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

FIRST SECTION

DECISION

Application no. 10747/09
Vladimir Albertovich CHISLENSKIY
against Russia

The European Court of Human Rights (First Section), sitting on 26 August 2014 as a Committee composed of:
Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*
and Søren C. Prebensen, *Acting Deputy Section Registrar,*
Having regard to the above application lodged on 29 January 2009,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vladimir Albertovich Chislenskiy, is a Russian national, who was born in 1972 and lived in Reka Emtsa prior to his arrest.

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

A. The circumstances of the case

1. Criminal proceedings

4. In 2007 the applicant was charged with several counts of real-estate fraud committed as a group.

5. On 10 April 2008 a press-officer of the trial court gave an interview to the local media. She gave some personal information about the accused and

reported on the course of the criminal proceedings. The interview was published, in particular, on a newspaper's website.

6. On 12 August 2008 the Arkhangelsk Regional Court found the applicant guilty of several counts of aggravated fraud and sentenced him to a fine of 150,000 Russian roubles (RUB) and ten years' imprisonment. The applicant appealed to the Supreme Court of Russia, asking it to provide him with a lawyer.

7. On 22 January 2009 the Supreme Court upheld the judgment of 12 August 2008 on appeal. The applicant was present at the hearing, but despite his request he was not provided with a lawyer.

8. On 7 March 2013 the Deputy Prosecutor General lodged a motion with the Supreme Court of Russia requesting to quash the appeal judgment and to re-examine the applicant's case. With reference to Article 6 of the Convention and the relevant provisions of the national law he claimed that the applicant's right to legal assistance had been infringed due to absence of a lawyer at the appeal hearing.

9. On 11 September 2013 the Supreme Court, by way of supervisory review proceedings, quashed the appeal judgment of 22 January 2009 and remitted the case for a fresh examination before the appellate court.

10. On 24 October 2013 the Supreme Court held a new appeal hearing with participation of the applicant and his lawyer. It commuted the applicant's sentence to six years and eleven months' imprisonment and reduced the amount of the fine.

2. Conditions of pre-trial detention

11. Between 24 May 2007 and 16 November 2008 the applicant was held in remand prison IZ-29/1 in Arkhangelsk. The prison was overcrowded. Thus, cell 24 measuring 28 sq. m was equipped with 14 sleeping places and accommodated up to 26 inmates; cell 26 measuring 28 sq. m was designed for 14 and housed up to 28 individuals.

12. The applicant was later transferred to remand prison IZ-77/3 in Moscow where he stayed between 16 November 2008 and 7 February 2009. The prison was also overpopulated. Thus, cell 605 measuring 30 sq. m was equipped with 18 sleeping places and accommodated up to 15 inmates; cell 414 measuring 12 sq. m was designed for 6 and housed up to 6 individuals.

13. On 12 February 2009 the applicant was transported to a correctional colony to serve his sentence.

B. Procedure before the Court

14. On 29 January 2009 the applicant posted his first letter to the Court, alleging violations of Articles 3, 5 and 13 of the Convention. He further alleged an infringement of Article 6 in the criminal proceedings against him, specifically mentioning the absence of a lawyer at the appeal hearing.

15. On 8 July 2009 the applicant sent another letter, claiming that he had not received any reply from the Court and reiterated the complaints he had made in the letter of 29 January 2009.

16. On 15 October 2009 the Court received the completed application form which was dated 7 September 2009. It contained a detailed statement of the complaints listed below.

COMPLAINTS

17. The applicant complained under Article 3 of the Convention about the conditions of his pre-trial detention.

18. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he was not provided with legal assistance at the appeal hearing of 22 January 2009.

19. Lastly, he alleged that the media coverage of his case violated Article 6 § 2.

THE LAW

A. The complaint about the conditions of the pre-trial detention

20. The Government submitted that 7 September 2009, the date of the application form, should be regarded as the date of introduction of that complaint. Taken that the period of the applicant's pre-trial detention had ended on 7 February 2009, when he had left the Moscow remand prison, the complaint was lodged out of time.

21. The Court must therefore establish the date of introduction of the complaint and the date on which the applicant's stay in the impugned conditions of detention ended.

22. The Court has consistently held that a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009, *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172 and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I).

23. In the present case neither the first nor the second letter contained a description of the actual conditions of his pre-trial detention (see paragraphs 14 and 15 above). These facts were described in detail only in the application form of 7 September 2009.

24. In these circumstances, the Court finds that the complaint about the conditions of the applicant's pre-trial detention was introduced on 7 September 2009.

25. In his application form, the applicant claimed that he was held in remand prison IZ-77/3 until 10 March 2009.

26. The Government submitted a certificate from the Arkhangelsk Division of the Penitentiary Service showing that the applicant had left IZ-77/3 on 7 February 2009 and that on 12 February 2009 he had already started serving his sentence in a correctional colony. In his observations in reply the applicant did not dispute the authenticity or accuracy of this information.

27. In the light of the above evidence, the Court concludes that the applicant's stay in the remand prison ended on 12 February 2009 at the latest.

28. Having regard to the findings above, the Court considers that the applicant's complaint concerning the conditions of his pre-trial detention was introduced more than six months after his transfer out of the remand prison. It must therefore be declared inadmissible in accordance with Article 35 § 1.

B. The complaint about the lack of legal assistance at the appeal hearing of 22 January 2009

29. The Government submitted that, following the resumption of the proceedings at the national level the alleged violation of Article 6 of the Convention had been remedied by the Supreme Court's decisions of 11 September and 24 October 2013. The applicant had therefore lost his victim status.

30. The applicant did not submit any specific comments.

31. The Court observes that, as follows from the materials of the case-file, the applicant was indeed not represented at the appeal hearing of 22 January 2009. That being said, the Court notes that the applicant obtained a re-hearing of his case by the court of appeal with the participation of his lawyer.

32. The Court reiterates that that an applicant may lose his status as a "victim" of the alleged violation if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of

by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

33. Turning to the present case, the Court observes that, by decision of 11 September 2013, the Supreme Court of Russia explicitly acknowledged a violation of the applicant's right to legal assistance in the appeal proceedings and ordered a fresh appeal hearing. The latter was held on 24 October 2013. The applicant was represented by a professional lawyer at the hearing. The applicant did not complain before the Court that the legal assistance provided to him at the appeal hearing of 24 October 2013 had been ineffective or otherwise in breach of the Convention.

34. The Court further notes that in the judgment of 24 October 2013 the appeal court commuted the applicant's sentence. The Court considers that, taken in conjunction with the re-hearing of the case, to be an adequate redress for the breach of the applicant's right to legal assistance in the first appellate hearing, sufficient of depriving him of victim status (see, by contrast, *Sakhnovskiy*, cited above, §§ 76-84).

35. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 6 §§ 1 and 3 (c) of the Convention within the meaning of Article 34 of the Convention and that this part of the application must be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

C. The complaint concerning the media coverage of the applicant's criminal case

36. The Court observes that there is no evidence in the case file that the applicant has ever raised this complaint before the domestic authorities and declares it inadmissible on account of non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Søren C. Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President