



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

FIRST SECTION

Application no. 24999/06
Sergey Vasilyevich MAKEYEV
against Russia
lodged on 23 May 2006

STATEMENT OF FACTS

1. The applicant, Mr Sergey Vasilyevich Makeyev, is a Russian national, who was born in 1976 and serves his sentence in Ozernyy, Mordovia Republic.

The circumstances of the case

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

3. On 21 April 2005 between 5 and 6 p.m. the applicant and Mr P. were apprehended by police on suspicion of robbery with violence. They were detained in Leninskiy District Department of the Interior (ROVD) of Penza and later transferred to the temporary detention facility IVS UVD of Penza Region.

4. On 22 April 2005 the applicant signed a document entitled voluntary confession (*явка с повинной*) describing the circumstances of the crime.

5. On 23 April 2005 Mr P. was interviewed as a suspect providing testimony incriminating himself and the applicant. Essentially the same testimony was given by him on 28 April 2005 during his interrogation as an accused.

6. On 28 April 2005 the investigative authorities requested the domestic courts to order pre-trial detention of the applicant. On the same day the Leninskiy District Court of Penza ordered pre-trial detention of the applicant. The relevant parts of the order read as follows:

“... Makeev S.V. [the applicant] is accused of a grave offense, which is punishable by imprisonment of five to ten years, was previously convicted [of other offences], does not work, has no permanent residence in Penza or Penza Region, [thus if not detained] he might flee from investigation and trial, continue criminal activities, tamper [with investigation] by influencing the victim.”

7. Later that day the applicant and Mr P. were transferred to the pre-trial detention facility IZ-58/1 of Penza.

8. On 30 November 2005 the applicant and Mr P. were convicted by the Leninskiy District Court of Penza of aggravated robbery with violence and sentenced each to seven years six months' imprisonment.

9. The District Court considering circumstances mitigating responsibility of the applicant concluded that his voluntary confession given to police on 22 April 2005 could not be regarded as such, since it was given after his apprehension by police, transfer to a police station and preliminary questioning by police officers, who had reasons to suspect him of a crime.

10. Further the trial court established that the applicant and Mr P. were apprehended on suspicion of robbery on 21 April 2005 and thus the period for serving their sentences should be calculated from that date.

11. The applicant appealed. Apart from substantive arguments concerning his conviction, he also alleged that his detention between 21 and 28 April 2005 was unlawful, since he was not formally detained for seven days.

12. On 15 February 2006 the Penza Regional Court upheld the applicant's conviction. The arguments regarding the applicant's detention between 21 and 28 April 2005 were summarily dismissed without any reasoning.

13. The applicant lodged a supervisory review complaint relying on essentially the same arguments, including allegations of unlawful detention during seven days. The complaint was dismissed by the Supreme Court of the Russian Federation on 30 January 2007.

14. The applicant lodged a complaint with prosecution authorities alleging his unlawful detention without a court order for more than forty-eight hours between 21 and 28 April 2005 and demanding criminal prosecution of a police investigator Mr G. responsible for it.

15. On 31 October 2006 an investigator in the Prosecutor's Office for the Leninskiy District of Penza refused to initiate criminal investigation due to absence of criminal acts committed by Mr G. The relevant parts of the decision read as follows:

“According to the statement of Mr G. ... [on 21 April 2005] Mr Makeyev [the applicant] and Mr P. ... were apprehended after commission of the crime and confessed in it... [S]ince it was necessary to perform investigative and operative-search activities they were kept in IVS UVD of Penza Region ...

According to the reply of the Leninskiy ROVD of Penza submitted in response to the information request, Mr Makeyev and Mr P. were apprehended for vagrancy on 21 April 2005 and on 22 April 2005 transferred to a reception and identification centre (*приемник-распределитель*).

According to the reply of the temporary detention facility IVS UVD of Penza Region, Mr Makeyev and Mr P. were detained in the IVS on 22 April 2005 under vagrant apprehension order due to absence of vacant places in the Reception and Identification Centre of the Regional Department of the Interior, On 28 April 2005 they were transferred to IZ-58/1 of Penza.

On 28 April 2005 the Leninskiy District Court of Penza ordered pre-trial detention of Mr Makeyev and Mr P.

The appeal judgment of 15 February 2006 upheld [the applicant's conviction] and established that [his apprehension and detention were lawful] ...

In the course of inquiry it had been established that Mr Makeyev was apprehended and detained in the IVS in order to establish his identity.”

16. The applicant challenged the refusal to initiate criminal proceedings. However, on 9 February 2007 his complaint was dismissed by the decision of the Leninskiy District Court of Penza, as upheld by the Penza Regional Court on 25 April 2007.

COMPLAINTS

The applicant complains under Articles 5 and 13 of the Convention about his allegedly unlawful detention between 21 and 28 April 2005. He further complains under Article 5 § 5 of the Convention about absence of an enforceable right to compensation in this regard.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty between 21 and 28 April 2005 in breach of Article 5 § 1 of the Convention?

In particular, did the deprivation of liberty during that period fall within paragraphs (c) and/or (e) of this provision? Which provisions of the domestic law served as legal basis for the applicant's detention during the abovementioned period?

2. Considering that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008) was the applicant provided with a fair procedure securing lawfulness of his detention during that period?

In particular was the applicant's detention between 21 and 28 April 2005 speedily and duly reviewed by a court?

3. Did the applicant have an effective and enforceable right to compensation for his detention in alleged contravention of Article 5 § 1, as required by Article 5 § 5 of the Convention?

4. The Government are invited to submit the following documents in respect of the applicant's detention between 21 and 28 April 2005:

(a) records of all investigative actions in which the applicant took part, including confessions and interrogation records;

(b) vagrant apprehension order of 22 April 2005 (*постановление о задержании за бродяжничество*) as well as all other documents which served as the basis of the applicant's detention during the abovementioned period;

(c) full copy of a criminal inquiry file in respect of the applicant's allegedly unlawful detention;

(d) copy of the decision of the Leninskiy District Court of Penza of 9 February 2007.