



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

FIRST SECTION

Application no. 10746/08
Isa Akhmetovich ADAYEV
against Russia
lodged on 13 February 2008

STATEMENT OF FACTS

The applicant, Mr Isa Akhmetovich Adayev, is a Russian national, who was born in 1976 and is serving a prison sentence in Petrozavodsk, Kareliya Republic. He is represented before the Court by Mr D. Itsleyev, a lawyer practising in Ingushetiya Republic.

The circumstances of the case

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

1. Abduction of two soldiers

On 13 January 2001 two soldiers of the Russian federal forces M. and P. came to the applicant's house to buy drugs. After the applicant sold heroin to them, unknown persons attacked the soldiers, put them in a car and took them to a hide-out where they were kept for five days. The kidnappers also took M.'s automatic gun. The soldiers were released by law-enforcement officers on 18 January 2001. The gun was never found.

2. Criminal proceedings against the applicant

According to the applicant, on 4 April 2007 at approximately 7 p.m. he was arrested on suspicion of having participated in abduction of M. and P. According to the arrest record, the applicant was arrested on 5 April 2007 at 10:40 a.m.

On 6 April 2007 the Achkhoy-Martan District Court of the Chechen Republic authorised the applicant's detention pending the criminal proceedings against him. According to the text of the decision, the applicant was arrested on 5 April 2007.

On 26 June 2007 the District Court found the applicant guilty of abduction and theft of weapon and sentenced him to seven years' imprisonment. The court relied on the written statements of M. and P. obtained by the investigator, the written statements made by their parents to whom M. and P. had told about their abduction, the written statements made by other soldiers who confirmed that M. and P. had been missing in 2001. Investigator Mir. testified in court as regards his questioning of M. and P. The court also heard a number of the applicant's relatives and neighbours who testified as to the applicant's character and the curfew introduced in the village in 2001 and studied the materials from the case-file prepared by investigator M. As regards the use of M. and P.'s written statements, the court noted as follows:

“... According to [the rules of criminal procedure], if the victim of the crime fails to appear in court, the court, if requested by a party to the proceedings or of its own motion, may decide to have the [victim's] earlier statement read out in the event of a natural calamity or other extraordinary circumstances preventing the [victim's] appearance in court. The court considers that the victims were prevented from appearing in court for the following reasons: their psychological state, i.e, their lack of desire to reminisce about the circumstances of the abduction coupled with deprivation of liberty and, possibly, with the life threat, and to live through this again; lack of safety during the trip to Chechen Republic where the political situation is still troublesome, especially ... for ethnic Russians who are not locals; a risk that the [applicant's] relatives might put pressure on them; and the fact that they live far away and do not have means to pay for the trip to attend the court hearing. The court considers such circumstances to be extraordinary and preventing the victims from appearing in court.”

On 15 August 2007 the Supreme Court of the Chechen Republic upheld the applicant's conviction on appeal.

3. Proceedings concerning the applicant's arrest

On 21 July 2008 the applicant's wife complained to the prosecutor's office that her husband's arrest conducted on 4 April 2007 had not been recorded.

On 29 July 2008 the investigator with the prosecutor's office refused to institute criminal proceedings concerning the applicant's allegedly unrecorded detention at the police station. The investigator questioned the applicant's wife and relatives who submitted that the applicant had been arrested on 4 April 2007 and dismissed the allegation as unsubstantiated noting that the applicant had been arrested on 5 April 2007 in the presence of a lawyer.

On 30 August 2008 the head of the district investigative committee quashed the decision of 29 July 2008 and ordered further inquiry. He noted, that the investigator had failed to question the police officers who had arrested the applicant and to verify the records at the police station concerning the detention of arrestees.

On 8 September 2008 the investigator with the prosecutor's office refused to open a criminal investigation into the applicant's allegedly unlawful arrest. He relied on the statements made by two police officers who claimed that the applicant had been arrested at 7 a.m. on 5 April 2008 and taken to the police station where at 10 a.m. the investigator prepared the record of his arrest. The investigator also verified the records of the police

station which indicated that the applicant had been brought to the station on 5 April 2007.

On 10 September 2008 the District Court ordered further inquiry into the circumstances of the applicant's arrest. The court noted that the police officer Mir. who had allegedly talked with the applicant at the police station on 4 April 2007 and the lawyer Mezh. who had represented the applicant during the criminal proceedings against him had not been questioned.

On 19 October 2008 the investigator with the prosecutor's office refused to open criminal investigation into the applicant's arrest. In the course of the inquiry the investigator questioned the police officer who had been on duty on 4 April 2007 and claimed that, following the questioning, Mir. had released the applicant and the latter had left the police station. Mezh. submitted that on 5 April 2007 he had been present during the applicant's questioning by the investigator and that the applicant had not said anything about having been arrested on 4 April 2007.

On 5 November 2008 the District Court dismissed the complaint lodged by the applicant's wife against the decision of 19 October 2008 as unsubstantiated.

On 3 December 2008 the Supreme Court upheld the decision of 5 November 2008 on appeal.

COMPLAINTS

The applicant complains under Article 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings against him were unfair. In particular, he alleges that he was unable to confront the two witnesses testifying against him and that he was convicted in the absence of any evidence.

The applicant complains under Articles 5 and 13 of the Convention that he was detained in the absence of any legal basis from approximately 7 p.m. on 4 April to 10:40 a.m. on 5 April 2007.

QUESTION TO THE PARTIES

As regards the use by the trial court of the statements made by the witnesses M. and P., was there a breach of the applicant's right to a fair trial provided for by Article 6 § 1 read with Article 6 § 3 (d) of the Convention? In particular, (1) was it necessary to admit the said witnesses' statements, (2) were those statements the sole or decisive basis for the applicant's conviction, and (3) were there sufficient counterbalancing factors including strong procedural safeguards to ensure that the trial, judged as a whole, was fair within the meaning of Article 6 §§ 1 and 3(d) (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 152, ECHR 2011)?