



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

FIRST SECTION

Application no. 10932/06
Valeriy Vladimirovich MEDVEDEV
against Russia
lodged on 17 February 2006

STATEMENT OF FACTS

The applicant, Mr Valeriy Vladimirovich Medvedev, is a Russian national, who was born in 1970 and lives in Murmansk.

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

In September 2004 the applicant was accused of having robbed L. On 24 September 2004 he was arrested in this connection.

On 26 September 2004 a judge of the Polyarnyy Town Court of the Murmansk Region decided to impose on the applicant the measure of restraint in the form of an undertaking to leave the place of his residence. The applicant was released.

By first instance judgment of 21 February 2005 the Polyarnyy Town Court of the Mourmansk Region, sitting in a single judge formation consisting of judge D., sentenced the applicant and three other co-accused of having committed an aggravated robbery. The applicant was also found guilty of forgery and received an overall sentence of seven years and four months of imprisonment. The court detained the applicant and ordered to calculate his term of imprisonment from 21 February 2005, taking into account his two days detention between 24 and 26 September 2004.

The judgment was quashed on appeal by the Murmansk Regional Court on 3 May 2005. The applicant was ordered to remain in custody pending criminal proceedings.

On 3 June 2005 the Town Court decided to return the case to the prosecution and ordered to finalise the investigation by 9 June 2005. The applicant was ordered to remain in detention pending the repeated investigation. This decision was upheld on appeal by the Regional Court on 30 June 2005.

On 16 August 2005 the Town Court, sitting in a single judge formation consisting of judge D., examined and granted the motion of the prosecution

to extend the applicant's detention on remand for three months until 19 November 2005. The applicant unsuccessfully challenged the judge, arguing that he could not participate because of his prior involvement in the trial on 21 February 2005.

The Regional Court essentially upheld the decision of 16 August 2005 on 6 September 2005.

On 18 November 2005 the Town Court extended the applicant's detention on remand for one month, until 19 December 2005. The applicant submits that he has never received a copy of this decision and thus could not appeal against it.

On 15 December 2005 the Town Court extended the applicant's detention on remand for three months, until 19 March 2006. It appears that the applicant's lawyer did not attend the hearing. He refers to the incoming mail log of his law firm to show that the court had failed to notify him about this hearing. He also notes that he had no prior knowledge that the question of the detention would be discussed at this hearing.

This decision was upheld on appeal by the Regional Court on 17 January 2006. The court did not accept the applicant's argument about the absence of his lawyer at the hearing of 15 December 2005, having noted that the lawyer's had failed to attend without excusing his absence with reference to any good reason. The applicant was not present at the hearing, whilst his lawyer was present and made submissions. The applicant alleged that he had received a notification concerning the appeal hearing on 14 January 2006 mere four days beforehand.

The applicant unsuccessfully appealed against the decision of 15 December 2005 and the decision of 17 January 2006 by way of supervisory review proceedings. In the decision of 15 February 2006 a judge of the Regional Court decided that the applicant's lawyer had been duly notified of the date of the hearing of 15 December 2005, but failed to attend without providing any good reason.

The applicant argues that appeal judge K. took part in the examination of his case on 3 May, 6 September 2005 and 17 January 2006.

At the time of the applicant's latest communication to the Court on 22 August 2006, the criminal proceedings in his case were still pending.

COMPLAINTS

The applicant complains under various Convention provisions that the criminal proceedings in his case were unfair. In particular, he is dissatisfied with the courts' alleged failure to furnish him with a copy of the decision of 18 November 2005, their alleged failure to notify his lawyer about the hearing of 15 December 2005 and to provide him with an opportunity to prepare for that hearing in advance and to take part in the appeal hearing of 17 January 2006, the repeated participation of judge D. in the hearings of 21 February 2005 and 16 August 2005 and judge K. in the hearings of 3 May, 6 September 2005 and 17 January 2006.

QUESTIONS TO THE PARTIES

1. Has the applicant been furnished with a copy of the decision of 18 November 2005? If so, the respondent Government are invited to provide the proof of its receipt by the applicant, including the date of notification.

2. In view of the answer to the first question, was Article 5 § 4 of the Convention respected in so far as the applicant complained about his inability to challenge the decision of 18 November 2005 on appeal?

3. Was the applicant's lawyer properly notified about the date and subject matter of the hearing of 15 December 2005? The respondent Government are invited to provide the proof of such notification.

4. Did the applicant receive a prior notification about the subject matter of the detention hearing of 15 December 2005? The respondent Government are invited to provide the proof of such notification.

5. Did the applicant receive a prior notification about the date of the appeal hearing of 17 January 2006 and why was he not able to attend it?

6. In view of the answers to the third, fourth and fifth question, were the detention proceedings of 15 December 2005 and 17 January 2006 in compliance with the requirements of Article 5 § 4 of the Convention? In particular, can it be said that the applicant's procedural rights to legal assistance of his choosing and to effective personal participation respected?

7. Was the repeated participation of judge D. in the hearings of 21 February 2005 and 16 August 2005 and judge K. in the hearings of 3 May, 6 September 2005 and 17 January 2006 compatible with Article 5 § 4 of the Convention in so far as this provision requires the detention hearings to be conducted by an impartial judge?