

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

FIRST SECTION

CASE OF SERGEYEV v. RUSSIA

(Application no. 29699/09)

JUDGMENT

STRASBOURG

17 September 2015

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



In the case of Sergeyev v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 25 August 2015,

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

PROCEDURE

1. The case originated in an application (no. 29699/09) 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 Sergey Fedorovich Sergeyev ("the applicant"), on 9 April 2009.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 19 May 2014 the complaints concerning the conditions of detention and the absence of applicant's counsel from an appeal hearing were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Moscow.

A. Criminal proceedings

5. On 13 August 2008 the Taganskiy District Court of Moscow found the applicant guilty of corruption and sentenced him to three years' imprisonment.

6. The applicant appealed. On 13 October 2008 the Moscow City Court modified the judgment on appeal. It characterised the offence as an abuse of power and reduced the sentence to one and a half years' imprisonment. A prosecutor was present during the hearing and made oral submissions. The

applicant also attended the hearing, but was not represented. As it happened, on the same day his lawyer had asked the City Court to examine the case in his absence.

B. Conditions of detention

7. Between 21 November 2007 and 3 November 2008 the applicant was held in remand prison IZ-77/2 in Moscow. The prison was overcrowded.

II. RELEVANT DOMESTIC LAW

8. For a summary of the relevant domestic law and practice, see the Court's judgment *Shulepov v. Russia*, no. 15435/03, §§ 17-20, 26 June 2008.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE COMPLAINT UNDER ARTICLE 3 OF THE CONVENTION

9. The applicant complained that the conditions of his pre-trial detention violated Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

10. The Government submitted a unilateral declaration on 18 September 2014. In particular, they acknowledged that the conditions of detention in the remand centre had not complied with the requirements of Article 3 of the Convention, and expressed their readiness to pay the applicant 4,935 euros (EUR) as just compensation. They further requested the Court to strike the application out of the list of cases in accordance with Article 37 of the Convention. The remainder of the declaration read as follows:

> "The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as 'any other reason' justifying the striking of the case out of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that

period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This payment will constitute the final resolution of the case in the relevant part."

11. The applicant disagreed with the Government's offer.

12. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if:

"... for any other reason established by the Court, it is no longer justified to continue the examination of the application".

13. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

14. To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

15. The Court notes at the outset that since its first judgment concerning the inhuman and degrading conditions of detention in Russian detention centres (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), it found similar violations in more than a hundred cases against Russia. It follows that the complaint raised in the present application is based on the clear and extensive case-law of the Court.

16. Turning next to the nature of the admissions contained in the Government's declaration, the Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged the violation of the above-mentioned provision of the Convention.

17. As to the intended redress to be provided to the applicant, the Government have undertaken to pay him compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. Even if the method of calculation employed by the Russian authorities in respect of the conditions-of-detention complaints did not correspond exactly to the guidelines established by the Court in the pilot judgment (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012), what is important is that the proposed sum is not unreasonable in comparison with the awards made by the Court in similar cases (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). The Government have committed themselves to effecting the payment of that sum within

three months of the Court's decision, with default interest to be payable in case of delay of settlement.

18. The Court therefore considers that it is no longer justified to continue the examination of this case in the part concerning the above-mentioned complaints. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the judgments concerning the same issues, the Court is also satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the examination of this part of the case. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the applications to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

19. In view of the above, it is appropriate to strike the case out of the list in the part concerning the above-mentioned complaint.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant complained that his right to a fair trial had been violated because he was not represented at the appeal hearing. He invoked Article 6 §§ 1 and 3 (c) of the Convention, the relevant part of which read as follows:

> "1. ... [E]veryone is entitled to a fair... hearing... by an independent and impartial tribunal ... .
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing ..."

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 Government submitted that counsel had been duly informed of the date of the appeal hearing but asked the City Court to examine the case in his absence, and the applicant had had an opportunity to present his arguments in person. They further noted that the court of appeal had reduced the sentence. Finally, the Government added that the applicant had not asked for an adjournment of the hearing or for an appointment of substitute counsel.

23. The applicant maintained his complaint. He claimed, in particular, that he had asked for a substitute lawyer.

24. The Court notes that the absence of counsel in appellate proceedings is a routine occurrence in cases against Russia and is the subject of the Court's well-established case-law (see *Samoshenkov and Strokov v. Russia,* nos. 21731/03 and 1886/04, 22 July 2010; *Sinichkin v. Russia*, no. 20508/03, 8 April 2010; *Shugayev v. Russia*, no. 11020/03, 14 January 2010; *Shilbergs v. Russia*, no. 20075/03, 17 December 2009; *Potapov v. Russia*, no. 14934/03, 16 July 2009; *Grigoryevskikh v. Russia*, no. 22/03, 9 April 2009; *Timergaliyev v. Russia*, no. 40631/02, 14 October 2008; and *Shulepov*, cited above).

25. The Court reiterates that, pursuant to Article 51 of the Code of Criminal Procedure ("CCrP"), legal representation is mandatory unless expressly waived by the suspect or the accused, with the exception of certain categories of cases where this right cannot be waived at all (see paragraph 8 above). There is no indication that the applicant intended to refuse legal assistance in the appeal proceedings and the City Court was aware that his counsel would not be present and that, given the last-minute notification, the applicant would not be able to retain another lawyer.

26. The parties disagree on whether or not the applicant asked the appeal court to adjourn the hearing. It is difficult to establish whether the applicant actually raised the issue since no record of the appeal hearing was drawn up. However, as it was obvious that the applicant would not have legal representation in the appeal hearing, different courses were open to the City Court (see *Balliu v. Albania*, no. 74727/01, § 35, 16 June 2005). It could either appoint a substitute lawyer, as provided for in Article 51 §§ 1 (1) of the CCrP, or adjourn the hearing of its own motion in order to secure the presence of a lawyer later. However, the City Court does not appear to have done either.

27. The Court reiterates that the principle of fair hearing requires, in particular, that each party be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Shilbergs*, cited above, § 100). Having regard to the participation of the prosecutor at the appeal hearing and the City Court's silence in front of the applicant's predicament who found himself without

legal representation at the appeal hearing where legal issues could be reviewed, the Court considers that the principle of fair trial has been disregarded.

28. There has accordingly been a violation of Article 6 §§ 1 and 3 (c) 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 1,000,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government did not submit any comments.

32. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant made no claim under this head.

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. *Takes note* of the terms of the Government's declaration, and the modalities for ensuring compliance with the undertakings referred to therein, and *decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaint under Articles 3;

2. *Declares* admissible the complaint concerning lack of legal representation in the appeal hearing;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the lack of legal representation of the applicant in the appellate proceedings;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand 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;

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

Done in English, and notified in writing on 17 September 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President