



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

FIRST SECTION

CASE OF LOSEVSKIY AND OTHERS v. RUSSIA

(Application no. 3243/06)

JUDGMENT

STRASBOURG

16 October 2014

This judgment is final but it may be subject to editorial revision.

In the case of Losevskiy and Others v. Russia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyeu, *President*,

Erik Møse,

Dmitry Dedov, *judges*,

and Søren Prebensen, *Acting Deputy Section Registrar*,

Having deliberated in private on 23 September 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 3243/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals, Mr Zakhar Viktorovich Losevskiy, Mr Mikhail Nikolayevich Goncharov and Mr Yevgeniy Nikolayevich Korkin (“the applicants”), on 7 November 2005.

2. Mr Goncharov and Mr Korkin were represented by Mr Losevskiy. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 December 2012 the application was communicated to the Government.

THE FACTS

4. The applicants were born in 1978, 1979 and 1970 respectively and lived in Chelyabinsk prior to their arrest.

5. On 27 April 2005 the Krasnoflotskiy District Court of Khabarovsk remanded the applicants in custody. The applicants were charged with forgery and legalisation of money committed by an organised group. On 14 March 2007 the Industrialniy District Court convicted the applicants at first instance.

6. The applicants’ detention on remand was not based on relevant and sufficient reasons. The gravity of the charges was cited as the main reason for detention in orders of 27 April 2005, 3 June 2005, 16 July 2005, 19 July 2005, 25 July 2005, 9 September 2005, 12 September 2005, 13 September 2005, 1 December 2005, 30 December 2005, 15 February 2006, 26 June 2006, 25 September 2006, 26 October 2006, 25 December 2006 and 8 February 2007. The same detention orders did not mention specific and

relevant facts capable of corroborating the existence of security risks. The domestic courts did not consider the possibility of applying alternative measures of restraint or did not consider them seriously. Extensions were approved without verifying compliance with the special diligence requirement: it was not stated what had been done in the period elapsed since the last extension and what had to be done during the period for which the extension would be granted (see the orders of 27 April 2005, 1 December 2005, 26 June 2006, 25 September 2006, 26 October 2006, 25 December 2006 and 8 February 2007). The detention orders of 1 December 2005, 30 December 2005, 15 February 2006, 26 June 2006, 25 September 2006, 26 October 2006, 25 December 2006 and 8 February 2007 employed repetitive standard formulae, notwithstanding changes in the applicants' situation or developments in the proceedings. The trial court also issued collective detention orders in respect of the co-defendants that did not contain an analysis of their individual situations (see the orders of 15 February 2006, 26 June 2006, 25 September 2006, 26 October 2006, 25 December 2006 and 8 February 2007).

THE LAW

I. SCOPE OF THE CASE

7. The Court observes that, in view of an inordinately large volume of the applicants' previous submissions, on 11 April and 22 August 2012 it invited Mr Losevskiy – in his double capacity of the applicant and the representative of the other two applicants – to submit a consolidated application form containing “a statement of the important facts in the chronological order and the complaints which he considered shall be examined by the Court”.

8. The application form which Mr Losevskiy submitted on 15 October 2012 was filled out in his own name but included two additional pages listing Mr Goncharov and Mr Korkin as the applicants and Mr Losevskiy as their representative.

9. The Court notes, however, that the statement of facts and the statement of alleged violations in the application form referred solely to Mr Losevskiy in the first-person singular, without mentioning any facts concerning either Mr Goncharov or Mr Korkin or any complaints they may have wished to raise. In these circumstances, the Court is unable to discern any evidence showing that Mr Goncharov or Mr Korkin wished to pursue their complaints and decides, in accordance with Article 37 § 1 (a) of the Convention, to strike the application in the part concerning Mr Goncharov

and Mr Korkin out of its list of cases. It will henceforth refer to Mr Losevskiy as “the applicant”.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

10. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention was excessively long and was not based on relevant and sufficient reasons. Article 5 § 3 provides as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

11. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

12. The Government did not make any comments on the merits of the case. The applicant maintained his claims.

13. The Court notes that the period to be taken into consideration lasted for one year, ten months and seventeen days, from the date of the applicant’s arrest on 27 April 2005 and until the date of his conviction on 14 March 2007.

14. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant’s detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive measures (see, among many others, *Mamedova v. Russia*, no. 7064/05, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, 28 June 2007; *Belov v. Russia*, no. 22053/02, 3 July 2008; *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Gulyayeva v. Russia*, no. 67413/01, 1 April 2010; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Romanova v. Russia*, no. 23215/02, 11 October 2011; and *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012).

15. Having regard to the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court considers that by failing to address specific facts or consider alternative preventive measures and by issuing collective detention orders concerning several co-defendants, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient". In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

16. There has accordingly been a violation of Article 5 § 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant also complained of other violations of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

19. The applicant claimed 153,000 US dollars in respect of pecuniary damage, representing the loss of earnings during his pre- and post-trial detention. He further claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government pointed out that there was no causal link between the alleged violation and the pecuniary damage. They also considered the claim for non-pecuniary damage to be excessive in the light of the Court's case-law in similar cases.

21. The Court observes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. There was no causal link between the violations found and the alleged loss of earnings (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March

2006). The Court therefore rejects the claim for pecuniary damage. On the other hand, it awards the applicants EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

22. The applicants also claimed EUR 1,720 for the legal fees and EUR 700 for postal expenses incurred before the domestic courts and the Court.

23. The Government did not comment on this part of the claims.

24. The Court notes that the legal fees were mostly related to the applicant's defence on criminal charges in the domestic proceedings and that an unusually high amount of postal expenses could only be accounted for by a large volume of the applicant's submissions to the Court which were, for the most part, unsolicited. Nevertheless, the Court considers it reasonable to award the sum of EUR 300 covering costs under all heads.

C. Default interest

25. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of the list of cases insofar as it was lodged by the applicants Mr Goncharov and Mr Korkin;
2. *Declares* Mr Losevskiy's complaint about an excessive duration of the pre-trial detention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay Mr Losevskiy, within three months from the date of the judgment, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President