

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

THIRD SECTION

CASE OF DERGALEV v. RUSSIA

(Application no. 39655/10)

JUDGMENT

STRASBOURG

4 July 2017

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



In the case of Dergalev 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 13 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 39655/10) 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 Gennadiy Gennadyevich Dergalev ("the applicant"), on 27 September 2010.

2. 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. The applicant complained that his pre-trial detention had been unreasonably long and that it had not been based on relevant or sufficient reasons.

4. On 29 August 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Novosibirsk.

6. On 10 April 2007 the applicant was arrested on suspicion of robbery as part of an organised group and of abuse of position.

7. On 11 April 2007 the Zheleznodorozhnyy District Court of Novosibirsk remanded him in custody. He remained in detention pending the completion of the investigation and trial. Referring to the seriousness of the charges, the courts extended his detention on the grounds that he might threaten witnesses, abscond, interfere with the investigation, reoffend or destroy evidence.

8. On 13 April 2009 the Oktyabrskiy District Court of Novosibirsk found the applicant guilty and sentenced him to nine years' imprisonment.

9. On 18 January 2010 the Novosibirsk Regional Court quashed the judgment on appeal and remitted the case for fresh examination. The court decided to place the applicant in pre-trial detention. His detention was subsequently extended on the same grounds as described above.

10. On 14 April 2011 the District Court convicted the applicant as charged and sentenced him to nine years' imprisonment. On 5 September 2011 the Novosibirsk Regional Court upheld the judgment on appeal.

II. PROCEEDINGS BEFORE THE COURT

11. On 16 January 2015 the Government submitted a unilateral declaration. They acknowledged that the applicant had been detained "without well-founded justification on the basis of decisions rendered by the courts", which did not "comply with the requirements of Article 5 § 3 of the Convention". They stated their readiness to pay 1,500 euros (EUR) to the applicant as compensation for his pre-trial detention from 18 January 2010 to 14 April 2011 and asked the Court to strike the case out of its list of cases.

12. On 10 March 2015 the applicant rejected the Government's offer. He expressed the view that the amount of money offered by the Government was insufficient.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

13. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had been excessively long and had not been based on relevant and sufficient reasons. Article 5 § 3, in so far as relevant, provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Scope of the complaint

14. Having regard to the provisions mentioned in the Government's unilateral declaration, the Court considers it necessary at the outset to determine the scope of the applicant's complaint.

15. The Court reiterates that in circumstances where applicants have continued to be deprived of their liberty while criminal proceedings were pending at the appeal stage, it has always regarded multiple, consecutive pre-trial detention periods as a whole and has not divided them into separate periods (see, among numerous authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007).

16. In the present case, the applicant's pre-trial detention began when he was arrested, namely on 10 April 2007. He was detained for the purposes of Article 5 § 3 until his conviction on 13 April 2009. He was then placed in pre-trial detention again on 18 January 2010, when the Novosibirsk Regional Court quashed his conviction. He was in pre-trial detention until 14 April 2011, when he was convicted again. The applicant was therefore in pre-trial detention for three years and three months.

B. The Government's request for the case to be struck out under Article 37 of the Convention

17. Having studied the terms of the Government's declaration of 16 January 2015, the Court is satisfied that the Government have acknowledged a violation of the applicant's right to release pending trial under Article 5 § 3 and have also offered to pay him compensation.

18. The Court observes, however, that the Government submitted a declaration which only covered part of the period of the applicant's pre-trial detention, namely the period from 18 January 2010 to 14 April 2011, and did not acknowledge a violation of Article 5 § 3 with regard to the period of pre-trial detention from 10 April 2007 to 13 April 2009. Without prejudging its decision on the admissibility and merits of the case, the Court considers that in such circumstances the Government's declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *Sorokin v. Russia*, no. 67482/10, § 21, 10 October 2013, and *Kalinin v. Russia*, no. 54749/12, § 23, 19 February 2015).

19. That being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

C. Admissibility

20. The Government argued that the applicant had failed to comply with the six-month rule with regard to his complaint about his pre-trial detention between 10 April 2007 and 13 April 2009.

21. The Court reiterates that in circumstances where applicants have continued to be deprived of their liberty while criminal proceedings were pending at the appeal stage, it has always regarded multiple, consecutive pre-trial detention periods as a whole and has not divided them into separate periods (see, among numerous authorities, *Solmaz*, cited above, §§ 34-37).

22. The Court observes that in the present case the applicant's pre-trial detention comprised two periods: (1) from 10 April 2007, when he was arrested pending the completion of the criminal investigation against him, to 13 April 2009, when he was convicted; and (2) from 18 January 2010, when the appeal court quashed the verdict, to his conviction on 14 April 2011. Having regard to the above, the two periods will be assessed cumulatively for the purposes of the six-month rule. The Court therefore dismisses the Government's objection.

23. The Court considers that the application 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.

D. Merits

24. The Court has already examined a large number of applications against Russia raising similar complaints under Article 5 § 3 of the Convention. It has found violations of that Article on the grounds that domestic courts had extended applicants' detention by relying essentially on the gravity of the charges and using stereotyped formulae, without addressing applicants' specific situations or considering alternative preventive measures (see, among many other examples, *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012; *Romanova v. Russia*, no. 23215/02, 11 October 2011; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Gultyayeva v. Russia*, no. 67413/01, 1 April 2010; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Belov v. Russia*, no. 22053/02, 3 July 2008; and *Shukhardin v. Russia*, no. 65734/01, 28 June 2007).

25. The Court notes that there is no reason to arrive at a different finding in the present case. In the present case, the domestic courts resorted to abstract and stereotyped grounds and did not seriously consider any alternatives to detention. Although such grounds are "relevant", they cannot be regarded as "sufficient". In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

26. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 3,000 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

29. The Government stated that the compensation it had offered was sufficient.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and it therefore rejects that claim. On the other hand, it awards the applicant EUR 3,300 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed EUR 100 for postal costs and expenses for copying documents in the domestic proceedings and the proceedings before the Court.

32. The Government stated that the sum they had offered was sufficient to cover costs and expenses.

33. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 14 to cover the applicant's postal costs.

C. Default interest

34. 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 complaint concerning the excessive duration of the applicant's pre-trial detention admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*

(a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 14 (fourteen euros), plus any tax that may be chargeable, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 4 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President