



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

FIRST SECTION

Application no. 630/08
Almaz Ilgizovich MINIKAYEV against Russia
lodged on 10 October 2007

STATEMENT OF FACTS

The applicant, Mr Almaz Ilgizovich Minikayev, is a Russian national, who was born in 1981 and is serving a prison sentence in Bor, Nizhniy Novgorod Region.

The circumstances of the case

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

On 22 March 2005 the applicant was arrested on suspicion of robbery. According to the official version of the events, Mir. and the applicant were arrested by the police in B.'s house which they broke into with intent to commit a robbery. According to the applicant, inside the house the policemen handcuffed him and then beat him up even though he did not resist the arrest. Then they took him outside, threw him down on the porch. They kicked him and beat him with the butt of a gun during the arrest and later when he was held in police custody. As a result, the applicant confessed to the robbery.

On 23 March 2005 the applicant was examined by a forensic medical expert. Expert S. prepared report no. 358 on 25 March 2005 noting that (1) the applicant sustained injuries as a result of use of force against him by the police in the course of his arrest; (2) the injuries caused no harm to his health. She further suggested that the applicant should seek medical advice to exclude a possibility of concussion. The expert documented the following injuries:

“bruising around the eyes, intense swelling of the left eyelid, ... bruising and swelling of the soft forehead tissue, an abrasion in the centre of the forehead, bruising of the ears, abrasions on the left temple and right cheekbone, a small surface contused wound on the top of the head, hemorrhaging and a small bruise on the inner surface of the lips, a bruise on the back and hemorrhaging on the left buttock.”

On 24 March 2005 the Melekesskiy District Court of the Ulyanovsk Region authorised the applicant's pre-trial detention. The applicant remained in custody pending investigation and trial.

On 20 April 2005 the applicant signed a confession statement admitting his involvement in a robbery which had taken place on 29 December 2004.

It appears that the prosecutor's office launched an investigation into the applicant's allegations of ill-treatment and on 20 October 2005 forensic expert S. conducted another examination as regards the applicant's injuries. In the report of 25 October 2005 she reiterated her earlier findings.

On 25 May 2006 the District Court fixed the trial for 7 June 2006.

On 21 December 2006 the applicant testified in court. He revoked his confession alleging that the police officers had put mental and physical pressure on him to make him confess to the robberies and testified against other defendants. In particular, he stated as follows:

«I was arrested ... at about 10 p.m. Even though I did not resist the arrest, [police officers] beat me during the arrest and right after it in order to make me make statement necessary for them. They beat me in the yard of B.'s house, then on the porch and inside the house. When I was inside, B. punched me in the eye. [The police officers] punched and kicked me and beat me with the butt of a gun. They told me to confess to a robbery Those were M., G. and U. They accompanied the beatings with the threat that, if I refused to confess to the robbery, they would charge me with a murder. They also asked me to testify against [other defendants]. ... They beat me until I agreed to cooperate. Then G. recorded my confession. As a result of [the beatings] I sustained traumas and bodily injuries. I had a rib broken. On 23 March 2005 I told about them to forensic expert S., but she did not mention them in the report.»

On 30 December 2006 the District Court found the applicant guilty of two counts of robbery and sentenced him to eleven years' imprisonment. As regards the applicant's injuries, the court noted as follows:

«The court verified the allegations made by the applicant [and other defendants] that they had confessed under mental and physical pressure exerted by police officers, including U., B., and G. These [police officers], when questioned in court, submitted that they had not put any pressure on the defendants; nor had they made [the defendants] confess. The [district] prosecutor's office did not confirm [the defendants'] allegations either. The court concludes that the bodily injuries sustained by [the applicant and two other defendants] as documented in the forensic reports have been inflicted in the course of their lawful arrest. Regard being had to the above, the court concludes that the confessions made by [the applicant and three other defendants] about their participation in the crimes are admissible and objective, in so far as they were found credible as being in accordance with other evidence. The court discerns no evidence to confirm the defendants' allegation of the infringement of their right to defence in the course of pre-trial investigation.»

On 16 April 2007 the Ulyanovsk Regional Court upheld, in substance, the applicant's conviction on appeal. As regards the allegedly coerced confessions, the appeal court noted as follows:

«The argument raised by the defence before the appeal court that the defendants' confessions and their testimonies given in the course of pre-trial investigation whereby they had admitted that they had taken part in the crimes and testified against [each other] were obtained under physical and mental pressure has been subject to thorough examination by the trial court. It concluded that those allegations were unsubstantiated. Furthermore, the trial court relied only on the defendants' concurring statements given in the presence of their lawyers, that is, in the circumstances that excluded the possibility of unlawful methods of investigation.

COMPLAINTS

In the introductory letter of 10 October 2007 the applicant complains about ill-treatment in police custody and coerced confession. He further complains about the length of his pre-trial detention.

In the application form lodged on 22 May 2008, the applicant refers to Article 13 of the Convention in respect of his complaint about the ill-treatment in police custody.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to torture or inhuman or degrading treatment by police officers during the arrest and while in police custody, in breach of Article 3 of the Convention? Having regard to the procedural protection from inhuman or degrading treatment, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?
2. As regards the applicant's arrest and detention in police custody, did he have at his disposal an effective domestic remedy for his complaint under Article 3, as required by Article 13 of the Convention?
3. The Government are requested to produce the complete investigation file pertaining to the applicant's allegations of ill-treatment.
4. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention, in respect of his complaints under Article 3 of the Convention? In particular, did the applicant invoke before the national authorities, at least in substance, the rights under Article 3 on which he now wishes to rely before the Court (*Akulinin and Babich v. Russia*, no. 5742/02, §§ 25-34, 2 October 2008)?
5. Was the length of the applicant's pre-detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? In particular, were the domestic courts' decisions extending the applicant's detention founded on "relevant and sufficient" reasons and were the proceedings conducted with a "special diligence" (*Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilykov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?
6. The Government are requested to produce the decisions of the national judicial authorities concerning the applicant's pre-trial detention.
7. In the determination of the criminal charge against him, did the applicant have a fair hearing as required by Article 6 § 1 of the Convention? In particular, was his right to remain silent and not to incriminate himself respected, having regard to the fact that the confession statements made by the applicant served as the ground for his conviction (*Gäfgen v. Germany* [GC], no. 22978/05, §§ 162-68, ECHR 2010)?