



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

FIRST SECTION

DECISION

Application no. 7020/03
Konstantin Vladimirovich RYAZANOV
against Russia

The European Court of Human Rights (First Section), sitting on 14 January 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 22 January 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Konstantin Vladimirovich Ryazanov, is a Russian national who was born in 1975 and lives in the town of Kamensk-Uralskiy in the Sverdlovsk Region.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and subsequently by V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

1. The applicant's arrests and the subsequent criminal proceedings

3. On 3 November 2000 the applicant and his brother stole some copper cable from a car park and then went to a river bank nearby to strip it and prepare it for sale. After following their tracks, the police arrested the brothers, who at that very moment were burning the cable jacket. On the same day the police drew up a report detailing the circumstances of their arrest, together with a crime scene inspection record.

4. The applicant and his brother were questioned and cross-examined by an investigator immediately after the events and both confirmed their involvement in this incident of theft. Later on that day, they were released against an undertaking not to leave their town of residence during the proceedings.

5. On 29 January 2001 the brothers were caught red-handed removing one hundred metres of copper cable from the basement of a block of flats. The police officers drew up a crime scene inspection record and an arrest record describing the circumstances of the arrest. In the presence of attesting witnesses they seized the applicant's bag containing the freshly removed copper cable.

6. Shortly afterwards the brothers were taken to the police station. A police officer drew up an "explanation" record, which set out the reasons for the arrest.

7. According to the applicant, in the police station he was put in a small, dark, overcrowded cell. A few hours later he was called for an interview, during which the police officers ill-treated him, forcing him to make a confession. They allegedly punched him in the back, put a gas mask over his face preventing him from breathing, and stood on his hand. Eventually he signed several blank sheets of paper. The applicant claims that he did not have any visible injuries on his body as a result of the ill-treatment and that he did not undergo any medical examinations in that connection after the events. The applicant did not bring any complaints in connection with the alleged ill-treatment before competent domestic authorities.

8. On 30 January 2001 the applicant's brother confessed to ten incidents of theft committed together with the applicant on 3 November, 1, 4, 13, 18, 19, 30 (2 incidents) and 31 December 2000 and 29 January 2001. The confessions were made in the presence of attesting witnesses at the locations at which the offences had been committed.

9. Subsequently, the investigating authorities accused the applicant and his brother of additional incidents of theft of copper cable. In total, the investigation brought charges in respect of fifty counts of theft allegedly committed on 3 November, 1 (two incidents), 4 (two incidents), 7 (two incidents), 9, 11, 13, 15 (two incidents), 16 (four incidents), 18 (five incidents), 19, 20 (three incidents), 21 (three incidents), 23 (two incidents),

24, 30 (three incidents) and 31 (four incidents) December 2000, and 2, 9, 11, 12, 22, 26 (two incidents), 28 (four incidents) and 29 January 2001.

2. The judgment of 22 August 2002

10. On 22 August 2002 the Krasnogorskiy District Court of the Town of Kamensk-Uralsk in the Sverdlovsk Region (“the District Court”) examined the applicant’s criminal case.

11. During the hearing, which was held in the presence of two defence counsel, the brothers admitted their involvement in the incidents of 3 November 2000 and 29 January 2001, but denied any participation in the rest of the incidents. They also stated that the investigating authorities had put pressure on them on 29 January 2001, forcing them to sign blank sheets of paper. The relevant part of the record of that hearing reads as follows:

“... Prosecutor: What incidents of theft do you admit [were committed by you]?”

[The applicant]: I admit to the incident of [3] November committed in the car park, but I don’t agree with the legal classification of our actions. I consider that we committed an attempted crime as we were caught near the place of the incident and at the moment of the arrest we had not [yet] stripped the cable ...

[The applicant]: I also admit to the incident of 29 January 2001. I do not admit the remaining incidents of theft. We were interviewed in breach of the Criminal Procedure Code of Russia.

The prosecutor: What do you mean, in breach of?

[The applicant]: Formal charges had not been brought against me and also I was forced to sign blank sheets of paper ...”

12. At the court hearing of 22 August 2002 the prosecutor withdrew the charges in respect of forty incidents of theft allegedly committed on 1, 4, 7 (two incidents), 9, 11, 15 (two incidents), 16 (four incidents), 18 (four incidents), 20 (three incidents), 21 (three incidents), 23 (two incidents), 24, 30 and 31 (three incidents) December 2000 and 2, 9, 11, 12, 22, 26 (two incidents) and 28 (four incidents) January 2001 owing to lack of evidence.

13. On 28 August 2002 the District Court convicted the applicant and his brother of multiple counts of theft and attempted theft committed by an organised criminal group. The court established the applicant’s involvement in ten incidents of theft committed on 3 November, 1, 4, 13, 18, 19, 30 (2 incidents) and 31 December 2000 and 29 January 2001. The applicant was sentenced to five years’ imprisonment.

14. The court’s findings in respect of the applicant’s involvement in the incident of 3 November 2000 were based on the self-incriminating statements given by the brothers during the cross-examination of 3 November 2000, and confirmed by them in person at the trial court hearings; the statements of the attesting witnesses and police officers, according to which on 30 January 2001 the applicant’s brother had confessed to the thefts and indicated the block of flats where they had

stripped the wires; the crime scene record of 3 November 2000; the police report of 3 November 2000; and material evidence such as a hand cart and a plastic bag full of copper wires.

15. The applicant's conviction in respect of the incidents of theft of 1, 13 and 19 December 2000 rested on the statements of his brother given on 30 January 2001 at the locations of the thefts and in the presence of attesting witnesses and a police officer; the statements of these attesting witnesses and the police officer given in court; and the crime scene inspection records of 1, 13 and 19 December 2000.

16. The court's conclusions regarding the applicant's involvement in the incidents of 4 and 18 December, the two incidents of 30 December and the incident of 31 December 2000 were based on the statements of the applicant's brother of 30 January 2001 given at the locations of the thefts and in the presence of attesting witnesses and a police officer, and the statements of these attesting witnesses and the police officer given at the trial court hearings.

17. The conviction concerning the incident of 29 January 2001 rested on the statements of the applicant and his brother admitting their involvement in the incidents of theft, given by them in person at the trial court hearings; the crime scene inspection record; and the arrest record of 29 January 2001, which confirmed that the brothers had been caught red-handed. It was also supported by the court statements of the attesting witnesses and the police officers confirming the applicant's brother's confession of 30 January 2001, and material evidence such as a plastic bag containing copper wires.

18. The relevant part of the decision reads as follows:

“[The applicant and his brother], acting in concert and as an organised criminal group, committed repeated thefts and attempted thefts aggravated by unlawful entry to premises.

The crimes were committed in the town of Kamensk-Uralsk in the following circumstances: [description of ten incidents of theft].

At the court hearing the [applicant] partially admitted his guilt, stating that on 3 November 2000 he and his brother, equipped with a hand cart and pliers, had gone to a [parking area], removed the copper wires located there and then gone to a river bank to burn the jackets [off the wires]. At the river bank they had been caught by police. On 29 January 2001, at night time, together with his brother, he had removed a telephone cable from the basement of a block of flats in order to sell it. Shortly afterwards [he and his brother] had been arrested by the police. He had not committed any other offences.

At the court hearing [the applicant's brother] partially admitted his guilt, stating that on 3 November 2000 he and his brother had gone to a [car park]. There they had removed copper wires and then walked down to a river bank around 30-40 metres away to strip the cable. When they were burning and stripping the wires, they had been apprehended by the police. On 29 January 2001, at night time, together with his brother, he had found a door open leading into the basement of a block of flats. They had gone inside and [the applicant] had removed copper wires. [The applicant's

brother] had stripped them and put them in his bag. Then they had been arrested by the police. He had not committed any other offences.

The court has assessed the evidence in the present case. It is convinced that the guilt of [the applicant and his brother] is confirmed by the statements of the witnesses and the other pieces of evidence gathered by the investigating authorities.

When questioned in court, [the first witness] stated that in December 2000 a police officer had invited her to be an attesting witness. In her presence a man had said that together with his brother he had removed wires from near a block of flats located at [address of the block of flats]. The man had also pointed to another house and stated that they had also removed wires there. The man had given his statements in her presence and in the presence of another attesting witness, her neighbour. [The first witness] signed the relevant investigation record.

When questioned in court, [the second witness] stated that around December 2000, near a block of flats located at [address of the block of flats], he had performed the duties of an attesting witness. Police officers had introduced a young man to him; that man had stated that, together with his brother, he had removed a cable from the basement of a block of flats nearby. [The second witness] signed the relevant investigation record.

When questioned in court, [the third witness] stated that around eighteen months earlier he had attended investigative measures as an attesting witness. During the relevant procedural action a man had told him that he and his brother had removed a cable from a block of flats located at [address of the block of flats].

When questioned in court, [the fourth witness] stated that around two years earlier, near his house, police officers had invited him to play the role of an attesting witness. A man had confessed to the theft of cabling from near entrance no. 6 of a block of flats nearby. Police officers had not instructed that man what to say. The man had spoken voluntarily.

[The fifth witness] did not appear before the court. The statements she had given at the preliminary investigation stage were read out. She stated that in January 2001 she had been out walking with an acquaintance when police officers had invited them to act as attesting witnesses. They had agreed. They had seen a man standing near a car. He had said that he had removed a cable from the basement of the block of flats located at [address of the block of flats]. He had stated that they had then burned the cable, stripped it and sold it. The man had said all this of his own volition. No one had put pressure on him.

When questioned in court, [the police officer who had been present at the investigative action of 30 January 2001] stated that at the preliminary investigation stage the brothers had given self-incriminating statements of their own volition in respect of all the offences.

The court casts no doubt on the validity of the witness evidence because it was consistent and collaborated by other pieces of evidence ...

The arrest of the accused persons in possession of the stolen wires is confirmed by the arrest record of 3 November 2000. According to this record, when patrolling a territory, police officers found an open junction box with no wires inside. There were footprints and cart tracks in the snow nearby that led towards a river. On the river bank the police found the accused, who were stripping wires.

During cross-examination the [applicant and his brother] confirmed that on 3 November 2000 they had stolen copper wiring from near a parking area.

The confiscated cart and bag of copper wires were examined during the preliminary investigation and added to the case file as pieces of concrete evidence. Later the bag of wires was given for storage to one of the victims of their crimes ...

During the investigative activities, the [applicant's brother], of his own volition, indicated the locations where the crimes had been committed.

Stolen cables confiscated from [the applicant] at the stage preliminary investigation stage were placed in a storage room at the Krasnogorsk Department of the Interior.

An analysis of the evidence shows that the statements of the accused persons were aimed at hindering the investigation.

In the court's opinion, in refusing to admit their guilt the accused persons were attempting to avoid criminal liability ...

The court accepts the classification of the offences suggested by the prosecutor. The brothers, acting as an organised criminal group, committed thefts and an attempted theft aggravated by unlawful entry to premises..."

19. According to the applicant, the trial court hearing records were inaccurate, but he never made any request for them to be amended.

20. The applicant and his brother appealed against sentence. They complained that their conviction was unfounded. No complaints were made by the brothers about a lack of legal assistance.

21. On 18 October 2002 the Sverdlovsk Regional Court examined the case on appeal and upheld the applicants' conviction on seven counts of theft committed on 3 November, 1, 4, 13, 18 and 31 December 2000 and 29 January 2001.

22. The court dropped the charges relating to the incident of theft of 19 December 2000 and the two incidents of theft of 30 December 2000, as the damage caused by the brothers in those incidents was insignificant and therefore could not lead to a prosecution.

23. On 27 May 2003 the Sverdlovsk Regional Court refused to reopen the case by way of supervisory review.

B. Relevant domestic law

1. The Constitution

24. Article 21 of the Constitution provides that no one may be subjected to torture, violence or any other cruel or degrading treatment or punishment.

25. Article 48 provides that everyone has a right to qualified legal assistance. It also provides that an arrested or detained person or a person accused of a criminal offence has a right to legal representation from the moment of his or her arrest, placement into custody, or the bringing of charges.

26. Article 51 provides that no one is obliged to give evidence against himself or herself or a spouse or close relative.

2. *Criminal Code of the Russian Federation of 1996*

27. Article 116 § 1 of the Criminal Code of the Russian Federation of 13 June 1996 provides that the application to another person of physical force which has caused physical pain but has not resulted in any damage to health is punishable by a fine, compulsory or correctional labour, or detention for a period of up to three months.

28. Article 286 § 3 (a) of the Criminal Code provides that actions on the part of a public official which clearly exceed his authority and entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, are punishable by three to ten years' imprisonment, with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

3. *Code of Criminal Procedure of the RSFSR of 1960*

29. Article 47 of the Code of Criminal Procedure of the Russian Federation ("the Code"), as in force at the material time, provided that a lawyer must be called to take part in a case at the moment when charges were brought or, if a person suspected of a criminal offence was arrested or detained before charges were brought against him, at the moment when the arrest record or a detention decision was read out to him.

30. Article 50 of the Code established that an accused could refuse legal assistance at any point in the criminal proceedings. If the accused was charged with criminal offences punishable by the death penalty, such a refusal was not binding on a court, an investigator or a prosecutor.

31. Article 3, 108 and 109 of the Code required that a competent authority institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to carry out all measures provided for by law to establish the facts and to identify those responsible and secure their conviction. The decision whether or not to institute criminal proceedings had to be taken within three days of the first report on the relevant facts.

32. No criminal proceedings could be brought in the absence of a *corpus delicti* (Article 5). Where an investigating body refused to open or terminated a criminal investigation, a reasoned decision was to be provided. Such decisions could be appealed to a higher-ranking prosecutor or to a court (Articles 113 and 209).

33. During criminal proceedings, persons who had been granted victim status could submit evidence and file applications, had full access to the case file once the investigation was complete, and could challenge appointments and appeal decisions or judgments in the case. At an inquest, the close relatives of the deceased were to be granted victim status (Article 53).

COMPLAINTS

34. Under Article 3 of the Convention, the applicant complained of ill-treatment by the police on 29 January 2001.

35. Under Article 6 §§ 1, 3 (c, d) of the Convention, the applicant claimed that on 29 January 2001 he had been forced to give self-incriminating statements, which had subsequently been used for his conviction. He further complained of a lack of legal assistance on 29 January 2001. In addition, he stated that the trial court hearing records were inaccurate and the courts had wrongly assessed the evidence in his case. He was also dissatisfied with the outcome of the criminal proceedings in general.

THE LAW

A. Complaint concerning the applicant's ill-treatment

36. The applicant alleged that he had been ill-treated by police officers on 29 January 2001, in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

37. The Court notes that the applicant did not in any concrete or substantiated manner raise the issue of the alleged ill-treatment before any competent domestic authority (see, for example, *Borgdorf v. Russia* (dec.), no. 20427/05, §§ 29-32, 22 October 2013).

38. It follows, therefore, that the complaint of ill-treatment is inadmissible on account of the applicant's failure to exhaust the available domestic remedies and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Complaint concerning the right to a fair trial

39. The applicant's complaints about the use of self-incriminating statements allegedly obtained on 29 January 2001 under duress; lack of legal assistance on 29 January 2001; inaccurate trial court hearing records; and wrongly assessed evidence in his case fall to be examined under Article 6 §§ 1 and 3 (c) of the Convention. Article 6 provides, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...”

1. The submissions of the parties

40. The Government submitted that the criminal proceedings against the applicant had been fair, that the charges against him had been based on numerous pieces of evidence confirming his guilt and that the applicant's conviction in respect of the episode of 29 January 2001 had not been based on the applicant's self-incriminatory statements.

41. The applicant disagreed and maintained his complaints.

2. The Court's assessment

42. As regards the use of the evidence allegedly obtained by ill-treatment on 29 January 2001, and the alleged lack of legal assistance on that date, the Court observes that the applicant has not produced any evidence in support of his allegations (such as medical certificates or statements by fellow detainees or any other witnesses), and has thus failed to substantiate his claim. Moreover, there is nothing to indicate that the police questioned the applicant on 29 January 2001 at all, as there is no trace of any such investigative activity in the documents submitted to the Court by the parties. It is furthermore clear from the first-instance judgment of 18 October 2002 and the appeal decision of 27 May 2003 that in convicting the applicant in relation to the incident of 29 January 2001 the courts did not rely on any self-incriminatory statements made by him regarding that incident.

43. As to the complaints about alleged misrepresentations in the trial court hearing records, the Court firstly observes that the applicant failed to provide the Court with a list of the alleged omissions. There is nothing to suggest that they were serious or that they affected the outcome of the proceedings as a whole. Secondly, the Court notes that the trial court judge and secretary who were present at the trial court hearings signed the trial court hearing records, confirming their validity and accuracy. The applicant failed to submit any evidence to the contrary, such as audio recordings of the hearings or witness statements. Accordingly, the Court sees no reason to cast doubt on the accuracy of the trial court hearing records.

44. As concerns the remaining complaints about the assessment of evidence and the allegedly unsafe conviction, the Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility and assessment of evidence, which are primarily a matter for regulation under

national law (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V). Furthermore, it is not the role of the Court to determine, as a matter of principle, whether a particular piece of evidence is necessary to decide a case (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII) or, indeed, whether the applicant is guilty or not. The question which must be answered is whether the alleged defects impaired the fairness of the proceedings taken as a whole. On the facts of the present case, the Court observes that the applicant was fully able to contest the authenticity and admissibility of the evidence at each stage of the proceedings and the courts addressed his arguments either by rectifying the alleged mistakes or rejecting them as unsubstantiated. That being so, and having regard to the extensive body of evidence which was presented by both parties and then carefully examined by the courts, the Court cannot conclude that any defects alleged by the applicant adversely affected the fairness of the proceedings as a whole.

45. Having regard to the foregoing, the Court concludes that these parts of the application are manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention and therefore must be rejected.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President