

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

THIRD SECTION

CASE OF OLYUNIN v. RUSSIA

(Application no. 22631/04)

JUDGMENT

STRASBOURG

19 April 2016

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



In the case of Olyunin 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 Stephen Phillips, *Section Registrar,*

Having deliberated in private on 22 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 22631/04) 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 Viktor Ilyich Olyunin ("the applicant"), on 22 May 2004.

2. The applicant was represented by Mr I.V. Novikov, a lawyer practising in Novosibirsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 12 December 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Barnaul.

5. In 2001 he became a suspect and then an accused in a criminal case concerning fraud. During the investigation of the criminal case the applicant was under a written undertaking not to leave his place of residence.

6. In March 2003 the prosecutor referred the criminal case to the Industrialnyy District Court of Barnaul ("the District Court") for trial.

7. On 19 September 2003 the District Court ordered the applicant's detention pending trial following the complaints by one of the victims and a witness about threats expressed by the applicant in their respect.

8. On 22 September 2003 the applicant's representatives lodged a cassation appeal against the detention order of 19 September 2003 with the Regional Court via the District Court.

9. On 6 October 2003 the District Court forwarded that appeal to the Regional Court and set its examination on 27 November 2003.

10. On 8 October 2003 the District Court forwarded a copy of the applicant's appeal to other participants of the criminal proceedings and informed them that they had until 22 October 2003 to submit their comments, if any.

11. On 22 October 2003 victim Shch. submitted her comments on the applicant's grounds of appeal.

12. On 19 November 2003 the Regional Court received all materials related to the applicant's appeal against the detention order of 19 September 2003.

13. On 27 November 2003 the Regional Court examined and rejected the applicant's appeal.

14. The District Court subsequently extended the applicant's detention on several occasions.

15. On 30 September 2004 the applicant was released under a written undertaking.

16. On 13 December 2005 the District Court found the applicant guilty of fraud and sentenced him to two years' imprisonment.

17. On 18 May 2006 the Regional Court upheld the applicant's conviction.

THE LAW

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

18. The applicant complained that his cassation appeal against the detention order of 19 September 2003 had not been examined speedily. He relied on 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."

19. The Government submitted that the appeal proceedings had been carried out in accordance with the time-limits provided for in the domestic law. Some delays had occurred when a copy of the applicant's appeal had been sent to a victim who lived in another city.

20. The applicant maintained his complaint.

A. Admissibility

21. 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

22. The Court will examine the merits of the applicant's complaint under Article 5 § 4 of the Convention in the light of the applicable general principles set out in, among others, *Idalov v. Russia* [GC] (no. 5826/03, §§ 154-55, 22 May 2012, with further references).

23. The Court observes that the applicant's appeal against the detention order of 19 September 2003 was lodged with the Regional Court via the District Court on 22 September 2003. The Regional Court examined and dismissed it on 27 November 2003. It follows that it took the domestic courts more than two months to schedule and examine the applicant's appeal.

24. The Government did not claim that the questions to be dealt with by the Regional Court were complex or that the applicant or his counsel had in some way contributed to the length of the proceedings. The Court notes that it took the District Court two weeks to prepare and forward the appeal materials to the Regional Court. Once sent, the appeal materials reached the Regional Court one month and a half afterwards. The Government did not provide any explanation as to why it had taken so long to refer the appeal materials from the District Court to the Regional Court. In that respect the Court reiterates that it is for the State to organise its judicial system in such a way as to enable the courts to comply with the requirements of Article 5 § 4 of the Convention (see *Butusov v. Russia*, no. 7923/04, § 34, 22 December 2009). It follows that the entire duration of the appeal proceedings in the present case is attributable to the domestic authorities.

25. The Court reiterates that where an individual's personal liberty is at stake, the Court has set up very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention. The Court has found a violation of Article 5 § 4 of the Convention in Russian cases where appeal proceedings lasted twenty-six (see *Mamedova v. Russia*, no. 7064/05, §§ 96-97, 1 June 2006) and twenty-seven days (see *Pichugin v. Russia*, no. 38623/03, §§ 154-56, 23 October 2012), stressing, in each case, that their entire duration was attributable to the authorities.

26. Having regard to its established case-law on the issue and the circumstances of the present case, the Court considers that the time it took the domestic courts to examine the applicant's appeal against the detention order of 19 September 2003 cannot be considered compatible with the "speediness" requirement of Article 5 § 4 of the Convention.

27. There has therefore been a violation of Article 5 § 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The Court has examined the other complaints submitted by the applicant. 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. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 160,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government submitted that if the Court found a violation of the Convention in the present case, such a finding would constitute adequate just satisfaction.

32. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court.

34. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

35. 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 under Article 5 § 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, 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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, 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 19 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President