

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

THIRD SECTION

CASE OF DENISENKO v. RUSSIA

(Application no. 18322/05)

JUDGMENT

STRASBOURG

14 February 2017

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



In the case of Denisenko v. Russia,

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

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 24 January 2017,

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

PROCEDURE

1. The case originated in an application (no. 18322/05) 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 Maksim Vladimirovich Denisenko ("the applicant"), on 21 April 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about his unacknowledged detention between 15 and 20 July 2004.

4. On 26 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Svetlyy, Kamchatka Region.

6. On 15 July 2004 at around 2 p.m. the applicant was arrested on suspicion of having committed a robbery and taken to a police station. According to the applicant, he was kept in unacknowledged detention at the police station from 15 to 20 July 2004. On 20 July 2004 at 5.40 p.m. the investigator drew up a record of the applicant's arrest as a suspect.

7. According to the Government, after his arrest on 15 July 2004 at 2 p.m., the applicant was released at 9 p.m. on the same date under an

obligation to appear (*обязательство о явке*). On 20 July the applicant returned to the police station to be questioned. After the interview the investigator decided to detain the applicant and drew up a record of his arrest as a suspect.

II. RELEVANT DOMESTIC LAW

8. The Code of Administrative Offences of the Russian Federation (hereinafter, "the CAO") of 30 December 2001, in force as from 1 July 2002, provides for the possibility to use the measure of administrative detention in exceptional circumstances in order to facilitate the processing of an administrative offence case (Article 27.3). Under Article 27.4 of the CAO, administrative detention should be recorded. The term of administrative detention should not normally exceed three hours (Article 27.5 § 1 of the CAO). Persons subject to administrative proceedings concerning offences punishable by – among other administrative sanctions – administrative detention may be subject to administrative detention for up to forty-eight hours (Article 27.5 § 3 of the CAO).

The Code of Criminal Procedure of the Russian Federation (hereinafter, "the CCrP") of 18 December 2001, in force as from 1 July 2002, provides that under certain conditions an investigating authority has the right to arrest a person suspected of having committed a criminal offence. The record of arrest should be made no later than three hours after the suspect is brought to an investigating authority (Article 92 § 1 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

9. The applicant complained about his unacknowledged detention from 15 to 20 July 2004 in breach of Article 5 § 1 (c) 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:
>
> [...]
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

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

1. Submissions of the parties

11. The Government denied that the applicant had been kept in unacknowledged detention from 15 to 20 July 2004. They asserted that on 15 July 2004 at 2 p.m. police had arrested the applicant on suspicion of having committed robbery. He was then charged with the administrative offence of hooliganism, allowing the authorities to detain him in exceptional circumstances for up to forty-eight hours in order to process the offence. At 9 p.m. on the same date the applicant was released under the obligation to appear (*обязательство о явке*).

12. The applicant maintained that he had been detained from 15 to 20 July 2004 without any record thereof. He noted that the Government had failed to submit any documents related to the alleged administrative proceedings against him. The applicant also submitted that the Government had not explained what exceptional circumstances had justified the use of administrative detention in his respect.

2. Assessment by the Court

13. The Court has had occasion to hold that the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see, among others, *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III; *Aleksandr Sokolov v. Russia*, no. 20364/05, 4 November 2010, §§ 70-73; *Ivan Kuzmin v. Russia*, no. 30271/03, §§ 81-84, 25 November 2010; *Smolik v. Ukraine*, no. 11778/05, §§ 46-48, 19 January 2012; *Grinenko v. Ukraine*, no. 33627/06, §§ 75-78, 15 November 2012; *Venskutė v. Lithuania*, no. 10645/08 , § 80, 11 December 2012; *Rakhimberdiyev v. Russia*, no. 47837/06, §§ 35-36, 18 September 2014; *Nagiyev v. Azerbaijan*, no. 16499/09, §§ 57 and 64, 23 April

2015; and *Birulev and Shishkin v. Russia*, nos. 35919/05 and 3346/06, §§ 56-57, 14 June 2016). The present case constitutes another example of this practice.

14. The Court notes that, even according to the Government, on 15 July 2004 the applicant was deprived of his liberty from 2 p.m. until 9 p.m. for seven hours in total. The police should have drawn up a record of the applicant's arrest no later than three hours after his detention, a requirement set out by both the CAO and the CCrP (see paragraph 8 above). However, the case file does not contain any arrest record dated 15 July 2004 drawn up within the framework of either administrative or criminal proceedings in respect of the applicant. If such a record (comprising all the required details) had been drawn up, there would be no doubt as to whether on 15 July 2004 the applicant had been indeed released or placed in detention.

15. On the basis of the above, the Court concludes that the applicant's arrest on 15 July 2004 without any record thereof is sufficient to demonstrate a breach of the requirements of both the domestic law and Article 5 of the Convention in respect of the proper recording of instances of deprivation of liberty.

16. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore 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

18. 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

19. The applicant claimed 7,500 euros (EUR) and EUR 72,000 in respect of, respectively, pecuniary and non-pecuniary damage allegedly

caused by the criminal proceedings against him since the arrest on 15 July 2004.

20. The Government submitted that the applicant's claims in respect of pecuniary and non-pecuniary damage were not related to the issue of the lawfulness of his detention.

21. 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 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

22. The applicant did not submit any claim under this head; the Court thus makes no award in this respect.

C. Default interest

23. 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 complaints concerning the unlawfulness of the applicant's detention from 15 to 20 July 2004 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred 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 14 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Helena Jäderblom President