



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

FIRST SECTION

Applications nos. 31475/10 and 16849/11
ANNENKOV and others against Russia
and GORIN against Russia
lodged on 2 May 2010 and 18 February 2011 respectively

STATEMENT OF FACTS

A. Application no. 31475/10

The applicants, Mr M. Annenkov, Ms L. Pukhova, Ms S. Korchagina, Ms O. Zakharova, Ms N. Shatalova, Ms S. Zhuravleva, Mr G. Buzov, Mr I. Khripunov, Ms Y. Suprunova, Ms M. Khavantseva, Mr N. Khavantsev, Ms A. Garkavets, Ms Y. Guseva and Mr M. Finskiy. They are Russian nationals and live in Voronezh. They were represented before the Court by Ms O. Gnezdilova, a lawyer practising in Voronezh.

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

The applicants held businesses at Voronezh municipal market or worked as street vendors for these businesses.

In 2007 the town administration transferred title to the land plot to a private company, which intended to demolish the market. Disagreeing with this course of action affecting their businesses and employment, the applicants and some others (some thirty people, in total) decided to remain at the market territory permanently in order to obstruct the company's project.

On 6 August 2009 the police told them to leave the territory of the market. The applicant refused to comply in the absence of any court order and put forward their right to remain at the market under rent contracts.

1. Proceedings relating to the events on 7 August 2009

On 7 August 2009 the police arrested the applicants, while some other protestors were left at liberty.

With reference to eyewitnesses, Mr Annenkov alleges that the senior officer of the Sovetskiy police station inflicted a blow to his chest, provoking the applicant's fall to the ground causing a head injury. Mr Annenkov was examined on 7 August 2009. He had a head injury and a rib fracture. Three other applicants (Ms Guseva, Ms Suprunova and Ms Zakharova) also sustained injuries of varying gravity.

By a judgment of 7 August 2009 a justice of peace considered that the applicants acted in breach of the regulations concerning public gatherings and resisted lawful orders by the police. The female defendants and Mr Annenkov were fined. The others were sentenced to five days of administrative detention.

On 13 August 2009 the district court upheld the judgments in respect of Mr Khavantsev, Mr Finskiy and Mr Khripunov.

On 2, 8 and 10 September 2009 the district court set aside the judgments in respect of the other defendants, and ordered a re-examination of their cases. Their outcome remains unclear.

On unspecified dates, Mr Khavantsev, Mr Khripunov and Mr Finskiy lodged requests for supervisory review of the final judgments in respect of them. On 20 November 2009 the deputy President of the Voronezh Regional Court dismissed their requests.

In the meantime, the applicants sought institution of criminal proceedings, alleging unlawful actions on the part of the police. A refusal to prosecute was issued. The applicants challenged it in a court.

On 19 October 2009 the district court held a hearing at which the prosecutor informed the court that he had revoked the above refusal and asked for further inquiry. The court proceedings became devoid of purpose and were discontinued. A new refusal was issued. The applicants sought judicial review, which they did not obtain because of the revocation of this second refusal in the meantime. A similar course of action occurred on further occasions.

2. Proceedings relating to the events on 10 August 2009

On 10 August 2009 the police arrested some twenty people at the market, including Ms Suprunova, Ms Guseva, Ms Garkavets, Ms Zuravleva, Ms Khavantseva and Mr Buzov.

On the same day, a justice of peace sentenced female defendants to a fine and Mr Buzov – to ten days of administrative detention.

Subsequently, on 13 August 2009 the appeal court upheld the judgment in respect of Mr Buzov. However, the appeal court set aside the other judgments, ordering a re-examination of the cases. Their outcomes remain unclear.

On an unspecified date, Mr Buzov lodged a request for supervisory review of the final judgment in respect of him. On 20 November 2009 the deputy President of the Voronezh Regional Court dismissed this request.

B. Application no. 16849/11

The applicant, Mr Anatoliy Gorin, is a Russian national. He was born in 1958 and lives in Zavyalovo village in the Altay Region.

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

The applicant was accused of driving a car intoxicated, in breach of Article 12.8 of the CAO. On 26 May 2010 a justice of peace convicted him of this offence and suspended his driving licence for one year and nine months. On 25 June 2010 the Zavyalovskiy District Court of the Altay Region upheld this judgment on appeal. The applicant received a copy of the appeal decision on the same day.

On or around 15 July 2010, the applicant lodged a request for supervisory review of the above court decisions.

By a judgment of 26 August 2010, the deputy President of the Altay Regional Court dismissed his request and upheld the court decisions of 26 May and 25 June 2010.

The applicant challenged, also by way of supervisory review, this supervisory review decision before the Supreme Court of Russia.

By a judgment of 18 October 2010, the deputy President of the Supreme Court upheld the court decisions of 26 May, 25 June and 25 August 2010.

C. Relevant domestic law and practice

1. Ordinary appeal procedure

As of 13 August 2009, the relevant provisions of the Code of Administrative Offences (CAO) were as follows.

A first-instance judgment in an administrative offence case was subject to ordinary appeal under Chapter 30 of the CAO.

Such appeal could be lodged before a court of general jurisdiction by the defendant or his counsel, the victim, legal representative of a minor or another vulnerable person and legal representatives of a legal entity (Articles 25.1-25.5 and 30.1 of the CAO). In cases concerning a legal entity or a person in relation to her commercial activity appeals should be before a commercial court under the Code of Commercial Procedure (Article 30.1).

An appeal should be lodged within ten days from the date when the judgment was received (Article 30.3 of the CAO).

Under Article 30.10 of the CAO a prosecutor could appeal against a first-instance judgment, which has not become final.

2. Supervisory review procedure (before 20 December 2008)

Article 30.11 of the CAO provided that a regional prosecutor, the Prosecutor General or their deputies were empowered to challenge, by way of supervisory review, a final judgment in an administrative offence case.

3. Supervisory review procedure (after legislative amendments in force since 20 December 2008)

Article 30.12 provided that the first-instance and appeal judgments, which became final, could be challenged by way of supervisory review by the defendant or his counsel, the victim, legal representative of a minor or another vulnerable person and legal representatives of a legal entity. Supervisory review could be sought by a regional prosecutor or his deputy, the Prosecutor General or his deputy.

Requests for supervisory review should be lodged before regional courts or the Supreme Court of Russia. Such requests were to be examined by the Presidents of such courts or their deputies. The Supreme Court was empowered to deal with appeals against decisions taken on supervisory review at the regional level. In other cases, the Supreme Commercial Court should have similar competence (Article 30.13).

Requests for supervisory review should indicate grounds for review (Article 30.14). The scope of review should be limited to the grounds indicated in the request and observations in reply. If the interests of legality require, the supervisory review judge could review the case in its entirety. Renewed requests for supervisory review on the same grounds before the same court were not allowed (Article 30.16).

Apparently, the above provisions remained unchanged and in force at the dates of the supervisory review proceedings in the present cases in 2009 and 2010.

4. Penalties under the CAO

Administrative detention cannot be imposed for an administrative offence committed by a pregnant woman, a woman having children, or a person below the age of majority (section 3.9 of the CAO).

In its decision no. 195-O of 13 June 2006 the Constitutional Court considered that the legislator was empowered to provide for different types of penalty for the same administrative offence committed by a man or a woman. The aim of such differentiation was the need to protect the health and social well-being of a woman who is a mother. In any event, the penalty of administrative detention could be imposed only by a court and only in exceptional circumstances, when a less intrusive penalty (such as a fine) would not be appropriate. In a case involving a male defendant, the judge should take into consideration whether the defendant was the sole parent taking care of his child or children.

COMPLAINTS

Application no. 31475/10:

Four applicants (Mr Annenkov, Ms Suprunova, Ms Zakharova and Ms Guseva) complain under Articles 3 and 13 of the Convention that there was no reason to use (excessive) physical force against them during their arrest and that there was no effective investigation.

All applicants complain under Articles 5 and 13 of the Convention about their arrests on 7 and 10 August 2009 and that there was no effective investigation into the allegedly arbitrary deprivation of liberty.

The applicants complain under Article 11 of the Convention that the authorities unlawfully and arbitrarily put an end to their peaceful meeting.

Four applicants (Mr Khripunov, Mr Finskiy, Mr Buzov and Mr Khavantsev) complain that the penalties imposed on them were in breach of Article 14 of the Convention in conjunction with its Articles 5 and 6. The district court provided no reasons for differentiating sentences/penalties between female and male defendants.

Application no. 16849/11:

The applicant complains under Articles 6 and 13 of the Convention that he was wrongly convicted.

QUESTIONS TO THE PARTIES

In the case of *Annenkov and others v. Russia* (appl no. 31475/10):

1. Noting that the appeal decisions in respect of four applicants had been given on 13 August 2009 while the present application was lodged on 2 May 2010, have the applicants complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? Should the decision of 20 November 2009 be taken into consideration in that respect (see for comparison *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009; *Kovaleva and Others v. Russia* (dec.), no. 6025/09, 25 June 2009; *Denisov v. Russia*, (dec.), no. 33408/03, 6 May 2004; and *AO “Uralmash” v. Russia* (dec.), no. 13338/03, 10 April 2003)?

The parties are requested to address the following issues, with reference to the provisions of the Code of Administrative Offences, which were applicable at the material time, in relation to the supervisory review procedure:

- Who had the power to initiate such proceedings? If a prosecutor could do so, was his power limited to the case in which this or another prosecutor had already participated at first instance and/or in ordinary appeal proceedings?
- What was the time-limit for bringing such proceedings? Was it clearly set up by the CAO and/or the relevant judicial practice? How was this time-limit calculated?
- Could such proceedings be held before one and only level of jurisdiction? Were further similar applications before the same or higher instance available? If yes, what was the method for calculating the applicable time-limit?
- Was it necessary to exhaust all “ordinary” means of appeal before applying for such review?
- What were the grounds for review? Was there any requirement of a fundamental defect in the proceedings, which ended with a final and enforceable judgment?

2. Was there a violation of Article 3 of the Convention in the present case?

3. Was there a violation of Article 11 of the Convention?

4. Was there a violation of Article 14 of the Convention, in conjunction with its Articles 5 and 6?

In the case of *Gorin v. Russia* (appl no. 16849/11):

1. Was Article 6 of the Convention applicable under its civil or criminal limb to the domestic proceedings in respect of the applicant (see for comparison *Lutz v. Germany*, 25 August 1987, §§ 51-57, Series A no. 123; *Malige v. France*, 23 September 1998, §§ 31-40, *Reports of Judgments and Decisions* 1998-VII; *Schmautzer v. Austria*, 23 October 1995, §§ 26-28, Series A no. 328-A; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005)?
2. Noting that the appeal decision in the applicant's case had been given on 25 June 2010 while the present application was lodged on 18 February 2011, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention? Should the court decisions of 26 August and 18 October 2010 be taken into consideration in that respect (see for comparison *Martynets v. Russia* (dec.), no. 29612/09, 5 November 2009; *Kovaleva and Others v. Russia* (dec.), no. 6025/09, 25 June 2009; *Denisov v. Russia*, (dec.), no. 33408/03, 6 May 2004; and *AO "Uralmash" v. Russia* (dec.), no. 13338/03, 10 April 2003)?
3. Was there a violation of Article 6 of the Convention?