



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

FIRST SECTION

Application no. 46106/07
Yuriy Dmitriyevich STOLMAKOV
against Russia
lodged on 10 October 2007

STATEMENT OF FACTS

The applicant, Mr Yuriy Dmitriyevich Stolmakov, is a Russian national, who was born in 1972 and lives in Magadan.

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

On 26 October 2004 the officers of the Magadan Regional Department of the Federal Drug Control Service (“the Drug Control Service”) apprehended K., the applicant’s son-in-law, in course of the operative-search activity “test purchase”. When questioned by the officers, K. confessed and testified that the applicant was also involved in drug sale.

A. The applicant’s apprehension on 27 October 2004, alleged ill-treatment and subsequent events

At about 9.05 a.m. on 27 October 2004 the applicant and V., a private person, were apprehended by a group of officers of the Magadan Regional Department of the Drug Control Service. They did not introduce themselves. The applicant submits that one of the officers twice hit him in the belly and twisted his arms. He fell on the ground with his face down. Then they brought V. and the applicant to a car and transferred them to the Drug Control Service premises.

The officers continued to beat the applicant up in the Drug Control Service building, in order to extract confession. According to the applicant, one of the officers whose first name was D. started to strangle him with a scarf. The applicant had been forced onto his knees. The officer kicked him in the belly and then ordered the applicant to take a seat. Then Mor., another officer, hit him several times in the face and shins. The officers ordered the applicant to sign a self-incriminating statement. The applicant agreed, out of fear for his life, and the officers brought him to an investigator’s office in

the same building. They allegedly warned the applicant not to tell anything to his lawyer since the latter would be appointed by the State and therefore “would be working for them”.

At about 10.30 a.m. on the same day the applicant was interrogated by investigator G. of the Drug Control Service, in the presence of a State-appointed lawyer. He wrote a confession of having sold drugs on three occasions. G. further decided to perform a search of the applicant’s flat and at about 11 a.m. advised the applicant of the search.

At 12.45 a.m. the search, held in the presence of the applicant and the lawyer, was completed. It appears that immediately after that the applicant was released against an undertaking not to leave the town.

B. Criminal proceedings against the applicant

On 27 October 2004 the applicant was questioned in respect of three episodes of sale of narcotic drugs and produced a self-incriminating statement.

On 28 October 2004 the applicant talked to his lawyer, “made sure that the latter had been appointed by the local bar and not the policemen” and decided to modify his submissions and withdraw the confession. When questioned by G. on the same date in the presence of the lawyer, he complained to the investigator about the actions of the officers of the Drug Control Service and requested to exclude his confession as obtained under duress.

On the same date the Magadan Town Court upheld lawfulness of the search of the applicant’s flat.

On 27 May 2005 the Magadan Town Court convicted the applicant of three counts of illicit sale of narcotic drugs in large quantity and sentenced him to seven years and six months’ imprisonment. The court examined the applicant’s allegations of ill-treatment and rejected them as unfounded¹. The court referred to oral statements of Drug Control officers Mor. and T., who had confirmed in the court room that the applicant had not been subjected to any kind of pressure, as well as to the refusal of 12 November 2004 to initiate criminal proceedings in respect of his ill-treatment allegations (see below). The court further noted that on 27 October 2004 the applicant had been questioned and produced a self-incriminating statement in the presence of his lawyer and that he had been advised of his rights, including a right not to incriminate himself, but had chosen to testify. The applicant was arrested in the court room and put into custody.

The applicant appealed, arguing, inter alia, that on 27 October 2004 he had testified under physical and psychological pressure.

On 10 August 2005 the Magadan Regional Court upheld the sentence on appeal, having rejected the ill-treatment allegations as unsubstantiated without further details.

On 9 November 2006 the Presidium of the Magadan Regional Court, acting upon the applicant’s lawyer’s request, examined the case by way of

1. It follows from the decision of 7 November 2007 by the Magadan Town Court concerning the applicant’s access to the medical information that the criminal case file did not contain a copy of the medical expert examination report of 1 November 2004.

the supervisory-review procedure. The court re-characterised the offences the applicant was convicted of to “attempted sale of narcotic drugs”, reduced his sentence to six years and nine months’ imprisonment and upheld the remainder of the sentence.

C. The applicant’s injuries

On 28 October 2004 investigator L. of the Magadan town prosecutor’s office decided that the applicant should undergo a medical examination. According to the medical examination order («*направление*»), the applicant had abrasions on the forehead and bruises of the ribs and the left shin.

According to the applicant, on 28 October 2004 he came to a local out-patient hospital, but the medical personnel refused to see him and invited him to come back on 1 November 2004.

On 1 November 2004 he was examined by the outpatient hospital’s doctor. The applicant complained about left side chest pain and informed the doctor that he had been beaten up by the officers of the Drug Control Service. The doctor observed that the chest pain was also reproduced by palpation. The applicant was diagnosed with a bruise of the left side of the chest. The doctor noted that the applicant did not have any visible injuries.

On the same date the out-patient hospital informed the police department of Magadan about the applicant’s injuries and about his submissions as regards their origin. It appears that the department forwarded that information to the prosecutor’s office.

On 3 November 2004 an expert of the local medical expert examination bureau examined the applicant. As it follows from the respective medical examination report dated 12 November 2004, the applicant was diagnosed with a bruise of the middle third of the anterior surface of the left shin which might have been caused by a blunt object and did not cause harm to his health. The expert did not find any objective confirmation of the chest injury.

D. Inquiry in respect of the allegations of ill-treatment and unlawful detention

1. Initial inquiry into the ill-treatment allegations (2004-2005)

On 3 November 2004 the applicant complained to the prosecutor’s office of Magadan about the ill-treatment. He submitted a detailed account of the events in support of his application and specified that that V. and another person, a hairdresser, were able to confirm his account of the events.

On 5 November 2004 the prosecutor’s office of Magadan started an inquiry. The prosecutor’s office:

- requested and obtained professional characteristics and job descriptions of the Drug Control Service officers Mor. and N., as well as trainee officer Mrin.;
- interviewed G. who testified that he had questioned the applicant at about 10.30 a.m. on 27 October 2004 and had not seen any visible

injuries on his body. He submitted that officers N. and Mor. had talked to the applicant before the questioning for some twenty or thirty minutes;

- interviewed Mor., Mrin. and N. who firmly denied any use of force against the applicant;

- questioned witness V. who testified that he had not seen the police beat the applicant during the apprehension. He was transferred to Drug Control Service premises together with the applicant, but immediately after arrival the applicant had been taken to a different office, whilst V. had been released after a brief interview. He added that at about 7 p.m. on the same date the applicant had come to his office and told him that he had been beaten by the police;

- finally, on 10 November 2004 the prosecutor's office held an additional interview with the applicant. He reproduced his initial complaint.

On 12 November 2004 the prosecutor's office refused to initiate criminal proceedings in respect of the complaint. The decision, one-page long, contained a brief summary of the applicant's allegations, as well as a reference to testimonies of investigator G., officers N. and Mor. and trainee officer Mrin., who denied any allegations of ill-treatment in respect of the applicant. It followed from the decision that at 9 a.m. on 27 October 2004 the applicant had been apprehended, brought to the police station, his identity had been established, a search of his flat had been performed and then the applicant had been brought to the investigator and questioned in the presence of the lawyer. The allegations of duress were rejected as unfounded.

The applicant submits that this decision was set aside on 26 November 2004 by a higher-ranking prosecutor. The file does not contain a copy of the respective decision or any further details in this respect.

On 26 July 2005 the Magadan Town Prosecutor quashed the decision of 12 November 2004 and ordered an additional inquiry. In the respective decision he emphasised, in particular, that the applicant's medical documents, as well as relevant materials from his criminal case file, had not been admitted to the inquiry file in so far as they concerned the events of 27 October 2004.

On 4 August 2005 the prosecutor's office of Magadan issued another refusal to initiate criminal proceedings. The decision reproduced *verbatim* the previous one and contained a conclusion that the applicant's ill-treatment submissions must have been a part of the defence strategy he had chosen to mislead the investigators. The decision did not contain any reference to the medical documents.

2. Proceedings of 2007 concerning the applicant's allegations of unlawful detention and ill-treatment

(a) Complaints about unlawful detention and search of 4 and 2 July 2007

On 2 July 2007 the applicant complained to the Magadan Town Investigative Department of the Investigative Committee of the Magadan Prosecutor's Office ("the town investigative department") about his unlawful apprehension between 10 a.m. and 6 p.m. on 27 October 2004 by the officers of the Drug Control Service.

On 4 July 2007 he introduced a separate complaint challenging lawfulness of the search of his flat on 27 October 2004.

(b) Decision of 10 July 2007 on allegedly unlawful apprehension and its subsequent quashing

On 10 July 2007 the town investigative department refused to order an inquiry in respect of his unlawful detention and search complains, since they had already been examined during the trial (see above).

On 16 August 2007 the Magadan Town Court rejected the applicant's complaint about the decision and discontinued the respective court proceedings.

On 3 October 2007 the Magadan Regional Court quashed the decision of 16 August 2007 and sent the case for a fresh examination. It found, in particular, that the issue of the applicant's unlawful detention had not been subject to any check by the trial court. The applicant did not provide further details in respect of those proceedings.

(c) Decision of 12 September 2007 and its annulment

On 12 September 2007 the town investigative department issued a refusal to initiate criminal proceedings, apparently in respect of both the ill-treatment and the unlawful detention complaints (internal inquiry number: 1-963-pr-07).

On 17 September 2007 the Deputy Head of the town investigative department quashed the decision and ordered an additional inquiry.

(d) Decision of 20 September 2007 concerning both the ill-treatment and unlawful detention complaints

On 20 September 2007, apparently by a single decision, the town investigative department refused to initiate criminal proceedings in respect of both the ill-treatment and unlawful detention allegations.

On 24 September 2007 a higher-ranking prosecutor upheld the refusal.

(e) The applicant's challenge of the decision of 20 September 2007 in the part concerning the ill-treatment allegations and subsequent developments

On 25 October 2007 the Magadan Town Court established that the decision of 20 September 2007 was unlawful and unfounded in so far as the inquiry into the allegations of ill-treatment was concerned. The court specified, in particular, that the evidence referred to in the prosecutor's decision was confined to the applicant's testimony, as well as documents containing professional characteristics and job descriptions of G., Mrin. and Mor. respectively. However, the investigator of the prosecutor's office in charge of the inquiry had failed to question those persons. Furthermore, the medical documents had not been admitted and examined.

On 15 November 2007 the Head of the town investigative department quashed the decision of 20 September 2007, apparently as a follow-up to the town court's ruling of 25 October 2007.

On 26 November 2007 the town investigative department issued yet another refusal to open criminal proceedings which, in turn, was quashed by a higher-ranking investigator on 4 December 2007.

On 12 December 2007 the Magadan Regional Court upheld the decision of 25 October 2007 on appeal.

On 13 December 2007 the Magadan town prosecutor issued a new refusal to initiate criminal proceedings in respect of the ill-treatment complaint. The prosecutor reiterated that the applicant's allegations had been examined by the trial court and rejected on 27 May 2005 as unfounded (see above). He further observed that according to the medical expert examination report of 3 November 2004 the applicant had had a bruise of the middle third of the anterior surface of the left shin. However, he stressed in that respect that the applicant had been diagnosed with chest bruise on the basis of his own subjective complaints, whilst there had existed no other objective evidence to confirm his sayings, as well as no indication of any other injury. He concluded that the information in the case file was insufficient to confirm that the applicant had been ill-treated.

On 14 December 2007 the Deputy Head of the town investigative department annulled the decision of 13 December 2007, on account of the town prosecutor's office's failure to question Mor. and Mrin., to admit several documents referred to by the applicant, to examine the applicant's submissions concerning the medical evidence, to request and admit medical documents and to order a new expert examination in order to establish the nature, possible reasons and mechanism of inflicting of the injuries.

On 24 December 2007 the town investigative department again decided that there was no need to initiate criminal proceedings in respect of the psychological and physical pressure complaint.

The applicant did not submit further information on the proceedings.

(f) The applicant's challenge of the decision of 20 September 2007 in the part concerning the unlawful detention issue

On 25 October 2007 the Magadan Town Court rejected the applicant's complaint about the refusal of 20 September 2007 to initiate criminal proceedings on account of his unlawful detention on 27 October 2004.

On 19 December 2007 the Magadan Regional Court quashed the decision of 25 October 2007 and ordered a new examination of the case by the first-instance court.

On 17 January 2008 the Magadan Town Court allowed the applicant's complaint. The court observed, in particular, that the materials of the applicant's criminal case, including the trial court's judgment, did not contain an arrest or apprehension record in respect of the applicant. It also examined the existing town investigative department's decisions for the period of July-December 2007 and, in particular, the decision of 24 December 2007 (see above). The court observed that the latter decision only concerned the applicant's allegations of ill-treatment, whilst he had also raised a separate unlawful apprehension which had remained unanswered. The court ordered the town investigative department to rectify that shortcoming.

No further information in this respect was submitted.

3. *The applicant's request for access to the medical expert examination results of 1 November 2004 and subsequent proceedings*

In the meantime, on 15 August 2007 the applicant requested the local medical expert examination bureau to provide him with a copy of the expert examination report drawn up in respect of him of 1 November 2004.

On the same date the medical expert examination bureau refused, stating that it could not “provide victims with copies of the expert documentation”.

The applicant challenged the refusal in court.

On 5 October 2007 the Magadan Town Court by an interlocutory decision ordered the respondent bureau, the Magadan prosecutor's office and the Drug Control Service to provide the court with documents concerning the applicant's ill-treatment allegations.

On 7 November 2007 the Magadan Town Court disallowed the applicant's action, having found that the expert examination bureau had acted in accordance with law.

According to the court's stamp on the copy of the decision, it did not enter into force. However, the case file does not contain any information as to whether the parties appealed against the court ruling.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention that he was ill-treated by the Drug Control Service officers and the investigation into his allegations of ill-treatment proved ineffective.

He complains under Article 5 §§ 1 and 2 that on 27 October 2004 he had been unlawfully detained in the absence of any record and without any explanation of a reason for his detention.

He complains under Article 6 §§ 2, 3 (b) and 3 (d) that he was convicted in violation of the presumption of innocence, that the conviction was based on contradictory and mutually exclusive evidence, that both the search record and the test purchase records were inadmissible, that the prosecution case was weak, that he was unable to question witness P. and that the trial court unlawfully admitted the decision not to initiate criminal proceedings of 12 November 2004, despite the fact that the impugned decision had been annulled by the higher-ranking prosecutor.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his arrest on 27 October 2004? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension on 27 October 2004 planned beforehand? Did the applicant resist the arrest? Did the police officers use excessive force to arrest him (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 27 October 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?

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

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 27 October 2004? In particular:

(a) Were the investigators (investigating authority) who carried out the inquiry into the applicant's allegations of 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?

(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) The parties are invited to specify whether any inquiry and/or investigation activities into the applicant's allegations of ill-treatment were held between 4 August 2005 and 2 July 2007 and to submit relevant documents.

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. Did the applicant exhaust the domestic remedies in respect of his complaint under Article 5 § 1 about the alleged deprivation of liberty on 27 October 2004? In particular, did he complain to a prosecutor or a court about his allegedly unlawful detention on that date immediately after the events? Did he comply with the six months' rule in respect of the complaint? Was a final decision taken in the proceedings concerning the alleged unlawfulness of the apprehension after 17 January 2008?

5. Assuming that the applicant exhausted the domestic remedies in respect of the above complaint and complied with the six months' rule: did the restriction upon the applicant's liberty on 27 October 2004 amount to deprivation of liberty? Was the impugned deprivation of liberty compatible with Article 5 § 1 of the Convention? What was the legal basis for the deprivation of the liberty? In particular, did the alleged deprivation of liberty on 27 October 2004 fall within the ambit of Article 5 § 1 (c) of the Convention? Was an apprehension record drawn up in respect of the applicant? The parties are invited to submit the relevant documents in this respect.