



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

FIRST SECTION

Application no. 60527/10
Dzhalil Vezir Ogly SHIRALIYEV
against Russia
lodged on 22 September 2010

STATEMENT OF FACTS

The applicant, Mr Dzhalil Vezir Ogly Shiraliyev, is a Russian national of Azeri origin who was born in 1966 and lives in Norilsk, the Krasnoyarsk Region. He is currently serving his sentence of imprisonment in correctional colony OIK-30 of Norilsk.

The circumstances of the case

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

1. Circumstances leading to the arrest of the applicant

According to the official account of the events, at some point the Norilsk Inter-District Department of the Federal Drug Control Service of the Russian Federation (“the Drug Control Service”) obtained operative information on the applicant’s involvement in drug trafficking.

On 10 June 2009 the applicant sold a doze of heroin to R., a private person. R. further came to the Drug Control Service, informed the authorities that he had purchased drugs from the applicant and provided them with the applicant’s phone number. According to the applicant, he met R. on that date but did not sell drugs to him.

On 2 July 2009, the Drugs Control Service decided to carry out the operative-search activity “supervision” in respect of the applicant’s place.

According to the findings of the document courts (see below), between 9 p.m. and 9.55 p.m. on 2 July 2009 B., a private person, met the applicant at his place and purchased about 10 g of heroine from him. She was arrested immediately after the purchase and searched in the presence of lay witnesses. She gave the drugs to the police officers and indicated the

applicant as a drug dealer. According to the applicant, B. came to his place on that date, but he did not sell drugs to her.

In the light of those developments, late at night on 2 July 2009 the Drug Control Service decided to carry out the operative-search activity “test purchase” in respect of the applicant. They instructed R. to buy drugs from the applicant and gave him 5,000 Russian roubles (RUB) for this purpose.

2. The applicant’s arrest and alleged ill-treatment

(a) Test purchase of 3 July 2009

At 00.45 a.m. on 3 July 2009 R., acting as an undercover agent, came to the applicant’s place, purchased 2.05 g of heroine from the applicant and left his flat. At 1.10 a.m. he gave the drugs to the police officers in the presence of two lay witnesses.

(b) Available information on the applicant’s arrest and alleged beatings

The applicant submits, without further details, that early in the morning on that date he left his place and was immediately apprehended by two policemen wearing balaclava masks. He did not resist the arrest. However, the policemen allegedly beat him up.

According to statements by lay witness Kuz. and Drug Control officer Sl., as reproduced in the bill of indictment of 29 September 2009, the applicant was arrested at about 4 a.m. on the street near his apartment block by members of the special unit of the Drug Control Service. Kuz. and Sl. were not present at the arrest. They saw the applicant between 4.20 a.m. and 4.40 a.m., when the policemen brought him to a lobby of a near-by apartment block, searched him in the presence of the lay witnesses and seized RUB 5,000 in banknotes received from R.

According to the court testimony of M., another Drug Control officer, as well as Sl.’s statement made during the trial (see below), the applicant was apprehended by the officers of the special unit of the Drug Control Service shortly after the test purchase. Sl. further specified that he had seen bruises on the applicant’s face and the applicant told him that he had been beaten by unknown persons on the street.

(c) Alleged ill-treatment at the Drug Control office

The applicant submits in the application form, without further details, that he was beaten by unspecified Drug Control officers.

According to his submissions during the trial as reproduced in the trial record, at some point on 3 July 2009 he was brought to the Drug Control Service office. The applicant was handcuffed. Officers K. and Sam. beat him up in order to extract confession. In particular, K. slapped him in the face. Sam. hit his face against the table and also pushed him in the chest.

The applicant did not produce a self-incriminating statement.

(d) The search of the flat and the applicant’s attempts to challenge its lawfulness

At 3 p.m. on the same date the Drugs Control Service searched the applicant’s flat in the presence of two lay witnesses.

On 6 July 2009 the Norilsk Town Court confirmed that the search had been lawful. The applicant submits that he was unable to obtain a copy of the decision. The decision was not appealed against.

(e) The applicant's transfer to the temporary detention centre and medical examination of 3 July 2009

At 5 p.m. on the same date the applicant was transferred to the temporary detention centre of Norilsk ("the Norilsk IVS"). A doctor examined him in the facility and established that he had a nasal fracture, bruises and abrasions on the face and an abrasion on the right leg.

(f) Arrest order of 4 July 2009

On 4 July 2009 the Norilsk Town Court authorised the applicant's pre-trial detention in connection with the charges of drug trafficking brought against him. The court noted, inter alia, that the applicant was apprehended at 10 a.m. on 3 July 2009. It appears that the decision was not appealed against.

(g) The applicant's transfer to the remand prison and medical certificate concerning his injuries

On 5 July 2009 the applicant was transferred to remand prison no. 4 of Norilsk.

According to the certificate of 25 January 2010 by the Head of the remand centre, the following injuries had been detected on the applicant immediately after his admission to the remand centre on 5 July 2009: a nasal septal fracture and a bruise of the face; bruises of the left forearm, right leg, left wrist and the chest.

3. The applicant's complaints about the alleged ill-treatment

(a) Initial inquiry and decision of 7 July 2009

It appears that at some point before 7 July 2009 a police officer of the Norilsk IVS informed the local police department that on 3 July 2009 the applicant had been transferred to the IVS with multiple injuries. According to the police report (not submitted to the Court), the applicant explained that the injuries had been caused to him by four unidentified persons. They had beaten him up at the entrance of his apartment block as a result of a quarrel and then left the spot.

At some point between 3 and 7 July 2009 the applicant was interviewed by an investigator of the Norilsk Town Department of Interior. It follows from the investigator's report (as cited in the decision of 7 July 2009, see below) that the applicant maintained that version of the events.

The applicant submits that the information contained in the IVS record was inaccurate, that the IVS officials either misunderstood him or knowingly included incorrect information in the report and that at the very outset he claimed that the injuries had been, in fact, inflicted by the Drug Control Service officers. He submits that he did not understand Russian well and did not receive legal assistance, that at the time of the events he did not know the names of the officers who had allegedly beaten him up and that he signed some documents without having read them.

On 7 July 2009 an investigator of the Norilsk Town Department of Interior held an inquiry into the complaint by the IVS officer under Article 144 of the Code of Criminal Procedure and refused to bring criminal proceedings in respect of the applicant's injuries, for the lack of indication of a crime. The investigator referred to the applicant's statement made during the inquiry from which it followed that the injuries had been caused to him by "four unknown persons" who had beaten him and run away before the Drug Control officers had arrived to arrest the applicant. The investigator further observed that at some point the applicant had requested to discontinue the inquiry since he had not had any claims in respect of that episode.

(b) Medical documents of 21 July and 24 August 2009

It follows from the trial record (see below) that on 21 July 2009 the applicant was examined by a doctor, apparently in respect of his injuries. The case-file does not contain a copy of the certificate or any further information in this respect.

On 24 August 2009 medical expert examination was held in respect of the applicant. The expert established that the applicant's injuries did not cause harm to his health.

(c) Subsequent proceedings

At some point, apparently on 28 September 2009, the applicant challenged the refusal at a court under Article 125 of the Code of Criminal Procedure.

On 28 January 2010 the deputy town prosecutor of Norilsk quashed the decision as unfounded and ordered a further inquiry. The applicant does not submit a copy of the decision.

On 2 February 2010 the Norilsk Town Court discontinued the examination of his action, because the decision of 7 July 2009 had already been set aside in the meantime.

On 5 February 2010 the investigator of the Norilsk Town Department of Interior again discontinued the inquiry and refused to bring criminal proceedings in connection with the applicant's ill-treatment allegations. The investigator reiterated that the injuries had been caused by unidentified persons before the arrival of the police officers and added that the police had questioned several locals as regards the events of 3 July 2009 but had not found any witnesses of the quarrel. He also referred to the forensic report stating that the applicant had had injuries which had not caused any health damage.

The applicant complained about the refusal to the prosecutor's office arguing, in particular, that the investigator had disregarded his submissions that the injuries had been inflicted by the police officers.

On 17 March 2010 the Norilsk town prosecutor's office refused to examine his complaint with reference to a) the applicant's own statement made at some point before 7 July 2009 and b) to the fact that the applicant's allegations of ill-treatment had been examined by the trial court (see below) and rejected as unfounded.

The applicant appealed against the decision to the town court.

On 14 April 2010 the deputy town prosecutor of Norilsk quashed the decision since the inquiry had been held with various defects. The applicant submits that the prosecutor's office did not send a copy of the decision to him.

On 15 April 2010 the Norilsk Town Court disallowed the applicant's complaint, since the decision of 5 February 2010 had been annulled a day before.

At some point the applicant complained to a court about the prosecutor's failure to send him a copy of the decision of 14 April 2010.

On 21 October 2010 the town court dismissed his action. The applicant received a copy of the decision on 12 November 2010.

On 19 November 2010 the applicant appealed.

On 8 December 2010 he was informed that the appeal hearing at the Krasnoyarsk Regional Court was scheduled for 18 January 2011.

On 15 November 2010 the applicant requested to be present at the court room.

On 18 January 2011 he was advised that the hearing was postponed until 22 February 2011.

He further submits, without further details, that unspecified authorities returned his statement of appeal to him and that thereafter the prison officers seized various documents, including the statement of appeal, from him. He further submits that he complained against the prison officers' actions, but to no avail. He does not provide any documents or further details in this respect.

The applicant did not furnish any information on the outcome of the appeal proceedings.

He submits that, being a detainee, he had difficulties in obtaining copies of the documents concerning his case and was unable to send some of them.

4. Criminal proceedings against the applicant

On 5 November 2009 the Norilsk Town Court convicted the applicant of three episodes of attempted sale of drugs and sentenced him to 12 years' imprisonment.

During the trial the applicant maintained that he had been beaten up at the Drug Control Service premises by Sam. and K. He submitted that he had introduced a complaint in this respect with a delay because, first, he had not had access to lawyer after his arrest and the police officers had not allowed him to lodge a complaint. Second, he had not believed that a complaint would have any prospect of success. He further requested to call the officers who had arrested him. He argued that he was unable to provide their names and addresses, since the officers were wearing masks and he could not identify them. The court refused, for the applicant's failure to provide the officers' personal details.

The court heard, in particular, officers Sam. and Sl. They testified that the applicant had been apprehended at 4 a.m. on 3 July 2009.

The court rejected the applicant's allegations of ill-treatment as unfounded. It referred to the findings of the inquiry of 7 July 2009 (see above) without providing any further details, as well as to the submissions of officers Sam., Sl. and M and several lay witnesses.

In its establishment of the facts of the test purchase the court observed that the applicant was arrested “almost immediately” after the test purchase of 3 July 2009.

The applicant appealed against the conviction arguing, in particular, that police officers Sam. and K. had beaten him up, that he had not been granted an interpreter and that the court failed to call witnesses R., N. and Ka. He denied his involvement in drug trafficking.

On 20 April 2010 the Krasnoyarsk Regional Court upheld the conviction on appeal. The court found that the first-instance judgment was sufficiently detailed and reasoned and the trial court had examined the existing evidence in its entirety. The applicant’s ill-treatment argument was found unsubstantiated and rejected in a summary way. The appeal court further dismissed the complaint concerning the failure to call the witnesses since the domestic court had taken all necessary measures to establish the witnesses’ whereabouts.

COMPLAINTS

The applicant complains under Article 6 § 1 and 6 § 3 (c) and (d) of the Convention that he was convicted as a result of police incitement, that the criminal proceedings against him were unfair, the prosecution case was weak, the trial court was biased and the evidence for his conviction was insufficient and, moreover, obtained in violation of the domestic law of criminal procedure. The courts incorrectly applied substantive law to his case. He complains that the trial court failed to question several witnesses, including R. He submits that he was unable to attend the appeal hearing concerning his complaint against the decision of 21 October 2010. He further refers to Articles 7, 13, 17 and 18 of the Convention complaining that his conviction was unfair and the domestic criminal proceedings ineffective.

He avers, without referring to any Convention provision, that on 3 July 2009 he was beaten up by the Drug Control officers. He further submits under Articles 6, 13, 17 and 18 that his several complaints about the alleged ill-treatment were rejected by the domestic authorities and the respective proceedings were ineffective. In particular, on two occasions the investigator’s refusals to bring criminal proceedings in respect of the alleged beatings had been quashed a day before the examination of the applicant’s respective complaint by a court.

He complains, without referring to a particular Convention provision, that the search of his flat and his arrest were unlawful.

He submits under Article 14 that he was discriminated against on the ground of his social status.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his apprehension on 3 July 2009? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension on 3 July 2009 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) Was the applicant subjected to treatment contrary to Article 3 of the Convention at the Norilsk office of the Drug Control Service on 3 July 2009? 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 on 3 July 2009, 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, as well as to provide an exact time-line of the events of 3 July 2009.

2. Have the authorities complied with their obligation under Article 3 of the Convention to carry out an effective investigation into the applicant's allegations of ill-treatment on 3 July 2009? 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) Were the officers who had taken part in the applicant's apprehension interviewed about the circumstances of the apprehension at any stage of the inquiry?

(f) Was the applicant's appeal against the decision of 21 October 2010 examined by the appeal court? What was the outcome of the appeal proceedings?

In connection with the above the Government are requested to submit relevant legible documents and, if need be, their typed copies, in response to each of the above questions, including, but not limited to:

- an entire copy of the case file concerning the inquiry into the applicant's alleged ill-treatment, including copies of the applicant's complaints and the replies he received, as well as copies of all decisions about the refusal to bring criminal proceedings in connection with his ill-treatment complaints;

- medical documents, including the medical certificate of 21 July 2009 and the medical expert examination report of 24 August 2009;

- excerpts from logbooks of primary medical examination of persons admitted to the Norilsk IVS and remand centre no. 4 of Norilsk for the period between 3 and 5 July 2009 and in respect of the applicant;

- excerpts from facilities in which the applicant was held between 3 and 5 July 2009 for the relevant dates and in respect of the applicant.

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?