



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

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THIRD SECTION

Application no. 54611/18

Murad Firuddinovich RAGIMOV and Firuddin Dursun ogly RAGIMOV
against Russia
lodged on 15 November 2018

STATEMENT OF FACTS

The applicants, Mr Murad Firuddinovich Ragimov and Mr Firuddin Dursun ogly Ragimov, are Russian nationals, who were born in 1994 and 1957, respectively. The first applicant is detained in Novo-Tyube, Dagestan. The second applicant lives in Krasnodar. He is the father of the first applicant. They are represented before the Court by Ms Y. Vanslova and Ms O.A. Sadovskaya, lawyers practising in Nizhniy Novgorod.

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

A. The circumstances of the case

1. The applicants' alleged ill-treatment on 30 August 2016

On 30 August 2016 the applicants and their family members: Ms A.G., the first applicant's mother and the second applicant's wife; Ms Gun.R. and Ms Gul.R., the first applicant's sisters; and Mr S.G., his cousin, stayed in a rented flat on seventh floor in the block of flats on Uvarovskaya lane in Moscow. At around 6 a.m. a group of around fifteen armed law-enforcement officers knocked their door. They wore black uniforms and bullet-proof vests with special rapid response unit insignia "SOBR" (*COBP*). The first applicant, wearing only underwear, opened the door. The

officers burst into the flat and punched him in the jaw. The applicant fell and the officers handcuffed him. According to the first applicant, the officers kicked him in his face and body, asking about firearms and drugs. They dragged him into the kitchen and applied electric shocks.

Meanwhile other SOBR officers entered the room of the second applicant and kicked him in his left leg. They punched him in his head at least fifteen times and asked him about firearms and drugs. The officers kicked him and applied electric shocks to him twice. The second applicant heard the first applicant screaming. The second applicant was several times strangled with a blanket. According to him, his ill-treatment lasted about thirty minutes.

According to the first applicant, the officers broke the dining table and started beating him with one of its legs. Afterwards they stroke his head with a crystal bowl. Then they stepped on his handcuffs and the applicant felt acute pain in his left hand. One of the officers put a plastic bag over his head and strangled him for about fifty seconds. When the applicant fainted, one of the officers stuck a knife in his right foot and poured cold water on him so that he regained consciousness.

The ill-treatment was witnessed by Ms A.G, Ms Gun.R. and Ms Gul.R. At around 7.30 a.m. Ms A.G. called the ambulance as she felt sick watching her son's ill-treatment. According to the applicants, medical assistants arrived and rendered medical aid to Ms A.G. and then left. She told them that the officers were beating her son.

At around 8.30 a.m. two dog trainers arrived with dogs. They inspected the flat twice. They said that everything was "clean" and then left.

According to the applicants, the ill-treatment continued until 10 a.m., when investigator D. arrived with two attesting witnesses. Officer Dzh. asked Ms Gun.R. to bring the first applicant's pants. After she had given the pants to Dzh., the second applicant saw that he put a foil bundle in one of the pockets. The second applicant told the officer that he had seen him planting the bundle. Dzh. had threatened him with physical violence and then had given the pants to the first applicant to put it on.

After that, police officer K. searched the first applicant and withdrew the bundle from his pocket and two plastic cans from his bag.

At around 1 p.m. the first applicant and Mr S.G. were taken to the Mitino District Department of the Interior in Moscow.

2. The applicants' medical examination

(a) The first applicant

In the Department of the Interior the applicant felt sick and asked for the ambulance. He was taken to the city hospital. At 2.22 p.m. he was examined by a neurosurgeon and diagnosed with a fracture of his lower jaw, chest concussion, incised wound to his right foot, bruises and abrasions to the soft tissues of his face and head.

At 3.35 p.m. the first applicant was examined by a trauma physician who indicated also abrasions on his left hand.

On 18 January 2017 the applicant underwent a forensic medical examination. He complained of having been ill-treated by SOBR officers on 30 August 2016. According to act no. 1968M/995 of 7 February 2017, the applicant's bruises and abrasions on his body and face were caused by at least fourteen blows by hard blunt objects. The expert mentioned that in the medical notes his wound on the foot had been referred to as both "incised" and "stab" wound, caused by an object with a limited surface area. Given the lack of detailed description of the injury, the expert considered it impossible to determine the mechanism of its infliction.

(b) The second applicant

On 30 August 2016 at 11.34 a.m. the applicant was admitted to Moscow hospital no. 180. He was diagnosed with a closed craniocerebral injury, brain concussion, multiple abrasions on his shoulders, chest, stomach area, right knee joint, bruises to the soft tissues of his face.

On 23 January 2017 the applicant underwent a forensic medical examination. According to act no. 1969M/996 of 7 February 2017, the abrasions were caused by at least five blows by hard blunt objects. The expert considered that it was impossible to determine the mechanism of infliction of his hypodermic hematoma on his left temple due to the lack of its description in the documents. The medical documents contained insufficient information about bruises to the soft tissues. The expert also considered that it was impossible to confirm or refute the diagnosis of a closed craniocerebral injury and brain concussion due to the lack of their subsequent supervision.

3. The first applicant's arrest record

On 31 August 2016 at 2.40 p.m. investigator D. drew up the first applicant's arrest record. According to it, the applicant was arrested "immediately after the commission of the crime and evidence of the crime was found on him". The applicant signed it, noting that he did not agree with the record and attached his statement of events to the record.

According to the applicant's statement, which is partly illegible, the applicant had been arrested on 30 August 2016 around 7 a.m. by SOBR officers. He submitted that they had punched and kicked him, applied electric shocks and strangled him with a plastic bag between 7 and 10 a.m. He also stated that the officers had planted drugs during the arrest. He asked to institute criminal proceeding against the officers in question.

4. The inquiry into the alleged ill-treatment

On 31 August 2016 the second applicant, Ms A.G., Ms Gun.R. and Ms Gur.R. lodged a complaint with the prosecution office about the ill-treatment of the applicants and arrest of the first applicant.

Their statements are similar to those of the first applicant's statements. They added that the SOBR officers had planted plastic cans in the first applicant's bag and that the officers had not allowed them to make remarks in the flat's search record.

(a) First refusal to open a criminal case

On 9 November 2016 a senior investigator of the Tushinskiy Inter-District Investigation Department in Moscow refused to open a criminal case into abuse of power by police officers.

The decision contained explanations of police officer Sh. who submitted that, according to the information received from the Moscow Service against Terrorism of the Federal Security Service ("the FSB") (*Служба по борьбе с терроризмом УФСБ Москвы (СТБ УФСБ)*), the first applicant had been suspected in participation in illegal armed groups fighting in Syria and that he had recently returned from Syria to the Moscow Region. On 30 August 2016 at around 3 a.m. officers of SOBR and the FSB had a meeting at the Centre against Terrorism of the Moscow Department of Interior ("the CPE") (*Центр по противодействию экстремизму МВД России по г. Москва (ЦПЭ)*), discussing the operation plan and their positioning at the scene. At 4 p.m. they moved to the applicant's place of residence on Uvarovskaya lane. CPE officers Sh., Dzh. and one SOBR officer took up their positions under the windows. Head of the group, CPE officer M., CPE officer Du., SOBR and FSB officers went to upper floors to take up their positions and prepare for the storming operation. Sh. and Dzh. did not see how other officers had entered the flat. After the operation, they were informed by radio transmitter that they could go up. At 6.05 a.m. they went up and officer Dzh. stayed at the entrance to the flat and talked to the women, the applicant's relatives. Officer Sh. was ordered to stay in the room of Mr S.G., who was lying on a bed with arms twisted behind his back by a SOBR officer. According to Sh., there was a mess and fragments of broken mirror in the flat resulted, as he had concluded, from the operation. After some time, dog trainers came and inspected the flat. Officer Sh. learned from other police officers that the first applicant had offered resistance to SOBR officers during the arrest. He stayed with S.G. and did not see how the officers had withdrawn items from the first applicant. He only knew that they had been withdrawn during the personal search of the applicant. Sh. also submitted that fighting techniques had been applied to the first applicant only during the operation and no more physical force had been used.

According to the explanations of police officer K., on 30 August 2016 officers of the CPE and FSB officers had conducted “operational-search measures” (*оперативно-розыскные мероприятия*) following the decision of the Moscow City Court of 25 August 2016. Officer K. and the head of the criminal investigation unit arrived at the scene at 5 a.m. Near the building of the house, they saw around 20-30 CPE and SOBR officers. At 10 a.m. officer K. was ordered to make a personal search. He went upstairs and told the officers already present in the flat that he was to make a personal search. One of the officers let him in and took him to the kitchen where he saw the first applicant and two officers. The applicant was dressed in sport pants. Officer K. noticed an abrasion on the applicant’s face and asked the officers how it had been caused. He was told that the applicant had offered resistance during the arrest. Police officer K. then offered the applicant to disclose if he had any objects prohibited from circulation. The applicant stated that he had none. After that, the officer searched the applicant and, in the presence of attesting witnesses, withdrew from his pocket a foil bundle with substance of plant origin. He put it in a box and sealed it.

The decision also contained statements of Ms Gun.R., which were similar to the applicants’ statements. She submitted that the officers had told them that the first applicant and Mr S.G. had been suspected in participation in ISIL (Islamic State of Iraq and the Levant). She submitted that in total around thirty officers were in their flat. She stated that she could see from the corridor that the officers had punched and kicked the first applicant, strangled him with a plastic bag and subjected him to electric shocks. They demanded him to confess that he had been involved in ISIL and in the attack on a police officer in Dagestan, but the applicant refused. She also stated that the foil bundle had been planted in his pants as there was nothing in the pocket when she had given them to the officer. The first applicant’s mother gave similar explanations.

The investigator concluded that nothing in the case materials had indicated that the police officers had committed a crime against the first applicant.

On 14 November 2016 the Deputy Head of the Investigation Department quashed the refusal as premature. He ordered to question investigator D., examine the first applicant’s medical documents and carry out his forensic medical examination.

On 6 December 2016 the second applicant also lodged a complaint with the Tushinskiy Inter-District Investigation Department in Moscow about ill-treatment by SOBR officers on 30 August 2016.

(b) The second refusal to open a criminal case

On 13 December 2016 the investigator again refused to open a criminal case. The decision contained the same explanations as the first refusal. Besides that, it referred to the explanations of investigator D., who

submitted that on 30 August 2016 at around 6 a.m. he received an order to arrive to Uvarovskaya lane. At 7 a.m. he inspected the flat in the presence of two attesting witnesses. Two cans with substances of plant origin had been discovered in the kitchen.

According to the explanations of CPE officer Du., on 30 August 2016 at 5.50 a.m. he arrived to the applicant's place of residence with a group of SOBR, FSB and other CPE officers. One of the officers, wearing plain clothes, rang a doorbell. The first applicant opened the door but when he saw a SOBR officer, he tried to close it. The officer in plain clothes let the way to a SOBR officer with a shield. The applicant tried to push him out and did not comply with orders to stop his resistance. The applicant then overturned a cupboard breaking a mirror. According to Du., other SOBR officers then entered the flat and forced the applicant back in the kitchen. At 6.15 a.m. dog trainers inspected the flat. In the kitchen the dog marked the presence of narcotic substances. In the applicant's bag two cans with substances of plant origin were discovered. A flat search record was then drawn up.

On 19 December 2016 the refusal was quashed by the investigator's superior, ordering to conduct the first applicant's forensic examination and to question the second applicant.

(c) Third refusal to open a criminal case

On 13 February 2017 the investigator issued another decision not to open a criminal case. Apart from the explanations mentioned above, the investigator cited conclusions of the applicants' forensic medical examination acts nos. 1968M/995 and 1969M/996 of 7 February 2017. He concluded that the applicants' injuries had been caused by officers during the operation as they had offered active resistance.

Dismissing the applicants' and their relatives' statements, the investigator stated that they were aimed at helping the first applicant to evade criminal responsibility. Assessing the officers' statements, he concluded that they were coherent and had no significant discrepancies.

On 15 March 2017 the decision was set aside by the investigator's superior as premature.

(d) Latest refusal to open a criminal case

Between 17 April 2017 and 16 June 2018 the investigators issued at least eight decisions not to open a criminal case with similar reasoning. They were all quashed by supervising officials.

On 24 August 2018 a special cases investigator issued the latest decision not to open a criminal case into abuse of power.

The explanations were identical to those contained in previous refusals to open a criminal case.

In addition, officer Dzh. submitted that, as he learned from other officers, only the first applicant had offered resistance during the arrest. Two medical

assistants submitted that they had arrived to the applicants' flat around 7.15 a.m. upon a call. On the spot they rendered medical assistance to a woman, Ms A.G., who told them that the officers were beating her son. The assistants did not see the first applicant and did not see if anyone had been ill-treated. The decision also cited explanations of Ms B., the applicants' neighbour. She submitted that early in the morning on 30 August 2016 she woke up because of the noise outside her flat. She heard men screaming and women crying. At 8 a.m. she tried to go out and see what was going on, but one of the officers did not let her and told her that they were conducting a counterterrorist operation.

5. Court proceedings against the first applicant

On 22 June 2017 the Tushinskiy District Court started criminal proceedings against the applicant on account of illegal drug storage on a large scale.

(a) The decision of 6 July 2017

On 6 July 2017 judge O., who was presiding in the applicant's criminal proceedings, issued a decision permitting the applicant's mother to visit him in a remand prison. The relevant part of the permission reads as follows:

“In accordance with Article 395 of the CCrP [I] permit Ms A.G. [*personal details*] to visit Murad Ragimov, born on 1 April 1994, who is being held in custody for having committed a crime under Article 228 § 2 of the Criminal Code.”

(b) The applicant's conviction of 18 January 2018

On 18 January 2018 the Tushinskiy District Court found the applicant guilty as charged. Judge O. was presiding. The applicant pleaded not guilty and argued that the drugs had been planted by SOBR officers and that the search had not been carried out immediately after his arrest. He also claimed that he had been ill-treated during the arrest by SOBR officers for several hours.

The court found the applicant guilty on the basis of witness statements of police officers questioned in court.

Witness statements of police officer K., CPE officers Sh., Du., Dzh., investigator D. and forensic expert P. were similar to those contained in the refusals to open a criminal case. In addition, as it follows from the hearing records, the police officer K. submitted that by the time he had arrived at the scene, attesting witnesses had already been present. He clarified that the first applicant had had an injury on his lips. The investigator submitted that he had arrived to the scene at around 9 a.m. and inspected the flat.

The court also heard SOBR officers Kl., O., Kuz., G., S., A., Av., Koz. Their statements can be summarised as follows. On 30 August 2016 they carried out operational-search measures at the applicants' flat. During the arrest the first applicant offered active resistance. He intentionally

overturned cupboard to prevent the officers to enter the flat. In the kitchen he also overturned the table breaking tableware. The applicant continuously kicked and punched officer O. and did not react to the orders to stop resistance. The officers applied special fighting techniques to overcome his resistance. No force was used against other people in the flat as they had not offered any resistance. No electric shocks were applied to the applicant, neither was he strangled with a plastic bag. Drugs had been found on him during the search in the presence of attesting witnesses. Officer Gor., who entered the flat following officer O., submitted that there had been no active resistance.

Dog trainers Ma. and Be. submitted in court they had inspected the flat between 9 and 10 a.m. and that the dogs had not found any drugs in the flat.

Ms Gun.R. submitted that officer Dzh. asked her to bring the first applicant's clothes. She gave clean pants and a sweater to the officer. The second applicant reiterated in court that he had seen that officer Dzh. had taken the foil bundle out of his pocket and planted it in the first applicant's pants.

The court dismissed statements of the second applicant, Ms A.G., Ms Gun.R. and Ms Gul.R., finding that they were unreliable and aimed at helping the first applicant to evade criminal responsibility.

The conviction referred to the report on discovery of evidence of crime (*рапорт об обнаружении признаков преступления*) drawn up by investigator F. that on 30 August 2016 between 7 and 9 a.m., during the inspection of the first applicant's flat, the police officers had withdrawn substances of plant origin on a large scale. It also referred to the police report that on 30 August 2016 between 7 and 10.10 a.m. police officers together with SOBR and FSB officers arrested the first applicant and that during his search substances of plant origin had been withdrawn from the left pocket of his pants.

The court concluded that the drugs had been found on the first applicant during his search and that his argument about planted items was unfounded. According to the conviction, the period of imprisonment was to be calculated from 30 August 2016, the day of his factual arrest.

(c) Appeal proceedings at the Moscow City Court

On 26 January 2018 the first applicant's lawyer appealed against the conviction. He argued, among other things, that the officers broke into the flat at around 6 a.m. and ill-treated the first applicant for about three hours, that the second applicant witnessed that officer Dzh. had planted drugs into the first applicant's pants, that only around 10 a.m., investigator D. had arrived with attesting witnesses. He claimed that the court had failed to give reasons why it had dismissed his arguments. The applicant also complained about a breach of presumption of innocence on account of judge O.'s statement in the decision of 6 July 2017 that the applicant had been held in custody for "having committed a crime".

On 15 May 2018 the Moscow City Court dismissed the applicant's lawyer's appeal. Referring to the search records, the court found that the applicant's claim that the drugs had been planted by SOBR officers was unfounded. The court further held that there were no contradictions in the evidence, which had been used in the conviction. The decision of the Moscow City Court does not contain a reference to the applicant's complaint about alleged breach of presumption of innocence.

B. Relevant domestic law and practice

For a summary of relevant domestic law concerning operational search measures and evidence in criminal proceedings, see *Bykov v. Russia* [GC], no. 4378/02, §§ 56-57, 10 March 2009.

For the relevant domestic law on the prohibition of torture and other ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014, and *Ryabtsev v. Russia*, no. 13642/06, §§ 48-52, 14 November 2013.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention about their ill-treatment by law-enforcement officers on 30 August 2016 and that no effective investigation was carried out in that regard.

2. The first applicant complains under Article 5 § 1 of the Convention about his unrecorded detention between 30 and 31 August 2016.

3. The first applicant also complains under Article 6 § 1 of the Convention that his trial was unfair in view of the use of evidence which had been allegedly planted by law-enforcement officers during the arrest.

4. He also complains under Article 6 § 2 of the Convention that the wording of the court decision of 6 July 2017 violated his right to be presumed innocent until proven guilty.

QUESTIONS TO THE PARTIES

1. a) Having regard to the injuries found on the applicants following the first applicant's arrest, have the applicants been subjected to torture, or inhuman or degrading treatment, in breach of Article 3 of the Convention (see, among other authorities, *Razzakov v. Russia*, no. 57519/09, 5 February 2015; *Gorshchuk v. Russia*, no. 31316/09, 6 October 2015; *Turbylev v. Russia*, no. 4722/09, 6 October 2015; *Fartushin v. Russia*, no. 38887/09, 8 October 2015; *Aleksandr Andreyev v. Russia*, no. 2281/06, 23 February 2016; and *Leonid Petrov v. Russia*, no. 52783/08, 11 October 2016)?

b) Have the authorities discharged their burden of proof by providing a plausible or satisfactory and convincing explanation of how the applicants' injuries were caused (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII and *Bouyid v. Belgium* [GC], no. 23380/09, § 83 and further, ECHR 2015)?

c) Was the recourse to physical force made strictly necessary by the first applicant's own conduct (see *Rizvanov v. Azerbaijan*, no. 31805/06, § 49, 17 April 2012)? In particular,

- did the State agents plan the arrest operations in advance?

- did they have sufficient time to evaluate the possible risks and to take all necessary measures for carrying out the arrest (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII; *Grigoryev v. Russia*, no. 22663/06, § 83, 23 October 2012; *Davitidze v. Russia*, no. 8810/05, § 90, 30 May 2013; *Minikayev v. Russia*, no. 630/08, §§ 59-60, 5 January 2016)?

2. Did the authorities carry out an effective investigation, in compliance with the procedural obligation under Article 3 of the Convention (see *Lyapin v. Russia*, no. 46956/09, §§ 125-40, 24 July 2014; *Samesov v. Russia*, no. 57269/14, § 54, 20 November 2018)?

3. Did the first applicant exhaust domestic remedies in respect of his complaint about unrecorded detention under Article 5 § 1 of the Convention? In answering the question, the parties are invited to address the following points:

a. What was the final decision in respect of this complaint?

b. Did the applicant lodge his complaint within a period of six months from the date on which the final decision was taken, as required by Article 35 § 1 of the Convention?

If yes,

4. Was the first applicant deprived of his liberty, within the meaning of Article 5 § 1 of the Convention? If such detention took place, was it compatible with the guarantees of Article 5 §§ 1 – 5 of the Convention?

5. Did the first applicant have a fair hearing in the determination of the criminal charge against him in accordance with Article 6 § 1 of the Convention taking into account his allegation that his conviction was based on the planted evidence (see *Bykov v. Russia* [GC], no. 4378/02, §§ 89-90, 10 March 2009; and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, §§ 42-59, 12 November 2015)?

6. Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in respect of the first applicant, given the statement of judge O. contained in her decision of 6 July 2017 that the applicant was “being held in custody for having committed a crime under Article 228 § 2 of the Criminal Code”?