



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

FIRST SECTION

Application no. 45914/06
Aybek Zaripovich SHARIPOV
against Russia
lodged on 11 September 2006

STATEMENT OF FACTS

The applicant, Mr Aybek Zaripovich Sharipov, was born in 1971 and lives in Ulyanovsk. He is currently serving his sentence of imprisonment in a correctional labour colony in the Ulyanovsk Region. He submits in the application form that he does not have any nationality; it transpires from the trial court judgment that he is an Uzbek national.

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 some point the Dmitrovgrad Department of the Ulyanovsk Regional Branch of the Federal Drug Control Service of the Russian Federation ("the Drug Control Service") decided to hold an operational-search activity "test purchase" in respect of the applicant. The decision was based on the testimony of R., the applicant's acquaintance arrested earlier on the same date, that he had purchased heroin from the applicant. R. agreed to participate in the covert operation and to buy drugs from the applicant on 23 June 2005.

According to the applicant, he did not meet R. on that date.

However, the official account of the events is that at 5 p.m. on 23 June 2005 R. called the applicant and asked him to sell heroin to him. At 5.40 p.m. the applicant arrived to the meeting point in the taxi driven by Sh. The applicant sold 5.51 grams of heroin to R. and received 4,000 Russian roubles in banknotes marked with special substance. At 5.45 p.m. R. transferred the drugs to the Drug Control Service officers.

On the same date the applicant was apprehended by the Drug Control Service officers on his way home.

According to the applicant, the policemen ordered him to leave the taxi and forced him on the ground. The officers, wearing plain clothes, did not introduce themselves. One of the officers pistol-whipped him in the face. The applicant lost consciousness for some time. He submits that at that point the banknotes marked with special substance were planted on him. When he regained conscience, an officer hit him with an automatic rifle butt stock.

Then he was transferred to the Drug Control premises. The officers handcuffed to a heating element. Officer D. twice hit the applicant in the neck with a wooden hockey-stick. Then he was brought to investigator I. for an interrogation. It is unclear whether the applicant made any submissions during the interrogation. Once I. left the office, another officer hit the applicant with automatic rifle butt stock, and he again lost consciousness for a short period of time.

At some point, apparently on 24 June 2005 the applicant was transferred to the temporary detention centre of Dmitrovgrad (“the IVS”).

B. The applicant’s injuries

It follows from the inquiry file (see below) that at some point, apparently on 24 June 2005, the IVS doctor examined him and discovered bruises on his body. The applicant did not submit a copy of the respective record.

On 27 June 2005 the applicant was transferred to prison YuN 78/T (*«Учреждение ЮН 78/Т»*) of Dmitrovgrad. The detention facility doctor examined the applicant upon arrival and established that he had a bruise of an eye and an abrasion on the back.

C. Refusal to bring criminal proceedings upon the ill-treatment complaint

On 19 July 2005 the applicant complained about the ill-treatment to the prosecutor’s office of Dmitrovgrad.

On 30 July 2005 investigator M. of the prosecutor’s office of Dmitrovgrad refused to bring criminal proceedings in respect of the applicant’s allegations of duress.

On 22 August 2005 the deputy prosecutor of Dmitrovgrad quashed the decision and ordered an additional inquiry.

On 10 September 2005 M. issued a new refusal to bring criminal proceedings against the Drug Control officers. The investigator referred to the applicant’s account of the events, as well as the testimony of officer D. who denied having exercised any pressure on the applicant. The investigator further took into account the submissions of O., L. and Dod., the Drug Control Service officers, who stated during the interviews (*«онпос»*) that on 23 June 2005 they had arrested the applicant in Sch.’s car immediately after the “test purchase”. Officer O. had introduced himself and had asked the applicant to leave the car. The applicant had not resisted. The policemen ordered him to clasp his hands behind the head. They had called investigator I. and officer D. to record the applicant’s arrest. They had not used any duress in respect of the arrestee. The officers submitted that they had been armed with pistols during the operation but they had denied having used

them. The investigator further referred to the medical certificate from by the IVS doctor, as well as to the medical examination record (*«акт медицинского освидетельствования»*) confirming the existence of a bruise on the applicant's face and an abrasion on his back. Finally, the investigator studied the documents from the criminal case against the applicant (see below) and noted from submissions of officers O., L. and Dod. to the trial court that they had not exercised any duress on the applicant. He also observed that the applicant had not raised any complaints as regards the alleged ill-treatment during unspecified investigative activities at the pre-trial stage of the criminal proceedings against him.

The investigator concluded that there were no grounds to doubt accuracy of the officers' submissions and, moreover, the nature of the applicant's injuries did not correspond to the applicant's own account of the events.

On 7 October 2005 the deputy prosecutor of Dmitrovgrad rejected the applicant's complaint about the investigator's decision as unfounded, having established that the officers involved in the covert operation and the applicant's arrest had produced consistent statements and that by lodging the duress complaint the applicant attempted to avoid criminal liability for his unlawful actions.

The applicant challenged the decision of 7 October 2005 at the Dmitrovgrad Town Court under Article 125 of the Code of Criminal Procedure ("Complaints about the authorities' unlawful actions").

On 17 October 2005 the Dmitrovgrad Town Court rejected his application as unfounded. The court studied the applicant's and the officers' submissions, as well as the documents concerning the applicant's trial. The court stressed that the applicant had only applied to the prosecutor's office on 19 July 2005, that is more than a month after the alleged ill-treatment had taken place. The court further found that the applicant had been arrested in the presence of lay witnesses. Lay witness G. testified during the trial that he had not seen the applicant being ill-treated upon his apprehension. Furthermore, none of the officers had had automatic rifles on that day. The court concluded, with reference to the officers' submissions, that the applicant's injuries could have appeared as a result of his falling on the ground during the arrest "and could have become visible within certain time [after the arrest]".

On 30 November 2005 the Ulyanovsk Regional Court upheld the first instance court's decision on appeal. As regards the applicant's injuries, the appeal court found no evidence to confirm that the policemen used force against the applicant and endorsed the first instance court's conclusion that "[the injuries] could have been caused under different circumstances" other than those invoked by the applicant.

D. Criminal proceedings against the applicant

On 23 June 2005 the applicant was arrested. On the same date investigator I. ordered a chemical expert examination of the drugs seized during the "test purchase" operation. On the same date an expert of the Drug Control Service held the physical and chemical expert examination and concluded that the police had seized 5.51 g of heroin.

On 24 June 2005 the applicant was charged with illicit sale of narcotic drugs. He was represented by a State-appointed lawyer.

On the same date the applicant and his lawyer studied the decision to perform the chemical expert examination. It follows from the decision study transcript that neither the applicant nor his lawyer raised any comments or objections to the decision.

On 25 June 2005 the Dmitrovgrad Town Court ordered the applicant's placement in custody pending investigation.

On 29 August 2005 the investigation was completed and the case file was sent to the Dmitrovgrad Town Court. The prosecution accused the applicant and R. of illicit sale of narcotic drugs.

During the trial, on 26 September 2005 lay witness G. testified that he had been present at the applicant's search immediately after the apprehension and saw the policemen seizing the marked banknotes from him. In response to the applicant's question, G. stated that he had not seen any injuries on him.

The court further questioned K. and Zh., two lay witnesses who remained in the car with the policemen and saw the officers giving R. banknotes marked with special substance. The court also called officers D. and L.

Officers O. and Dod., as well as lay witnesses Ch.V. and Ch.S., were absent from the court room. The applicant and his lawyer agreed to reading out their pre-trial statements.

On 14 November 2005 the applicant requested the trial court to order a medical expert examination of his injuries of 23 June 2005. On the same date the trial court rejected the motion as unrelated to the criminal proceedings against him.

On 14 November 2005 the applicant further requested that a new chemical expert examination be held in respect of the substance seized during the covert operation. He argued that the expert examination of 23 June 2005 had been performed by a Drug Control Service employee and therefore it was unreliable and its results could be forged. On the same date the request was disallowed by the trial court which found no reason to doubt the accuracy of the expert's conclusions.

On 26 December 2005 taxi driver Sch. was questioned. He submitted that he had not seen the policemen beating the applicant on 23 June 2005.

On the same date the court, acting upon the applicant's request, admitted to the case file the medical certificate by the IVS doctor, as well as the documents in respect of the prosecutor's inquiry concerning the applicant's ill-treatment allegations.

On the same date the court completed examination of the evidence. The applicant and his lawyer confirmed that they did not object to reading out of the pre-trial statements by Dod., O., Ch.V. and Ch.S.

On 26 December 2005 the Dmitrovgrad Town Court convicted the applicant on attempted sale of narcotic drugs in particularly large quantity and sentenced him to ten years and six months' imprisonment.

The conviction was based on oral evidence by lay witnesses G., Zh. and K., officers D. and L, as well as the depositions of R., the test buyer and also a co-accused in the case, given at the hearing and at the pre-trial stage. R. confirmed that the applicant had sold drugs to him. The court further referred in its findings to the pre-trial depositions of Dod., O., Ch.V. and

Ch.S., and also examined the testimony of defence witness B. (the applicant's partner) given at the hearing. Finally, the court referred to the chemical expert examination report, a comparative chemical examination report, and various procedural documents relating to the covert operation and the applicant's apprehension.

The applicant appealed. He argued, in particular, that the evidence in his case had been forged, that he had been ill-treated at the arrest and the policemen had planted drugs on him and that co-accused R. and witnesses L. and O. had produced contradictory statements which had been nonetheless admitted by the trial court. He further argued that his motions had been rejected and that the trial court had failed to call Rozh., another lay witness who had been present during the applicant's search. He further submitted that lay witnesses K. and Zh. had previously participated in several investigative activities in various other unrelated criminal proceedings in 2005 and therefore they had been biased.

On 31 December 2005 the applicant submitted his objections to the trial record. He claimed, without further details, that the statements of witnesses Zh. and G., as well as the applicant's lawyer's question to G., had been recorded incorrectly. On 11 January 2006 the objections were rejected by the trial court as unfounded.

On 15 March 2006 the Ulyanovsk Regional Court upheld the conviction. It found that the testimonies by K. and Zh. had been corroborated by other witnesses' submissions, as well as by various items of material evidence. R.'s pre-trial testimony had been produced in the presence of a lawyer and therefore it had been lawfully admitted by the trial court. Finally, the court found that the applicant's allegations of duress had been examined both by the prosecutor and the court and had proved to be unfounded.

On 18 April 2006 a judge of the Ulyanovsk Regional Court rejected the applicant's request for supervisory review of the case. He found, in particular, that the applicant had not requested to question lay witness Rozh. in due time and that there had been no reasons to doubt accuracy of the expert examination report in respect of the drugs seized from the applicant.

COMPLAINTS

By letter of 11 September 2006 the applicant complains under Articles 3 and 13 that he had been ill-treated by the Drug Control officers and that the authorities refused to hold an investigation into his duress complaint.

He further complains under Articles 1, 3, 6 and 13 that the evidence was planted on him, that the trial court was partial, that witness Rozh. was not called by the trial court, that some witnesses produced contradictory statements and that some other witnesses were biased. He complains that unspecified witnesses did not appear before the court and the applicant only learned about their statements from the trial court's judgment. He submits that the chemical expert examination was performed in his absence and was unlawfully admitted by the trial court. Finally, he complains that the State-appointed lawyer was not effective.

In the application form of 10 January 2007 he further complains under Article 6 of the Convention that the chemical expert examination report was produced by an officer of the Drug Control Service who was biased and could fake the evidence, and that the trial court unlawfully rejected his request to perform a new expert examination of the substance seized from the applicant. He alleges that his requests to call witnesses D., O. and an investigator K. had remained unanswered and that the trial record was forged so that to exclude a reference to his respective request made at the court room; that the trial court refused to order his medical expert examination in order to establish the origin of his injuries, as well as to hold an inquiry in the alleged bias of witnesses K. and Zh., and incorrectly assessed the testimony of taxi driver Sch.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his apprehension on 23-24 June 2005? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension on 23 June 2005 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 and to specify the exact time of the apprehension.

(b) 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?

(c) What activities involving the applicant were conducted at the premises of the Drug Control Service on 23 June 2005, and at which times of the day? If any of them were held at night, was it lawful? 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?

(d) The parties are invited, in particular, to specify which medical specialists examined the applicant on 23-27 June 2005 and to provide copies of the respective medical document(s), including medical certificates/other documents drawn up on that date.

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 on 23 June 2005? In particular:

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

(b) Which officers (police, Drug Control Service, etc.) from which police 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 inquiry and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(c) Did the absence of instituted criminal proceedings prevent investigative measures, which could correspond to the notion of an effective investigation, as required by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Taraburca v. Moldova*, no. 18919/10, § 57, 6 December 2011, and *Shanin v. Russia*, no. 24460/04, § 69, 27 January 2011)? Which of the investigation methods employed for a preliminary investigation under Articles 150-226 of the Code of Criminal Procedure (CCrP) could be and were employed, in the present case, in the course of the inquiry under Article 144 of the Code?

(d) Were persons from whom explanations («объяснения») were taken liable for false statements or a refusal to testify?

(e) Has a medical expert examination been ordered and held in order to establish the origin of the applicant's injuries?

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

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?

4. Has the appointment as expert of an officer of the Federal Service of Drug Control hindered the principle of equality of arms and rendered the proceedings unfair contrary to Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Shulepova v. Russia*, no. 34449/03, 11 December 2008, and *Zarb v. Malta* (dec.), no. 16631/04, 27 September 2005)? The Government are invited to submit a copy of the applicant's statement of appeal.