



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

THIRD SECTION

CASE OF RYTSAREV v. RUSSIA

(Application no. 63332/00)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

21/10/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rytsarev v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 63332/00) 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, Vladimir Ivanovich Rytsarev ("the applicant"), on 12 August 2000.

2. The applicant was represented by Mr V.V. Suchkov, a lawyer practising in Oryol. The Russian Government ("the Government") were represented by Mr P.A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his application for release was not determined speedily, as required by Article 5 § 4 of the Convention, and that the conditions of his detention were incompatible with Article 3 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 3 July 2003, the Court decided to communicate the complaints concerning the length of the proceedings by which the lawfulness of the applicant's detention was decided and the alleged inhuman treatment during detention and declared the remainder of the application inadmissible.

6. By a decision of 16 September 2004, the Court declared the remainder of the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1956 and lives in the village of Zhdimir in the Oryol Region of Russia.

A. Proceedings for determination of the lawfulness of the applicant's detention

10. On 8 July 2000 the applicant was arrested and detained on suspicion of having committed theft of aluminium wire. He was placed in a cell intended for the detention of administrative offenders ("KAZ") at the Znamenskiy district police station in the village of Znamenskoye.

11. On 9 July 2000 the applicant lodged a complaint with an investigator of the Znamenskiy District Police Department of the Oryol Region, seeking to have the lawfulness of his arrest and detention challenged before the Znamenskiy District Court of the Oryol Region and requesting that he be released. The complaint was never sent to the court.

12. On 11 July 2000 the applicant was charged with theft. On the same day an order for his pre-trial detention was issued by the investigator and confirmed by the prosecutor of the Znamenskiy District of the Oryol Region.

13. On 13 July 2000 the applicant was transferred to detention facility no. 1 (Investigatory Isolation Ward no. 1) in the town of Oryol.

14. On 27 July and 9 August 2000 the applicant again complained about the unlawfulness of his arrest and detention, this time to the Sovetskiy District Court of Oryol. The complaints reached the court on 7 and 16 August 2000 respectively.

15. On 17 August 2000 the Sovetskiy District Court asked to be sent the case file for examination and scheduled a hearing for 23 August 2000. The hearing was not held, since the case file had not been communicated and the applicant had not been brought to court.

16. On 22 August 2000 the applicant's counsel wrote to the prosecutor of the Znamenskiy District of the Oryol Region, complaining about the

investigator's failure to transfer the applicant's complaint of 9 July 2000, alleging unlawful detention, to a court. The prosecutor did not react.

17. On 5 September 2000 the Sovetskiy District Court held a hearing. The court found that the applicant's arrest and detention were unlawful and ordered that he be released directly from the courtroom.

18. On 18 December 2001 the Khotynetskiy District Court of the Oryol Region remitted the criminal case against the applicant on a charge of theft to the public prosecutor of the Znamenskiy District of the Oryol Region for further investigation.

19. By a decision of 12 September 2003 the Znamenskiy District Court of the Oryol Region discontinued criminal proceedings in view of the fact that the prosecution service had dropped the charges against the applicant.

20. The applicant brought proceedings for non-pecuniary damage caused as a result of his detention.

21. On 23 April 2004 the Zheleznodorozhniy District Court of Oryol held:

“...the court has come to the conclusion that the plaintiff Rytsarev was unlawfully held in custody during the preliminary investigation for a total of over 56 days..., which caused him moral and physical suffering. Furthermore, with regard to compensation for non-pecuniary damage, the court takes into account that, while detained in the KAZ of the Znamenskiy District of Oryol Region from 8 July to 12 July 2000 inclusive, Rytsarev was not given food since, according to the report for the period from 6 to 15 July 2000 by the public catering enterprise “Znamenskoye”, which supplies meals for persons detained in the Znamenskiy district police department's KAZ, food was not delivered to the district police department from 6 to 13 July 2000... In that connection, the court cannot account of two applications from the head of the district police department ... requesting two meals for detainees, since one is undated and the other is dated 11 July 2000, in other words four days after Rytsarev was detained, and they do not indicate for whom the meals were ordered... Equally, it follows from the application by ... Rytsarev's brother ... that food parcels ... [for Rytsarev] were not accepted from him or other relatives [by the Znamenskiy district police department's KAZ]. Only water and tea were accepted...”

22. The court awarded the applicant 30,000 Russian roubles (RUR) for non-pecuniary damage. The judgment came into force on 2 June 2004.

23. According to the Government, the sum awarded was paid to the applicant on 25 October 2004 in execution of the judgment. This was not denied by the applicant.

B. Conditions of detention

24. According to the applicant, he was given no water or food during his detention in the Znamenskiy district police station's KAZ from 8 to 12 July 2000 inclusive. His relatives were allowed to pass him only water and tea in two 1.5 l bottles on 9 July 2000. He was not taken out for exercise or permitted to go to a lavatory, which was located outside the building, as frequently as he needed.

25. Records of the applicant's questioning on 9 July 2000 contain a statement by him to the effect that he had not eaten anything since the previous day and had not been given water. Similarly, records of his questioning on 12 July 2000 contain statements that he had not been given anything to eat and drink, that he had been brought water by his brothers and that the investigator had offered to give him food in exchange for a guilty plea.

26. The applicant's complaint of 22 August 2000 about the conditions of his detention was dismissed on 23 August 2000 as ill-founded by the Znamenskiy District prosecutor's office. However, the prosecutor noted that there had been no courtyard suitable for detainees' exercise on account of repair work.

27. In their observations of 3 October 2003 the Government submitted that daily meals had been served to detainees at lunchtime by the only catering enterprise in the village. The detainees had been served only tea for breakfast and dinner. Food from relatives was accepted without restrictions. According to police officers from the Znamenskiy district police station, the applicant refused meals provided by the police. However he received daily food parcels from his relatives, without restrictions. There were no limitations on drinking water. He did not complain about the shortage of water or food. Thus, when questioned by the district prosecutor on 11 July 2000 he made no complaints about his detention conditions. He asked only that a doctor be called since he felt unwell, and that request was granted. The applicant was regularly taken out to a lavatory. He was not tortured and no degrading acts were performed against him.

II. RELEVANT DOMESTIC LAW

28. The Code of Criminal Procedure of 1960, in force at the material time, provided as follows:

Article 46

“... The accused may ... appeal to a court against the unlawfulness and groundlessness of detention...”

Article 220-1

“... When a prison administration receives a detainee's [appeal to a court against pre-trial detention], it must pass the [appeal] to the relevant court immediately, and, at any rate, not later than 24 hours after its receipt, having informed a public prosecutor...”

If the appeal was lodged via the prison administration, the prosecutor must send [the documents confirming the lawfulness and validity of the detention as a measure of restraint] to the court within 24 hours of receipt of the prison administration's notification that the person concerned has lodged an appeal...”

Article 220-2

“... A judge must review the lawfulness of the detention ... within three days of receipt of documents confirming the lawfulness and validity of the detention as a measure of restraint...”

THE LAW**THE GOVERNMENT'S PRELIMINARY OBJECTION**

29. After the case had been declared admissible, the Government submitted that, following the discontinuation of the criminal proceedings against the applicant, the Zheleznodorozhniy District Court of Oryol acknowledged in a judgment of 23 April 2004 that there had been a violation of the applicant's rights as guaranteed by Articles 3 and 5 of the Convention and awarded compensation for non-pecuniary damage. The Government concluded that the applicant's rights were therefore restored and invited the Court to discontinue the examination of the complaint in accordance with Article 37 § 1 of the Convention.

30. The applicant invited the Court to proceed with the consideration of the case. He submitted that the domestic civil court did not acknowledge that he had been subjected to torture, nor did it consider the issue of his access to a court in relation to his complaint about the unlawfulness of his detention. No criminal proceedings had been brought with regard to his ill-treatment.

31. The Court reiterates that the issue of whether someone may still claim to be a victim of an alleged violation of the Convention entails on the part of the Court essentially an *ex post facto* examination of the situation of the person concerned in the course of which the question whether he or she has received reparation for damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where national authorities have found a violation and their decision constitutes appropriate and sufficient redress therefor, the party involved can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Holzinger v. Austria (no. 1)*, no. 23459/94, § 21, ECHR 2001-I).

32. The Court observes that the applicant brought proceedings for damages against the State which ended with the judgment of 23 April 2004 of the Zheleznodorozhniy District Court of Oryol, which came into force on 2 June 2004. The District Court awarded the applicant RUR 30,000 for non-pecuniary damage on account of the applicant's unlawful detention for over 56 days prior to his release on 5 September 2000, and the fact that he

had not been given food from 8 July to 12 July 2000 inclusive while held in custody. The District Court based its finding on a thorough examination of the applicant's complaints of ill-treatment and the evidence produced by both parties (see paragraph 21 above).

33. The Court finds that the Zheleznodorozhniy District Court of Oryol acknowledged, in substance, a violation of the applicant's rights as guaranteed under Article 3 of the Convention in that he had not been given food for five days during his detention. The Court considers that by awarding the applicant that compensation the District Court offered appropriate and sufficient redress. Thus, the applicant could no longer claim to be a victim of a violation of Article 3. The Court is therefore unable to take cognisance of the merits of the complaint.

34. The Court notes that in their observations of 3 October 2003 the Government acknowledged that the complaint of 9 July 2000 about the unlawfulness of detention, which the applicant lodged with the investigator of the Znamenskiy District Police Department of the Oryol Region, was never forwarded to a court, in breach of the domestic law. The Government informed the Court that it has been pointed out to the head of the Znamenskiy District Police investigation department that such violations are intolerable.

35. The Court further notes that the damages awarded by the judgment of 23 April 2004 related, *inter alia*, to the fact that the applicant had been held unlawfully in custody for 56 days until 5 September 2000.

36. In these circumstances, and taking into account that it does not transpire from the above judgment that the applicant raised a separate question concerning the “speediness” of the proceedings to determine the lawfulness of his detention, the Court accepts the Government's view that the violation was remedied at the domestic level. It cannot therefore examine the merits of the complaint.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that, by reason of the applicant's loss of his status as a “victim” for the purposes of Article 34 of the Convention, it is unable to take cognisance of the merits of the application.

Done in English, and notified in writing on 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President