



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

29 August 2012

FIRST SECTION

Application no. 20808/10
Shamil Yunusovich MUBARAKSHIN
against Russia
lodged on 16 March 2010

STATEMENT OF FACTS

The applicant, Mr. Shamil Yunusovich Mubarakshin, is a Russian national who was born in 1960 and lives in Kazan.

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

A. Alleged ill-treatment at the Vysokogorskiy Police Department

On 7 August 2005 the applicant's wife was found dead near the graveyard of the Vysokogorskiy District of the Republic of Tatarstan.

On 15 August 2005 the Deputy Prosecutor of the Vysokogorskiy District refused to initiate criminal proceedings concerning her death, having found no injury or trace of violence on her body.

In November 2007 neighbours told the applicant that police had inquired about his whereabouts, alleging that he had murdered his wife.

On 19 November 2007 the applicant was summoned to appear on 22 November 2007 at the Vysokogorskiy District Police Department ("ROVD"). The case materials do not show his procedural status at that stage. The applicant appeared with his lawyer and gave an extensive statement about the events of August 2005. Unhappy about his statement, the policemen allegedly threatened the applicant that they would catch him later without his lawyer.

On 27 November 2007 at around 21.00 the applicant was apprehended by three police officers near his place of residence in Kazan. They told him in presence of three witnesses that he had murdered his wife, took him in a white car and drove some 40 kilometres away from Kazan to the

Vysokogorskiy ROVD. The case materials do not show the applicant's procedural status at the moment of his apprehension.

Without registering his detention in accordance with the law, the police officers handcuffed the applicant and tortured him during three days, i.e. from 27 to 29 November 2007, in order to make him confess that he had murdered his wife in August 2005. The police officers allegedly deprived the applicant of water and food, beat him up, put a plastic bag on his head to cut air and forced him to stay on his knees or feet for hours. The applicant's repeated requests for assistance by his lawyer were not granted and he was only beaten up again in response.

On 28 November 2007 policemen were unable to unlock the handcuffs and had to call for a rescue team of the Ministry for Emergency Situations, which cut them by hydraulic shears after several unsuccessful attempts.

On 29 November 2007 at around 10.00 the investigator R. Sh. responsible for the criminal case concerning the murder of the applicant's wife came to the Vysokogorskiy ROVD and proposed that the applicant make a statement. The applicant refused and the police officers continued his ill-treatment by similar methods. The investigator came back several times to ask the applicant whether his intentions had changed.

At a certain point the policemen threatened the applicant that they would plant drugs with his handicapped son and would torture him in the applicant's presence. In response, the applicant agreed to make self-incriminating statements and confessed that he had murdered his wife, repeating word by word a text read out by one of the police officers.

On the same date at 18.10 an arrest record was compiled by the investigator to whom the applicant made the same confession as a criminal suspect in presence of a lawyer on duty. The applicant's request for assistance by the lawyer chosen by him was denied.

On 7 December 2007 the applicant showed the place of his wife's death during a visit to the crime scene together with the investigator R. Sh. and the policeman A. G. who ill-treated the applicant at the Vysokogorskiy ROVD.

On the same date the applicant was examined by a forensic expert who certified numerous bruises on his body. According to the expert's report № 8498, some of the recorded injuries could have been caused on the dates of the alleged ill-treatment as indicated by the applicant (27-29 November 2007), while others were more recent.

B. Refusal to open criminal proceedings in respect of the applicant's allegations of ill-treatment by police

In January 2008 the applicant requested criminal proceedings to be brought on account of his ill-treatment by police.

On 1 February 2008 the investigator A. Ya. of the Arskiy Interdistrict Department of the Investigation Committee found no criminal offence in the police's actions and refused to open criminal proceedings. The investigator reached his conclusion mainly relying on the information provided by five police officers involved in the applicant's detention and questioning (R. L., A. G., O. M., R. Shi. and I. Z.). The officers indicated in particular that the applicant had been brought to the Vysokogorskiy ROVD in November 2007 without specifying the exact date. They denied any duress in the applicant's

respect. The investigator's decision also referred to verifications undertaken by the Vysokogorskiy District Prosecutor's Office in December 2007 in respect of the detention facility (*IVS*) of the Vysokogorskiy ROVD.

The applicant repeatedly appealed against that decision to the Vysokogorskiy District Prosecutor on 15 September 2008, 29 August 2008, 6 October 2008, 10, 20, 23 and 26 March 2009, 30 November 2009. All those applications were dismissed on the ground that the applicant's grievances had been adequately examined and assessed by the investigator and, later, by the trial court in its judgement of 8 July 2009 (see below).

The applicant also lodged a complaint about ill-treatment by police with the President of the Russian Federation, which was transmitted on 31 December 2009 to the Prosecutor of the Republic of Tatarstan. The Deputy Prosecutor of the Republic reiterated in his reply that there was no ground to bring criminal proceedings against the police officers concerned.

C. The applicant's trial

On 8 July 2009 the Sovetskiy District Court of Kazan found that the applicant had murdered his wife by strangling and sentenced him to eight years and six months' imprisonment. The court's finding was based, *inter alia*, on the applicant's confession made at the pre-trial stage, which was not confirmed by the applicant at the trial.

The applicant complained before the District Court about the police's abuses between 27 and 29 November 2007 which had forced him to confess. He also complained that he had been denied any legal assistance at that stage. The District Court dismissed those arguments, noting that he had been arrested on 29 November 2007 as a criminal suspect in accordance with the law and duly assisted at that moment by a lawyer on duty.

As regards the applicant's allegations of ill-treatment by police, the District Court heard, in particular, one of the police officers involved in the applicant's apprehension and questioning and the investigator in charge of the applicant's criminal case. The District Court found that some bruises on the applicant's body had been caused later than 29 November 2007 and could have been intentionally inflicted by the applicant himself. According to the court, the bruises on his left shoulder could also have been inflicted by the applicant himself between 25 November 2007 and 1 December 2007, while no trace of ill-treatment was found on the applicant's face.

On 22 September 2009 the Supreme Court of the Republic of Tatarstan upheld the applicant's conviction. It found in particular that the applicant's complaint about ill-treatment was unsupported by evidence and that the applicant's confession was made in accordance with the domestic law.

COMPLAINTS

The applicant complains under Articles 3 and 5 of the Convention that the police unlawfully detained him between 27 and 29 November 2008 and subjected him to torture in order to obtain his confession of a crime he had never committed.

He further complains under Article 13 of the Convention about the lack of effective investigation into these events.

Invoking Article 6, the applicant complains that his confession under torture was used as a basis for his subsequent criminal conviction and that he was deprived of any means to prove his innocence at the trial. He also complains that he was denied access to his lawyer during the initial period of his detention.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty between 27 November at 21.00 and 29 November at 18.10 in violation of Article 5 § 1 of the Convention? In particular, did this deprivation of liberty fall within paragraph (c) of this provision?

In answering that question the Government is requested to address, *inter alia*, the following points:

(a) When exactly was the applicant apprehended (*фактически задержан*) by police and brought to the Vysokogorskiy ROVD? Please submit the detailed custody records for 27, 28 and 29 November 2007 hour by hour with precise information about the applicant's location (including the relevant extracts from the register of persons brought to a police station, visitors' records, etc.).

(b) What were the legal grounds and reasons for the applicant's apprehension on 27 November 2007 and his subsequent detention until 18.10 on 29 November 2007 when an arrest record was compiled in his respect? What was his procedural status?

(c) What were the legal grounds and reasons for the applicant's first questioning by police on 22 November 2007? What was the applicant's procedural status at that stage and was he assisted by his designated lawyer?

2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by police officers between 27 and 29 November 2007, in breach of Article 3 of the Convention?

In answering that question the Government are requested to address, *inter alia*, the following points:

(a) Once in the hands of the police:

(i) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(ii) Was he given the possibility of informing a third party (family member, friend, etc.) about his detention and his location and, if so, when?

(iii) Was he given access to a lawyer and, if so, when?

(iv) Was he given access to a doctor and, if so, when? Was his medical examination conducted out of the hearing and out of sight of police officers and other non-medical staff?

(b) What activities were conducted in the applicant's respect at the Vysokogorskiy ROVD on 27, 28 and 29 November 2007, and during which periods? If they were carried out at night, was this lawful? Where was the applicant held on those dates? What confessions and/or statements (*явка с*

повинной; показания) did the applicant give during that period (please submit relevant documents including the written, audio or video records containing the applicant's statements/confessions)?

(c) What was the applicant's procedural status for his questioning on 29 November 2007 by the investigator R. Sh. of the Arskiy Interdistrict Investigation Committee in charge of the criminal proceedings concerning the murder of the applicant's wife (please submit the records of the applicant's examination and other relevant documents)?

3. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), did the investigation conducted by the domestic authorities into the present case comply with the requirements of Article 3 of the Convention (see, among many others, *Mikheyev v. Russia*, no. 77617/01, §§ 108-110 and 121, 26 January 2006)? In particular:

(a) What investigative actions did the investigator A. Ya. of the Arskiy Interdistrict Department of the Investigation Committee take and were those sufficient to ensure that the investigation into the alleged ill-treatment be thorough and effective?

(b) Were there further investigative steps taken by the Prosecutor's Office of the Republic of Tatarstan or another authority in order to remedy possible shortcomings in the investigation conducted by the investigator A. Ya.? Did the authorities ever heard other witnesses of the applicant's apprehension and detention who did not work in the police or Investigation Committee (e.g. the applicant's neighbours witnessing his apprehension on the 27 November or members of the rescue team of the Ministry for Emergency Situations who unlocked his handcuffs on 28 November 2007)? Did the authorities ensure an appropriate forensic examination (судебно-медицинская экспертиза) in order to elucidate the applicant's injuries and their causes?

(c) Did the authorities responsible for the inquiry into the alleged ill-treatment (including the investigator A. Ya.) enjoy the necessary independence from those who were allegedly involved, either directly or indirectly, in that ill-treatment (including the investigator R. Sh.)?

(d) Did the applicant lodge a judicial appeal against the authorities' refusal to open criminal proceedings on account of the alleged ill-treatment and, if yes, what was the outcome of the judicial proceedings?

4. Did the applicant enjoy a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 and was he able to defend himself as required by Article 6 § 3 (c) of the Convention? In particular:

(a) Was the applicant informed of his right to be assisted by a lawyer immediately after his apprehension by police on 27 November 2007? If not,

when was he informed of that right and what was the exact scope of the right he was informed of?

(b) Was the applicant's request for assistance by his designated lawyer denied by the police during his detention and questioning on 27, 28 and 29 November 2007 at the Vysokogorskiy ROVD? If so, for what reasons and on what grounds?

(c) Was the applicant allowed to be assisted by any lawyer in detention up until the moment when his arrest order was compiled, i.e. until 18.10 on 29 November 2007?

(d) Did the absence of legal assistance during those three days entail "irretrievable" damage to the defence, thus leading to a violation of Article 6 of the Convention (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008, and *Mehmet Şerif Öner v. Turkey*, no. 50356/08, §§ 21-23, 13 September 2011)?

5. Was the applicant deprived of a fair hearing under Article 6 § 1 given that his conviction was based on the evidence including his confession (*явка с повинной*), which was allegedly obtained by police under duress and without legal assistance? Did the applicant request at the trial that such evidence be declared inadmissible? If so, what was the ground for such a request and how was it decided by the trial court (please submit the relevant extracts of the court records and/or any other relevant documents)?

6. In answering the above questions the Government are requested to submit the relevant documents in support of their information, and, in particular, the following:

(a) the relevant extracts in respect of the applicant and his lawyer from the register of persons who visited the Vysokogorskiy ROVD on 19 November 2007;

(b) the records of all applicant's interviews conducted at the Vysokogorskiy ROVD on 19 November and from 27 to 29 November 2007, including the records of the polygraph test, if available;

(c) the reports drawn upon verifications undertaken by the Vysokogorskiy District Prosecutor's Office in December 2007 in respect of the detention facility (IVS) of the Vysokogorskiy ROVD (as referred to in the investigator A. Ya.'s decision of 1 February 2008);

(d) all decisions by various authorities responding to the applicant's repeated complaints about torture and ill-treatment and possible subsequent decisions taken on appeal by higher authorities, with the indications as to when those decisions entered into legal force;

(e) the report № 8498 of the applicant's examination of 7 December 2007 by the forensic expert and the photographs of the applicant's injuries

taken by the forensic expert during that examination with an indication of the exact time when they were taken;

(f) the records of the call for the rescue team of the Ministry for Emergency Situations (*карта вызова дежурной бригады Министерства по Чрезвычайным Ситуациям*) and any other document or records showing the details of their intervention with a view to unlocking the applicant's handcuffs on 28 November 2007 at the Vysokogorskiy ROVD;

(g) the applicant's confessions made on 29 November 2007 at the Vysokogorskiy ROVD;

(h) the records of the trial which led to the judgment of the Sovetskiy District Court of Kazan of 8 July 2009 and the applicant's statement of appeal against that judgment.