



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

FIRST SECTION

Application no. 45477/11
Roman Anatolyevich BOBYLEV
against Russia
lodged on 22 June 2011

STATEMENT OF FACTS

The applicant, Mr Roman Anatolyevich Bobylev, is a Russian national who was born in 1965 and lives in Volzhskiy, the Volgograd Region. He is currently serving the sentence of imprisonment in correctional labour colony IK-5 of Lepley, the Republic of Mordoviya.

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

A. The applicant's arrest and alleged ill-treatment

At about 9 p.m. on 9 April 2010 the applicant and his three-year-old son went to a shop near their place in Volzhskiy, the Volgograd Region. Once in the shop, the applicant was apprehended by the officers of the Volzhskiy Office of the Volgograd Regional Department of the Federal Drug Control Service ("the Drug Control Service"). The policemen handcuffed him. A salesperson and two passers-by in the shop, as well as the applicant's son, witnessed the apprehension. The applicant submits that the son, threatened by the events, started crying.

According to the applicant, he did not resist the policemen. The policemen searched his pockets in the absence of lay witnesses and planted the sachet of sachet of heroine on him. Then they waited for about thirty minutes for the lay witnesses to arrive on him. The lay witness did not sign the seizure record on the spot but only at some point later on the same date.

According to the officers' depositions (see below), as well the report dated 9 April 2010 by Drug Control officer D, the applicant violently resisted the arrest and the officers had to use force and handcuff him. The applicant was searched in the presence of two lay witnesses, and the drugs were discovered on him by the policemen.

Then the applicant was brought to the Drug Control Office premises. He submits that he was severely beaten by the policemen there. He was several times hit in the ribs, face and groin. He submits that they ill-treated him in order to obtain his authorisation for a search in his flat. According to the applicant, S. and I., apparently lay persons, eye-witnessed the beatings.

The applicant's son remained at the Drug Control Office's building until 4 a.m. on 10 April 2010. Then he was transferred to the applicant's spouse.

It appears from the crime scene examination record (*«протокол осмотра места происшествия»*) dated 10 April 2010 that between 3.40 a.m. and 4.20 a.m. officer G. searched the applicant's flat in the presence of two lay witnesses (A. and B.)

At 10 a.m. on 10 April 2010 an unspecified Drug Control officer drew up an apprehension record in respect of the applicant.

It appears that thereafter the applicant was placed transferred to the temporary detention centre of Volzhskiy ("the IVS"). The applicant submits that he was examined upon his arrival to the IVS and an officer recorded his injuries, as well as the applicant's submissions as regards their origin.

At some point he was placed in remand prison no.5 of Volzhskiy and examined by the medical personnel of the facility. He does not provide further details in this respect.

B. Medical documents

It appears that at some point the applicant received a "direction" (*«направление»*) for a medical examination from an unspecified authority.

According to the medical certificate of 12 April 2010 (referred to in the decision of 9 June 2010, see below), the applicant was examined by an unspecified doctor who established that he had bruises on the left shoulder and the left axillary crease.

On 14 May 2010 a medical expert examination was held in respect of the applicant on the basis of the existing medical documents. The expert confirmed the existence of bruises on the applicant's left shoulder and axillary crease and concluded that the injuries could have been inflicted by a blunt object of unknown origin and that they had not caused harm to the applicant's health. The expert concluded that the injuries had been inflicted on different dates: the bruise of the axillary crease could have been inflicted within 1 to 3 days preceding the medical examination on 9 [sic] April 2010, whilst the hematoma on the left shoulder could have appeared "within five to ten days before the date of the [medical] examination".

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

On 12 April 2010 the applicant requested criminal proceedings to be brought on account of his unlawful apprehension and ill-treatment by police as well as, apparently, in respect of psychological pressure on his minor son.

On 20 April 2010 the case file was forwarded to the Investigative Department of the Investigation Committee of the Prosecutor's Office of the Russian Federation of the Volgograd Region ("the investigative department").

1. Decision of 30 April 2010 and its quashing

On 30 April 2010 investigator L. of the investigative department found no criminal offence in the officers' actions and refused to bring criminal proceedings against them. The investigator reached that conclusion relying on the information provided by two police officers involved in the applicant's apprehension and questioning (G. and K.). The officers indicated, in particular, that they had apprehended the applicant when he had been attempting to sale heroin, that he had resisted the arrest and they had been obliged to use force, as well as to handcuff him. Otherwise, they denied any duress in the applicant's respect. The decision also contained a summary of the applicant's account of the events in so far as it concerned the arrest. The decision further read that the applicant had been questioned at the Drug Control office and that he had chosen to remain silent. The investigator concluded that the applicant's allegations of ill-treatment were a part of his defence strategy and were aimed at avoiding criminal liability for his illicit actions.

The applicant appealed against the decision.

It appears that at some point before 18 May 2010, apparently on 30 April 2010, the Head of the investigative department quashed the decision and ordered an additional inquiry.

On 18 May 2010 the Volzhskiy Town Court of the Volgograd Region disallowed the applicant's complaint, since the decision appealed against had been set aside in the meantime.

2. Refusal to bring criminal proceedings of 9 June 2010

On 9 June 2010 L. decided that there was no reason to bring criminal proceedings against the police officers concerned. The decision referred to the following information and documents:

- the applicant's account of the events of 9 April 2010, including a description of the alleged ill-treatment at the Drug Control office;
- the statements by the policemen (K. and G.) who reiterated their position as regards the use of force during the arrest. They also submitted that they had not searched the applicant before the lay witnesses' arrival on the date of his apprehension. They confirmed that two salespersons had eye-witnessed the events in the shop. They indicated that they had questioned the applicant on the Drug Control premises in the presence of B., another policeman. They denied any allegations of ill-treatment;
- the testimony by officer B, who had seen the applicant handcuffed. He confirmed that the applicant had not been beaten on 9 April 2010;
- the submissions of salespersons Kh. and P., who confirmed that the applicant had been handcuffed and searched in the presence of the lay witnesses and the drugs had been discovered on him. They had not seen the policemen planting the sachet on the applicant. They submitted that the applicant had not resisted and the officers had not beaten him up;
- the testimonies of lay witnesses B. and A. who confirmed that the drugs had been found on the applicant in their presence;
- report by G. on the use of physical force and handcuffs as a result of the applicant's resistance to the police officers;
- medical documents of 12 April and 14 May 2010.

The investigator found that the bruise of the shoulder had been inflicted at some point before the apprehension and the bruise of the axillary crease could have been caused during the arrest. The use of force had been lawful, since the applicant had resisted the policemen. Furthermore, no injuries of the face, ribs and groin had been established, contrary to the applicant's submissions. Furthermore, officers G., K. and B. denied any duress against the applicant during his interview at the office of the Drug Control Service. The investigator considered that the applicant's account of the events, taken alone, could not serve as a basis for bringing criminal proceedings against the policemen, since it was not corroborated by any other items of evidence. The investigator found it impossible to establish beyond reasonable doubt whether or not the applicant's injuries were caused by the police, and concluded that the applicant was attempting to avoid being held criminally liable for the offence he was charged with.

3. The applicant's appeal against the decision of 9 June 2010 and the respective court proceedings

The applicant challenged the decision of 9 June 2010 in court under Article 125 of the Code of Criminal Procedure of the Russian Federation ("Complains about the authorities' unlawful acts or omissions"). He submitted, in particular, that:

- the testimonies of the policemen concerning the applicant's violent resistance contradicted to the salespersons' submissions that the applicant had not resisted the arrest;
- the investigators had failed to interview either the IVS officers or the remand prison personnel, as well as to obtain and study the respective records of the applicant's injuries made at those detention facilities immediately after the events;
- witnesses S. and I. had not been questioned;
- the forensic medical examination had not been conducted;
- the investigation department failed to examine his allegations of psychological pressure exercised on his son who had remained at the Drug Control Service's office until 4 a.m. on 10 April 2010 and had been deeply traumatised by the events of that night.

He also sought leave to appear before the court.

On 28 December 2010 the Volzhskiy Town Court examined the applicant's action. The court observed that the applicant had been detained in a correctional labour colony, found that it was not under obligation to ensure the applicant's presence in the court room and decided to examine the case in the applicant's absence. The applicant was not represented. Investigator L., as well as Deputy Town Prosecutor of Volzhskiy, was present and made submissions.

The court dismissed the applicant's action on the ground that his grievances had been adequately examined and assessed by the investigator on 9 June 2010 and, in any event, the court was not competent under Article 125 of the Code of Criminal Procedure to quash a refusal to bring criminal proceedings and to forward a case to an investigation authority for an additional inquiry or for a decision to open criminal proceedings.

The applicant appealed. He submitted, in particular, that he had not been present at the first-instance hearing and had been unable to make submissions before the court.

On 15 March 2011 the Volgograd Regional Court dismissed his complaint and upheld the lower court's findings. It found that the first-instance decision was lawful, that the applicant had been informed of the date and time of the hearing in his case and the first instance court had rejected his request for participation in the hearing in accordance with law.

D. Criminal proceedings against the applicant

At some point the applicant was charged with two counts of attempted illicit sale of narcotic drugs performed by an organised group.

On 10 August 2010 he confronted lay witness A. who testified that on 9 April 2010 he was present at the applicant's search in the shop and confirmed that a policeman had seized a sachet of heroin from the applicant. A. had not completed any documents on the spot, but he had only signed the seizure record some time later. He was also present at the examination at the applicant's place but had not seen any documents being completed in respect of that investigative activity.

Salespersons Kh. and P testified in open court that on 9 April 2010 the applicant had not resisted the arrest, that his minor son had been with him at the shop at the moment of the apprehension and they had heard him crying, and that at some point the applicant screamed that the police had been planting drugs on him.

On 24 November 2010 the Volzhskiy Town Court convicted the applicant as charged and sentenced him to twelve years' imprisonment. It appears that the court admitted, inter alia, a testimony of a witness nicknamed "buyer no.2" who submitted to the court that he had not bought drugs on 9 April 2012.

On 15 February 2011 the Volgograd Regional Court upheld the conviction on appeal.

The applicant did not submit copies of the respective court decisions and of his statement of appeal.

E. Other developments

1. Proceedings concerning the injury inflicted before the apprehension

It follows from the Volzhskiy Town Court's decision of 28 December 2010 that on 27 December 2010 an inquiry concerning the bruise on the applicant's shoulder inflicted before the apprehension had been disjoined in a separate case and sent to the local Department of Interior, for follow-up. The case-file does not contain any further details or documents in this respect.

2. Court proceedings of 29 March 2010 and the applicant's appeal

At some point applicant complained to a court about the investigative authorities' failure to examine his grievance in respect of the Drug Control

Service's officers' actions in respect of his minor son and to provide the applicant with any information on the matter.

On 19 October 2011 the investigative department informed the applicant that his complaint concerning unlawful actions in respect of his son had been joined to the inquiry concerning the allegations of the applicant's ill-treatment and unlawful apprehension.

On 29 March 2012 the Volzhskiy Town Court examined the case in the applicant's absence and decided that there had been no breach of the applicant's rights since the investigative authorities had issued a lawful refusal to bring criminal proceedings on 9 June 2010, as upheld by the domestic courts on 15 March 2011.

On 21 June 2012 the Volgograd Regional Court upheld these findings on appeal.

3. Additional information on the applicant's son's whereabouts on 9-10 April 2010

On 22 August 2010 the prosecutor's office of Volzhskiy informed the applicant that his new complaint about his son's and his own apprehension had been examined. It was established that on 10 April 2010 the applicant and his son had been brought to the Drug Control Service's office. Between 1.10 a.m. and 1.15 a.m. on that date the applicant had been interviewed by an officer and the applicant's and the child's place of residence had been established. The child had been transferred to his mother on 4 a.m. on the same date, when the officers had conducted the flat's examination. The domestic law did not contain a reference to a specific time-limit for transferring the minors to their parents in such situations. With reference to G.'s testimony the prosecutor's office informed the applicant that the son "had remained with [the applicant] all the time, no complaints [had been] received". The prosecutor's office concluded that the situation did not call for any action.

4. Defamation proceedings

On 5 May 2011 the Volzhskiy department of the interior informed the applicant that unspecified actions of G. on 1 October 2010 "contained elements of criminal libel as defined in Article 129 § 1 of the Criminal Code", and advised the applicant on the procedure of bringing criminal proceedings in case he insisted on G.'s criminal prosecution.

The applicant does not submit any further details on the proceedings.

COMPLAINTS

By letter of 22 June 2011 the applicant complains, without further details, that Articles 3, 6 and 13 were violated in his case as a result of unfair criminal proceedings against him.

In the application form of 27 August 2011 the applicant raises the following complaints:

(1) he submits under Article 3 that on 9-10 April 2010 he was beaten up by the Drug Control Service officers and under Article 13 that the investigation into his ill-treatment complaint was ineffective;

(2) he complains under Article 5 § 1 (c) that his apprehension on 9 April 2010 was unlawful and, in particular, that the arrest record was only drawn up on 10 April 2010 in the morning;

(3) he alleges, under Article 6, that criminal proceedings against him were unfair, that certain items of evidence were forged, that the domestic courts admitted that evidence and incorrectly assessed the existing evidence in the case, that they incorrectly established the facts and wrongfully applied domestic law, as well as disregarded the authoritative interpretations provided by the Plenary Supreme Court of Russia on the matter. He submits that the trial court refused to order unspecified expert examinations on the request of the defence. With reference to his conviction of two counts of attempted sale of drugs he alleges, without further details, that the police was under obligation to arrest the unspecified offenders once the first episode had been completed, but the officers incited them to commit another offence.

(4) he complains under Article 8 that he was ill-treated in order to obtain his permission for an examination/search of his home and therefore the examination was unlawful.

By letter of 24 October 2011 the applicant complains that the testimony of the witness nicknamed “buyer no. 2” were forged by the investigation authorities.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to a treatment contrary to Article 3 of the Convention between 9 p.m. of 9 April 2010 and 10 a.m. on 10 April 2010? The Government are invited, in particular, to address the following factual questions.

(a) Was the applicant subjected to inhuman or degrading treatment during his apprehension on 9 April 2010? Was his apprehension planned beforehand? Did the applicant resist the arrest? Did the police officers use excessive force to arrest them (see *Rehbock v. Slovenia*, no. 29462/95, §§ 71-77, ECHR 2000-XII)? The Government are invited to submit the respective documents.

(b) Once in the hands of the Drug Control Service officers:

(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 and was his medical examination conducted out of the hearing and out of sight of police officers and other non-medical staff?

(c) What activities involving the applicant were conducted at the Drug Control Service office on 9-10 April 2010, and during what periods? If they were carried out at night, was this lawful? What was the applicant's procedural status? Where was the applicant held on 9-10 April 2010? 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?

In answering each of the above questions the Government are requested to submit the relevant documents in support of their information, and, in particular, a copy of the arrest record in respect of the applicant (*«протокол задержания»*).

2. 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), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular:

(a) Were the investigators (investigating authority), who carried out the inquiry into the applicant's allegations of police ill-treatment, independent of the investigators (investigating authority) who were responsible for investigating the criminal case against the applicant?

(b) Which domestic authorities (police, Drug Control officers, etc.) from which department(s) were involved in the inquiry into the applicant's complaint of police ill-treatment? What operational and other activities did they carry out in the course of the above inquiry? In particular, did the domestic authorities in charge of the inquiry obtain and study a record of the applicant's injuries made at the temporary detention cell (the IVS), as well as a similar record made in remand prison SIZO no.5?

(c) Were the domestic authorities involved in the inquiry independent of the Drug Control Service and those of its officers who were allegedly implicated in the applicant's ill-treatment?

3. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention as required by Article 13 of the Convention?

Reference is being made, in particular, to the Volzhskiy Town Court's findings of 27 December 2010 that the court was not competent under Article 125 of the Code of Criminal Procedure to order an additional inquiry in the applicant's allegations and "to send a case to an investigation authority for an additional inquiry or for a decision to open criminal proceedings".

4. Did the applicant exhaust the domestic remedies in respect of his complaint under Article 5 § 1? In the affirmative, was the applicant's apprehension and alleged detention in the Drug Control Service premises between 9 p.m. on 9 April 2010 and 10 a.m. on 10 August 2010 compatible with the requirements of Article 5 § 1 of the Convention? What was the legal basis for the applicant's detention on 9-10 April 2010? In particular, did the applicant's apprehension and detention fall within the ambit of Article 5 § 1 (c) of the Convention? Was an apprehension record drawn up in respect of the applicant? The Government are requested to produce all the documents pertaining to the applicant's apprehension and/or arrest and detention between 9 and 10 April 2010 (the apprehension record, if any, extracts from the registers of the local Department of the Federal Drug Control Service, etc.), as well as to submit information on the exact time of the applicant's apprehension and his transfer to the IVS.