

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

THIRD SECTION

CASE OF CHAYKA v. RUSSIA

(Application no. 37042/14)

JUDGMENT

STRASBOURG

13 June 2017

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Chayka v. Russia,

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

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 37042/14) 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 Yevgeniy Valentinovich Chayka ("the applicant"), on 25 April 2014.

2. The applicant was represented by Mr A. Belyakov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 16 November 2015 the complaint concerning the belated examination of the applicant's statements of appeal against the detention order was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Moscow.

5. On 8 October 2013 the applicant was arrested on suspicion of aggravated fraud. Two days later the Tverskoy District Court of Moscow authorised his detention.

6. The detention was extended by the District Court on 20 November 2013. The applicant's counsel appealed. On 20 January 2014 the Moscow City Court upheld the detention order.

7. On 5 September 2014 the District Court changed the measure of restraint from detention to house arrest.

THE LAW

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

8. The applicant complained that the review of the detention order of 20 November 2013 had breached the "speediness" requirement of Article 5 § 4 of the Convention, which reads as follows:

> "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."

9. The Government did not contest that argument.

A. Admissibility

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

11. The Court recalls that it has already found a violation of Article 5 § 4 of the Convention in a number of cases against Russia, where, for instance, the proceedings by which the lawfulness of applicants' detention was decided lasted thirty-four (see *Manerov v. Russia*, no. 49848/10, §§ 43-47, 5 January 2016), twenty-seven (see *Pichugin v. Russia*, no. 38623/03, §§ 154-56, 23 October 2012), twenty (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009) or twenty-six days (see *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006), stressing that their entire duration was attributable to the authorities.

12. The Court observes that in the present case it took the appeal court approximately two months to examine the applicant's statement of appeal against the detention order of 20 November 2013. The Moscow City Court issued its decision on 20 January 2014. The Government did not put forward any arguments explaining that delay.

13. Having regard to the above, the Court considers that the appeal proceedings on review of the lawfulness of the applicant's detention did not

comply with the "speediness" requirement under Article 5 § 4 of the Convention. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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

15. The applicant claimed 369,910 Russian roubles (RUB) in respect of pecuniary and 20,000 euros (EUR) in respect of non-pecuniary damage.

16. The Government submitted that the amounts claimed were excessive and unreasonable.

17. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,250 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

18. The applicant also claimed RUB 475,000 for the costs and expenses incurred in the domestic proceedings and in the proceedings before the Court.

19. The Government considered the claims excessive and unsubstantiated.

20. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses as unsubstantiated.

C. Default interest

21. The Court considers it appropriate that the default interest rate 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 § 4 of the Convention concerning the excessive length of the judicial review of the applicant's detention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 2,250 (two thousand two hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(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 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President