compare *Svoboda and Others*, cited above, § 56). In particular, one of the applicant's medical records indicates that he was injured on the left upper arm whereas the other suggests that he was injured on the left shoulder (see paragraphs 13 and 14 above). Moreover, both medical reports indicate injuries of the applicant's chest and in fact one of them sets out the chest injuries as the main diagnosis (see paragraph 14 above). However, the applicant argued

before the domestic authorities and before the Court that he had been injured by being pulled by the hand by one of the police officers and he never suggested any injury to his chest (see paragraphs 9, 17, 27-28 and 32 above; and compare *Povestca*, cited above, § 37).

51. Furthermore, the Court observes that the applicant's allegations of ill-treatment as submitted before the Court and the domestic authorities are inconsistent. In particular, the applicant submitted before the Court that during his interview on 26 March 2013 he had been ill-treated by the inspector M.A. and the two inspectors from the Split Police Department (see paragraph 9 above) whereas in his complaint to the Internal Control Unit the applicant submitted that he had only been ill-treated by the inspector M.A. (see paragraphs 9 and 21 above).

52. The Court further notes that there is no evidence that the applicant informed his superiors or any of his relatives or other persons of his injuries allegedly caused by the use of force on 26 March 2013. Instead, as it follows from the evidence submitted by the Government which the applicant did not challenge, he returned to his work and resumed his duties until the end of the working day (see paragraphs 12 and 19 above). Moreover, following the interview the applicant handed over his mobile phone card to the police officers and duly signed a seizure record indicating that he had no objections (see paragraph 11 above).

53. In these circumstances, whereas the Court accepts that an applicant might be discouraged from voicing his allegations by the very fact of being under the control of those whom he was accusing of ill-treatment, in the present case the applicant was not remanded in the police custody or detention and there is nothing suggesting that he was prevented from making a complaint or undergoing a medical examination following his departure from the premises of the Z. Police Department (compare *Gorbatenko v. Ukraine,* no. 25209/06, § 117, 28 November 2013).

54. Against the above background, the Court considers that the applicant has failed to lay the basis of an arguable complaint that he was ill-treated as alleged. Furthermore, it is not open to him to contest the effectiveness of the domestic investigation, since he failed to provide the authorities with any serious and reasonably credible information about his alleged ill-treatment (see paragraph 33 above; and *Kuralić v. Croatia*, no. 50700/07, § 36, 15 October 2009; *Igars*, cited above, § 72; and *Kravchenko v. Ukraine* (dec.), no. 23275/06, § 51, 24 June 2014).

55. Accordingly, the Court rejects the applicant's complaint under both the substantive and procedural limbs of Article 3 of the Convention as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of the Convention

56. The applicant cited Articles 5 and 14 of the Convention and Article 1 of Protocol No. 12 without providing any relevant substantiation.

57. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

58. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 July 2015.

Søren Nielsen
Registrar

Isabelle Berro
President