



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

Communicated on 3 February 2014

FIRST SECTION

Application no. 53494/09
Eldar Ramazan Ogly ORUDZHOV and others against Russia
lodged on 28 September 2009

STATEMENT OF FACTS

The applicant, Mr Eldar Ramazan ogly Orudzhov, is Russian national who was born in 1965 and lives in the Krasnoyarsk region. He is represented before the Court by Mr D. Boyev, a lawyer practising in the Krasnoyarsk region.

A. The circumstances of the case

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

1. Administrative offence proceedings

In 1994 the applicant, a stateless person at the material time, moved to Russia from Azerbaijan together with his wife and three children. In 2004 he received a residence permit valid until 2 October 2008. After its expiration he continued to live in Russia without a residence permit.

On 25 June 2009 the applicant was stopped by the police. The police officer drew up a report on the commission of an offence under Article 18.8 of the Administrative Offences Code.

On 25 September 2009 the applicant was arrested. He spent the night at the police station and on the next day, 26 September 2009, he was brought before the Norilsk Town Court of the Krasnoyarsk Region for a hearing. The hearing was however adjourned until 28 September 2009 at the applicant's request.

On 28 September 2009 the Norilsk Town Court found as follows:

“The court holds that [the applicant] is guilty of an administrative offence under Article 18.8 of the Administrative Offences Code, that he is to pay a fine in the amount of 2,000 [Russian roubles] and that he is to be administratively removed from Russia via the special detention centre of the Krasnoyarsk Interior Department (or the

Norilsk temporary detention centre for persons awaiting deportation, situated at no. 2 at Vokzalnaya street in Norilsk).”

On the same day the applicant was placed in the Norilsk temporary detention centre for persons awaiting deportation.

On 10 December 2009 the Krasnoyarsk Regional Court upheld the judgment on appeal, finding that it had been lawful, well-reasoned and justified.

2. Review of the lawfulness of detention

On an unspecified date the applicant lodged an application for release with the Norilsk Town Court. He argued, in particular, that his detention from 25 to 26 September 2009 and from 28 September 2009 onwards had been unlawful.

On 10 February 2009 the Norilsk Town Court dismissed his claims. It found that the judicial examination of the police report of 25 June 2009 had been scheduled for 29 June 2009. The applicant had however failed to attend the hearing. Given that the applicant's attendance had been mandatory pursuant to Article 25.1 § 3 of the Administrative Offences Code, the hearing had been adjourned. As the applicant had not informed the police of the change of his place of residence, the police had been unable to notify him of the new date of the hearing. In July and August 2009 the applicant had several times telephoned the police to ask about the date of the hearing. The police had asked him to come to the police station, which the applicant had refused. It had not been until 25 September 2009 that the applicant had finally come to the police station and had been immediately arrested. Three hours later, however, he had been given a summons to appear in court on 26 September 2009 and released. His arrest had been lawful. The applicant had not proved that he had been held at the police station over the night. Further, as regards his detention from 28 September 2009 onwards, the court found that after the applicant's administrative removal from Russia had been ordered, he had been detained with a view to administrative removal pursuant to Article 27.6 of the Administrative Offences Code. As the applicant did not have any valid identity documents, it was necessary to ask Azerbaijan Consulate for a return certificate for him. According to the local department of the Federal Migration Service (hereafter “the FMS”), they had been waiting for the administrative removal order to be upheld on appeal before contacting Azerbaijan Consulate. The FMS had received a copy of the appeal judgment of 10 December 2009 on 25 January 2010 and was planning to contact Azerbaijan Consulate in the nearest future. The applicant's continued detention had been therefore lawful and justified.

The applicant appealed. He submitted, in particular, that he had not been notified in due form about the hearing of 29 June 2009. Nor had he ever received any summonses to appear in court. The courts had never ordered that the applicant be brought to the court by force. The police had therefore had no power to arrest him and to bring him to the courtroom. He further insisted that he had spent the night of 25 September 2009 at the police station and that he had not been free to leave. His detention from 25 to 26 September 2009 had been therefore unlawful. Further, the applicant complained that his detention from 28 September 2009 onwards had not

been based on a court order. The detention issue had not been discussed during the hearing of 28 September 2009 and the judgment of 28 September 2009 had not contained a detention order.

On 21 April 2010 the Krasnoyarsk Regional Court upheld the judgment of 10 February 2009 on appeal. It found, in particular, that from 28 September 2009 onwards the applicant had been detained pursuant to section 34 § 5 of the Foreign Nationals Act.

3. The applicant's release

On 30 November 2011 the head of the Norilsk Town Interior Department applied to the Norilsk Town Court for an extension of the applicant's detention. He argued that the applicant had not been administratively removed from Russia because he did not have identity documents. Numerous requests to Azerbaijan Consulate for a return certificate had remained without reply. Given that the applicant's term of detention was to expire on 10 December 2009, an extension was necessary.

On 1 December 2010 a deputy President of the Norilsk Town Court replied, by a letter, that the Administrative Offences Code did not provide for a procedure to extend detention pending administrative removal. Pursuant to Article 31.9 § 1 of the Administrative Offences Code, an administrative removal order was valid for a year after its entry into force, at the end of which it could no longer be enforced.

On 10 December 2010 the applicant was released.

On 10 May 2013 the applicant was granted Russian nationality.

4. Conditions of detention

From 28 September 2009 to 10 December 2010 the applicant was held in the Norilsk temporary detention centre for persons awaiting deportation.

His cell measured 14 sq. m and housed eight inmates. The food was scarce. Inmates did not have any walks or outdoor exercise.

B. Relevant domestic law

1. The Administrative Offences Code

Article 18.8 of the Administrative Offences Code of the Russian Federation provides that a foreign national who infringes the residence regulations of the Russian Federation, including by living on the territory of the Russian Federation without a valid residence permit or by non-compliance with the established procedure for residence registration, will be liable to punishment by an administrative fine of 2,000 to 5,000 Russian roubles and possible administrative removal from the Russian Federation.

Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires such a report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation shall be made by a judge of a court of general jurisdiction. Article 25.1 § 3 provides for mandatory attendance at the hearing of the person charged with an administrative offence punishable by an

administrative removal from the Russian Federation. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

Article 32.10 § 5 allows domestic courts to order a foreign national's detention with a view to administrative removal in one of the detention centres listed in Article 27.6. Article 27.6 provides that detained persons must be held in special detention centres which must meet sanitary and security requirements. Requirements to the conditions of detention, food rations and medical assistance in such centres must be determined by the Government.

Article 31.9 § 1 provides that a decision imposing an administrative penalty may not be enforced after the expiry of a one-year period from the date on which this decision became final.

2. Foreign Nationals Act

The Law on Legal Status of Foreign Nationals in the Russian Federation, no. 115-FZ of 25 July 2002 (“the Foreign Nationals Act”) provides that a foreign national against whom an administrative removal order has been made may be held in custody until execution of such order. Detention has to be authorised by a court (section 34 § 5).

COMPLAINTS

The applicant complains under Article 3 of the Convention about the allegedly inhuman conditions of his detention from 28 September 2009 to 10 December 2010 in the Norilsk temporary detention centre for persons awaiting deportation.

The applicant complains under Article 5 § 1 of the Convention that his detention from 25 to 26 September 2009 and from 28 September 2009 to 10 December 2010 was unlawful.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's detention from 28 September 2009 to 10 December 2010 in the Norilsk temporary detention centre for persons awaiting deportation compatible with Article 3 of the Convention? The Government are requested to comment on all aspects of the conditions of detention which the applicant complained of.

2. Was the applicant's detention from 25 to 26 September 2009 “lawful” in the meaning of Article 5 § 1 (c) and/or (f) of the Convention? In particular, what was the legal basis for his detention? At which moment was the applicant free to leave the police station? Was his detention recorded in official records? The Government are requested to submit a copy of such records.

3. Was the applicant's detention from 28 September 2009 to 10 December 2010 “lawful” in the meaning of Article 5 § 1 (f) of the Convention? In particular, what was the legal basis for the detention? Given that the decision of 28 September 2009 did not refer to the domestic provision on which the detention was based and did not set a time-limit for the detention, was the applicant afforded adequate protection from arbitrariness (see *Nakhmanovich v. Russia*, no. 55669/00, § 71, 2 March 2006; see also *Azimov v. Russia*, no. 67474/11, § 171, 18 April 2013)? Further, was there a realistic prospect of the applicant's administrative removal to Azerbaijan or other country? Were the administrative removal proceedings conducted with due diligence (see *Mikolenko v. Estonia*, no. 10664/05, §§ 59 – 68, 8 October 2009)?