



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

FIRST SECTION

CASE OF BEDNOV v. RUSSIA

(Application no. 21153/02)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Bednov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 21153/02) 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 Vladimir Vladimirovich Bednov (“the applicant”), on 14 April 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his applications for release pending trial had not been examined by domestic courts.

4. The application was allocated to the First 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 24 March 2005, the Court declared the application partly admissible.

6. The applicant and the Government each filed further written observations (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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1964 and lives in Krivoborye, Voronezh Region.

8. On 25 July 2001 the applicant was arrested on suspicion of robbery.

9. On 27 July 2001 the Prosecutor ordered the pre-trial detention of the applicant as a preventive measure.

10. The applicant filed a complaint on 6 August 2001 with the Liskinskiy District Court of the Voronezh Region and on 7 August 2001 with the Voronezh Regional Court, claiming that his detention was unlawful.

11. On 9 August 2001 the applicant lodged an application for release pending trial with the Voronezh Regional Court. The application was sent by the administration of the remand prison on the same date and was received by that court on 14 August 2001.

12. On 16 August 2001 the applicant lodged another application for release pending trial with the Voronezh Regional Court. On the same date the Voronezh Regional Court forwarded the applicant's application for release to the Zhelesnodorozhniy District Court of Voronezh. It is unclear whether that application was the one dated 9 August or 16 August 2001.

13. On 23 and 27 August 2001 the applicant again lodged applications for release pending trial with the Voronezh Regional Court. The application of 23 August 2001 was sent by the administration of the remand prison on the same date and was received by that court on 27 August 2001.

14. The Government submitted that on 23 August 2001 the Voronezh Regional Court had sent the applicant certain clarifications concerning Article 220-1 of the Code of Criminal Procedure.

15. The applicant submitted that on 27 August 2001 he had received a reply from the Voronezh Regional Court informing him that all his complaints and applications had been transmitted to the Liskinskiy District Court.

16. On 31 August 2001 the Voronezh Regional Court forwarded the applicant's application to the Liskinskiy District Court. It is unclear to which of the applications this corresponded.

17. On 7 September 2001 the applicant was transferred to a different remand prison.

18. On 11 September 2001 the investigative authorities forwarded certain documents from the applicant's case file to the Zhelesnodorozhniy District Court for examination under Article 220-2 of the Code of Criminal Procedure.

19. On 20 September 2001 the Liskinskiy District Court forwarded the applicant's application for release pending trial to the Zhelesnodorozhniy District Court referring to the fact that the applicant was being held in a remand prison within the latter court's jurisdiction. The application was received by the Zhelesnodorozhniy District Court on 24 September 2001.

20. On 26 September 2001 the administration of the remand prison where the applicant used to be held informed the Zhelesnodorozhniy District Court that the applicant could not be conveyed to a hearing on that date because on 7 September 2001 he had been transferred to the Liskinskiy District. It appears that the hearing was supposed to concern the application for release pending trial.

21. On 2 October 2001 the Zhelesnodorozhniy District Court forwarded the applicant's applications for release pending trial to the Liskinskiy District Court. It is unclear which particular applications were concerned.

22. On 3 October 2001 the administration of the remand prison where the applicant used to be held again informed the Zhelesnodorozhniy District Court that the applicant could not be conveyed to a hearing on that date because on 7 September 2001 he had been transferred to the Liskinskiy District.

23. On 30 October 2001 the Liskinskiy District Court convicted the applicant of theft and sentenced him to four years and six months' imprisonment. The court counted the term of the applicant's pre-trial detention towards the term of his imprisonment.

24. On 19 March 2002 the judgment was upheld on appeal by the Voronezh Regional Court.

II. RELEVANT DOMESTIC LAW

25. In accordance with Article 220-1 of the Code of Criminal Procedure of 1960 in force at the material time, complaints about a decision to apply pre-trial detention as a preventive measure and about the length of the detention could be lodged with a court by the detainee or his representative. Under Article 220-2 judicial review of the lawfulness, validity and length of the detention was carried out by a judge *in camera* at the place of the detention within three days after receipt of documents justifying the arrest.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

26. The applicant complained under Article 5 § 4 of the Convention that his complaints about the lawfulness of his pre-trial detention and applications for release pending trial had not been examined by the domestic courts. Article 5 § 4 of the Convention provides:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Arguments of the parties

1. The Government

27. In their observations submitted prior to the decision on admissibility of 24 March 2005 the Government stated that in reply to the applicant's complaints challenging the lawfulness of his pre-trial detention and applications for release pending trial, the Voronezh Regional Court, on 23 August 2001, had sent him certain clarifications concerning Article 220-1 of the Code of Criminal Procedure. As regards the complaints and applications received by the courts after that date, the Government maintained that the applicant had sent them to the Zheleznodorozhniy District Court and to the Liskinskiy District Court, both of which lacked jurisdiction to examine them. The Government further asserted that the Liskinskiy District Court had not examined the complaints and applications concerned because on 30 October 2001 the applicant had been convicted. The Government maintained that for the above reasons the complaint was manifestly ill-founded. In their observations submitted after the decision on admissibility of 24 March 2005 the Government noted with regard to the applicant's applications lodged with the Voronezh Regional Court that all documents related to the year 2001 had been destroyed as the time-limit for their retention had expired.

2. The applicant

28. The applicant contested the Government's submissions claiming that he had not sent any complaints to the Zheleznodorozhniy District Court. He contended that they had all been sent to the Liskinskiy District Court in accordance with the instructions received from the Voronezh Regional Court, but that none of them had been examined.

B. The Court's assessment

29. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to obtain the review of the procedural and substantive conditions essential for the “lawfulness”, in Convention terms, of their deprivation of liberty (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 154-B, p. 34, § 65). In guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, Article 5 § 4 also enshrines their right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Rokhlina v. Russia*, no. 54071/00, § 74, 7 April 2005).

30. Turning to the facts of the present case, the Court notes that during his pre-trial detention, between 25 July and 30 October 2001, the applicant lodged six complaints concerning the unlawfulness of his detention and applications for release pending trial. None of them was examined by a domestic court.

31. As regards the first argument advanced by the Government, the Court observes that they neither submitted a copy of the Voronezh Regional Court's letter of 23 August 2001, nor explained precisely what clarifications the applicant had been provided with or why, if at all, that fact should have released the domestic courts from having to examine his complaints.

32. The Court further notes the Government's assertion that the applicant sent his complaints to the Zheleznodorozhniy District Court and to the Liskinskiy District Court, both of which lacked jurisdiction to examine them. The Court observes, however, that the applicant sent his first complaint to the Liskinskiy District Court and the remaining complaints and applications for release to the Voronezh Regional Court. His complaints and applications were then transferred from one court to another a number of times. Therefore it was the domestic courts themselves that failed to establish which court had jurisdiction to review the lawfulness of the applicant's pre-trial detention.

33. Lastly, the Government maintained that the Liskinskiy District Court had not examined the complaints and applications concerned because on 30 October 2001 the applicant had been convicted. The Court observes, in the first place, that this argument contradicts the previous one, since the explanation offered by the Government in respect of that failure to examine the applicant's complaints implies that the Liskinskiy District Court had jurisdiction to examine them. Furthermore, the Court considers that the fact that the applicant was eventually found guilty of a criminal offence and the term of his pre-trial detention was counted towards the term of his sentence cannot in principle justify the failure to examine his applications for release pending trial. It follows that the applicant was denied the right to a judicial decision concerning the lawfulness of his pre-trial detention.

34. There has therefore been a violation of Article 5 § 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed non-pecuniary damage in the amount of EUR 72,000 caused by the actions of judicial and executive bodies. He referred, in particular, to the very fact of his detention, allegedly poor conditions of his post-conviction detention, alleged ill-treatment in prison that affected his health, difficulties with payments for certain public utilities and lack of funds for proper housing.

37. The Government submitted that the alleged damage had no causal link with the complaint before the Court.

38. Inasmuch as the applicant's claim relates to his post-conviction detention and alleged financial hardship, the Court does not discern any causal link between the violation found and the non-pecuniary damage alleged. On the other hand, the Court accepts that the applicant suffered distress, anxiety and frustration caused by the denial of his right to have the lawfulness of his detention examined. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

39. The applicant did not make any claims in respect of the costs and expenses incurred before the domestic courts and before this Court.

40. Accordingly, the Court makes no award under this head.

C. Default interest

41. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President