



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

FIRST SECTION

Application no. 38106/05
Mikhail Ivanovich YURCHENKOV
against Russia
lodged on 22 August 2005

STATEMENT OF FACTS

The applicant, Mr Mikhail Ivanovich Yurchenkov, is a Russian national, who was born in 1959 and lived before his arrest in Nizhniy Tagil, Sverdlovsk region. He is currently serving an imprisonment sentence in a correctional colony in Sverdlovsk region.

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

A. The applicant's arrest and pre-trial proceedings

On 6 March 1998 criminal proceedings were instituted into murders of two police officers in the Sverdlovsk region. Between March and August 1998 eight persons were arrested on suspicion of their involvement in those criminal offences.

On 17 August 1998 the applicant was arrested in Nizhniy Novgorod on suspicion of being a member of a criminal gang which committed those murders as well as other criminal offences. He was subsequently transferred to Nizhniy Tagil, Sverdlovsk region, and was detained on remand. He remained in detention until his conviction in 2003.

On 25 August 1998 the applicant was brought to a police station in Nizhniy Tagil. On the same date he was placed to a remand prison in which he stayed until April 1999. During his stay in that prison he was subjected to various forms of ill-treatment (he was held in a punishment cell during seven months, he was handcuffed during first two months of his detention, he was beaten up and tortured). He was not allowed to see his relatives, legal counsel and to send complaints to various domestic authorities.

During the investigation of the case the applicant was taken on numerous occasions from the remand prison to the police station for questionings. He alleges that during those transfers and also during his stay at the police

station police officers beaten him up and tortured him to extort his confession. Moreover, all questionings were carried out without legal counsel. He was forced to waive his right to legal assistance under physical and psychological pressure by the investigator and was forced to sign self-incriminating statements which the investigator had prepared in advance. In particular, those records stated that he confessed to a membership of the criminal gang and robberies and murders committed as a member of that gang.

On 14 July 1999 the applicant was presented with a final version of charges. He alleges that it was the first time when he was provided with legal counsel. However, the investigator did not allow the applicant to have a confidential meeting with his counsel before the questioning on that date.

On 16 July 1999 the applicant complained to the regional prosecutor about the investigator's refusal to allow him meeting his counsel before his questioning on 14 July 1999. The applicant also complained that throughout the pre-trial proceedings his defence rights had been violated and that he had been subjected to ill-treatment and forced to incriminate himself.

On 26 July 1999 the applicant complained to the regional prosecutor that before his questioning on 26 August 1998 he had asked to be provided with legal counsel. However, investigator L. ignored his request. He also complained that starting from that day he had been regularly beaten up by police officers to make him confess to the impugned offences. He therefore signed all records of questionings which had been prepared in advance by the investigator. He asked to initiate criminal proceedings against investigator L. and police officers who had beaten him up.

On 16 August 1999 the prosecutor refused to initiate criminal proceedings and informed the applicant of that decision. It appears that the applicant did not challenge that decision in a court.

Between 13 August 1999 and 23 February 2000 the applicant was familiarising himself with the materials of the case.

One of the applicant's co-defendants' was a military officer. Therefore, on 3 March 2000 the criminal case against the applicant and his twelve co-defendants was referred for trial to the Military Court of the Ural Circuit ("the Military Court").

On 14 November 2000 the Military Court returned the criminal case to the investigating authorities on the grounds of serious violations of the defendants' defence rights. In particular, the court found that the applicant's defence rights had been violated by the investigator's refusal to allow him to have a confidential meeting with his counsel on 14 July 1999. The court also established that, despite the fact that the applicant refused to be assisted by legal counsel during familiarising with the materials of the criminal case, investigating authorities should have provided him with counsel because he had been charged with murder.

However, on 11 March 2001 that decision was quashed by the Supreme Court of the Russian Federation and the case for referred to the trial court for examination on the merits.

B. The trial and the applicant's conviction

Between 15 May 2001 and 8 September 2003 the Military Court heard the criminal case against the applicant and his co-defendants.

On 8 September 2003 the Military Court found the applicant guilty of a number of serious criminal offences, including murder and robberies, committed as a member and leader of a criminal gang and sentenced him to twenty-three years' imprisonment. During the trial the applicant was represented by counsel B.

The applicant denied his involvement in the impugned crimes. He submitted that during the pre-trial proceedings he had been forced to waive his right to legal assistance under pressure by the investigator. He therefore signed all the records of his questionings which the investigator had prepared in advance. Regarding the right to not to incriminate himself, the applicant submitted that he had not made use of it because he intended to say the truth before the trial court.

The court observed that all the records of the applicant's questionings stated that before his questioning the applicant had been apprised of his right to not to testify against himself and his family. All those records were signed by the applicant. The court further found the applicant's allegations whereby he had been forced to incriminate himself under duress were unsubstantiated.

The trial court held that the applicant's guilt in relation to the impugned crimes had been proven by an extensive body of evidence examined during the trial, such as the records of the applicant's questionings, statements by his co-defendants, victims and witnesses, expert examinations and other evidence.

C. The appeal proceedings

In the grounds of appeal against his conviction the applicant complained, among other things, that his conviction had been based on records of his questionings carried out without legal counsel. He submitted that he had been forced to waive his right to legal counsel under pressure. He asked the appeal court to quash his conviction and to terminate criminal proceedings against him or to remit the case for a new examination.

On 14 July 2005 the Supreme Court of the Russian Federation quashed the judgment of 8 September 2003 in the part concerning the applicant's conviction for one count of robbery, upheld the remainder of the judgment and decreased the applicant's sentence to twenty-one years' imprisonment. The Supreme Court also found that the applicant's complaint about violation of his defence rights were unsubstantiated. He had voluntarily waived his right to legal assistance and there had been nothing in the materials of the case to suggest that he had been forced to do so. At that hearing the applicant was represented by legal counsel.

COMPLAINTS

1. The applicant complains under Article 3 that:

(a) during his stay in the remand prison he was subjected to various forms of ill-treatment (he was held in a punishment cell during seven months, he was handcuffed during the first two months of his detention, he was beaten up and tortured; he could take shower only once a week);

(b) during his transfers from the remand prison to police station and during his stay at the police station police officers beaten him up and tortured him to extort his confession; they also put psychological pressure on him;

2. He complains under Article 5 that he was not properly informed of the reasons of his arrest and his pre-trial detention was unlawful and unreasonably long.

3. He complains under Article 6 of the Convention that criminal proceedings against him were unfair. In particular, he complains that:

(a) despite his numerous requests investigating authorities did not provide him with legal counsel between his arrest on 17 August 1998 and until 14 July 1999 and did not allow him to contact a lawyer; they forced him to waive his right to legal assistance by putting physical and psychological pressure on him; he also complains that when he was finally provided with counsel V. on 14 July 1999 he was not allowed to have a confidential meeting with her before his questioning;

(b) the trial court read out the pre-trial statements by his co-defendant I. who had died in the course of the proceedings;

(c) his case was examined by a military court.

4. Finally, the applicant complains under Article 8 that during his detention in the remand prison he was not allowed to see his relatives and to send complaints to various domestic authorities.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention?

(a) Was he able to defend himself through legal assistance of his own choosing, as required by Article 6 § 3 (c) of the Convention? If the applicant did not appoint counsel of his choosing, was the applicant afforded free legal assistance, within the meaning of Article 6 § 3 (c) of the Convention? Did the interests of justice require such assistance? In particular:

What was the exact time when police arrested the applicant on 17 August 1998? Which investigative measures were carried out from the moment of the applicant's arrest until he met his counsel or was provided with legal-aid counsel? Was the applicant provided with legal assistance immediately after

his arrest on 17 August 1998 and did the interest of justice require that such assistance be provided to him free of charge? When was he provided with legal-aid counsel or when was he allowed to contact counsel of his choosing for the first time? Was the applicant allowed to have a confidential meeting with counsel before his questioning on 14 July 1999? If the applicant could not benefit from legal assistance immediately after his arrest and throughout the pre-trial proceedings and also if he was not allowed to have a meeting with his counsel on 14 July 1999, was the restriction of the applicant's defence rights justified? Did that restriction unduly and irretrievably prejudice the overall fairness of the trial in the applicant's case?

(b) Did the applicant waive his right to legal assistance once or several times from the moment of his arrest in August 1998 and until he met his counsel? Did such waiver run counter to any public reason? Was it established in an unequivocal manner and was it attended by minimum safeguards commensurate to its importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II)? Could the applicant reasonably foresee what consequences of his conduct, namely waiver of his right to legal assistance, would be (see *Pfeifer and Plankl v. Austria*, 25 February 1992, § 38, Series A no. 227 and *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007)?

The Government are required to provide copies of the record of the applicant's arrest on 17 August 1998 and records of all investigative actions, including the records of the applicant's questionings, performed during the pre-trial proceedings.