



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

1959 · 50 · 2009

FIRST SECTION

CASE OF YEVDOKIMOV v. RUSSIA

(Application no. 17183/05)

JUDGMENT

STRASBOURG

17 September 2009

FINAL

17/12/2009

This judgment may be subject to editorial revision.

In the case of Yevdokimov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 17183/05) 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 Aleksey Petrovich Yevdokimov (“the applicant”), on 12 April 2005.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 23 January 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1982 and lives in Saransk, the Republic of Mordovia.

5. On 15 March 2003 the applicant was arrested on suspicion of theft and detained pending trial. He was allegedly ill-treated by the police who sought to extract a confession.

6. On 6 October 2003 the Oktyabrskiy District Court of Saransk convicted the applicant of theft and sentenced him to three years’

imprisonment. However, on 11 February 2004 the Supreme Court of the Republic of Mordovia quashed his conviction on appeal and remitted the case for a retrial.

7. On 25 May 2004 the Oktyabrskiy District Court of Saransk again convicted the applicant of theft and sentenced him to two years and two months' imprisonment. On 13 October 2004 the Supreme Court upheld the conviction and sentence on appeal. The time spent in detention pending trial was to be counted towards the sentence. Thus, the applicant would have served his sentence by 15 May 2005.

8. On 31 March 2005, following a request for supervisory review by the applicant, the Presidium of the Supreme Court of the Republic of Mordovia reduced his sentence to two years' imprisonment. The applicant was present and took part in the supervisory-review proceedings. Thus, according to article 408 § 3 of the Code of Criminal Procedure the applicant should have been released immediately. However, he was returned to the prison. Once the prison administration received the decision of the Presidium of the Supreme Court, the applicant was released on 7 April 2005.

9. The applicant then brought proceedings for compensation in respect of the excess time he had spent in prison.

10. On 18 May 2006 the Leninskiy District Court of Saransk dismissed his claims. It held that the delay in his release had been due to the supervisory-review procedure, which had ended on 31 March 2005, and to the fact that the prison administration had not received the decision of 31 March 2005 of the Presidium of the Supreme Court until a week later and so were not liable for the additional period the applicant had spent in prison. On 4 July 2006 the Supreme Court of the Republic of Mordovia upheld that judgment on appeal.

II. RELEVANT DOMESTIC LAW

11. Article 22 of the Constitution of the Russian Federation provides that everyone shall have the right to freedom and personal inviolability. Arrest, detention and keeping in custody shall be permissible only under a court order. A person may not be detained for more than 48 hours without a court order.

12. In accordance with article 408 § 3 of the Code of Criminal Procedure of the Russian Federation a supervisory review ruling under which a convicted person shall be subject to release from custody shall be executed to that extent immediately, if the convicted person is attending the supervisory review proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

13. The applicant complained that the period he had spent in detention had exceeded his final prison sentence by twenty-three days. He relied on Article 5 § 1 (a) of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...”

A. Admissibility

14. The Court considers that the applicant’s complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The applicant maintained that following the supervisory-review decision to reduce his sentence to two years’ imprisonment, his sentence had come to an end on 15 March 2005. However, he was only released on 7 April 2005. Thus, he considered that the excess period of imprisonment was contrary to Article 5 of the Convention.

16. The Government pointed out that according to domestic law the applicant should have been released immediately following the decision of the Presidium of the Supreme Court of 31 March 2005. Thus, they accepted that the applicant’s detention as from that date had no basis in domestic law and amounted to a violation of the applicant’s rights under Article 5 § 1 of the Convention.

17. The Court reiterates that by judgment of 25 May 2004, as upheld on appeal on 13 October 2004, the applicant was convicted and sentenced to two years and two months’ imprisonment starting from 15 March 2003, the day of his arrest. Accordingly, the applicant would have served his sentence by 15 May 2005. It follows that until 31 March 2005, when the Presidium of the Supreme Court of the Republic of Mordovia examined the case, the applicant’s imprisonment was a lawful detention of a person after conviction by a competent court as required by Article 5 § 1 (a) of the

Convention. It is true that as a result of the supervisory review on 31 March 2005 and the reduction of his sentence to two years' imprisonment, the applicant would have had served his sentence by 15 March 2005. Nevertheless, this subsequent development did not, in the Court's view, make the detention until 31 March 2005 unlawful within the meaning of Article 5 of the Convention. As regards the remaining period until the applicant's release on 7 April 2005, the Government admitted that the applicant's detention had no basis in domestic law and amounted to a violation of the applicant's rights under Article 5 § 1 of the Convention.

18. The applicant took note of the Government's admission.

19. In the circumstances of the present case the Court finds no reason to hold otherwise. It therefore concludes that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 31 March to 7 April 2005.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant complained under Article 3 that he had been ill-treated in police custody following his arrest, under Article 6 § 1 that the proceedings against him had been unfair and under Article 13 that the examination of his appeal against the judgment of 25 May 2004 had not been sufficiently thorough.

21. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government considered that the claim was unsubstantiated.

25. The Court accepts that the applicant suffered distress and frustration as a result of the delay in his release and that the non-pecuniary damage sustained would not sufficiently be compensated for by the finding of a violation of the Convention. However, the Court finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, it awards the applicant EUR 300 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

26. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

27. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *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 300 (three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President