



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

FIRST SECTION

Application no. 41509/06
Yuriy Yuryevich STADNIK
against Russia
lodged on 6 September 2006

STATEMENT OF FACTS

The applicant, Mr Yuriy Yuryevich Stadnik, is a Russian national, who was born in 1976 and serves his sentence in the correctional colony in the town of Isilkul, Omsk Region.

The circumstances of the case

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

On 23 August 1994 the Tsentralniy District Court of Omsk found the applicant guilty of theft and sentenced him to two years' imprisonment. However, given the applicant's compliant behaviour during the investigation, the court held that his sentence should be suspended on condition of a yearlong probation. The District Court further decided to relieve the applicant of serving the sentence, including the probation period, having applied an act of amnesty. The judgment became final on 31 August 1994.

On 29 May 1995 the Oktyabrskiy District Court of Omsk convicted the applicant of aggravated robbery and sentenced him to six years of imprisonment. Having considered that the applicant had committed the crime during his probation period, the court determined the final sentence of seven years' imprisonment. The judgment became final on 9 June 1995.

On 11 December 2001, the Presidium of the Omsk Regional Court, by way of a supervisory review, amended the judgment of 29 May 1999, having noted that the Oktyabrskiy District Court had incorrectly calculated the final sentence. The Presidium reiterated that an act of amnesty had been applied to the applicant on 23 August 1994 and that the District Court had had no right to join the sentences. The final sentence was, therefore, set at six years and was to be calculated from 2 January 1995 when the applicant

had been arrested on suspicion of aggravated robbery. Given that the applicant had already served more than six years, the Presidium ordered his immediate release.

The applicant lodged a request with a criminal court, seeking compensation for eleven months and fourteen days of detention which he had spent above what had been ordered by the Presidium.

On 5 August 2003 the Oktyabrskiy District Court dismissed the request, having noted that the criminal procedural law did not provide for a possibility to compensate a period of unlawful detention when the judgment had not been quashed but had merely been amended, as in the applicant's case. It recommended the applicant to seek compensation within a civil-law procedure.

In the meantime, the applicant tried to initiate criminal proceedings against judge B., who had presided over his case in May 1995 and had issued the judgment of 29 May 1995.

On 19 September 2003 an assistant prosecutor of the Oktyabrskiy District dismissed the request, having found that judge B. had disregarded the judgment of 23 August 1994, in the part concerning the application of the amnesty act, and thus had committed an abuse of office by negligence. However, given that more than two years had passed since the judgment of 29 May 1995, the statutory limitation period had expired and the judge could no longer bear criminal responsibility for his actions.

Following a number of unsuccessful attempts to lodge a tort action, the applicant was finally able to comply with procedural requirement and on 20 December 2005 the Tsentralniy District Court of Omsk rejected his action in full. The District Court's reasoning was as follows:

"By virtue of Article 1070 of the Russian Civil Code damage caused to an individual as a result of unlawful conviction, unlawful prosecution, unlawful application of a preventive measure in the form of detention or a written undertaking, unlawful administrative punishment in the form of administrative arrest, and damage caused to a legal entity ... should be compensated by the treasury of the Russian Federation ... in the full amount in line with the procedure prescribed by law [and] irrespective of the guilt on the part of officials of law-enforcement agencies, pre-trial investigation, prosecutor's office and courts.

As follows from the case file materials, [the applicant] was held criminally liable and convicted by the judgments of the Tsentralniy and Oktyabrskiy District courts of Omsk in compliance with the law. By the decision of the Presidium of the Omsk Regional Court the judgment of 29 May 1995 against [the applicant] was amended in the part concerning imposition of the sentence; [the applicant], however, was not provided with a right to rehabilitation in compliance with Articles 133 and 134 of the Russian Code of Criminal Procedure; therefore there are no grounds to apply Article 1070 § 1 of the Russian Civil Code.

Paragraph 2 of Article 1070 of the Russian Civil Code prescribes that damage caused to an individual or a legal entity as a result of unlawful actions by law-enforcement agencies, pre-trial investigation [and] prosecution which did not lead to consequences established in paragraph 1 of Article 1070 of the Russian Civil Code, should be compensated on the basis and in line with the procedure laid down by Article 1069 of the Civil Code. Damage caused in the course of the administration of justice is to be compensated if the judge's guilt is established by a court judgment.

On 19 September 2003 an assistant prosecutor of the Oktyabrskiy District Court of Omsk [conducted] an inquiry into [the applicant's] complaint about an abuse of office

committed by the President of the Oktyabrskiy District Court of Omsk, Mr S., and a former judge of the same court, Mr B., crimes proscribed by Articles 293 and 305 of the Russian Criminal Code, [and] issued a decision refusing institution of criminal proceedings in view of the absence of a criminal conduct on the part of [the President of the court] and in view of the expiration of the statutory limitation period for bringing criminal charges against [the former judge, Mr B.].

As follows from the text of that decision, the actions of the former judge, Mr B., contained features of a negligent abuse of office, proscribed by paragraph 1 of Article 293 of the Russian Criminal Code; however, by virtue of Article 78 of the Russian Criminal Code, the [former judge] should be relieved of the criminal responsibility after the expiration of the two-year limitation period following the judgment [against the applicant].

Rules of Article 1070 § 2 of the Civil Code lay down a specific condition for levying the criminal responsibility for damage caused in the course of the administration of justice which is connected to specific functions carried out by the judicial system as established by the Russian Constitution and as defined by the procedural law and also conditioned by a specific procedure in which judicial acts may be reviewed Article 1070 § 2 of the Civil Code not only excludes presumption of guilt ... but also provides for an additional condition for compensating damage by the State: the guilt of a judge should be established by a final judgment within a criminal procedure. [It means] that the State's responsibility is connected to a criminal conduct by a judge; [the criminal conduct should have been] carried out intentionally or negligently in the course of the administration of justice.

At the same time, in its decision no. 1-P of 25 January 2001 the Russian Constitutional Court established that the law does not provide for a procedure to compensate damage in cases when criminal prosecution against a judge was discontinued on non-rehabilitating grounds.

In these circumstances, taking into account that no judgement was issued against the former judge, Mr B., holding him criminally liable for the abovementioned act committed in the course of the administration of justice, the court does not find any grounds to award [the applicant's] claims in full."

On 14 June 2006 the Omsk Regional Court upheld the judgment, having fully supported the District Court's reasoning.

COMPLAINT

Without a reference to any Convention provision, the applicant complained that he had been unable to obtain compensation for his unlawful detention of more than eleven months.

QUESTION TO THE PARTIES

Did the applicant have an effective and enforceable right to compensation for his unlawful detention for more than eleven months, as required by Article 5 § 5 of the Convention?