

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

THIRD SECTION

CASE OF STADNIK v. RUSSIA

(Application no. 41509/06)

JUDGMENT

STRASBOURG

13 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stadnik 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 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 41509/06) 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 Yuriy Yuryevich Stadnik ("the applicant"), on 6 September 2006.

2. The applicant was represented by Ms M. Samorodkina, a lawyer practising in Moscow. 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 19 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1976.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. In 1994, the applicant was convicted of theft and given a two-year custodial sentence conditional on one year's probation. However, the court applied a general amnesty act and the applicant's conviction, including the probation period, was spent with immediate effect.

7. Less than one year later, on 29 May 1995, a different court convicted the applicant of aggravated robbery and sentenced him to six years' imprisonment. Considering that the applicant had breached the terms of his probation by committing a new offence, the court ordered the suspended

sentence to be activated and increased the total length of the sentence by one year.

8. On 11 December 2001 the Presidium of the Omsk Regional Court acknowledged that the 1995 judgment had been unlawful in the part relating to the increase of the final sentence in connection with the prior conviction that had already been spent. The length of the sentence was varied to six years' imprisonment, calculated from 2 January 1995 which was the date of the applicant's arrest. Given that the applicant had already spent more than six years in detention, the Presidium ordered his immediate release.

9. The applicant unsuccessfully tried several avenues for claiming compensation for his unlawful detention during eleven months and fourteen days.

10. He sought first to exercise the "right to rehabilitation" under the Code of Criminal Procedure (see paragraph 13 below). On 5 August 2003 the Oktyabrskiy District Court in Omsk rejected his application, pointing out that the "right to rehabilitation" only accrued to those who have been acquitted or exonerated which was not the applicant's case. The applicant did not appeal against that decision.

11. The applicant also tried to initiate criminal proceedings against Judge B. who had given the judgment of 29 May 1995. His criminal-law complaint was rejected on the ground that the limitation period had expired.

12. Finally, the applicant filed a civil claim for compensation under the tort provisions of the Civil Code (see paragraph 14 below). On 20 December 2005 the Tsentralniy District Court in Omsk rejected his claim, finding that paragraph 1 of Article 1070 did not apply because the applicant had been found guilty rather than acquitted and that the special condition of applicability of paragraph 2 – the criminal conviction of the judge – was not fulfilled. On 14 June 2006 the Omsk Regional Court rejected an appeal against that decision.

II. RELEVANT DOMESTIC LAW

13. Article 133 of the Code of Criminal Procedure governs the exercise of the "right to rehabilitation" which is, in essence, the restoration of the person to the *status quo ante* following termination or discontinuation of criminal proceedings. This right includes the right to compensation in respect of pecuniary and non-pecuniary damage and reinstatement of labour, pension, housing and other rights.

14. Article 1070(1) of the Civil Code provides that the damage caused to an individual as a result of unlawful conviction, unlawful institution of criminal proceedings, unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, or an unlawful administrative penalty in the form of detention or community service shall be compensated in full, irrespective of the fault of

the officials or agencies. Article 1070(2) clarifies that the damage sustained by an individual in the framework of the administration of justice shall be compensated for provided that the judge's guilt has been established in a final criminal conviction.

THE LAW

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

15. The applicant complained that he did not have an enforceable right to compensation for a period of unlawful detention in breach of Article 5 § 5 of the Convention which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

16. 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

17. The Government submitted that the complaint was manifestly ill-founded. The applicant did have the right to compensation but chose not to use it "to the full extent". The applicant maintained that he had used all the domestic remedies but to no avail.

18. The Court reiterates that the right to compensation under Article 5 § 5 of the Convention arises if a breach of one of its other four paragraphs has been established, directly or in substance, either by the Court or by the domestic courts (see, among many other authorities, *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012; *Svetoslav Dimitrov v. Bulgaria*, no. 55861/00, § 76, 7 February 2008; and *Çağdaş Şahin v. Turkey*, no. 28137/02, § 34, 11 April 2006).

19. In the instant case the Presidium of the Regional Court established that the applicant had served a longer sentence than he should have because of a legal error in the sentencing part of the most recent conviction. This indicates that the domestic courts established in substance that the applicant had been deprived of his liberty in a manner that was not in accordance with a procedure prescribed by law, that is, in breach of the requirements of

paragraph 1 of Article 5. It follows that Article 5 § 5 is applicable in the instant case.

20. The Court reiterates that the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty. This requirement goes hand in hand with the principle that the Convention must guarantee not rights that are theoretical or illusory but rights that are practical and effective. It follows that compensation for detention imposed in breach of the provisions of Article 5 must be not only theoretically available but also accessible in practice to the individual concerned (see *Abashev v. Russia*, no. 9096/09, § 39, 27 June 2013, with further references).

21. In *Abashev*, the Court found that the Russian law in its present state did not provide for an effective possibility to obtain compensation for unlawful detention if the applicant was found guilty in criminal proceedings (ibid., §§ 30 and 40-42). The present case is another example of this unacceptable situation. The applicant was denied the "right to rehabilitation" on the ground that it only accrued to those who have been cleared of the charges. His civil claim for compensation was likewise refused because paragraph 1 of Article 1070 only referred to the specific exhaustively listed situations and the application of paragraph 2 was conditional on the claimant's ability to produce a final criminal conviction of the judge who had issued the impugned decision. That requirement set an unattainable standard of proof in the situation where the institution of criminal proceedings had become time-barred through no fault of the applicant's.

22. It follows that the manner in which Article 1070 is formulated and applied precluded the applicant from obtaining compensation – whether before or after the findings of the European Court in the present judgment – for the detention that was imposed in breach of Article 5 § 1 of the Convention. Having rejected the applicant's compensation claim on essentially formal grounds, the Russian courts did not interpret or apply the domestic law in the spirit of Article 5 of the Convention (see *Abashev*, cited above, § 42, and *Houtman and Meeus v. Belgium*, no. 22945/07, §§ 45-47, 17 March 2009).

23. The applicant did not therefore have an enforceable right to compensation as is required under Article 5 § 5 of the Convention. There has accordingly been a violation of this provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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."

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

26. The Government considered him claim unsubstantiated.

27. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

28. 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 § 5 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five 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;

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

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President