



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

Communicated on 5 May 2014

FIRST SECTION

Application no. 19476/05
Rinat Ildusovich AKHATOV
against Russia
lodged on 27 April 2005

STATEMENT OF FACTS

1. The applicant, Mr Rinat Ildusovich Akhatov, is a Russian national, who was born in 1983 and lives in Gremyachinsk.

A. The circumstances of the case

2. In the early morning of 29 August 2004, at about 2:30 am, police patrol apprehended the applicant on a street in Gremyachinsk on suspicion of rape. The police officers Mr Rkh. and Mr Kr. found the applicant hiding in a bush. They showed the applicant to the alleged victim, Ms P., who immediately identified him as the rapist. The applicant denied having raped her. He explained to the police that he had been passing by, that he heard cries of Ms P. and had run for help to the scene.

3. According to the reports by Mr Rkh. and Mr Kr., police officers, at the moment of his arrest the applicant behaved aggressively. He verbally assaulted policemen, threatened them, pushed them in the chest and tried to punch one of the officers, Mr Kr. When handcuffed and brought to the police station, the applicant continued to threaten police officers and insult them before their colleagues and other witnesses. He also tried to punch Mr Gl., an officer who conducted body search of the applicant before his incarceration. The account of the applicant's violent behaviour given by the policemen was later corroborated by three witnesses who had been present at the scene at the moment of the applicant's arrest, Mr Gol., Mr Cher., and Ms Shim., as well by several other policemen from the police station. Two witnesses who had seen the applicant in the evening shortly before his arrest testified that the applicant must have been seriously drunk.

4. On 30 August 2004 police brought the applicant before the justice of the peace. Judge St. examined reports by two policemen, testimony of two witnesses of the apprehension and heard the applicant in person. Following

a brief hearing the judge established that the applicant “had resisted police officers ... had refused in categorical form their lawful order to follow them to the police station, had grasped hold of their uniform, had pushed them away and had tried to escape”.

5. The judge found the applicant guilty of an offence provided by Article 19.3 part 1 of the Code of Administrative Offences (“Failure to comply with the lawful order of a police officer ...”) and sentenced the applicant to five days’ imprisonment. The conviction was not appealed against and became final.

6. On 1 September 2004 the town prosecutor opened criminal investigation into the alleged rape of Ms P. On 3 September 2004 the investigator requested a detention warrant from the court in respect of the applicant. On the same day the Gremyachniskiy Town Court ordered the applicant’s detention on remand for two months.

7. On 27 October 2004 the applicant was charged under Article 131 of the Criminal Code (“Rape”) and Articles 318 and 319 of the Criminal Code (“Use of violence against a representative of a public authority acting in the discharge of his duties” and “Insults to a representative of a public authority”). As follows from the act of charging, the facts in connection with which the applicant was charged under Articles 318 and 319 were the same as the events which had earlier led to his 5-days’ administrative arrest under Article 19.3 part 1 of the Code of Administrative Offences (CAO), namely his aggressive behaviour and verbal assaults of the policemen following his arrest on 29 August 2004.

8. On 9 November 2004 the prosecution submitted the applicant’s case with the bill of indictment to the court.

9. On 19 January 2005 the Gremyachniskiy Town Court found the applicant guilty of rape of Ms P. In addition, the applicant was found guilty under Articles 318 and 319 of the Criminal Code and sentenced to 1 year of imprisonment and 9 months of correctional labour respectively. The final sentence under all heads was defined as 7 years’ imprisonment.

10. The applicant’s lawyer appealed. In his brief of appeal he complained of incorrect assessment of evidence by the trial court and of various procedural breaches during the investigation and trial. He also complained that the applicant had been punished for the same offence twice: thus, on 30 August 2004 the justice of the peace had found him guilty of not complying with the lawful orders of policemen, i.e. the same behaviour which led to his conviction under Article 318 and 319 of the Criminal Code.

11. On 1 March 2005 the Perm Regional Court upheld the conviction on appeal in a summary manner. On the point concerning the alleged double jeopardy the Regional Court held as follows:

“As to the legitimacy of the administrative punishment imposed on [the applicant], this question must be resolved in the order established [by law].”

COMPLAINT

The applicant complains under Article 4 of Protocol No. 7 to the Convention that by sentencing him first under Article 19.3 part 1 of the

Code of Administrative Offences and then under Articles 318 and 319 of the Criminal Code for the same acts the Russian courts punished him twice.

QUESTIONS TO THE PARTIES

1. As regards the applicant's "administrative arrest" of 30 August 2004, can it be regarded as a "criminal punishment" within the autonomous meaning of Article 4 of the Protocol No. 7 to the Convention (see *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, § 52, ECHR 2009)?

2. If the applicant's administrative arrest is to be regarded as a criminal sanction, was the applicant's subsequent conviction under Articles 318 and 319 of the Criminal Code compatible with Article 4 of Protocol No. 7 to the Convention?