



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

Communicated on 19 November 2018

FIRST SECTION

Application no. 29627/16
Oleg Gennadyevich SENTSOV and
Aleksandr Aleksandrovich KOLCHENKO
against Russia
lodged on 27 April 2016

STATEMENT OF FACTS

The applicants, Mr Oleg Gennadyevich Sentsov and Mr Aleksandr Aleksandrovich Kolchenko, are Ukrainian nationals who were born in 1976 and 1989 respectively. They are serving prison sentences in correctional colonies. The applicants are represented by Ms N. Dobрева, a lawyer from Sofia, Bulgaria.

A. The circumstances of the case

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

1. The first applicant

The first applicant, Mr Oleg Gennadyevich Sentsov, is a Ukrainian national, who was born in 1976 and is currently serving his sentence in the Federal Penal Institution “Correctional colony no. 8 of the Directorate of the Federal Service for the Execution of Punishments for the Yamalo-Nenets Autonomous Area”.

The first applicant is a Ukrainian filmmaker and writer and a native of Crimea. He actively opposed the annexation of Crimea by the Russian Federation in 2014 by delivering food supplies to the Ukrainian army units trapped in their barracks.

Late in the evening of 10 May 2014 the applicant was arrested by FSB officers at his home. He was taken to a local police station where, as he alleges, during approximately three hours he was beaten with fists, feet or

truncheons, asphyxiated, electrocuted and threatened with rape (including with a soldering iron) by the FSB officers. They pressured him to confess to planning and performing terrorist attacks, but he did not. After that they took him to his home where a search was performed. Upon the applicant's transfer to a detention centre in Simferopol, the applicant was examined by a doctor, who discovered numerous bruises and haematomas on his body.

On the following day a record of arrest was drawn up; it indicated that the applicant had been arrested at 8:15 am on 11 May 2014. The report stated that the applicant had been arrested on suspicion of being a member of a terrorist organisation and of having actively prepared a terrorist attack with explosives with other members of that organisation, and of acquiring illegal explosives with the help of the members of the organisation.

On 11 May 2014 the Kyivskyy District Court of Simferopol ordered the first applicant's pre-trial detention; that measure was extended on a number of occasions until the first applicant's conviction.

On 13 May 2014 the investigator in charge of the case ordered the joinder of the criminal proceedings against the applicant, Mr A. and Mr Ch. In this ruling the investigator indicated for the first time that the applicant along with the two other suspects was also suspected of having set fire to two buildings in Simferopol on 14 and 18 April 2014 respectively.

On 4 June 2014 the applicant's lawyer filed a criminal complaint on account of the applicant's ill-treatment with the Investigation Committee of the Russian Federation. This complaint was referred to the investigation authorities in Simferopol. On 17 July 2014 an expert appointed by the ICRF found that Mr Sentsov had facial abrasions and spinal bruises caused by impacts with a blunt object. The expert suggested that these injuries may have been caused on 11 May 2014. On 4 August 2014 the investigator of the Investigation Committee refused to institute criminal proceedings upon the first applicant's complaints about ill-treatment stating that the sadomasochistic toys found in Mr Sentsov's apartment could have been the reason of the latter's injuries. Appeal against that decision was dismissed on 26 November 2014 by the same officer who had refused to institute criminal proceedings, Mr O. The applicant was never questioned regarding his ill-treatment on the night of 10-11 May 2014 and he and his lawyers have not been informed of any developments in the investigation of his ill-treatment.

Subsequently, in the course of his trial, the applicant complained about his ill-treatment.

2. The second applicant

The second applicant, Mr Aleksandr Aleksandrovich Kolchenko, is an activist and supporter of anarchism, anti-fascism and internationalism. He was involved in public and ecological initiatives, took part in the anti-fascist movement and supported Russian anti-fascists. He is also a supporter of a united Ukraine, including Crimea and the eastern oblasts.

On 16 May 2014 the second applicant was arrested on suspicion of membership in a terrorist group allegedly headed by the first applicant and setting on fire the office of the United Russia party on 18 April 2014.

3. The judgment of the Military Court of the N-C Command

On 25 August 2015 the Military Court of the North-Caucasian Command convicted the first and the second applicant of terrorism and sentenced them to twenty and ten years' imprisonment respectively. The court based its judgment on among other things statements made by the second applicant, a co-accused, Mr A., and the witness Ch. given during the pre-trial investigation (allegedly under duress); testimonies of anonymous witnesses; and an expert report according to which the first applicant's biological material had been found on a gun (according to the first applicant his biological material was forcibly implanted on the gun by FSB officers). Also on 31 July 2015, when testifying in the first and second applicants' trial the co-accused, Mr A., withdrew his earlier statement as it had allegedly been made under duress. The court rejected the applicants' complaints about ill-treatment and coercion as unsubstantiated.

4. The judgment of the Supreme Court of the Russian Federation

On 24 November 2015 the Supreme Court of the Russian Federation upheld this verdict.

B. Relevant domestic law and practice

1. Constitution of the Russian Federation

Article 2

"An individual, his rights and freedoms, shall be the supreme value. The recognition, observance and the protection of the rights and freedoms of an individual and citizen shall be an obligation of the State".

Article 29

"1. Everyone is guaranteed the freedom of thought and speech.

..."

2. Criminal Code of the Russian Federation

Article 205

Terrorist attack

"1. Commission of an explosion, arson or other actions that terrorize population and create danger of human death, infliction of considerable property damage or other grievous consequences with the purpose to destabilize activities of the authorities or international organizations, or to influence on their decisions making, as well as the threat of committing the above actions for the same purposes -

shall be punished by deprivation of liberty for a period of eight to fifteen years.

2. The same actions:

a) committed by a group of persons in collusion ...

shall be punished by deprivation of liberty for a period of ten to twenty years with limitation of liberty for the period from one year to two years.

...”

Article 205.4

Creation of a terrorist organization and participation in it

“1. Creation of a terrorist organization, that is a permanent group of persons, who beforehand united to carry out terrorist activities ... justification and support of terrorism, as well as running such a terrorist organization...

Shall be punished by deprivation of liberty from fifteen to twenty years....”

2. Participation in a terrorist organization -

Shall be punished by deprivation of liberty from five to ten years....”

Article 222

Illegal purchase, transfer, sale, storage, transportation or carrying of a weapon, its basic parts and ammunition

“1. Illegal purchase, transfer, sale, storage, transportation or carrying of a weapon, its basic parts and ammunition ...

Are punished by limitation of liberty for a period of up to three years, or compulsory labour for the period of up to four years, or detention for a period of up to six months, or deprivation of liberty for a period of up to four years...

2. The same actions committed by a group of persons in collusion, -

are punished by deprivation of liberty for the period from two to six years...

3. The actions stipulated by parts one or two of this article, committed by an organized group, -

Are punished by deprivation of liberty for the period from five to eight years...

...”

3. *Federal Constitutional Law entitled “On Admission of the Republic of Crimea to the Russian Federation and Creation in the Framework of the Russian Federation of new entities – Republic of Crimea and the City of Federal Significance of Sevastopol “*

Article 4

Recognition of the citizenship of the Russian Federation for citizens of Ukraine and stateless persons who permanently reside on the territory of the Republic of Crimea or on the territory of the city of federal significance of Sevastopol

“1. From the day of admission of the Republic of Crimea to the Russian Federation and creation of new entities in the framework of the Russian Federation, citizens of Ukraine and stateless persons who as of that day permanently reside on the territory of the Republic of Crimea or on the territory of the city of federal significance of

Sevastopol, shall be recognized as the citizens of the Russian Federation, with the exception of the persons, who within one month from that day shall declare their wish to keep their and/or their under-age children's other citizenship or to remain stateless persons.

...

4. A person who has been recognized as a citizen of the Russian Federation and who has received an identification document of a citizen of the Russian Federation, shall be deemed a citizen who has no foreign citizenship, if that person submits a statement that he/she does not wish to keep the foreign citizenship..."

Article 9

Creation of courts of the Russian Federation on the territories of the Republic of Crimea and the city of federal significance of Sevastopol. Administration of justice during the transition period

"1. During the transition period courts of the Russian Federation (federal courts) will be created in accordance with the judicial system laws of the Russian Federation on the territories of the Republic of Crimea and the city of federal significance of Sevastopol with taking into consideration their administrative and territorial division established by the respective legislative (representative) body of the state authorities of the Republic of Crimea and by the respective legislative (representative) body of the state authorities of the city of federal significance of Sevastopol.

2. The persons holding positions of judges of the courts acting on the territories of the Republic of Crimea and the city of Sevastopol as of the day of the Republic of Crimea admission to the Russian Federation and creation of new entities in the framework of the Russian Federation shall have priority for obtaining positions of judges in the courts of the Russian Federation created on those territories, provided that they have citizenship of the Russian Federation and comply with other requirements to the candidates for positions of judges established by the Russian Federation laws on status of judges. The competition for positions of judges in the above-mentioned courts shall be conducted by the Supreme Qualification Board of Judges of the Russian Federation.

..."

5. Before creation of courts of the Russian Federation on the territories of the Republic of Crimea and the city of federal significance of Sevastopol, the justice in the name of the Russian Federation on the aforementioned territories shall be administered by the courts acting as of the day of the Republic of Crimea admission to the Russian Federation and creation of new entities in the framework of the Russian Federation. Provided they have the citizenship of the Russian Federation the persons holding positions of judges of those courts shall continue to administer justice, until creation and beginning of functioning on the aforementioned territories of the courts of the Russian Federation.

..."

COMPLAINTS

The first applicant complains under Article 3 of the Convention that he was tortured and ill-treated by the FSB officers during the pre-trial investigation and that there was no effective investigation into his complaints.

The first and the second applicants complain under Article 6 § 1 that they were not brought before a tribunal established by law. They reason that since the annexation of Crimea was unlawful and since they were Ukrainian citizens and the alleged crimes were committed on the Ukrainian territory (in Crimea) they could not have been tried by a Russian court.

The first and the second applicants further complain that their trial was unfair as they were convicted on the basis of evidence obtained by torture and coercion.

The first and the second applicants also complain that their conviction was not based on relevant and sufficient evidence, that the court did not duly assess some evidence, that some evidence (the first applicant's biological material on the gun) was fabricated, that there were no grounds to keep anonymity of two witnesses, that they were not able to question witness Ch. and that their conviction was politically-motivated

The first applicant complains under Article 10 and 18 of the Convention that his conviction aimed at intimidating the persons opposing the Russian policy.

QUESTIONS TO THE PARTIES

1. Has the first applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?

If so, did it amount to torture (see *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Sergey Ivanov v. Russia*, no. 14416/06, § 79, 15 May 2018; *Bartasaghi Gallo and Others v. Italy*, nos. 12131/13 and 43390/13, § 120, 22 June 2017; *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 109, 1 June 2017)?

2. Having regard to the procedural protection from torture (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

3. Was the court which dealt with the applicants' case a tribunal established by law, as required by Article 6 § 1 of the Convention?

4. Did the first and the second applicants have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 § 1 of the Convention? In particular,

(a) Was the applicants' conviction based on evidence obtained by torture?

(b) Was the applicants' conviction based on fabricated evidence?

(c) Were there sufficient grounds to maintain the anonymity of two witnesses? If so,

(i). were there sufficient reasons to admit the evidence of these witnesses;

(ii). was these witnesses' testimony 'sole or decisive' for the applicants' conviction;

(iii). were there counterbalancing factors in place to compensate for the impossibility to examine the anonymous witnesses? (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 154-165, ECHR 2011; *Schatschaschwili v. Germany* [GC], no. 9154/10, § 107-131, ECHR 2015)

5. Were the applicants able to examine witness Ch. and the two anonymous witnesses against them, as required by Article 6 § 3 (d) of the Convention?

APPENDIX

Nº.	Firstname LASTNAME	Birth date	Nationality	Place of imprisonment	Representative
1.	Oleg Gennadyevich SENTOV	13/07/1976	Ukrainian	Yamalo-Nenets	N.O Dobrevá
2.	Aleksandr Aleksandrovich KOLCHENKO	26/11/1989	Ukrainian	As far as the Court is aware, Moscow	N.O Dobrevá