



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

FIRST SECTION

Application no. 51165/08
Askerbiy Shabanovich MILINOV
against Russia
lodged on 13 August 2008

STATEMENT OF FACTS

The applicant, Mr Askerbiy Shabanovich Milinov, is a Russian national, who was born in 1941 and lives in the town of Maykop, Adygeya Republic.

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

In the morning on 26 September 2007 public celebrations devoted to the 450th anniversary of the unification of Adygeya with Russia commenced in the main square in Maykop. At 10.00 a.m. the applicant entered the square holding a placard which stated: “Why have [you] devoured my wonderful noble people?” to express his disaccord with the official version of the unification. Almost immediately he was approached by several police officers one of whom snatched the placard from his hands. Two other officers grabbed the applicant, forcefully placed his hands behind his back and quickly walked him to a larger group of police officers. The applicant did not resist and merely asked for the reason for his arrest. He was then taken to the duty unit of the Maykop Town police department. The applicant was held in the unit for three hours and forty minutes. He was told that the head of the police department, who was taking part in the public celebrations, wanted to talk to him. The applicant was released following the department head’s failure to appear.

On the same day the applicant visited the town traumatology centre where a doctor on duty recorded his complaints about a pain in the right shoulder and also noted that the applicant was sober. Having been diagnosed with a muscle strain in the right shoulder the applicant was prescribed in-patient treatment.

On 1 October 2007 the applicant asked the Adygeya Republican Forensic Medical Expert Bureau to give a medical expert opinion on the nature of his shoulder injury. An expert report issued on 24 December 2007 confirmed the diagnosis of the muscle strain which most probably occurred as a result of “unusual and abnormal movement of the shoulder blade”.

The applicant lodged a complaint with the Maykop Investigation Department of the prosecutor’s office, having complained about the ill-treatment by the police and his unlawful arrest on 26 September 2007.

On 2 November 2007 a senior investigator of the Investigation Department refused to open a criminal case, having found no prima facie case of ill-treatment. In particular, the investigator noted that the applicant had not been administratively arrested, had not been held administratively liable and had only been taken to the duty unit because he had scared children with his placard and his looks.

The applicant’s subsequent attempt to appeal against the decision of 2 November 2007 to the head of the Investigation Department was unsuccessful. In particular, on 11 February 2008 the department head confirmed the conclusions made by his subordinate and refused to quash the decision.

In the meantime, the applicant lodged a tort action against the Ministry of Interior of the Adygeya Republic, the Republican Federal Security Service and the Ministry of Finance, seeking compensation for damage for his ill-treatment, unlawful detention and interference with his freedom of expression by the police on 26 September 2007.

On 24 January 2008 the Maykop Town Court dismissed the action, having reasoned, in so far as relevant, as follows:

“... by virtue of Article 1100 of the Russian Civil Code compensation for non-pecuniary damage may only be awarded to [the applicant] if the guilt of [the police officers] and officials of the Federal Security Service [is established].

It follows that the circumstances which have the greater weight for the case are as follows: the fact that [the applicant] sustained non-pecuniary damage, the unlawful nature of the actions by [the police officers], the guilt of the mentioned officers in having caused non-pecuniary damage to [the applicant] and causal link between the actions of the named public officials and the resulting consequences.

[The applicant’s] claims cannot be accepted if one of the abovementioned circumstances is missing.

As the court established, the President’s Office and the Committee of Ministers of the Adygeya Republic scheduled a manifestation for 10.00 a.m. on 26 September 2007; [the manifestation] was devoted to the celebration of the 450th anniversary of the voluntary unification of Adegeya with Russia. ... The manifestation started with a small delay. On 26 September 2007 [the applicant] arrived at the square in advance, having brought a placard [which stated]: ‘Why have [you] devoured my wonderful noble people?’ At the same time he chose to stand in the place where [children] were. [The applicant] did not warn the organisers of the manifestation about the abovementioned action. [His] action did not correspond to the aim of the public manifestation. Given the existing historic traditions and practice of celebrating holidays and memory dates, [and taking into account] their important social and political character, the law of the Adygeya Republic issued on 14 February 1995 no. 168-1 ‘On holidays and memory dates’ specific holidays and memory dates are set out in the Adygeya Republic. One of them is 21 May, the Day of Remembrance and

Sorrow for victims of the Caucasus War in the 19th century. On 21 May [the applicant's] actions could have been acceptable.

Moreover, [the applicant], dressed in dark clothes, was near small children from art groups; he held the placard protesting against the event which a large group of people, the leaders of the Adygeya Republic and many guests from other regions of the Russian Federation had gathered to celebrate. Therefore, [the applicant's] behaviour could not but attract attention from [representatives] of State bodies entrusted with keeping the order at the manifestation. As [the applicant] explained, he had not expected such a response.

Having approached [the applicant] from behind, police officers addressed him [and the applicant] responded inadequately. As [the applicant] explained at the court hearing, he had rudely asked the police officers [what they had wanted and whether Yezhov's and Beria's time had come back]. [The applicant] was asked to hand over the placard; he ignored the request and the placard was taken from him by force. [The applicant] was agitated, was surrounded by small children and their parents who, in their turn, started expressing their disapproval of [the applicant's] actions. [The applicant] was asked to step aside to give explanations; however, he also disregarded that request from the police officers.

Thus, witness M. stated that on 26 September 2007, during the manifestation, he and his direct supervising officer L. had approached [the applicant] and had asked him to step away from the crowd. Mr L. was dressed in civilian clothes and Mr M. wore the police uniform. [The applicant] had a placard in his hands. He was nicely asked to step away from the crowd of twelve-year-old kids. He started shaking and screaming. Mr L. took the placard from [the applicant's] hands and handed it over to Mr M. who, in his turn, put the placard under a tree. When Mr M. had come back, [the applicant] was being taken away from the crowd by Mr L. and a man in civilian clothes. [The applicant] then voluntarily followed [the officers]. [He] was merely taken by hands and away from the crowd; Mr M. had not seen [the applicant's] hands being twisted. After [the applicant] had been brought to a group of police officers where high-ranking officers were also present, Mr M. left and went to perform his on-duty task; he did not know what happened afterwards.

Witness L. stated that during the manifestation at the main square ... he had stayed near the tribune and the Minister of Interior had told him to pay attention to a person who was standing among children and was holding a placard with a nationalist slogan. [The applicant] attracted attention by being entirely dressed in black clothes and standing among children from art groups who were all dressed in light clothes. The placard was made of a card board a part of which was white and another part was grey; the sign was written on the grey part and not on the white one. All that attracted our attention as [the applicant's] behaviour appeared to run contrary to the nature of the on-going manifestation. [Mr L.] approached [the applicant] and, having touched him on the left shoulder, addressed him. Mr L. was followed by Mr M. who, being a subordinate and having seen Mr L.'s actions, followed the lead. They approached [the applicant] from behind as they did not know his intention and did not want to provoke his inadequate actions if he, in fact, planned to commit something illegal. Mr L. approached [the applicant] from the left side and asked him: 'I am sorry, can I talk to you?' At that moment [the applicant] became hysterical and started screaming something of nationalist character; he was shaking and started waving the placard although he was surrounded by children. Even parents who stood behind the children started expressing their disagreement with [the applicant's] behaviour. Mr L. took away the placard, gave it to Mr M. and asked [the applicant] to exit the crowd. [The applicant] began arguing, having stated that his rights were being violated. Mr L. held [the applicant] by his left arm, another officer, unknown to Mr L. ... and dressed in civilian clothes, held [the applicant] by his right arm and they took him to a group of police officers where the police chief was also present. Mr K. approached, [identified the applicant] and also noted that the latter had certain problems in view of his nationalist views. After [the applicant] had been brought to the group of police

officers where high-ranking officers were also present, Mr L. left and went to perform his on-duty tasks; he did not know what happened afterwards.

Witness K., heard upon [the applicant's] request, stated that [the applicant] had been of sound mind, but he had been very agitated. Mr K. had not seen how [the applicant's] placard had been taken away and when [the applicant] had been taken away from the crowd.

Witness H. stated that he had seen [the applicant] carrying one or two placards before the manifestation. He had not seen what had been written on them. He had heard a noise and, having turned, had seen [the applicant] having been taken away ([the officers had held him] by his hands with his right hand having been placed behind his back and the left hand being held in a fighting grip). From his right side [the applicant] was accompanied by a police officer in the uniform and from the left side a person in civilian clothes [held the applicant]. When [the applicant] was taken to a group of police officers ... he was released. Mr H. did not know what had happened afterwards.

By virtue of Article 6 of the Federal Law no. 54-FZ issued on 19 June 2004 'On public assembly, meetings, pickets and manifestations' participants of public manifestations have to comply with lawful orders of the organiser of the public event ... and police officers.

By virtue of Article 11 § 4 of the Federal Law no. 1026-1 issued on 18 April 1991 'On Police', in order to carry out their duties the police has a right to request necessary explanations and information from individuals. According to Article 2 of the abovementioned law, one of the tasks of the police is to preserve public order and security.

It follows that [the applicant's] actions, including his rude refusal, in response to a request from the police officers, to exit the crowd of the children, called for lawful and well-founded actions of the police officers ..., in particular: [the applicant] having been taken away from the crowd to identify him and to seek explanations related to the slogan on his placard.

Moreover, by a decision issued on 2 November 2007 a senior investigator of the Maykop Investigation Department of the prosecutor's office dismissed [the applicant's request] for institution of criminal proceedings in view of his having allegedly sustained injuries under Article 24 § 1 (1) of the Russian Code of Criminal Procedure, that is for the absence of a criminal event.

[The applicant's] argument that the police officers had unlawfully held him in custody for three hours and 40 minutes also did not find any support in the court hearing.

By virtue of Article 5 § 11 of the Russian Code of Criminal Procedure an arrest is a measure of procedural restraint applied by police officers ... for a period of no more than 48 hours since the factual deprivation of liberty of a person on a suspicion of a criminal offence.

According to Article 27.3 § 1 and Article 27.5 § 1 of the Russian Code on Administrative Offences, administrative arrest is a short-term (no more than three hours) deprivation of liberty of an individual which is applied in exceptional cases to ensure the correct and timeous examination of a case on administrative offence or to execute a decision on administrative offence.

On the same day, that is on 26 September 2007, [the police officers] invited [the applicant] to talk to the head of the police department in the duty unit of the police department where, due to objective reasons, [the applicant] for a long period of time

had to wait for the head of the department as at that time he was taking part in the celebrations at the town stadium.

Thus, witness G. stated that on 26 September 2007, acting upon Mr P.'s order, he together with Mr N. had taken steps to identify [the applicant]. After two hours Mr G. had received an order from [the head of the police department] that [the applicant] should be invited to the duty unit of the police department ... for a talk. Mr G. and Mr N. drove to [the applicant's] house. [The applicant] was not at home and [the police officers] waited for him on a bench near the house. When [the applicant] arrived, the officers asked him to go to the duty unit with them. They did not force [him] in any way. [The applicant] asked the officers to drive him to a hospital for drug addicts for a medical examination and they did so and then took the applicant to the police department. After they brought [him] to the duty unit, Mr G. informed [his colleagues] that he had brought [the applicant] upon an order from supervising officers for a talk. Mr G. returned to the duty unit at 5.00 p.m. and saw [the applicant] in the corridor. Had [the applicant] refused to follow [Mr G. and Mr N.] to the duty unit, they would not have forced him.

Mr N. gave similar statements.

Mr Sh. stated that he had seen [the applicant] on 26 September 2007. [The applicant] was brought to the duty unit and Mr Sh. was told that the head of the police department would talk to [the applicant]. He was also told that [the applicant] was taken with a placard. Mr Sh. asked [the applicant] to go to the assembly hall [in the duty unit]. Forty or fifty minutes later [the applicant] came to Mr Sh. and asked whether he had to wait for a long time. Mr Sh. called the head of the department on the phone and the latter told him that he could not leave [the celebrations]. [The applicant's] daughter came and she was allowed to see [the applicant]. [The applicant] stayed in the duty unit for approximately three hours; Mr Sh. informed [the applicant] of his right to complain. He asked [the applicant] whether he wanted to give written explanations, but [the applicant] refused. Mr Sh. made a copy of [the applicant's] passport, once again apologised and let [him] go. [The applicant] left together with his daughter. [The applicant] said that he would not come back and if the police wanted to talk to him, they should come to see him. No one stopped [the applicant] from moving inside the duty unit. Mr Sh. informed his superiors twice that [the applicant] was waiting in the unit. The department head asked that, if possible, [the applicant] should wait for him [and] said that he would arrive later because he needed to attend the celebration. [The applicant] was calm.

It follows that [the applicant's] argument that he was unlawfully detained is unsubstantiated and does not correspond to the reality as [the applicant] absolutely voluntarily agreed to go to the police department, he was not coerced by anyone; the police officers on duty in the duty unit of the police department merely announced to [the applicant], who on a number of occasions approached the [police officers on duty] of the department head's request to wait for him; should he wished to do so [the applicant] was free to leave the duty unit any time during those three hours and forty minutes mentioned by him as he, in fact, did in the end; he stayed in a study room in the duty unit of the police department and not in a cell for administrative arrestees and on a number of occasions he went to the unit's court yard to smoke.

In those circumstances, [the applicant's] claim for compensation of non-pecuniary damage should be dismissed in view of its manifestly ill-founded character".

On 22 February 2008 the Supreme Court of the Adygeya Republic upheld the judgment on appeal, having fully endorsed the Town Court's reasoning. In particular, the Supreme Court supported the Town Court's finding that the police officers had correctly responded to the applicant's "refusal to exit the crowd of children" by taking him out of the crowd to check his identity and that the applicant had failed to provide any evidence

in support of his claim that the officers' actions had been unlawful and had caused non-pecuniary damage to him. The Supreme Court also held that the applicant's stay in the police duty unit for almost four hours did not amount to a deprivation of liberty as the applicant had voluntarily followed the police officers to the unit, had stayed in the study room and not in a cell, had freely moved in the unit, had exited the unit to the court yard to have a smoke, had used a mobile phone and had freely left the duty unit.

COMPLAINTS

The applicant complained under Articles 3, 5, 6, 11 and 13 of the Convention that he had been ill-treated and unlawfully deprived of his liberty by the police, that he had not been allowed to voice his opinion at the public manifestation on 26 September 2007 and that the courts had been biased, having refused to properly consider his arguments.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, did the deprivation of liberty for almost four hours on 26 September 2007 fall within any paragraph of this provision? What was the legal basis for the applicant's arrest? Was he arrested in accordance with a procedure prescribed by law?
2. Was there a violation of the applicant's right to freedom of expression, contrary to Article 10 of the Convention?