

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

THIRD SECTION

CASE OF MAKARSKIY v. RUSSIA

(Application no. 41333/14)

JUDGMENT

STRASBOURG

9 January 2018

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



In the case of Makarskiy v. Russia,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 41333/14) 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 Ivan Viktorovich Makarskiy ("the applicant"), on 23 February 2015.

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. On 1 December 2016 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1989.

5. On 27 December 2010 the applicant was arrested on drug-related charges and placed in custody.

6. On 14 December 2012 the case was submitted for trial to the Voronezh Regional Court.

7. On 11 July 2013 the court returned the case to the deputy Prosecutor General for remedying certain procedural defects.

8. On 20 September 2013 the Investigations Department of the Federal Drug Control Service received the case file and forwarded it to its regional branch in St Petersburg.

9. On 1 November 2013 an investigator asked the St Petersburg City Court to extend the applicant's detention for a further four months, until

31 March 2014. On 8 November 2013 the City Court granted the application. The applicant filed an appeal. He pointed out that the maximum statutory time period for keeping him in pre-trial detention had expired a long time ago and that any further extensions had been unlawful.

10. On 27 November 2013 the St Petersburg City Court rejected his appeal in a summary fashion, without examining his arguments in detail.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

11. The applicant complained that his detention beyond the maximum statutory time period had been effected in breach of Article 5 § 1 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 ..."

12. The Government acknowledged that the global duration of the applicant's detention had exceeded the maximum statutory time limit and had led to a violation of Article 5 of the Convention.

A. Admissibility

13. 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.

B. Merits

14. The Court has previously examined the matter of pre-trial detention being extended for the purpose of studying the case file. It found that, in the absence of an explicit norm providing for repeated extensions of the authorised detention period, any extension in excess of the maximum statutory time limit would be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 of the Convention

(see *Tsarenko v. Russia*, no. 52235/09, §§ 59-63, 3 March 2011, and *Suslov v. Russia*, no. 2366/07, §§ 75‑79, 29 May 2012).

15. Having regard to its established case-law and the Government's acknowledgement of the fact that the applicant's detention had lasted beyond the maximum authorised detention period, the Court finds that there has been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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."

17. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

18. The Government indicated that Article 41 was to be applied in accordance with the established case-law.

19. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

20. 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 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, to be converted into the currency of the respondent State 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 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President