



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

## FIRST SECTION

Application no. 73094/10  
Ilya Grigoryevich KOTKOV  
against Russia  
lodged on 22 November 2010

### STATEMENT OF FACTS

The applicant, Mr Ilya Grigoryevich Kotkov, is a Russian national, who was born in 1982 and who is currently serving a sentence of imprisonment in Naryshkino correctional colony IK-5, Orel Region. He is represented before the Court by Mr N. Shakhnazarov, a lawyer practising in Moscow Region.

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

#### **A. The applicant's arrest and alleged ill-treatment on 3-4 March 2009**

On 3 March 2009 at approximately 2 p.m. the applicant was arrested on suspicion of robbery. The record of the applicant's arrest was drawn up at 10.20 p.m.

The applicant alleged to have been ill-treated by the police and forced into confession.

On 4 March 2009 between 9 a.m. and 10.20 a.m. the applicant signed, in the absence of a lawyer, a self-incriminating statement ("*объяснение*").

On the same day the applicant took part in an operational-search action "the questioning" (*ОПМ "опрос"*) at which he confessed again to his involvement in the robbery. The questioning was carried out in the absence of the applicant's lawyer.

Later on the same day, between 6.40 p.m. and 7 p.m., the applicant was questioned as a suspect in the presence of a lawyer and refused to make any statements.

On 5 March 2009 at approximately 10 p.m. the Orlovskiy District Court of Orel Region extended the applicant's detention until 6 p.m. on 7 March 2009 having adjourned the examination of the investigator's request for application of the custodial measure in respect of the applicant until

7 March at 11 a.m. The adjournment was sought by the defence with the view of collecting documents characterising the applicant's personality.

On 10 March 2009 a forensic medical examination was performed on the applicant. It disclosed the following injuries: an abrasion measuring 1.5×0.2 cm on the anterior surface of the neck in the upper third on the left, an abrasion measuring 2×2 cm on the anterior surface of the right shoulder joint, an abrasion measuring 6×0.5 cm on the anterior surface of the left wrist joint, an abrasion measuring 1×0.3 cm on the internal surface of the right wrist joint. The report concluded that the above injuries could have been caused through an impact of hard blunt objects between seven and ten days prior to the examination and that they had not amounted to any health damage.

On 11 March and 23 March 2009 the applicant's mother complained about her son's ill-treatment to the Prosecutor's Office.

On 31 March, 10 April, 24 April, 29 May and 24 June 2009 a chief investigator of Investigation Department of Orel Regional Prosecutor's Office (*следственный отдел по г. Орлу Следственного управления Следственного комитета при прокуратуре РФ по Орловской области*) refused to institute criminal proceedings for lack of evidence of a crime. It was found that the applicant received the injuries trying to escape from the police during his arrest.

On 31 March, unspecified date, 20 May and 15 June 2009, and 9 February 2010 respectively the deputy head of Investigation Department of Orel Regional Prosecutor's Office quashed the above refusals.

On 27 February 2010, however, the chief investigator of Investigation Department of Orel Regional Prosecutor's Office yet again refused to institute criminal proceedings.

It appears that the applicant was never questioned about the circumstances of the alleged beatings. Neither were the witnesses who saw the applicant's arrest and could disprove the version put forward by the police to the effect that the applicant showed resistance. The Investigation Department of Moscow Regional Prosecutor's Office (*следственный отдел по г. Пушкин Следственного управления Следственного комитета при прокуратуре РФ по Московской области*) entrusted to carry out the questioning of those witnesses has never done so.

## **B. The applicant's alleged ill-treatment on 18 November 2009**

The applicant alleged that on 18 November 2009 he was subjected to ill-treatment by a convoy officer. The alleged ill-treatment occurred in the building of the Orlovskiy District Court of Orel Region during the pause in the court hearing between 1.40 p.m. and 2 p.m.

When the hearing resumed the applicant complained about having been beaten up and asked for adjournment of the hearing. The hearing was adjourned.

On the same day the applicant's lawyer brought a complaint of ill-treatment to the Prosecutor's Office and requested to conduct the applicant's medical examination.

At 5.20 p.m. on the same day the applicant was examined by an internist of the remand prison. He was discovered to have a bruise on his forehead and a bruise on the right cheek-bone.

On 27 November 2009 an investigator of Investigation Department of Orel Regional Prosecutor's Office refused to institute criminal proceedings into the applicant's allegation for lack of evidence of crime.

On 27 January 2010 the deputy head of Investigation Department of Orel Regional Prosecutor's Office quashed the above decision.

The applicant was never questioned about the alleged instance of ill-treatment and appears to be unaware of any subsequent decisions on his complaint.

### **C. The applicant's trial and conviction**

During the trial on 13 January and 27 January 2010 the applicant asked the court to allow his father-in-law and his wife respectively to be his representatives. The court dismissed his request having taken into consideration the fact that the applicant was already represented by two professional lawyers.

On 5 February 2010 renewed his request, but the trial court left his request unexamined.

The applicant requested the court to obtain attendance of witnesses Yer., S., Yezh. on behalf of the defence, but his requests were dismissed.

The applicant alleged that he was not afforded an opportunity to study the text of the prosecutor's pleadings.

On 14 April 2010 the Orlovskiy District Court of Orel Region convicted the applicant of two counts of robbery and sentenced him to nine years' imprisonment. The court extensively relied on the applicant's self-incriminating statements made on 4 March 2009 allegedly as a result of coercion and in the absence of a lawyer.

On 8 June 2010 Orel Regional Court qualified both counts of robbery as an aggravated robbery and reduced the sentence to six years two months' imprisonment.

## **COMPLAINTS**

1. The applicant complains under Articles 3 and 13 of the Convention about his alleged ill-treatment on 3-4 March 2009 and 18 November 2009 and the failure of the domestic authorities to carry out an effective investigation.

2. The applicant further complains under Article 6 that the court based his conviction on his self-incriminating statements obtained through coercion and in the absence of his lawyer.

### QUESTIONS TO THE PARTIES

1. As regards the events of 3-4 March 2009 and 18 November 2009, was the applicant subjected to torture and/or inhuman or degrading treatment, in breach of Article 3 of the Convention? Reference is made to the applicant's account of events and to medical records confirming the existence of injuries on the applicant's body.
2. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 131; ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?
3. In connection with the above questions, the Government are requested to submit copies of all decisions taken by the domestic authorities in relation to the applicant's complaints of ill-treatment and the materials of the relevant inquiries.
4. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 §§ 1 and 3 (c) of the Convention? In particular, having regard to the applicant's confessions made on 4 March 2009 and to the use in the criminal proceedings of items of evidence obtained after these interrogations, were his rights not to incriminate himself and to defend himself effectively respected (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 165-166, ECHR 2010, and *Salduz v. Turkey* [GC], no. 36391/02, § 58, ECHR 2008)? Reference is made to the applicant's allegations of ill-treatment and absence of a lawyer during these interrogations.