



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

Communicated on 13 February 2014

FIRST SECTION

Application no. 32151/09
Aleksandr Leonidovich YELISEYEV
against Russia
lodged on 1 April 2009

STATEMENT OF FACTS

The applicant, Mr Aleksandr Leonidovich Yeliseyev, is a Belarusian national, who was born in 1967 and lives in Kalinkovichi, in the Gomel Region, Belarus.

The circumstances of the case

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

1. Impounding of the applicant's car

On 29 March 2008 the applicant was stopped by a Russian customs officer at the border crossing into Belarus. After having checked the applicant's documents, the officer informed the applicant that, having failed to declare his Opel car when entering Russia, he had infringed the Russian customs regulations. The officer instituted administrative proceedings against the applicant and impounded his car.

On 11 June 2008 Colonel B., Head of the Novozybkov Customs Post of the Bryansk Customs Office, examined the applicant's case. He found the applicant liable for having failed to declare the car and ordered him to pay a fine in the amount of 35,509.50 Russian roubles (RUB). He further ruled that the applicant's car, which had been impounded by customs, should be returned to the applicant. The applicant appealed.

On an unspecified date the Novozybkov Town Court of the Bryansk Region fixed the hearing for 8 August 2008.

On 8 August 2008 the Town Court examined the applicant's appeal and upheld the decision of 11 June 2008. The court heard the case in the applicant's absence. In the operative part of the judgment, the court advised

the applicant of his right to appeal against the judgment adopted by the Town Court.

According to the applicant, the letter from the Town Court notifying him of the date and time of the court hearing reached him on 9 August 2008.

On 26 September 2008 the applicant received a copy of the Town Court's judgment of 8 August 2008 by post.

On an unspecified date the applicant lodged an appeal with the Bryansk Regional Court. On 13 November 2008 the Regional Court sent a letter to the applicant informing him that his appeal was not substantiated.

The subsequent request by the applicant for supervisory review was dismissed by the Supreme Court of the Russian Federation on 26 January 2009.

On 20 August 2009 the Acting Head of the Novozybkov Customs Post of the Bryansk Customs Office discontinued the enforcement proceedings in respect of the decision of 11 June 2008. He noted that the applicant was a foreign national and had no assets or known place of residence in the Russian Federation and that it was impossible to enforce the decision of 11 June 2008 on account of the expiry of the relevant time-limit.

On 24 August 2009 the Bryansk Customs certified that (1) the decision concerning the applicant's administrative liability had come into force on 15 July 2009; (2) the applicant had failed to reclaim his car within a month of that date; and (3) the applicant's car would be sold.

According to the applicant, his car was not returned to him. Nor did he receive the proceeds from the sale of his car, if there were any.

2. Strategy-31 rally

On 19 March 2012 the leaders of the Strategy-31 movement notified the Mayor of Moscow of their intention to organise a rally (from 6 to 8 p.m.) at Triumphalnaya Square in the centre of Moscow and a march (from 8 to 8.30 p.m.) from Triumphalnaya Square down Tverskaya Street to Manezh Square on 31 March 2012 (Saturday). Approximately 1,500 people were expected to attend. The events were organised to promote the right to peaceful assembly as set forth in Article 31 of the Constitution of the Russian Federation and the freedom of Parliamentary elections in Russia.

On 20 March 2012 the government of Moscow refused to agree on the venues for the rally and the march. According to the authorities, there was archeological and construction work going on in Triumphalnaya Square and the march, according to the indicated route, would “disrupt the normal functioning of the city's infrastructure and traffic [and] infringe the rights and interests of people who would not take part [in the rally and the march]”. The authorities further suggested two alternative venues for the planned events, also located in the centre of Moscow.

On 31 March 2012 the rally was held as planned at Triumphalnaya Square. The applicant took part. At 6.30 p.m. he was arrested and brought to the police station. According to the arrest record, the applicant had chanted slogans such as “Down with Putin” and “Fascism shall not pass”.

On 17 April 2012 the Justice of the Peace of Precinct no. 367 of the Tverskoy District of Moscow found that the rally held on 31 March 2012 had been organised in contravention of the existing procedure and that the applicant had taken part without having verified whether it had been

legitimate. The court found the applicant administratively liable for violation of the established procedure for organising a public assembly and fined him RUB 500. The applicant appealed.

On 21 May 2012 the Tverskoy District Court of Moscow upheld the decision of 17 April 2012 on appeal.

COMPLAINTS

The applicant complains under Article 6 of the Convention of the unfairness of the administrative proceedings concerning his failure to comply with the customs regulations. In particular, he alleges that the court informed him belatedly about the date and time of the hearing and heard the case in his absence.

He complains under Article 1 of Protocol No. 1 that the State failed either to return his car to him or to reimburse its value.

As regards the applicant's participation in the rally on 31 March 2012 and subsequent arrest and imposition of an administrative fine, he complains of a violation of his rights set out in Article 11 of the Convention.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention applicable under its civil or criminal head to the proceedings which ended with the judgment of the Novozybkov Town Court of the Bryansk Region on 8 August 2008?
2. When did the judgment delivered by the Novozybkov Town Court of the Bryansk Region on 8 August 2008 become final?
3. In the light of the answer to question 2, did the applicant comply with the six-month time-limit laid down in Article 35 § 1 of the Convention?
4. If Article 6 § 1 of the Convention is applicable to the proceedings in question, did the applicant have a fair hearing, in accordance with Article 6 § 1 of the Convention? In particular, did the Novozybkov Town Court of the Bryansk Region notify the applicant promptly about the date and time of the hearing in order to provide him with an opportunity to attend?
5. As regards the impounding of the applicant's car and its subsequent sale by the customs authorities, has there been an interference with the applicant's peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1?
6. Has there been an interference with the applicant's freedom of peaceful assembly, within the meaning of Article 11 § 1 of the Convention?
7. If so, was that interference prescribed by law and necessary within the meaning of Article 11 § 2?