



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

FIRST SECTION

Application no. 44925/06
Aleksandr Robertovich KLEYN
against Russia
lodged on 9 November 2005

STATEMENT OF FACTS

The applicant, Mr Aleksandr Robertovich Kleyn, is a Russian national, who was born in 1969 and is serving a prison sentence in Chelyabinsk.

The circumstances of the case

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

On 29 December 2000 the applicant was arrested on suspicion of double murder. He remained in custody pending investigation and trial.

On 13 September 2001 the Chelyabinsk Regional Court found the applicant guilty of murder, accessory to murder and attempted fraud, and sentenced him to twenty-three years' imprisonment. The court also found K. and L. guilty of attempted fraud and illegal possession of firearms. The tribunal comprised one professional judge and two lay assessors.

On 12 April 2002 the Supreme Court of the Russian Federation upheld the applicant's conviction on appeal.

On 22 December 2004 the Kopeysk Town Court of the Chelyabinsk Region reduced the applicant's sentence by seven months in compliance with the latest amendments to the Russian Criminal Code.

On an unspecified date the applicant asked for a supervisory review of the judgments of 13 September 2001 and 12 April 2002, alleging that he had been tried by a tribunal that had not been "established by law".

On 29 April 2005 the Presidium of the Supreme Court of the Russian Federation received the case file for supervisory review.

On 15 June 2005 the Presidium quashed the judgments of 13 September 2001 and 12 April 2002 and remitted the matter for fresh consideration. Referring to the case of *Posokhov v. Russia* (no. 63486/00, § 41, ECHR 2003-IV), the Presidium noted that the lay assessors had not been

authorised to consider the applicant's case. Lastly, the Presidium ordered that the applicant be detained pending a new trial.

On 5 August 2005 the Regional Court fixed the trial for 18 August 2005 and noted that the measure of restraint previously imposed on the applicant should remain unchanged. On 13 October 2005 the Supreme Court upheld the decision of 5 August 2005 on appeal.

On 19 September 2005 the Regional Court found the applicant guilty as charged and sentenced him to twenty-two years and three months' imprisonment. The court found that the applicant and Sh.¹ had killed V. and Sk. in an attempt to fraudulently obtain the proceeds from the sale of a flat by V., and that K. and L. had assisted them in carrying out the fraud. The tribunal comprised a single judge. The applicant was represented by a lawyer.

On 23 June 2006 the Supreme Court upheld the conviction on appeal. The applicant and his lawyer were present at the hearing and made submissions to the court.

COMPLAINTS

The applicant complains, under Article 5 §§ 1 (c) of the Convention, that his detention was unlawful.

He complains under Article 3 of Protocol No. 7 in conjunction with Article 13 of the Convention that he could not obtain compensation for his unlawful detention after conviction pursuant to the judgment of 13 September 2001, as upheld on appeal on 12 April 2002.

¹ Sh. was convicted of the same offences in a different set of proceedings.

QUESTIONS TO THE PARTIES

1. Has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention in respect of his complaint under Article 5 § 1 (a) about the unlawfulness of his post-conviction detention pursuant to the judgment of 13 September 2002 delivered by Chelyabinsk Regional Court as upheld on appeal by the Supreme Court of the Russian Federation on 12 April 2002? In particular, when did the applicant become aware that the lay assessors were not “competent” to take part in the criminal proceedings against him?
2. Was the applicant deprived of his liberty in breach of Article 5 § 1 (a) of the Convention? In particular, as regards the judgment of 13 September 2001 delivered by Chelyabinsk Regional Court as upheld on appeal by the Supreme Court of the Russian Federation on 12 April 2002, was the applicant convicted by a “competent court” within the meaning of Article 5 § 1 (a) of the Convention (see *Yefimenko v. Russia*, no. 152/04, §§ 101-11, 12 February 2013)?
3. Was the applicant’s detention from 15 June to 19 September 2005 compatible with the requirements of Article 5 § 1 (c) of the Convention (see *Sabirov v. Russia*, no. 13465/04, §§ 28-36, 11 February 2010)?
4. Did the applicant have an effective and enforceable right to compensation for his detention in alleged contravention of Article 5 § 1 (a), as required by Article 5 § 5 of the Convention?
5. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention, in respect of his complaint under Article 5 § 5 of the Convention? In particular, did the applicant invoke before the national authorities, at least in substance, the right under Article 5 § 5?