

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

THIRD SECTION

CASE OF PANOV v. RUSSIA

(Application no. 35878/08)

JUDGMENT

STRASBOURG

15 November 2016

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



In the case of Panov 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 18 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 35878/08) 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 Denis Vladimirovich Panov ("the applicant"), on 29 May 2008.

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

3. On 7 January 2014 the complaint concerning the lack of review of the applicant's pre-trial detention was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and is currently serving a sentence in a correctional colony in the Tambov Region.

5. On 17 July 2007 the applicant was arrested on suspicion of robbery. On the following day the Meshchanskiy District Court of Moscow authorised his detention.

6. On 6 September 2007 the Taganskiy District Court extended the detention. That detention order was upheld on appeal on 22 October 2007 by the Moscow City Court.

7. Another extensions of detention followed on 16 October 2007 and 11 December 2007. The applicant appealed against both detention orders.

8. On 17 January 2008 the applicant was convicted as charged and sentenced to nine years' imprisonment. The conviction became final on 19 March 2008.

9. On 2 July 2008, in reply to the applicant's complaint about the failure to examine his appeal, the City Court informed him that his appeal against the detention order of 16 October 2007 was not received by the City Court. However, by a letter of 22 August 2008 the City Court forwarded the applicant's appeal statement lodged on 17 October 2007 to the District Court, requiring it to perform procedural steps necessary to initiate the appeal proceedings. The City Court also informed the applicant that his appeal complaint of 17 October 2007 was mistakenly attached to another case-file.

10. No further information on organisation of the appeal hearing against the detention order of 16 October 2007 was provided.

THE LAW

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

11. The applicant complained that his appeal against the detention order of 16 October 2007 had not been examined. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "4. 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."

12. The Government submitted that the applicant's appeal statement against the detention order of 16 October 2007 was in fact examined by the Moscow City Court on 22 October 2007, along with his appeal against the detention order of 6 September 2007. They further argued that, given the examination of the appeal on 22 October 2007, the applicant's complaint to the Court lodged on 29 May 2008 was belated, having fallen outside the six-month time-limit provided for by Article 35 § 1 of the Convention.

A. Admissibility

13. The Court considers that the Government's objection as to the applicant's failure to comply with the six-month time-limit is closely linked to the substance of his complaint about the Russian courts' failure to examine his appeal against the detention order of 16 October 2007 and should, therefore, be joined to the merits. The Court further notes that the application is not manifestly ill-founded within the meaning of

Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The Court reiterates that it has already found a violation of Article 5 § 4 of the Convention in a number of cases against Russia, where the domestic courts for various reasons omitted to conduct a judicial review of applicants' detention pending trial (see *Sadretdinov v. Russia*, no. 17564/06, §§ 88-95, 24 May 2016; *G.O. v. Russia*, no. 39249/03, §§ 98-101, 18 October 2011; *Miminoshvili v. Russia*, no. 20197/03, §§ 104-05, 28 June 2011; *Popov and Vorobyev v. Russia*, no. 1606/02, §§ 93-100, 23 April 2009; *Moiseyev v. Russia*, no. 62936/00, §§ 161-63, 9 October 2008; *Khudobin v. Russia*, no. 59696/00, §§ 122-24, ECHR 2006-XII (extracts); and *Bednov v. Russia*, no. 21153/02, §§ 29-34, 1 June 2006).

15. The Court observes at the outset that it was not disputed between the parties that the applicant had appealed against the detention order of 16 October 2007.

16. The Court takes note of the Government's argument that on 22 October 2007, the Moscow City Court examined simultaneously appeals against the two detention orders: those of 6 September and 16 October 2007. However, that argument lacks any factual basis. The Court observes that in its decision of 22 October 2007 the City Court did not make a single reference to the detention order of 16 October 2007, having exclusively referred, including in the operative part of its decision, to the detention order of 6 September 2007. Moreover, in its letter of 22 August 2008 (see paragraph 9 above) the City Court acknowledged the mistake and informed the applicant that his appeal statement against the detention order of 16 October 2007 had been misplaced and that the District Court had been asked to take necessary procedural steps to ensure the examination of the appeal statement. However, no further information on the fate of those proceedings was given.

17. In these circumstances and in the absence of any information to the contrary, the Court considers that the applicant's appeal against the detention order of 16 October 2007 has not been examined by the domestic courts.

18. As regards the applicant's compliance with the six-month time-limit for lodging the complaint, the Court reiterates that in the cases concerning the absence of judicial review of detention six-month period for lodging application with the Court starts to run from the moment when the applicant should have realised the futility of his complaint (see *Fursenko v. Russia*, no. 26386/02, §§ 131-34, 24 April 2008). The applicant in the present case introduced his complaint to the Court on 29 May 2008. However, it was not until 2 July 2008 that the applicant learned that there were certain

procedural irregularities with his appeal against the detention order of 16 October 2007. Even assuming that the applicant should have lost hope in the examination of his appeal when he was convicted on 17 January 2008 and when his attempts to have his pre-trial detention challenged became evidently futile, his complaint to the Court brought on 29 May 2008 was still lodged in conformity with the six-month time-limit provided for in Article 35 § 1 of the Convention. The Government's objection in this respect should therefore be dismissed.

19. The Court further recalls that where the domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Khudobin*, cited above, § 122, and *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84). It therefore considers that the authorities' failure to examine the appeal against the detention order of 16 October 2007 deprived the applicant of his right to have the lawfulness of his detention reviewed and amounted to a breach of Article 5 § 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

22. The Government considered the claim excessive.

23. The Court awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

24. The applicant also claimed EUR 1,800 in respect of the costs and expenses.

25. The Government maintained that the applicant has failed to substantiate his claim.

26. The Court reiterates that the applicant has already been awarded EUR 850 in legal aid. Regard being had to the documents in its possession and to its case-law, as well as the subject-matter of the present case, the Court considers that it is not necessary to make any additional award under this head.

C. Default interest

27. 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. *Decides* to join to the merits the Government's objection as to the compliance by the applicant with the six-month rule and rejects it;

2. *Declares* the application admissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President