



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

FIRST SECTION

Application no. 9673/09
Sergey Marksovich DUDIN against Russia
lodged on 10 December 2008

STATEMENT OF FACTS

1. The applicant, Mr Sergey Marksovich Dudin, is a Russian national, who was born in 1962 and lives in Parfino, Novgorod Region. He is represented before the Court by Mr K.V. Pakin, a lawyer practising in Velikiy Novgorod.

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

1. The applicant's pre-trial detention and conviction

3. On 23 July 2007 the applicant was apprehended by police at the cargo terminal "Shushary" in Saint Petersburg under suspicion of robbery. Later that day he was transferred to Krestsy, Novgorod Region.

4. On 25 July 2007 the Krestetskiy District Court of Novgorod Region (the District Court) ordered pre-trial detention of the applicant. Subsequently the period of the applicant's detention was extended on 20 September and 2 November 2007.

5. In the order of 2 November 2007 the District Court authorised extension of the applicant's detention "until and including 24 December 2007".

6. On 11 December 2007 the District Court scheduled a preliminary hearing for the applicant's trial in order to decide on his further detention. The relevant section of the operative part of the decision read as follows:

"[The court] ORDERED

To schedule a preliminary hearing in the criminal case of Mr Dudin ... on 25 December 2007 at 10.00 a.m. ...

To transfer [from the detention facility] the accused Mr Dudin for the hearing at the set date and time.

To keep the measure of Mr Dudin's restraint – pre-trial detention – unchanged."

7. On 25 December 2007 between 10.00 a.m. and 11.00 a.m. the District Court held a preliminary hearing ordering the criminal case to be sent to

trial and the applicant's further detention. During the hearing the applicant and his representative raised the objection regarding unlawfulness of the applicant's detention between 24 December 2007 and the time of the hearing, but the District Court dismissed it without advancing any specific reasons in this regard. The applicant appealed.

8. On 21 February 2008 the Novgorod Regional Court upheld the lower court's decision. In the relevant part the Regional Court's decision read as follows:

“Mr Dudin's and his representative's arguments regarding unlawfulness of the detention ... at the moment of the adoption of the decision [are unfounded] ... [T]he present criminal case was transferred to court on 11 December 2007, i.e. within the period of [the accused's detention ordered during investigation] and according to section 2, Article 255 of the Criminal Procedure Code the period of the defendant's detention is calculated from the date when the case was transferred to court and until the judgment is pronounced and may not exceed six months.”

9. On 27 May 2008 the District Court convicted the applicant of aggravated robbery and sentenced to six years' imprisonment. On 10 July 2008 the conviction was upheld on appeal by the Novgorod Regional Court and the period of the applicant's pre-trial detention between 23 June 2007 and the day of conviction was fully counted towards execution of his sentence.

10. On 2 March 2011 the applicant was released before serving his full sentence on probation.

2. The proceedings concerning non-pecuniary damages for allegedly unlawful detention

11. The applicant lodged a civil action against the Ministry of Finance of the Russian Federation seeking non-pecuniary damages for his allegedly unlawful detention without a court order between 24 and 25 December 2007.

12. On 24 April 2008 the Novgorodskiy Town Court of Novgorod Region found that between midnight 24 December 2007 and 11.00 a.m. on 25 December 2007 the applicant's detention was unlawful and violated his rights under Article 22 of the Russian Constitution and Article 5 § 1 of the Convention. The applicant was awarded non-pecuniary damages of 2000 Russian roubles (50 euros). During the hearings the representative of the Ministry of Finance acknowledged that the applicant's detention during the abovementioned period was not secured by a court order. The representative of the Ministry of the Interior (intervening in the proceedings) admitted that the authorisation for the detention expired on 24 December 2007. The representative of the regional Prosecutor's Office (also intervening in the proceedings) maintained that the applicant's detention was lawful, but stated that any detention without a court order would be unlawful.

13. On 11 June 2008 the Novgorod Regional Court annulled the lower court's judgment on appeal and adopted a new judgment dismissing the applicant's claims. The Regional Court argued that while the order of 2 November 2007 set the period of detention “until and including 24 December 2007”, the decision of 11 December 2007 to schedule a

preliminary hearing to 25 December 2007 essentially ordered the detention until that date, because it left it “unchanged” (see paragraph 6 above).

COMPLAINT

14. The applicant complains under Article 5 § 1 of the Convention that he was unlawfully detained without a court order for a period of eleven hours between 24 and 25 December 2007. He also complains under Article 6 § 1 of the Convention about the refusal of the domestic courts to award him non-pecuniary damages.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention?
2. In particular, was the deprivation of liberty during the period between midnight of 24 December 2007 and 11.00 a.m. on 25 December 2007 lawful within the meaning of Article 5 § 1 of the Convention? If so, what was the legal basis for the applicant's deprivation of liberty during this period?
3. Having regard to the duration of the applicant's detention between midnight of 24 December 2007 and 11.00 a.m. on 25 December 2007 and the fact that this period was included in calculation of the applicant's criminal sentence, can it be said that the applicant has suffered a significant disadvantage within the meaning of Article 35 § 3 of the Convention?