



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

FIRST SECTION

Application no. 3909/08  
Sergey Mikhaylovich AGARKOV  
against Russia  
lodged on 1 December 2007

**STATEMENT OF FACTS**

The applicant, Mr Sergey Mikhaylovich Agarkov, is a Russian national, who was born in 1985 and lives in Valuyki. He is currently serving his sentence of imprisonment in correctional colony FGU IK-7 of the Belgorod Region.

**The circumstances of the case**

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

*1. The applicant's arrest and alleged ill-treatment*

At some point a lay person complained to law-enforcement authorities that unspecified persons, further identified as the applicant and his two acquaintances Get. and Leb., were extorting money and a glass of cannabis from him. The Belgorod Department of the Federal Drug Control Service ("the Drug Control Service") decided to hold an operational-search activity "operative experiment" in order to verify that information. They were further informed that those persons could be in possession of unspecified firearms.

**(a) The applicant's arrest**

At 8 p.m. on 16 November 2005 the applicant, Get. and Leb., were arrested by the officers of a special unit of the in a car during the operative experiment. The policemen took the applicant from the car, ordered him to prostrate himself on the ground, his face against the paves, and handcuffed him. Other persons were also apprehended.

The applicant submits that he did not resist and that the police did not use violence against him at that point.

The official account of the events is that the applicant and his acquaintances resisted the arrest and the policemen used physical force to apprehend them (see below for the respective officers' testimonies).

**(b) Examination by a narcology expert and the applicant's pictures taken on 16 November 2005**

After the arrest the applicant was brought to the Drug Control Service office of Belgorod. He underwent an examination by a narcology expert. Expert Gap. photographed the applicant.

**(c) Interrogation at the Drug Control office and alleged ill-treatment**

Thereafter the applicant was brought to office no. 223 on the second floor of the Drug Control Service building. Five officers were present in the office. They told him to write a self-incriminating statement and threatened him that otherwise he would be severely beaten. The applicant chose to remain silent. Then they handcuffed the applicant. Three officers severely beat him in order to extract confession of his involvement in drug trafficking. In particular, one of the officers hit him three or four times in the face. Another officer kicked him in the groin. The applicant was further struck several times in the kidney area by a different policeman. The applicant shouted and begged the officers to stop. He told them that he had a kidney disease; however, the beatings continued. Then one of the officers typed some document and told the applicant to sign it; the applicant was transferred to office no. 226. The applicant signed the document without having read it, out of fear for his life.

Then he was brought to office no. 227 and met Leb. there. Leb. told him that he had also been beaten by the policemen.

The applicant stated that he had bruises on his legs, in the kidney area (left side) and the left eye.

**(d) The applicant's pictures and the dispute over their date**

The applicant submits that at some on 17 November 2005 he was photographed at the Drug Control Service office. He provides copies of the pictures. Multiple abrasions and bruises are clearly visible on his face. These pictures were admitted to the criminal case-file (see below).

The official account of the events is that he was only photographed on 16 November 2005, that is after the arrest but before the interrogation (see above), and that no pictures of him were taken on the subsequent dates.

The applicant submitted to the authorities throughout the investigation (see below), and maintains before the Court, that on 16-17 November 2005 he was photographed twice and that the pictures admitted to the case-file showed his injuries inflicted during the interrogation. He points out that the pictures are undated, despite the case-processing requirements for any criminal case file. Furthermore, for an unspecified reason a respective page of the criminal case-file does not contain any date either. He alleges, referring to the nature and the colour of the bruises and swellings on his face, that they should have been inflicted at least one day before the pictures were taken.

(e) Subsequent events

It appears that on 17 November 2005 the applicant was brought to an investigator. Criminal proceedings were brought against him under Article 229 § 3 (b) of the Criminal Code (stealing or extortion of narcotic drugs or psychotropic substances by an organised group).

The case file does not contain information on the place of the applicant's detention on that date. It appears that he was placed in a temporary detention centre ("the IVS") and remained there overnight.

On 18 November 2005 the applicant was brought to the Belgorodskiy District Court of the Belgorod Region for determination of a preventive measure in respect of him, and his mother managed to talk to him after the hearing. She saw abrasions on his forehead and a bruise under the left eye and, his nose was swollen and the nasal bridge was "incised". The applicant told her that he had been beaten by the Drug Control officers. Then the applicant's lawyer contacted her and advised her to lodge a complaint about her son's ill-treatment.

It appears that at some point the applicant was transferred to remand prison no. IZ-31/1 of Belgorod, where he was examined and his injuries were recorded. The applicant did not submit a copy of the respective medical documents.

*2. The applicant's injuries*

According to a medical report («заключение») of 13 January 2006, the applicant had bruises of the body, the left hand, the left arm and the face. The injuries could have been caused by solid blunt objects within five to seven days preceding the initial examination.

Medical expert report no. 2112 drawn up on 14 April 2006 (as cited in the decision of 17 April 2006, see below) read as follows:

"... bruises of the left side of the scapular region, ... left forearm, left ear, as well as abrasion areas of soft tissues or the abrasion of the right side of the forearm, of the nasal bridge, could have been inflicted [as a result of an interaction with] a solid blunt object, such as the ground, which could have taken place during Agarkov's arrest ...

A bruise under the left eye and of the left ear could also have been caused as a result of traumatic action of blunt solid objects, such as hands and legs, directed to the left side of the face and head".

*3. Complaints about the ill-treatment and domestic investigation*

On 22 November 2005 the applicant's mother complained to the prosecutor's office of Belgorod that on 16 November 2005 her son had been tortured by the Drug Control officers. She submitted, in particular, that on 18 November 2005 the applicant's lawyer had seen injuries on the applicant's and Get.'s faces. She further stated that she had seen a bruise under her son's eye and injuries of the upper lip and the nose. She requested that an inquiry be held and criminal proceedings be brought against the officers concerned.

On 16 December 2005 investigator M. of the prosecutor's office of Belgorod, having held a preliminary inquiry, decided to initiate criminal proceedings under Article 286 § 3 (a) of the Criminal Code (abuse of authority) in connection with the allegations of ill-treatment of the

applicant, Get. and Leb. between 8 p.m. on 16 November and 8 a.m. on 17 November 2005. The case was assigned no. 20051011140.

On 20 December 2005 the applicant, and at some point Get. and Leb., were granted victim status in the criminal proceedings.

When questioned as victims, they maintained that they had been tortured in the Drug Control Service building. They provided detailed accounts of the events. Leb. confirmed that he had seen the applicant in the building after the interrogation and saw traces of beatings on his face; he had further seen blood on the floor in the office where the applicant had been beaten.

Thereafter a crime-scene examination was held. The applicant and two other victims maintained their submissions.

The investigator further interviewed the applicant's mother, who described the applicant's injuries as seen by her on 18 November 2005, as well as relatives of Get. and Leb. who maintained that all three arrestees had been beaten on the Drug Control premises.

Drug Control officers G., Lin., Gl., Mak. and Gol were questioned as witnesses.

Officer G. submitted that he had not participated in the applicant's arrest. At some point Lin. had informed him by phone that the victims, including the applicant, had been apprehended during the operative experiment, and then brought the applicant to his office. G. and Lin. had questioned the applicant; they had not used violence, nor had they heard any suspicious noises, such as shouting or screaming, in the building. G. had noticed redness of the applicant's skin and asked him if he had been beaten; the applicant replied in the negative.

Officer Lin. testified that he had been in charge of the operative experiment. Officers M., R., Dzh., Khl., Rog., Gor., Gl., Khod. had participated in the operative-search activity. The police had been in possession of the information that the applicant and Let. had been armed with unspecified firearms. Therefore, it was decided that members of a special police unit would conduct the arrest. Lin. took the command of the operation and "exercised [its] audio- and video-control". The special unit members, all wearing balaclava masks, had acted "rapidly and firmly". Dzh. had searched the applicant and seized a traumatic gun from him. Then the three apprehended persons had been transferred to the Drug Control office. Lin. and G. had questioned the applicant, and had seen an abrasion and a redness on his face. The applicant behaved aggressively and refused to cooperate. Then Lin. had ordered Khl. to get explanations from the applicant; thereafter Khl. had brought him a document signed by the applicant.

Officer Khl. confirmed that Lin. had ordered him to interrogate the applicant. A special unit officer wearing a balaclava mask brought the applicant to his office. The applicant had confessed of stealing or exportation of narcotic drugs. He had not made use of his rights to remain silent or to contact a lawyer or a relative. Khl. had seen bruises and abrasions on the applicant's face; the applicant had been unable to explain their origin.

Officers Gl., R., Mak. and Gol. denied any use of violence against either of the arrestees.

Expert Gap. of the Drug Control Service testified that he had photographed the applicant on 16 November 2005, that is between the arrest and the interrogation. He had seen bruises and abrasions on his face, also clearly visible on the pictures.

The investigator further questioned six members of the special police unit. They testified that they had had to use force against the applicant and two other persons in the car since they had not complied with an initial order to leave the car and, furthermore, the officers had had information that the three persons had been armed and also saw a gun resembling to a *Makarov* pistol near the driver's seat in the car. In particular, special-unit officer Kis. submitted that he had had to take the applicant out of the car and force him on the ground, his face against the pavement.

Two lay witnesses confirmed that the police had used force during the arrest and that abrasions had been seen on the applicant's face immediately after the apprehension.

On the other hand, three eye-witnesses of the arrest, lay persons, questioned upon the applicant's lawyer's request, denied that physical force had been used against the passengers of the car.

At some point a number of confrontations was held between the victims and officers G., Lin., Gl., Mak. and Gol. During the confrontations the applicant and two other alleged victims of torture consistently maintained that the officers had been involved in their ill-treatment and provided details. The officers firmly denied any allegations of ill-treatment.

On 9 March 2006 a psychological expert examination was performed in respect of the video-recording of the applicant's interview and a crime-scene examination held on unspecified dates. The expert concluded that the statements of the applicant had been "unconvincing and contradictory", he "had not shown emotions, [self-] protecting movements", "even though he had spoken of a threat to his life and about a fear for it". He had not noticed several contradictions between his description of the events and his own actions during the crime-scene reconstruction, and had bluntly referred to his state of shock when faced with questions in this respect.

Finally, the investigator admitted medical documents in respect of both the applicant (see above) and two other alleged victims of the ill-treatment.

On 17 April 2006 investigator M. decided to discontinue the criminal proceedings on the ground of the absence of *corpus delicti* under Articles 285 and 286 of the Criminal Code in the actions of the Drug Control officers, as provided by Article 24 § 1 (2) of Code of Criminal Procedure. Having analysed the above evidence, the investigator concluded that the injuries had been sustained by the applicant during his arrest and such use of force had been lawful and justified. He found no evidence of ill-treatment at any point after the arrest.

On 14 January 2007 the applicant challenged the refusal in court under Article 125 of the Code of Criminal Procedure requesting to declare the investigator's decision unlawful. He complained, in particular, that the policemen had only been questioned as witnesses and not as suspects. He further argued that both the victims and the police officers who had actually arrested them denied that the applicant had been hit in the face during the arrest. He maintained that the injuries had been inflicted during the interrogation at the Drug Control office. He pointed out that, according to

the medical expert report of 14 April 2006, only a part of injuries could have been inflicted during the arrest. However, no explanation of the remaining injuries which could have been inflicted by “solid blunt objects such as hands and legs” (see the medical expert report of 14 April 2006, cited above) had been provided.

On 6 February 2007 the Sverdlovskiy District Court of Belgorod examined the complaint in the presence of the applicant’s lawyer and rejected it. The court found, in particular, that the applicant’s dissatisfaction with the fact that none of the officers had ever been questioned as suspect was based on an incorrect understanding of the domestic law.

On 4 April 2007 the Belgorod Regional Court quashed the decision of 6 February 2007 on appeal, on account of the applicant’s absence from the first-instance hearing, and remitted the case to the first-instance court for a fresh examination.

At some point the applicant agreed that the case be examined in his absence.

On 15 May 2007 the Sverdlovskiy District Court, sitting in a different formation, again disallowed the applicant’s complaint under Article 125 as unfounded.

On 17 October 2007 the Belgorod Regional Court upheld the district court’s findings on appeal as lawful and well-founded.

On 6 May 2008 the applicant’s lawyer requested the prosecutor’s office of Belgorod to produce copies of the confrontations records between the applicant and officers Rog., Gl., Mak. and Khl.

On 12 May 2008 the Deputy Prosecutor of Belgorod rejected the request as having no basis in domestic law.

#### *4. Criminal proceedings against the applicant*

On 17 November 2005 criminal proceedings were brought against the applicant on suspicion of extortion of narcotic drugs by an organised group. On 18 November 2005 the Belgorodskiy District Court of the Belgorod Region ordered his arrest pending the investigation.

On 6 October 2006 the Belgorodskiy District Court of the Belgorod Region convicted the applicant as charged and sentenced him to six years and three months’ imprisonment. It is unclear whether the judgment was appealed against. The applicant does not provide details or documents in respect of this set of proceedings.

## COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention that on 16 November 2005 he was tortured by the Drug Control officers and that the investigation into his ill-treatment complaint was ineffective.

He further submits under Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 thereto that the court proceedings concerning his complaint against the authorities were ineffective and unfair.

He also refers in broad terms to Article 14 of the Convention.

### **QUESTIONS TO THE PARTIES**

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his apprehension on 16-17 November 2005? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension on 16 November 2005 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.

(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 16-17 November 2005, 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 and also to provide copies of the relevant medical documents.

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 16-17 November 2005?

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?