



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

FIRST SECTION

CASE OF ISTOMIN v. RUSSIA

(Application no. 31691/10)

JUDGMENT

STRASBOURG

15 October 2015

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

In the case of Istomin v. Russia,

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

Khanlar Hajiyeu, *President*,

Linos-Alexandre Sicilianos,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 22 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 31691/10) 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 a Russian national, Mr Aleksandr Sergeyeuich Istomin (“the applicant”), on 10 May 2010.

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

3. On 18 March 2014 the complaint concerning the length of pre-trial detention was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and is detained in Mozzhukha, Kemerovo Region.

5. On 15 July 2009 the applicant was arrested on suspicion of large-scale embezzlement.

6. On 16 July 2009 he was formally charged with the crime.

7. On 17 July 2009 the Tsentralnyy District Court of Kemerovo remanded the applicant in custody pending investigation. The judge found that (1) the applicant was suspected of a serious crime, (2) his involvement in embezzlement was confirmed by the evidential material in the case file, (3) he might put pressure on witnesses or (4) he might interfere with investigation.

8. On 10 November 2009 the Zavodskoy District Court of Kemerovo extended the applicant's pre-trial detention. The court referred to the gravity of the charges and reiterated that the applicant might threaten witnesses or interfere with investigation. It also observed that the applicant might re-offend or abscond.

9. On 26 November 2009 the Kemerovo Regional Court upheld the detention order of 10 November 2009 on appeal.

10. The applicant remained in custody pending investigation and trial until his release on 24 June 2010.

11. On 5 November 2013 the applicant was found guilty of the charge.

THE LAW

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

12. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had been excessively long and had not been 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

13. The Government argued that the applicant had lost interest in pursuing his application as he had failed to inform the Court about the final judgment in his criminal case. They also submitted that the Court should not take into consideration the period of pre-trial detention following 10 May 2010, the date on which the applicant lodged his application.

1. The applicant's interest in pursuing the application

14. The present case concerns the allegedly excessive duration of the applicant's pre-trial detention. By lodging his application with the Court, the applicant complained about a situation in which he had already been for some time. In these circumstances, any subsequent developments in the criminal proceedings against him would not have affected the core of the matter underlying his complaint under the Convention because a significant period of his detention had already taken place. Accordingly, the Court is unable to find that the absence of information concerning the applicant's conviction might have had a decisive influence on the Court's judgment or have prevented it from ruling on the case.

15. In the instant case, the applicant remained in contact with the Court, informing it of the developments in his situation up to his release. The Court cannot therefore discern anything to support the Government's allegation that the applicant had lost interest in pursuing his application. It finds the Government's submission without merit and dismisses it.

2. *Period of pre-trial detention*

16. According to the Court's case-law, the period to be taken into consideration for the purposes of Article 5 § 3 ends with the applicant's release or his or her conviction by the first-instance court (see *Idalov v. Russia* [GC], no. 5826/03, § 112, 22 May 2012, *Labita v. Italy* [GC], no. 26772/95, §§ 145-147, ECHR 2000-IV).

17. In the instant case the applicant was arrested on 15 July 2009 and released on 24 June 2010. His pre-trial detention therefore lasted 11 months and 9 days.

3. *Conclusion*

18. Having regard to the above, the Court finds that it is competent to examine the applicant's pre-trial detention between 15 July 2009 and 24 June 2010. The complaint concerning that period is neither manifestly ill-founded nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The Government acknowledged that the applicant's pre-trial detention between 15 July 2009 and 10 May 2010 had been incompatible with the requirements set out in Article 5 § 3 of the Convention.

20. The applicant maintained his complaint.

21. The Court has already, on numerous 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 had extended an applicant's detention whilst essentially relying on the gravity of the charges and merely using stereotypical 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).

22. Turning to the circumstances of the present case, the Court notes that there is no reason to arrive at a different finding in the present case. The Court considers that 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".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 850,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

26. The Government pointed out that there was no causal link between the violation and the pecuniary damage alleged and that the applicant had not substantiated his claims. They also considered the claim for non-pecuniary damage to be excessive in the light of the Court's case-law.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant did not claim reimbursement of any costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

29. 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. *Declares* the complaint concerning the excessive duration of pre-trial detention admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, EUR 1,000 (one thousand euros), plus any tax that may be chargeable,
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President