



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

FIRST SECTION

Application no. 24948/05
Eduard Rostislavovich ARTEMENKO
against Russia
lodged on 3 June 2005

STATEMENT OF FACTS

The applicant, Mr Eduard Rostislavovich Artemenko, is a Russian national who was born in 1966 and lived until his arrest in the town of Roslavl in the Smolensk Region.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant

On 15 June 2003 the applicant was arrested on suspicion of unintentional manslaughter. On 30 September 2003 he was committed to stand trial before the Leninskiy District Court of Smolensk. On 10 October 2003 the District Court fixed the first trial hearing and ordered that the applicant should remain in custody.

On 26 April 2004 the Leninskiy District Court found the applicant guilty as charged and sentenced him to twelve years' imprisonment. That judgment became final on 10 July 2004 when the Smolensk Regional Court upheld it on appeal.

2. Proceedings for compensation for non-pecuniary damage

In February 2005 the applicant lodged an action with the Leninskiy District Court, arguing that his detention from 2 to 26 April 2004 had been unlawful as there had been no legal order authorising his detention during that period. He sought compensation for non-pecuniary damage.

On 23 September 2005 the Leninskiy District Court, in the presence of a defendant's representative, dismissed the applicant's action, finding that the

applicant's conviction precluded him from claiming compensation in respect of non-pecuniary damages. Its operative part reads as follows:

“Given that Mr Artemenko was found guilty of the crime in relation to which he had been detained since 17 June 2003, he did not acquire the right to exoneration and to compensation in respect of non-pecuniary damage.

Therefore, there exist no grounds for satisfying Mr Artemenko's claim for compensation in respect of his unlawful detention pending trial.”

The applicant appealed, complaining, *inter alia*, that the District Court had refused to secure his attendance and had not provided him with copies of materials presented by the defendants. He also maintained his initial claim for compensation.

On 29 November 2005 the Smolensk Regional Court upheld the judgment of 23 September 2005 in the applicant's absence.

B. Relevant domestic law

In accordance with Article 255 of the Code of Criminal Procedure, the term of detention pending trial is calculated from the date the court receives the file up to the date on which the judgment is given. The period of detention pending trial may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each.

Article 1064 of the Civil Code contains general provisions on liability for the infliction of damage. It establishes that damage inflicted on the person or property of an individual shall be reimbursed in full by the person who inflicted the damage (Article 1064 § 1).

Article 1070 of the Civil Code determines liability for the damage caused by unlawful actions of law-enforcement authorities or courts. Paragraph 1 establishes the principle of strict liability of the State treasury for the damage caused by (i) unlawful conviction; (ii) unlawful institution of criminal proceedings; (iii) unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, and (iv) unlawful administrative detention or mandatory works.

Paragraph 2 establishes, in particular, that the federal or regional treasury shall be liable for the damage sustained by an individual in the framework of administration of justice provided that the judge's guilt has been established in a final criminal conviction.

Article 133 of the Code of Criminal Procedure governs the exercise of the “right to rehabilitation” which is, in essence, the restoration of the person to the *status quo ante* following termination or discontinuance of criminal proceedings. This right includes the right to compensation in respect of pecuniary and non-pecuniary damage and the restoration of labour, pension, housing and other rights. The damage must be compensated for in full, irrespective of the fault of the investigator, prosecutor or court (paragraph 1). Paragraph 2 confers the “right to rehabilitation” on defendants who have been acquitted, against whom charges have been dropped, in respect of whom proceedings have been discontinued or whose conviction have been quashed in their entirety or in part. Paragraph 3 provides that “any individual who has been unlawfully subjected to

preventive measures in criminal proceedings shall have the right to rehabilitation”.

COMPLAINTS

1. The applicant complained under Articles 5 and 13 of the Convention that his detention from 2 to 26 April 2004 had been unlawful.

2. The applicant complained under Articles 6 and 14 of the Convention that he was refused leave to attend the proceedings concerning his claim for the compensation and that he had not been provided with copies of the defendants’ submissions.

QUESTIONS TO THE PARTIES

1. Was the applicant's detention from 2 to 26 April 2004 "in accordance with a procedure prescribed by law" and covered by an appropriate detention order? Was it compatible with the requirements of Article 5 § 1 of the Convention?

2. Did the applicant have an enforceable right to compensation for the allegedly unlawful detention, as required by Article 5 § 5 of the Convention?

3. The parties are required to submit all the detention orders, including that of the Leninskiy District Court dated 10 October 2003, as well as all the judgments concerning the applicant's civil claim for compensation.