



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

FIRST SECTION

Application no. 26344/06
Denis Dmitriyevich AFONICHEV
against Russia
lodged on 23 May 2006

STATEMENT OF FACTS

The applicant, Mr Denis Afonichev, is a Russian national, who was born in 1981 and is currently serving his sentence in correctional colony IK-16 in the town of Salavat, the Republic of Bashkortostan.

A. The applicant's arrest, alleged ill-treatment and the related complaints

On 9 March 2004 police officers of the Sterlitamak Department for the Fight Against Organised Crime of the Ministry of the Interior of Bashkortostan (hereinafter also "the UBOP") arrested the applicant and B. in a flat occupied by them in the town of Sterlitamak, the Republic of Bashkortostan, on suspicion of several violent crimes, including unlawful possession of arms. In the applicant's submission, the arresting officers applied unjustified and disproportionate physical force to him by knocking him down on the floor and hitting and kicking him all over his body, following which they handcuffed him and left him lying on the floor. They further searched the flat and found arms, which, in the applicant's submission, they could have planted there.

On the same date the UBOP officers took the applicant to the police ward of the Sterlitamak Department of the Interior (*изолятор временного содержания УВД г.Стерлитамак*) where they started questioning him, requesting that he confessed to unlawful possession of arms found at his flat. They twisted his arms and hit him on the kidneys and liver region and threatened him with reprisals. Faced with his refusal to confess, they cuffed his hands behind his back, pushed him on the table and started pulling off

his trousers, threatening to put a chair leg into his anus. After that he signed a confession statement concerning the arms found at his flat.

According to an excerpt from the registration log of the police ward of the Sterlitamak Department of the Interior, the date of the applicant's admission to the ward was given as 10 March 2004 and the column entitled "Complaints/[injuries] noted on admission" stated: "a bruise under the right eye, contusion of the soft tissues of the orbital region".

On 11 March 2004 the Sterlitamak Town Court authorised the applicant's placement in custody.

On 12 March 2004 officers of the Ufa Department for the Fight Against Organised Crime visited the applicant at the police ward, requesting that he confessed to further crimes. They applied "physical and psychological violence" to obtain his confessions and threatened him that during his transfer to the police ward of the Ufa Department of the Interior they would shoot him down "during an attempt to escape". After that the applicant confessed to murder of Ig., robbery of the A. family, robbery and murder of G., robbery of Is. and theft from Ib.

On unspecified dates the applicant complained to the prosecutor's office of the Bashkortostan Republic about the ill-treatment during and following his arrest by the Sterlitamak and Ufa UBOP officers.

By a decision of 18 June 2004 the prosecutor's office refused to open a criminal case into the applicant's alleged ill-treatment during arrest. The decision stated that in September 2009 a criminal case had been opened against the applicant and a number of other individuals on suspicion of participation in an organised armed group, unlawful possession of arms and several episodes of aggravated robbery. Given that the applicant had been hiding from the investigation, his name had been put on a wanted list. On 9 March 2004, following receipt of information on his and other gang members' eventual whereabouts, UBOP had entered the flat where the applicant had resided at the material time and had asked if he and B. had objected to an inspection of the premises. The latter had not objected, which had been confirmed by their written statements. In the course of the inspection the officers had discovered firearms and explosives, following which the applicant had offered resistance and had attempted to escape. As a result, the police officers "applied physical force and special means, following which [the applicant] was arrested". The decision concluded that the officers had taken adequate steps required by the circumstances because they had arrested individuals convicted and suspected of particularly serious crimes.

On 29 June 2004 the Sterlitamak deputy town prosecutor dismissed the applicant's complaint about his alleged ill-treatment by officers of the Sterlitamak organised crime unit with a view to extracting his confessions. A handwritten copy of the decision produced by the applicant, in so far as relevant, states as follows:

"... On 17 June 2004 the Sterlitamak Town prosecutor's office received [the applicant's] complaint about the acts of [UBOP officers] ... of Sterlitamak.

From the complaint: the UBOP officers had applied [to the applicant] physical force with a view to obtaining [his] confessions.

In the course of an inquiry concerning the complaint [the applicant's] submissions were established to be unfounded. According to certificate [from remand prison] IZ3/3, no bodily injuries had been discovered on [the applicant] upon his admission to the detention facility. According to the explanations by the UBOP officers who had carried out operative and search measures, no physical or psychological coercion had been applied to [the applicant]..."

There is no indication that the applicant appealed against any of those decisions.

B. Conditions of the applicant's detention

After his arrest the applicant was held in the police ward of the Sterlitamak Department of the Interior from 10 to 17 March 2004.

On 17 March 2004 the applicant was transferred to the police ward of the Ufa Department of the Interior (hereinafter also "the Ufa police ward"), where he was held until 27 March 2004. It appears that he was subsequently detained in remand prison IZ-3/1 in Ufa, from which detention facility he was regularly transferred to the police ward of the Ufa Department of the Interior and held there on the following dates:

- from 1 to 11 April 2004;
- from 13 to 15 May 2004;
- from 21 to 24 May 2004;
- from 15 to 16 June 2004;
- from 28 June to 2 July 2004, and
- on 5 July 2004.

In the applicant's submission, during his stay in the above-mentioned police wards in Sterlitamak and Ufa he was not provided with an individual sleeping place, bedding or hygiene products, including toilet paper. He was not offered an opportunity to take a shower. In the police ward in Sterlitamak his cell was not equipped with access to tap water and a toilet and he had to be taken out to the toilet which occurred only twice a day and was particularly humiliating for the applicant who had suffered from dysentery at the material time. In both detention facilities he was fed only once a day. The cells where he was detained lacked a table, shelves for personal belongings and clothes hooks.

C. The applicant's trial

On 16 July 2004 the criminal case against the applicant and his two co-accused concerning, among others, charges of participation in an organised armed group, unlawful possession, storage and carrying of arms, ten episodes of concerted aggravated robbery, several counts of concerted murder and attempted concerted murder and four counts of theft was sent for trial to the Supreme Court of the Bashkortostan Republic.

At trial the applicant pleaded guilty in respect of several counts of concerted robberies and thefts but denied the remainder of the charges, alleging that his pre-trial confessions had been obtained under duress and submitting that he had been ill-treated during arrest.

The trial court interviewed the UBOP officers who had participated in the applicant's arrest, as well as members of the investigative group who had investigated the criminal case against him.

According to the trial record, UBOP officers Mu. and Ish. stated that they had participated in the applicant's arrest, that he had resisted it and that they had to handcuff him to subdue his resistance. UBOP officers G. and Mukh. submitted that they had participated in the applicant's arrest and that the latter had offered no resistance. UBOP officers A.A. and A.A.Sh., as well as prosecutor Kh. submitted that they had participated in several investigative steps involving the applicant. All UBOP officers and the prosecutor denied having applied physical force with a view to making the applicant confess or having witnessed anyone beating him up in their presence. In addition, Kh. stated that all investigative measures had been carried out in the presence of the applicant's lawyer and, should the applicant had had bodily injuries, those would have been discovered and recorded by the authorities of the remand prison where he had been held.

It follows from the trial record that following witness Ch.'s failure to appear despite the court-issued instruction to the bailiffs to secure his presence, the trial court read out his pre-trial statement concerning the episode of concerted robbery of the A. family.

By judgment of 1 July 2005 the trial court found the applicant guilty of participation in an organised armed group and unlawful possession, storage and carrying of firearms and possession of explosives, aggravated concerted robbery of the A. family, seven further counts of aggravated concerted robbery, three counts of concerted attempted murder and one count of concerted murder and three counts of theft. The applicant was acquitted on the charges of theft from Ib., murder of Ig. and one count of concerted robbery.

In finding the applicant guilty of unlawful possession, storage and carrying of arms, concerted robbery and murder of G., as well as concerted robbery and attempted murder of Is., the trial court relied, among other pieces of evidence, on the applicant's pre-trial statements.

In finding the applicant guilty of the robbery of the A. family the trial court relied, among other things, on the applicant's and his co-accused' pre-trial statements, statements of two victims who submitted that they had been attacked by several men wearing masks, statements by two witnesses who submitted that they had been in a restaurant with two other members of the A. family and a pre-trial statement by witness Ch. The latter stated, in particular, that he had been instructed by one of the perpetrators (T.) to drive the applicant and his accomplices to the house of the A. family, that T. had "wished them luck" and requested them "not to harm anyone", that Ch. had waited for the applicant and others, who had returned half an hour later with several goods and that one of them had been with a pistol. On the next day T. had told Ch. that T.'s relatives had been robbed and Ch. realised that the men he had driven to the place indicated by T. on the previous day had committed the robbery. However, when he had told T. about it, the latter ordered him to keep it secret.

The trial court sentenced the applicant to twenty one years' imprisonment.

On 8 August 2005 the trial court granted the applicant's request for rectification of the trial court record confirming, among other things, the fact that the applicant and his lawyer had objected to the reading out of the pre-trial statement by witness Ch.

On 23 November 2005 the Supreme Court of Russia upheld the trial court judgment on appeal.

The applicant's attempts to obtain supervisory review of his conviction remained unsuccessful.

D. Court proceedings concerning conditions of detention

1. Proceedings concerning the Ufa police ward

On 22 January 2008 the applicant complained to the Oktyabrskiy District Court of Ufa about the conditions of his detention in the police ward of the Ufa Department of the Interior, seeking compensation of non-pecuniary damages. He requested to be exempted from paying the court fees, owing to the fact that there was no paid work offered in the correctional colony and that he had no money.

By a decision of 4 February 2008 the district court refused to examine the applicant's complaint. It noted that the Constitutional Court in its Ruling no. 272-O of 13 June 2006 had held that a deferral of payment of or reduction in court fees could be insufficient to secure the convicted detainees' access to justice, given that they are not employed and have no money at their accounts. The district court found, however, that the applicant had failed to prove that he had no possibility to work at the place of his detention or that he had no money at his account in the colony or any material assets outside it which he could use with the help of proxies or otherwise to pay the court fees. It also noted that the applicant had failed to indicate the address of respondent.

On 22 April 2008 the Supreme Court of the Bashkortostan Republic upheld the decision on appeal.

2. Proceedings concerning the Sterlitamak police ward

On 30 September 2009 the Sterlitamak Town Court granted the applicant's complaint about the conditions of his detention in the police ward of the Sterlitamak Department of the Interior in the period between 10 and 16 March 2004. Having examined the witness' statements and other evidence, the town court found it established that the applicant had not been provided with an individual sleeping place and bedding; that his cell had not been equipped with toilet facilities and that no access to tap water had been provided; that he had been fed only once a day; that his cell had been insufficiently lit and that the applicant had not been provided with outside walks. It concluded that, as a result of those conditions of detention the applicant had endured mental suffering and awarded him 1,500 Russian roubles, to be recovered from the Federal Treasury. The judgment became final on 15 December 2009.

COMPLAINTS

The applicant complains under Article 3 that he was ill-treated during his arrest on 9 March 2004 and subsequently in the police ward in Sterlitamak by the UBOP officers.

Under the same Convention provision he submits that the conditions of his detention in the police wards in Ufa and Sterlitamak were appalling.

The applicant further complains under Article 6 that the criminal proceedings against him were not fair in that:

- (a) he was convicted on the basis of self-incriminating statements given under duress;
- (b) the domestic courts failed to secure the attendance of prosecution witnesses Sh. and Ch.;
- (c) in convicting him the courts relied on the crime scene inspection report, which had been carried out unlawfully and which should have been declared inadmissible;
- (d) his presumption of innocence had been violated by a publication of an article on his criminal case in the local press;
- (e) some pieces of evidence used for his conviction were, in reality, not examined by the trial court;
- (f) the trial hearing record was inaccurate, and
- (g) he was not provided with legal assistance during the appeal hearing.

The applicant also complains under Article 6 that the domestic courts refused to examine his complaint about the conditions of his detention in the police ward in Ufa.

Lastly, he complains under Article 13 that his attempts to obtain supervisory review of his conviction were unsuccessful.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted the domestic remedies in respect of his complaints about ill-treatment? If so, and having regard to the applicant's submissions, was there a violation of Article 3 of the Convention on account of his alleged ill-treatment, threats and intimidation in the period between 9 and 13 March 2004 and in particular, (i) during his arrest on 9 March 2004; (ii) after his arrest and transfer to the police ward of the Sterlitamak Department of the Interior by the agents of the State?

In addressing the above question the parties are requested to deal, *inter alia*, with the following points:

- (a) Once in the hands of the authorities:
 - (i) What was the exact time of the applicant's arrest?
 - (ii) What State agents were present during the applicant's arrest?
 - (iii) Was the applicant informed of his rights? If so, when, and what rights was he informed about?
 - (iv) What was the exact time of his admission to the police ward of the Sterlitamak Department of the Interior?
 - (v) Was he given access to a lawyer and, if so, when?
 - (vi) Was he given access to a doctor and, if so, when and was his medical examination conducted out of the hearing and out of sight of police officers and other non-medical staff?
 - (vii) Was he given the possibility of informing a family member, friend, etc. about his detention and his location and, if so, when?

(b) What activities involving the applicant were conducted at the premises of the police ward of the Sterlitamak Department of the Interior between 9 and 13 March 2004, and at which times of the day? What was the applicant's procedural status? What confessions and/or statements did the applicant give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions)? Was the applicant given access to a lawyer before and during each such activity?

2. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into the applicant's allegations of ill-treatment? In particular:

(a) Were the investigating authorities who carried out the inquiries into the applicant's allegations of ill-treatment independent from the investigating authorities who were responsible for investigating the criminal case against the applicant?

(b) Which officers from which police department(s) were involved in the inquiry into the applicant's complaints of police ill-treatment? What operational and other activities did they carry out in the course of the inquiry/ies and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(c) The parties are invited to specify, in particular:

-whether a forensic medical examination/ a medical expert examination was performed in respect of the applicant in order to establish the nature and the origin of his injuries?

-when was the applicant questioned/interviewed in respect of his allegations of ill-treatment?

-when did the applicant complain to the authorities about his ill-treatment (please, enclose copies of the complaints)?

The Government are requested to submit relevant documents in response to each of the above questions.

3. Having regard to the applicant's specific submissions, were the conditions of his detention in the police wards of the Departments of the Interior in Ufa and Sterlitamak compatible with Article 3 of the Convention?

4. The Government are requested to indicate the exact dates on which the applicant was detained in the police wards of the Department of the Interior in Ufa and Sterlitamak and to produce documentary evidence, including population registers, floor plans, day planning, colour photographs of the sanitary facilities, etc., as well as reports from supervising prosecutors concerning the conditions of detention in those facilities.

5. Was the fairness of the applicant's trial undermined in view of the courts' admission in evidence of his self-incriminating statements concerning the unlawful possession of arms, the robbery of the A. family, the robbery and murder of G., allegedly obtained under duress, so as to be in breach of Article 6 §§ 1 and 3 (c) of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 165-66, ECHR 2010)?

6. Did the applicant's inability to examine prosecution witness Ch. give rise to a breach of Article 6 §§ 1 and 3 (d) of the Convention (see *Rachdad v. France*, no. 71846/01, 13 November 2003)?

7. Regard being had to the decision of the Oktyabrskiy District Court of Ufa of 22 January 2008, refusing to examine the applicant's complaint on the merits, as upheld on appeal, was the applicant's "right of access to court" under Article 6 § 1 respected in the present case?