



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

Communicated on 12 May 2014

FIRST SECTION

Application no. 13074/07
Mikhail Yevgenyevich BALBASHEV
against Russia
lodged on 18 January 2007

STATEMENT OF FACTS

The applicant, Mr Mikhail Yevgenyevich Balbashev, is a Russian national, who was born in 1980 and lived in Belopolye prior to his arrest. He is currently serving his sentence of imprisonment in the Irkutsk Region.

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

A. Alleged ill-treatment on 28 February - 1 March 2003 and the applicant's injuries

On 28 February 2003 at 11 p.m. the applicant together with five other persons was arrested on suspicion of several counts of robbery and murder and brought to the district department of the interior ("the GROVD") of Tulun, the Irkutsk Region. The applicant submits that he and other arrestees were beaten by the policemen on 28 February 2003, during their apprehension, and on 1 March 2003, after their arrival at the GROVD, at night and during the day and that as a result he made a confession statement. The applicant maintains that he was given access to a lawyer only on the second day after his arrest.

The applicant submits a copy of the medical forensic expert report No. 198 of 1 March 2003 certifying that on at 4 a.m. on that date a doctor recorded a bruise on the applicant's right cheek and a contusion of both lips.

B. The authorities' response to the applicant's complaint of police ill-treatment

It appears that the applicant did not complain of the alleged ill-treatment until the trial in the criminal case against him and the other persons started. On an unspecified date the applicant complained of the alleged ill-treatment

before the trial court. On 16 November 2005 the prosecutor in charge of the applicant's criminal case compiled a report on the basis of the applicant's ill-treatment allegations and ordered an inquiry into the matter. On 22 November 2005, after a pre-investigation inquiry under Article 144 of the Code of Criminal procedure, prosecutor S. of the Tulun Inter-district Prosecutor's office refused to initiate criminal proceedings. The decision cited the account of the events given by the policemen concerned. The policemen acknowledged that they had used force against the applicant and other co-accused as the latter had been armed and had resisted the arrest by shooting at the policemen. They denied the applicant's allegations of ill-treatment in the GROVD. It appears that the applicant was not questioned in the course of the inquiry.

On 13 September 2006 the applicant's complaint against the decision of 22 November 2005 was dismissed by the Tulun Town court of the Irkutsk Region on the ground that the complaint had already been examined in substance in the course of the applicant's trial (see below). On 27 November 2006 the decision of 13 September 2006 was upheld on appeal by the Irkutsk Regional court.

C. The applicant's trial

In the course of the trial the applicant pleaded guilty in respect of all the charges, save for one count of robbery, one murder and one theft. He submitted that the confessions to the crimes he pleaded not guilty for had been given in coercive environment and stated that the injuries detected on him on 1 March 2003 had been inflicted by the policemen. The first-instance court studied the medical report and heard the policemen having taken part in the arrest of the co-accused. The policemen reiterated their statements given in the course of the prosecutor's inquiry.

On 13 February 2006 the Irkutsk Regional court convicted the applicant of banditry and carrying weapons as well as of 8 counts of robbery, 5 thefts and 2 murders, including those the applicant had pleaded not guilty for. By the same judgment thirteen other co-accused were convicted of similar crimes. The court referred, *inter alia*, to the confession statement given by the applicant on 1 March 2003. With regard to the ill-treatment allegations, the judgment cited the policemen's statements and the findings of medical forensic expert report No. 198 of 1 March 2003, and held that the use of force upon the applicant's arrest was lawful and not excessive.

The applicant did not submit a copy of his grounds of appeal. It appears from the summary of the defence arguments in the appeal judgment that the co-accused challenged the admissibility of the confessions as obtained under duress.

On 16 May 2008 the Supreme Court of Russia upheld the applicant's conviction on appeal, having found that the lower court duly and thoroughly assessed the evidence and reached reasoned conclusions. With regard to the ill-treatment complaint the court referred to the findings of the trial court and concluded that there was no reason to depart from them.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention about ill-treatment in police custody and of the lack of an effective investigation into his relevant complaint, and under Article 6 of excessive length of the proceedings in his criminal case, use of confessions obtained under duress and lack of legal assistance after the arrest.

QUESTIONS TO THE PARTIES

1. When did the applicant first complained to the authorities of the alleged ill-treatment? The parties are invited to submit a copy of his complaint.

2. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by the police officers on 28 February - 1 March 2003, in breach of Article 3 of the Convention?

In answering that question the Government are requested to address, *inter alia*, the following points concerning the circumstances surrounding the applicant's alleged ill-treatment:

(a) Once in the hands of the police on 28 February 2003:

(i) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(ii) Was he given the possibility of informing his family about his apprehension and, if so, when?

(iii) Was he given access to a lawyer and, if so, when? Was that a lawyer on duty invited by a police officer or an investigator, or a lawyer of the applicant's choice? If given initially a State-appointed lawyer, when did the applicant receive access to a lawyer of his choice?

(iv) Was he given access to a doctor and, if so, when?

(b) What activities, where, when and by whom were conducted with the applicant's participation on 28 February-1 March 2003? The Government are required to provide a detailed hour-by-hour report on what happened during that period and to account for the time spent by the applicant in the hands of police. Where was the applicant held during that period? What was his procedural status? What confessions and/or statements (*«явка с повинной; показания»*) did he give during that period? Was he given access to a lawyer before and during each such activity, and, if so, was that a lawyer on duty invited by a police officer or an investigator, or a lawyer of the applicant's choice?

The Government are required to provide relevant procedural and other documents in support of their answers, including where applicable the decision on bringing the criminal proceedings within the framework of which the applicant was apprehended; records of the applicant's apprehension as a suspect; records of investigative activities including interrogations as a suspect and accused, surrender with a confession of guilt (*«явка с повинной»*), if any; records of the applicant's entering and leaving the police station from the Register of persons brought to a police station (*«Книга учета лиц, доставленных в дежурную часть органа*

внутренних дел»), any documents attesting to his state of health and injuries during the period concerned, etc.

3. Having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), did the State conduct an investigation in compliance with Article 3 of the Convention (see, among many others, *Mikheyev v. Russia*, no. 77617/01, §§ 108-10 and 121, 26 January 2006)? In particular, considering that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

(a) Did the domestic authorities discharge such a duty?

(b) Were the police officers, which assisted the investigating authority and carried out operational activities in the course of the pre-investigation inquiry into the applicant's complaint, impartial and independent from the police officers who allegedly subjected the applicant to ill-treatment?

(c) Was the investigating authority which examined the applicant's complaint of police ill-treatment impartial and independent from the police officers who allegedly subjected the applicant to ill-treatment? Did those police officers' department conduct operative and other supporting activities in cases investigated by the investigating authority in question?

(d) What operational and other activities were carried out in the course of the pre-investigation inquiry? Was the applicant questioned?

(e) Does the pre investigation inquiry under Articles 144-45 of the Code of Criminal Procedure of the Russian Federation provide for procedural guarantees and investigative methods capable of establishing the facts of the case and leading to the identification and punishment of those responsible, where there is an arguable claim of ill-treatment under Article 3 of the Convention? Did the domestic authorities' refusal to bring criminal proceedings and, hence, to conduct a preliminary investigation according to Part VIII, Articles 150-226 of the Code of Criminal Procedure breach the State's obligation to conduct an investigation in compliance with Article 3?

The Government are invited to submit copies of the materials of the pre-investigation inquiry under Articles 144-45 of the Code of Criminal Procedure and other relevant documents.

(f) Were the issue of ill-treatment and the issue of an effective investigation of the related complaint examined in substance during the applicant's trial and on appeal against the trial judgment? Was the trial court empowered to afford any adequate redress in respect of these two issues? (see *Vladimir Romanov v. Russia*, no. 41461/02, §§ 50-52, 24 July 2008; *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008; and *Lopata v. Russia*, no. 72250/01, § 107, 13 July 2010)?

4. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention as required by Article 13 of the Convention?

5. Was the length of the criminal proceedings against the applicant compatible with the requirements of Article 6 § 1?

6. Were the applicant's defence rights and the principle of the fairness of proceedings enshrined in Article 6 §§ 1 and 3 (c) of the Convention respected in the present case? Reference is being made to the applicant's submission that the domestic courts convicted him, in particular, on the basis of his confession statement obtained on 1 March 2003 when he had no legal representation. The parties are invited to specify, in particular:

(a) Was any evidence obtained on 28 February and 1 March 2003 and, in particular, the applicant's self-incriminating statement, used for convicting the applicant? Was such evidence obtained in coercive environment and in the absence of a lawyer?

(b) Did the absence or delay of legal assistance on 28 February - 1 March 2003 caused "irretrievable" damage to the defence, thus leading to a violation of Article 6 of the Convention (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008)? Did the domestic courts' admission of statement produced in the absence of a lawyer impair the applicant's right to a fair hearing?

(c) Was his conviction based, solely or to a decisive extent, on evidence obtained during time when the applicant had no legal assistance?

Did the applicant exhaust the domestic remedies in relation to the above complaint? The parties are requested to provide relevant documents, including a copy of the trial record (*«протокол судебного заседания»*) and copies of the grounds of appeal against the judgment of 13 February 2006.

7. The applicant is requested to submit a copy of his identification document.