



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

FIRST SECTION

Application no. 7077/06
Andrey Valeryevich FORTALNOV
against Russia
lodged on 9 January 2006

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Andrey Valeryevich Fortalnov, is a Russian national who was born in 1978 and lives in St Peterburg. He is represented before the Court by Ms T. Klykova, a lawyer practising in St Petersburg.

A. The circumstances of the case

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

At about 10 p.m. on 18 July 2005 the applicant was arrested by the police and taken to the police station. He was body-searched and questioned.

On 19 July 2005 at 5.10 a.m. a criminal case was opened against the applicant on suspicion of drug possession. At 7.10 a.m. the record of the applicant's arrest was drawn up, following which the applicant was interrogated as a suspect. From that moment on the applicant allegedly became aware of the reasons for his arrest. On the same day charges were brought against the applicant under Article 228 § 2 of the Criminal Code.

On 20 July 2005 the Dzerzhinskiy Federal Court of the Tsentralniy District of St Petersburg ordered that the applicant should be remanded in custody.

The applicant challenged the lawfulness of the above decision, claiming that, in violation of domestic law, the record of his arrest had been drawn up nine hours after his being brought to the police station (it should have been drawn up within three hours), which, in the applicant's opinion, rendered his subsequent detention on remand unlawful.

On 9 August 2005 the St Petersburg City Court found the above decision lawful and justified. The appeal court held that the custodial measure had been applied in accordance with domestic law and that the belated drawing up of the record of the applicant's arrest as such could not serve as the ground for the applicant's release from custody.

On 15 September 2005 the District Court extended the applicant's detention until 31 October 2005.

On 22 November 2005 the City Court upheld the above decision on appeal. The court acknowledged the fact that the record of the applicant's arrest had been drawn up after the expiry of the three hours permitted by domestic law. It held, however, that this violation could not automatically lead to the refusal of the investigator's requests for the application of a custodial measure and its further extension.

On 8 October 2005 the criminal case against the applicant was submitted to the Krasnogvardeyskiy District Court of St Petersburg for trial. The custodial measure remained unaltered.

On 26 February 2006 the Krasnogvardeyskiy District Court of St Petersburg convicted the applicant under Article 228 § 2 of the Criminal Code of large-scale drug possession and sentenced him to four years' imprisonment.

The applicant appealed against the above judgement. However, the case file contains no information as to the outcome of the appeal proceedings.

B. Relevant domestic law

1. Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002)

Article 92 § 1 of the Code provides that after a suspect is brought to the police station the record of his or her arrest shall be drawn up within three hours.

2. Civil Code of the Russian Federation (Part 2, in force since 1 March 1996)

Article 1069 of the Civil Code provides that damage caused by unlawful actions or inaction on the part of a public authority or a public official should be compensated.

Article 1070 § 1 of the Code provided, at the time, that damage caused by unlawful prosecution or unlawful placement in custody should be compensated for in full by the State, irrespective of any fault by public officials.

Article 1070 § 2 provides that other damage caused by unlawful activity on the part of the investigative authorities or the prosecutor's office should be compensated for under the rules laid down in Article 1069.

COMPLAINTS

Under Article 5 §§ 1 (c), 2, 4 and 5 of the Convention the applicant challenges the lawfulness of his arrest and detention on remand. He claims, in particular, that the record of his arrest was drawn up nine hours after his actual arrest by the police, in breach of the requirements of domestic law. The applicant further complains that the unlawfulness of his arrest tainted the lawfulness of his subsequent detention on remand.

QUESTIONS TO THE PARTIES

1. Did the applicant's detention at the police station from 10 p.m. on 18 July 2005 to 7.10 a.m. on 19 July 2005 comply with a procedure prescribed by law, in compliance with the requirement of lawfulness set out in Article 5 § 1 (c) of the Convention? Reference is made to the belated drawing up of the record of the applicant's arrest.
2. Did the applicant have at his disposal an effective procedure by which he could challenge the lawfulness of his detention in the above period, as required by Article 5 § 4 of the Convention?
3. Did the applicant have an enforceable right to compensation for his detention in the above period, as required by Article 5 § 5 of the Convention?