



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

Communicated on 9 July 2014

FIRST SECTION

Application no. 51098/07
Gennadiy Nikolayevich KURKIN
against Russia
lodged on 15 October 2007

STATEMENT OF FACTS

The applicant, Mr Gennadiy Nikolayevich Kurkin, is a Russian national, who was born in 1972 and lives in the Republic of Tatarstan. He is currently serving his sentence of imprisonment in the Tula Region.

A. Alleged ill-treatment on 18 and 19 July 2006

1. The applicant's arrest and alleged ill-treatment

On 18 July 2006 at approximately 12.30 p.m. the officers of the Belevskiy District Police Station of Tula («Белевский РОВД г. Тула») arrested the applicant on suspicion of murder and robbery.

According to the officers' statements in the course of the domestic proceedings initiated by the applicant (see below), after an interrogation the applicant was released in the evening of the same day, but re-arrested on 19 July 2006.

According to the applicant, in the course of the interrogation on 18 July 2006 the policemen beat him up, threatened to kill him by aiming a gun into the applicant's head, put a plastic bag on his head in order to suffocate him. The applicant spent the night in the police station, handcuffed to a heating radiator. On the following day, 19 July 2006, as a result of the ill-treatment the applicant confessed to the crimes he was suspected of.

2. Information on the applicant's transfer to the IVS and the arrest record

According to the applicant's statements at the trial, at 6.40 p.m. on 19 July 2006 he was put in the temporary detention facility (IVS) of the Belevskiy District Police Station.

According to the register of inmates of the police station, the applicant was admitted to the IVS at 7.40 p.m. on that date.

At 8.20 p.m. on 19 July 2006 the record of the applicant's apprehension was drawn.

3. Events of 20-21 July 2006

It appears that at some point on 20 July 2006 the applicant got access to a court-appointed lawyer and was questioned as a suspect in the lawyer's presence. According to the applicant, he refused to testify and maintained that his confessions had been obtained under duress. According to the findings of the first-instance court which tried the applicant's criminal case (see below), the applicant did not make any statement with regard to the alleged ill-treatment during his interrogation on 20 July 2006.

On 21 July 2006 an unspecified court ordered the applicant's arrest pending investigation.

B. The applicant's injuries and respective medical documents

It follows from the documents provided by the applicant that upon his arrival in the IVS on 19 July 2006 he was examined by a doctor on duty, who recorded abrasions under the applicant's eyes and on his chest.

According to the medical forensic report no. 198 drawn up on 21 July 2006 at 4 p.m., the applicant had a bruise on his left-eye lid which had been inflicted by a solid blunt object within 4-5 days prior to the examination and had not caused any damage to the applicant's health.

C. Tula authorities' response to the applicant's complaint of police ill-treatment

1. Refusals to open a criminal case

On 15 August 2006 the applicant complained to the Belevskiy District Prosecutor of the ill-treatment by the police officers. It appears that since then the investigators delivered not less than five decisions not to open criminal proceedings, dated 18 August 2006, 24 January 2007, 27 November 2008, 28 May 2009 and 3 June 2009. At least three decisions, dated 18 August 2006, 24 January 2007 and 27 November 2008, were subsequently annulled by a superior prosecutor, and the case was remitted for further inquiry.

The latest available refusal to open criminal proceedings was issued on 3 June 2009 by the investigator of the Odoyevskiy Inter-District Investigative Department of the Investigative Committee. With reference to the police officers' statements the investigator rejected the applicant's allegations of ill-treatment and unacknowledged overnight detention as unfounded and considered that the injuries described in the expert report of 21 July 2006 must have been inflicted prior to the applicant's apprehension which, according to the inquiry materials, had taken place on 19 July 2006.

2. Appeals against some refusals to open criminal proceedings

The applicant appealed to a court against the refusal to open criminal proceedings of 27 November 2008. On 28 April 2010 the Suvorovskiy District Court of the Tula Region discontinued the proceedings on the ground that the decision of 27 November 2008 had been annulled in the meantime. On 14 July 2010 the Tula Regional Court upheld the district court's decision.

The applicant also appealed to a court against the decision not to open criminal proceedings of 3 June 2009. On 16 December 2010 the Belevskiy District Court of the Tula Region refused to accept the complaint for examination on the ground that those issues had already been examined by the courts during the trial against the applicant (see below). On 16 March 2011 the Tula Regional Court endorsed the district court's reasoning and upheld the decision of 16 December 2010.

D. The applicant's trial

On 30 January 2007 the Tula Regional Court convicted the applicant of murder and robbery and sentenced him to sixteen years' imprisonment. The court referred, *inter alia*, to the confession statement given by the applicant on 19 July 2006.

The judgment cited the findings of the forensic expert report no. 198 of 21 July 2006, as well as submissions of the concerned police officers L., Yu. and P. made in the court room. The policemen denied the applicant's allegations and testified that on 18 July 2006 the applicant had been brought to the police station for a "talk". The officers had seen bruises on the applicant's face; the latter explained that he had had a fight with another person on the previous day. On the same day the applicant had been released. On 19 July 2006 the applicant had been again summoned to the police station, where he voluntarily confessed.

The court also took into account that during his interrogation on 20 July 2006 the applicant had not complained of the alleged ill-treatment. It also referred to an unspecified decision not to open criminal proceedings taken upon the applicant's complaints to the District prosecutor. The court concluded that the applicant's account of the events was not corroborated by the evidence in the court's possession.

It transpires from the hearing transcript that in the course of the trial a witness S. testified that she had seen the policemen arrest the applicant on 18 July 2006 and that the applicant had had no visible injuries on him at that time. Another witness, Ts., testified that on 19 July 2006 at approximately 7 p.m. she had seen police officers taking the applicant out of the police station, and that the applicant had had bruises on his face.

On 27 September 2007 the Supreme Court of Russia upheld the judgment of 30 January 2007. Referring to the decision not to open criminal proceedings taken upon the applicant's complaints, the court found that the first instance court had examined the allegations of ill-treatment in detail and reasonably rejected them as unfounded. The court also rejected the applicant's argument about inadmissibility of the self-incriminating

statement allegedly produced under duress, having endorsed the lower court's conclusions on the matter.

COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention of ill-treatment in police custody and of the lack of an effective investigation into his relevant complaint. The applicant also complains under Article 5 of the Convention that he was unlawfully deprived of liberty from 12.30 p.m. on 18 July to 21 July 2006 and that he was belatedly brought before the judge who ordered his pre-trial detention. The applicant also complains under Article 6 of the Convention that his conviction was based on his confessions obtained under duress and in absence of a lawyer.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to torture, inhuman or degrading treatment or punishment by the police officers during the period from 12.30 p.m. on 18 July 2006 to 8.20 p.m. on 19 July 2006, 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:

(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? Was his medical examination, if any, conducted out of the hearing and out of sight of the police officers?

(b) What activities, where, when and by whom were conducted with the applicant's participation during the period between the moment of his actual apprehension and until the moment when he was first brought before the judge who ordered his remand in custody? 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? Was he given access to a doctor and, if so, when? When, by whom and on which ground was the forensic medical examination of the applicant ordered?

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 («*протоколы задержания*»); transcript of the applicant's interrogation of 20 July 2006; the investigator's request for remand in custody; decision ordering the applicant's detention of 21 July 2006; records of investigative activities of 18-19 July 2006, including interrogations as a suspect and accused; surrender with a confession of guilt («*явка с повинной*») of 19 July 2006; 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*»), of his admission to the IVS, any documents attesting to his state of health and injuries during the period concerned (forensic expert report No. 198 of 21 July 2006; documents related to the applicant's examination by the doctors in IVS), etc.

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), 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:

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

(b) Was the investigating authority which examined the applicant's complaint of police ill-treatment impartial and independent from the investigating authority which conducted the investigation in the criminal case against the applicant?

(c) 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?

(d) 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?

(e) Which officers from which police department(s) were involved in the inquiry into the applicant's complaint of police ill-treatment? What operational and other activities were carried out in the course of the pre-investigation inquiry? Were other persons detained in the cell together with the applicant? If so, were they questioned in relation to the applicant's complaint of police ill-treatment? Were persons from whom explanations («объяснения») were taken liable for false statements or a refusal to testify?

(f) 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 absence of instituted criminal proceedings prevent investigative measures, which could correspond to the notion of an effective investigation, as required by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Taraburca v. Moldova*, no. 18919/10, § 57, 6 December 2011, and *Shanin v. Russia*, no. 24460/04, § 69, 27 January 2011)? Which of the investigation methods employed for a preliminary investigation under Articles 150-226 of the Code of Criminal Procedure (CCrP) could be and were employed, in the present case, in the course of the inquiry under Article 144 of the Code? 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 inquiries under Articles 144-45 of the Code of Criminal Procedure including the investigating authorities' decisions on the applicant's complaints of police ill-treatment; all the decisions not to open criminal proceedings, including those dated 18 August 2006, 24 January 2007, 27 November 2008, 28 May 2009, and 3 June 2009; all the decisions quashing the refusals of prosecution; the courts' decisions on the applicant's complaints against the investigating authority's decisions; copies of the grounds of appeal against the judgment of 30 January 2007; other relevant documents.

3. 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?

4. Did the applicant exhaust domestic remedies in respect of his complaints under Article 5 of the Convention? In the affirmative:

(a) Was the applicant's detention from 18 to 21 July 2006 "lawful" in the meaning of Article 5 § 1 of the Convention? In particular, was there a violation of Article 5 § 1 on account of the alleged delay in compiling the arrest record, as a result of which the applicant's detention was unrecorded for a period between 12.30 p.m. on 18 July 2006 and 8.20 p.m. on 19 July 2006? Having regard to the applicant's allegation that he was detained

without a judicial decision for more than forty-eight hours, was his detained “in accordance with a procedure prescribed by law”?

(b) Was the applicant brought promptly before a judge or other officer authorised by law to exercise judicial power, as required by Article 5 § 3 of the Convention?

The Government are requested to submit information on the exact time of the applicant’s apprehension(s), release (if any), and of his transfer to the IVS on the relevant dates.

5. 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 that the domestic courts convicted him, in particular, on the basis of his confession statement obtained on 19 July 2006 when he had no legal representation. The parties are invited to specify, in particular:

(a) Was any evidence obtained between 18 July 2006 at 12.30 p.m. and 19 July 2006 at 8.20 a.m. used for convicting the applicant? Reference is being made, in particular, to the applicant’s confessions of 19 July 2006, allegedly made under duress. Was such evidence obtained 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 the applicant’s conviction based, solely or to a decisive extent, on such evidence?