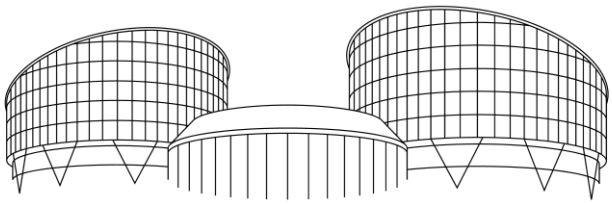

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 13776/11
Yevgeniy Borisovich YARTSEV
against Russia

The European Court of Human Rights (First Section), sitting on 26 March 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yevgeniy Borisovich Yartsev, is a Russian national, who was born in 1979 and lived in Irkutsk until his arrest. He was represented before the Court by Mr I. Trunov and Ms L. Ayvar, lawyers practising in Moscow.

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.

A. The circumstances of the case

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

1. Criminal proceedings

4. Between 30 August 2008 and 15 November 2010 and subsequently between 17 April 2011 and 29 May 2012 the applicant was held in remand prison IZ-38/1 in Irkutsk. According to him, the conditions of his detention were inadequate; the Government disputed that.

5. By the Irkutsk Regional Court's judgment of 2 March 2010 following a jury trial, the applicant was convicted of forming and leading a criminal syndicate, murder, unlawful possession of weapons and ammunition and armed robbery, and sentenced to nineteen years' imprisonment in a high-security institution. On 22 September 2010 the Supreme Court of the Russian Federation upheld the judgment on appeal.

2. Civil defamation proceedings

6. On 3 March 2010 the web-sites of the Prosecutor General's Office and the Irkutsk Regional Prosecutor's Office and the Regions.Ru news portal published information about the conviction of the applicant and his co-defendants. On 12 August 2010 the applicant lodged a defamation claim against the prosecutors' offices and the news site, alleging in particular a breach of his presumption of innocence. He sought leave to appear in person before the court but his request was rejected. On 21 December 2010 the Tverskoy District Court of Moscow dismissed his claim, finding that the prosecutors had accurately reported the findings contained in the Regional Court's judgment of 2 March 2010 and that the news items concerned a matter of public interest. The case file does not contain a copy of a statement of appeal or of an appeal judgment.

B. Procedure before the Court

7. On 9 March 2010 the applicant sent a letter to the Court, containing an outline of his complaints. It was registered under application no. 19987/10 and the applicant was invited to return the completed application form no later than 9 June 2010. As no further correspondence had been received from the applicant for more than six months, his complaints were taken to have been withdrawn and the file opened in respect of the application was destroyed.

8. On 25 February 2011 the applicant's representative Mr Trunov sent a letter to the Court, indicating that the applicant wished to lodge a complaint under Article 3 of the Convention about the conditions of his detention in

the Irkutsk remand prison and the conditions of his transport to the Irkutsk Regional Court, a complaint under Article 5 of the Convention concerning his pre-trial detention and a complaint under Article 6 about alleged irregularities in the criminal proceedings against him and in the subsequent defamation proceedings. This application was given number 13776/11.

9. By letter of 2 March 2011, the Court acknowledged receipt of the letter to the applicant's representative and informed him as follows (translated from Russian):

> "You should return by post the completed application form not later than eight weeks from the date of the present letter. In other words, the date on which you send back the completed application form must not be later than **27 April 2011**. Failure to comply with this time-limit will mean that it is the date of the submission of the completed application form rather than that of your first communication which will be taken as the date of the introduction of the application. Your attention is drawn to the fact that it is the date of introduction that is decisive for compliance with the time-limit set out in Article 35 § 1 of the Convention (see para. 18 in the enclosed Notes for Guidance to applicants)."

10. On 7 June 2011 the Court received the completed application form. It was signed by Mr Trunov and Ms Ayvar, the applicant's representatives, and dated "1 July 2011".

11. On 12 July 2011 the Court received a letter from the applicant which was dated 22 June 2011. In that letter, the applicant stated his intention to lodge a complaint under Articles 3 and 13 of the Convention about the conditions of his detention in the Irkutsk remand prison in the period after 17 April 2011. On 4 October 2011 the Court received a letter which was identical in its contents but it was dated 13 September 2011 and signed by Ms Pushkareva, the applicant's representative.

12. By letter of 10 October 2011, the Court informed the applicant that another application in his name had already been registered on the basis of Mr Trunov's letter of 25 February 2011. The applicant was requested to clarify whether he would like to introduce a new application or to have his communication joined to the existing file. The Court did not receive any reply from the applicant.

13. On 15 September 2011 the Court received an undated letter from Mr Trunov, which referred to application no. 19987/10. He requested in particular priority treatment of the applicant's case, alleging that his life and health were in danger. On 12 October 2011 the President of the First Section rejected the request.

14. By another undated letter received at the Court on 27 January 2012, Mr Trunov petitioned the Court for a joinder of applications no. 19987/10 and 13776/11 and reiterated his request for priority treatment. On 10 February 2012 the Court advised him that the file opened in respect of application no. 19987/10 had been destroyed and that his renewed request for priority did not contain any new factual information.

COMPLAINTS

15. The applicant complained under Article 3 of the Convention that the conditions of his detention in the Irkutsk remand prison and the conditions of his transport to the Regional Court had been inhuman and degrading.

16. The applicant complained under Article 5 §§ 3, 4 and 5 of the Convention that his detention on remand had not been justified.

17. The applicant complained under Article 6 § 1 about an allegedly excessive length of the criminal proceedings against him, irregularities in the selection of jurors and a breach of his presumption of innocence on account of the press-releases published by prosecutors' offices.

18. Finally, the applicant invoked Article 13 of the Convention.

THE LAW

A. Date of introduction of the application

19. The Government submitted that the applicant had returned the completed application form almost four months after the submission of the initial communication. In those circumstances, the date on the application form should be taken as the date of introduction of the application.

20. The applicant's representative replied that, upon receipt of the Court's letter of 2 March 2011, he had submitted the completed application form on 25 April 2011. He produced financial documents from which it appeared that the company owned by the applicant's brother had paid him for the applicant's representation before the Court the following amounts: 100,000 Russian roubles (RUB) on 3 March, 28 March and 22 April 2011, RUB 50,000 on 11 July 2011, and RUB 400,000 on 13 October 2011.

21. The Court reiterates that, in accordance with its established practice and Rule 47 § 5 of the Rules of Court, it normally considers the date of the introduction of an application to be the date of the first communication indicating an intention to lodge an application and giving some indication of the nature of the application. Such first communication, which may take the form of a letter sent by fax, will in principle interrupt the running of the six-month period (see *Kemevuako v. the Netherlands* (dec.), no. 65938/09, § 19, 1 June 2010).

22. The purpose of the six-month rule is to promote security of the law, to ensure that cases raising Convention issues are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-42, 29 June 2012). As the Court

has held, it would be contrary to the spirit and aim of the six-month rule if, by any initial communication, an applicant could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants must therefore pursue their applications with reasonable expedition, after any initial introductory contact (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004). A failure to do so may lead the Court to decide that the interruption of the six-month period is to be invalidated and that it is the date of the submission of the completed application which is to be considered as the date of its introduction (see Rule 47 § 5 of the Rules of Court and paragraph 4 of the Practice Direction on the Institution on Proceedings).

23. The Court observes in the present case that – following receipt of his initial communication of 25 February 2011 – the applicant's representative Mr Trunov was advised by the Registry that he had to return the completed application form to the Court not later than 27 April 2011, that is within eight weeks from the date of the Registry's letter of 2 March 2011. The representative was further informed that if he failed to do so, the date of submission of the completed application form would be taken as the date of introduction of the application (see paragraph 9 above).

24. The applicant's representative alleged that he had despatched the completed application form already on 25 April 2011. However, the only completed application form available in the case file is the one dated "1 July 2011" which was received at the Court on 7 June 2011 (see paragraph 10 above). It is noted that, in his observations in reply to the Government's objection, the applicant's representative Mr Trunov did not produce any evidence capable of supporting his claim that a completed application form had indeed been sent on 25 April 2011. Taking into account that all of his communications were shipped by international express mail services, such as DHL, it must have been possible to provide at least a postal receipt. Records of financial disbursements in connection with the present application only show the dates of such disbursements and the amounts paid but they cannot be a proof of the date of sending of the application form.

25. The Court further notes that the date on the application form is obviously erroneous, for it could not have been signed in July but received in June. The Court has previously held that in case of a discrepancy between the date on the application form and the date of the postmark, it is the latter that is to be taken into account for calculation of the relevant time-limits (see *Kemevuako*, cited above, § 24, with further references). The DHL postal receipt which is in the Court's possession shows that it was despatched from Mr Trunov's office on 2 June 2011.

26. Having regard to the foregoing, the Court finds that the date on which the envelope containing the completed application form was postmarked, namely 2 June 2011, should be considered as the date of introduction of the present application.

B. Article 3 of the Convention

27. The Government submitted that the conditions of the applicant's detention had been compatible with Article 3 of the Convention. The applicant disagreed.

28. It is observed that the applicant was held in the Irkutsk remand prison during two periods of time. In this connection, the Court reiterates that an applicant's detention should be regarded as a "continuing situation" as long as it has been effected in the same type of detention facility in substantially similar conditions. The applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation" (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

29. Following the applicant's conviction at final instance, on 15 November 2010 he was sent to serve his sentence in a high-security correctional colony and he did not return to the remand prison until 16 April 2011 in connection with the proceedings in a different criminal case. Having regard to the applicant's transfer to a different type of a detention facility in the intervening period, the Court finds that his detention in the Irkutsk remand prison shall not be regarded as a "continuing situation" but rather as two distinct periods.

30. As regards the first period of the applicant's detention which ended on 15 November 2010, as well as the conditions of the applicant's transport during that period, the Court reiterates its finding that the date of introduction of the present application is 2 June 2011, which is more than six months after the end of the period in question. It follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

31. Following his transfer back to the Irkutsk prison, the applicant stated his intention to complain about the conditions of his detention in his communication of 22 June 2011 (see paragraph 11 above). However, the Court's request for clarifications concerning this new complaint did not elicit any response from the applicant or his representative (see paragraph 12 above). Nor has it been followed up by the submission of the completed application form. Accordingly, this complaint must be taken to have been withdrawn and need not be examined by the Court (Rule 47 § 4 of the Rules of Court and paragraph 8 of the Practice Direction on the Institution on Proceedings).

C. Articles 5 and 6 of the Convention: criminal proceedings against the applicant

32. The Court notes that the criminal proceedings against the applicant ended with the Supreme Court's judgment of 22 September 2010, whereas

the present application was introduced on 2 June 2011, that is more than six months later.

33. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

D. Article 6 of the Convention: civil defamation proceedings

34. In so far as this complaint was distinct from the alleged breach of the applicant's presumption of innocence in the criminal proceedings and in so far as it referred to the alleged defects of the civil proceedings, the Court notes that the case file contains no materials showing that the applicant's representative lodged an appeal against the District Court's judgment of 21 December 2010.

35. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

E. Article 13 of the Convention

36. The Court reiterates that Article 13 has been interpreted as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention. In view of its findings above with regard to other aspects of the application, the Court considers that the applicant has no "arguable claim" of a breach of a violation of the Convention or its Protocols which would have warranted a remedy under Article 13.

37. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President