THIRD SECTION

**CASE OF POPOV v. RUSSIA**

*(Application no. 25082/06)*

JUDGMENT

STRASBOURG

2 July 2019

*This judgment is final but it may be subject to editorial revision.*

In the case of Popov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

 Paulo Pinto de Albuquerque, *President,* Helen Keller, María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 June 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1.  The case originated in an application (no. 25082/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Aleksandrovich Popov (“the applicant”), on 25 April 2006.

2.  The applicant was represented by Mr S. Kiryukhin a lawyer practising in Orsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3.  On 28 August 2013 notice of the complaint concerning torture at the hands of the police was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1972 and is detained in Orsk.

5.  Late in the evening on 19 December a resident of Orsk, Mr Sh. was killed in his home. Suspicion fell on the applicant.

6.  The circumstances surrounding the applicant’s arrest and questioning are partly disputed, and therefore each version is given below.

A.  The applicant’s arrest and questioning (the official version)

7.  On 23 December 2004 two operatives of the town anti-narcotics brigade, First Lieutenants Kh. and U., were waiting in ambush near the applicant’s hiding place. When the applicant appeared, they approached him. Kh. noticed bruises under the applicant’s eye and on a lip. The officers introduced themselves, and asked the applicant to follow them. In reply, the applicant (who was drunk) cursed and shouted that as an ex‑commando he would easily overpower the officers. He hit Kh. in the chest, and then tried to flee. The operatives used sambo (a martial art) to tackle him, and took him in handcuffs to Sovietsky police station (*Советский РОВД г. Орска*).

8.  At the station the applicant was shown into room 31 for an “explanatory conversation” (*разъяснительная беседа*) with Captain Shch. in order to clarify the circumstances of the crime.

9.  According to one source, Shch. noticed that the applicant had a black eye and asked about its origin. The applicant explained that he had had a fight with a neighbour. According to another source, Shch. noticed no injuries on the applicant.

10.  During the conversation, which was respectful, the applicant decided to confess because, as he said, he would be unable to live with a heavy heart. The applicant told that on 19 December he had been drinking with Sh., that Sh. had angered him, and that he had twice punched him on the nose. At 5.55 p.m. Shch. recorded the confession (*явка с повинной*). The applicant signed it and was handed over to Investigator Po. at Oktyabrsky police station.

11.  At 5 p.m. Investigator Po. opened a criminal investigation into Sh.’s murder. Once in front of the investigator, the applicant said that he had confessed at Sovietsky police station and wrote another confession. This time he added that after he had punched Sh., Sh. had collapsed to the floor and fallen asleep. The applicant noted that he was confessing without psychological or physical coercion.

12.  At 7.12 p.m. the investigator formally detained the applicant as a suspect. The applicant agreed with the detention order and made no remarks. The investigator told the applicant’s partner about the detention.

13.  The investigator also commissioned a forensic examination to find out, in particular, if the applicant’s hands were injured.

B.  The applicant’s arrest and questioning (the applicant’s version)

14.  According to one source, in the morning of, or, according to another source, at 2–3 p.m. on 23 December 2004 the applicant was arrested by three officers, two young fair-haired ones, and an older one wearing a moustache. They put a gun to the applicant’s head and drove him to Sovietsky police station.

15.  At the station the applicant was shown into a room on the third floor. The officers started to punch and kick him on the sides, buttocks, and ears, urging him to incriminate himself. The beatings left him bleeding with a burst eardrum, a black eye, split lips, and several chipped teeth. On seeing the futility of the beatings, the officers turned to torture. They tied the applicant into a painful position called “the swallow” (“*ласточка”*), in which hands and legs are fastened together behind the back, and four times suffocated him with a gas-mask filled with ammonia. After six hours, already after dark, the applicant capitulated and penned a dictated confession. He was handed over to Investigator Po. at Oktyabrsky police station.

16.  Once in front of the investigator, the applicant complained to him of the torture. In response, the investigator commissioned a forensic examination of the applicant, but for some reason omitted to record the applicant’s complaint.

C.  The further proceedings

17.  Later the same day, a forensic doctor examined the applicant. The applicant told the doctor that he and Sh. had struck each other in the face and that the police had tortured him. To his description of torture he added slaps on his right hand. The doctor established the following injuries: bruises on the left eye and cheekbone caused by a blunt object three to five days before, and bruises on the upper lip and damage to the two upper front teeth caused by blunt objects no more than one day before. The right hand was not injured.

18.  Another report made on the same day established that the applicant was moderately intoxicated as a result of alcohol.

19.  At 1.30 a.m. on 24 December 2004 the applicant was transferred to the temporary-detention centre (*ИВС*) of Orsk. On admission, the duty officer noticed a bruise under the applicant’s left eye.

20.  At 12–1 p.m. on 24 December 2004, the applicant (aided by counsel) re-appeared before Investigator Po. The investigator formally interviewed the applicant first as a suspect, and then as the accused. Both times the applicant declined to testify and made no other remarks.

21.  On 25 December 2004 the applicant appeared before a judge of the Oktyabrsky District Court of Orsk. The judge ordered that the applicant be detained on remand. The applicant agreed to be detained and made no other remarks.

22.  In February 2005 Po. opened a criminal investigation into the theft of electronic devices from Sh.’s home. He joined the two investigations, and on 21 February 2005 interviewed the applicant as the accused. The applicant (aided by counsel) declined to testify and made no other remarks.

23.  On 10 March 2005 the applicant complained to the Orenburg Region public prosecutor of torture.

24.  On 21 March 2005 the applicant went on hunger strike in protest against the lack of a reply.

25.  On 28 March 2005 the complaint was referred to the prosecutor of the Sovietsky district of Orsk for a pre-investigation inquiry (*доследственная проверка*).

26.  The inquiry into the applicant’s allegation of torture was entrusted to Investigator Pa. of the Oktyabrsky district prosecutor’s office.

27.  In his turn, Pa. asked the head of the unit in which the applicant’s alleged assailants served to hold an internal inquiry (*служебная проверка*). Officers Kh., U., and Shch. wrote out their versions of the applicant’s arrest and interview at Sovietsky police station. The head of the unit issued three almost identical performance reviews for the officers, saying, among other compliments, that each of them could “inspire others to confessional conversation” (*обладает* *умением располагать людей к доверительной беседе*). The internal inquiry concluded that the applicant had not been ill‑treated.

28.  In addition, Pa. interviewed the applicant (assisted by counsel) and Investigator Po.

29.  On 15 April 2005 Pa. decided not to institute criminal proceedings. Based on the gathered evidence, he concluded that the applicant had been injured before he had been brought to Sovietsky police station, and thus the officers had no case to answer. At the same time, the investigator decided not to prosecute the applicant for falsely accusing the officers because he had been honestly mistaken that they had wronged him.

30.  On 26 April 2005 the Oktyabriskiy District Court of Orsk found the applicant guilty of murder and theft. The court established that the applicant had beaten Sh. to death while they had been drinking in Sh.’s flat and had stolen some home electronic equipment on his way out.

31.  At the trial the applicant pleaded not guilty. He said that on the night of the murder he had been drinking elsewhere and that he had been tortured into falsely incriminating himself as proven by the injuries on his body.

32.  The court dismissed this defence, noting that the forensic report suggested that the applicant had been injured before his arrest, and that the pre-investigation inquiry had cleared the officers of any misconduct.

33.  The court sentenced the applicant to eleven years’ imprisonment.

34.  On 2 June 2005 the Orenburg Regional Court upheld this sentence.

35.  In January 2008 the applicant’s representative, Mr Kiryukhin applied for judicial review of the decision not to institute criminal proceedings against the operatives. He alleged that Pa.’s inquiry had been superficial because he had failed to have the officers undergo a lie-detector test.

36.  On 25 January 2008 the Sovietsky District Court ruled that for pre‑investigation inquiries a lie-detector test was not mandatory and upheld the investigator’s findings.

37.  The applicant appealed, pleading that he himself would be prepared to undergo a lie-detector test to prove his accusations, that the court had blindly sided with the operatives, that in 2006 or 2007 U. had been convicted for torturing others and of forging official records, and that the court had ignored the case-law of the Strasbourg Court.

38.  On 26 February 2008 the Orenburg Regional Court upheld the decision of 25 January 2008 without answering the argument about U.’s conviction.

II.  RELEVANT DOMESTIC LAW

39.  Article 21 § 2 of the Constitution of the Russian Federation provides, in so far as relevant:

“No one shall be subjected to torture ...”

Section 5 of the Police Act 2010 provides, in so far as relevant:

“The police may not resort to torture ...”

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40.  The applicant complained under Article 3 of the Convention that the police officers had tortured him in order to extract a confession and that the investigation of that incident had been ineffective. This Article reads:

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

A.  Admissibility

41.  The Government argued that this complaint was inadmissible. The applicant maintained his complaint.

42.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

43.  Relying on the official version of the events, the Government submitted that the police officers had not tortured the applicant. He had been injured before his arrest, most likely by Sh.. During his pre-trial appearances before Investigator Po. and the domestic courts, the applicant had not complained of torture, though he had been informed of his legal rights and had been aided by counsel. It had been only three years later that Mr Kiryukhin had revived the matter. The operatives had documented the confession because it had been their legal duty to record reported crimes.

44.  The investigation into the alleged torture had been effective, full, timely, and independent. Investigator Pa. had been independent from the alleged perpetrators and had finished the inquiry in days. Though the inquiry had left the origin of the applicant’s injuries unexplained, it could be deduced that they had been received before his arrest.

45.  The applicant denied that he had ever told the forensic doctor that he had been injured in the fight with Sh. and claimed that the doctor had falsified the record. Such abuses were common. The authorities had deliberately avoided subjecting suspects to lie-detector or psycho-linguistic tests so as to be able to imprison innocent people like him.

2.  The Court’s assessment

46.  The Court does not have a clear picture of the origin of the applicant’s injuries (compare with *Rahmi Şahin* *v. Turkey*, no. 39041/10, § 44, 5 July 2016). Not only do the parties contradict each other about the circumstances of the arrest and police interviews, their versions of the events at times contradict themselves.

47.  In particular, the parties disagree about how many officers had arrested the applicant (two or three), what exactly had happened in room 31 in Sovietsky police station (a civil conversation or wanton abuse), why Investigator Po. had ordered a forensic medical examination of the applicant (to test his implication in the murder or to document the signs of torture). The official version contradicted itself about whether Officer Shch. had seen injuries on the applicant after his arrival at the station. The applicant contradicted himself about the time of his arrest.

48.  At the same time, arguable claims of serious ill-treatment by the police require an effective official investigation so as to deny impunity to potential abusers (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998‑VIII).

49.  The applicant’s claim was arguable because, as the doctor had found, the applicant’s lips and teeth could have been damaged on the day of his arrest (see paragraph 17 above) and, as the Government have admitted, the origin of that damage remained unexplained.

50.  The alleged ill-treatment (see paragraph 15 above) was serious.

51.  However, its investigation was not “effective” within the meaning of the Convention (see *Armani Da Silva* *v.* *the United Kingdom* [GC], no. 5878/08, § 240, 30 March 2016). The authorities followed up on the applicant’s complaint only after eighteen days (the applicant had to go on hunger strike to speed them up). Investigator Pa. delegated part of his tasks to an interested party (the suspects’ hierarchical superior), and omitted to interview the suspects, to arrange a confrontation between them and the applicant, to seek witnesses, or to reconstruct the crime scene. Furthermore, as has been found in the past (see *Lyapin v. Russia*, no. 46956/09, § 134‑35, 24 July 2014), a pre-investigation inquiry such as the one held in the present case could not be qualified as an effective investigation.

52.  Accordingly, there has been a violation of Article 3.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

53.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A.  Damage

54.  The applicant claimed 70,000 euros (EUR) in respect of pecuniary and non-pecuniary damage caused by his unjustified prosecution.

55.  The Government submitted that this claim was not related to the issue before the Court, and that if a violation were to be found, it would in itself amount to just satisfaction.

56.  The Court finds no evidence of any pecuniary damage and therefore rejects this claim. On the other hand, it awards the applicant EUR 26,000 in respect of non-pecuniary damage.

B.  Default interest

57.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the application admissible;

2.  *Holds* that there has been a violation of Article 3 of the Convention;

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months, EUR 26,000 (twenty-six thousand euros) in respect of non‑pecuniary damage to be converted into the currency of the respondent State at the rate applicable at the date of settlement plus any tax that may be chargeable;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

4.  *Dismisses* the remainder of the applicant claim for just satisfaction.

Done in English, and notified in writing on 2 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Paulo Pinto de Albuquerque
 Deputy Registrar President