

The Third Section of the European Court of Human Rights (ECHR), with a judgement of December 7th 2021, ruled against Russia for a violation of art. 3, 5 and 6 of the European Convention on Human Rights which prohibit torture and guarantee the right to liberty and security and to a fair trial. The case concerned the applicant's ill-treatment and unrecorded detention at a police station, the lack of an effective investigation into his ill-treatment complaint, and his unfair conviction on drug-related offences that he had (according to the applicant) been incited by the police to commit. In particular, relying on art. 3 of the Convention, the applicant claimed that he was ill-treated by Russian police officers and that the investigations into his ill-treatment complaint were ineffective. The Russian Government claimed that these investigations did not reveal any evidence of ill-treatment but the European Court found that multiple injuries had been recorded on the applicant's body following the thirty-four hours he spent at the police station; in fact, the medical certificate and the extract from the record drawn up on the day the applicant was taken to a temporary detention facility showed that he had multiple bruises on the right shoulder and right hip; hematomas on the left shoulder and left hip; abrasion on the left forearm; and bruises on the soft tissues of the chest, arms and legs. From a subsequent forensic medical examination to which he was subjected, it turned out that the injuries recorded on his arrival at the temporary detention facility, two months earlier, had been caused by a blunt solid object. However, the expert, not excluding that the injuries could have been inflicted on the day of his arrest, was unable to determine their origin or the precise date of their infliction because the record was not sufficiently detailed. This led the European Court to believe that the allegations of ill-treatment made against police officers by the applicant were credible. Yet, his complaints were summarily rejected twice as a result of pre-investigation inquiries based solely on statements by police officers who have always denied the use of violence against him. Thus, no criminal proceedings were initiated on the incident and the findings of such pre-investigation inquiries were accepted by the judicial authorities in the criminal proceedings conducted against the applicant. The European Court reiterated that the mere carrying out of a pre-investigation inquiry is not sufficient to comply with the obligations deriving from art. 3 of the Convention and that require national authorities to carry out an effective investigation into credible allegations of ill-treatment in police custody. In addition, the Russian Government stated that the multiple injuries found on the applicant's body were caused by some simple falls during his arrest but the Strasbourg judges considered this explanation not satisfactory or convincing: the Government failed to discharge its burden of proof and produce evidence capable of casting doubts on the applicant's account of events. Therefore, given the nature of the injuries, the European Court stated that the Russian police subjected the applicant to inhuman and degrading treatment, violating art. 3 of the Convention. The applicant then claimed a violation of art. 5 of the Convention, caused by his unrecorded detention following his arrest. It was established by the Russian Court of Appeal – and also acknowledged by the Government – that the applicant was arrested at 2.30 p.m. on August 25th 2006 and unlawfully detained at the police station until his arrest was officially recorded at 19:40 on August 26th 2006: that unrecorded detention left him completely at the mercy of those holding him, putting his personal security at risk and rendering him vulnerable to ill-treatment. It follows that there has undoubtedly been a violation of art. 5 of the Convention insofar as it establishes that everyone has the right to liberty and security and that no one shall be deprived of his liberty, save in the cases and in accordance with a procedure prescribed by law. Finally, the applicant complained that he had been unfairly convicted of drug offences which he had been incited by the police to commit, in violation of art. 6 of the Convention. The Court has consistently found a violation of this article on account of the deficiency in the existing procedure for the authorization and administration of test purchases of drugs in Russia and the courts' failure to adequately address pleas of entrapment by taking the steps necessary to uncover the truth and to eradicate doubts as to whether such persons committed the offence as a result of incitement by an agent provocateur. It was not possible to reach a different conclusion in respect of the present case and the ECHR considered that the criminal proceedings against the applicant were incompatible with the notion of a fair trial.

Riferimenti Normativi:

- art. 3 Convenzione Europea dei Diritti dell'Uomo
- art. 5 Convenzione Europea dei Diritti dell'Uomo
- art. 6 Convenzione Europea dei Diritti dell'Uomo



Ill-treatment, unrecorded detention and unfair conviction for offences committed as a result of incitement by an agent provocateur complement a violation of Human Rights

Diritto processuale penale

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