



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

THIRD SECTION

CASE OF AMIZHAYEV v. RUSSIA

(Application no. 1386/14)

JUDGMENT

STRASBOURG

21 November 2017

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

In the case of Amizhayev v. Russia,

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

Branko Lubarda, *President*,

Pere Pastor Vilanova,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 31 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 1386/14) 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 Arbi Vakhitovich Amizhayev (“the applicant”), on 24 November 2013.

2. The applicant was represented by Mr I. Timishev, a lawyer practising in Nalchik. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 1 December 2016 the complaint concerning the applicant’s allegedly unlawful detention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1979 and lives in Groznyy in the Chechen Republic.

5. On 23 June 2012 the applicant was arrested in connection with a drug-related offence and placed in custody.

6. On 14 August 2012 the Oktyabrskiy District Court of Groznyy found the applicant guilty and sentenced him to one year’s imprisonment.

7. On 14 November 2012 the Supreme Court of the Chechen Republic quashed the conviction and ordered a retrial.

8. On 30 May 2013 the Oktyabrskiy District Court again convicted the applicant and sentenced him to one year's imprisonment. The court stated that the "preventive measure [should] remain unchanged until the conviction [had become] final".

9. On 24 June 2013 counsel for the applicant asked the director of the remand prison to release the applicant since he had already served the one-year sentence. On the same day a judge of the District Court faxed a letter to the director, informing him that the applicant should not be released until the Supreme Court had examined the matter on appeal since the District Court ordered the preventive measure to remain unchanged.

10. On 3 July 2013 the Supreme Court upheld the conviction and the applicant was released.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

11. The applicant complained that his that his detention in the period from 23 June to 3 July 2013 was in breach of Article 5 which provides in the relevant parts as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

..

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ..."

A. Admissibility

12. The Government claimed that the applicant had failed to exhaust the domestic remedies. In their view, he should have first challenged the allegedly unlawful actions by public authorities in accordance with the procedure set out in Chapter 25 of the Code of Civil Procedure and later filed a civil claim for compensation under Article 1070 of the Civil Code.

13. The applicant replied that the remedies invoked by the Government were not effective in the circumstances of his case where his continued detention had been ordered by a court.

14. The Court observes that judicial decisions, such as the one at issue in the present case, cannot be challenged in accordance with the procedure

under Chapter 25 of the Code of Civil Procedure. It further reiterates that, in the absence of an explicit and formal acknowledgement by the domestic court of the unlawful nature of the applicant's detention, a claim for compensation under Article 1070 of the Civil Code had no prospects of success and the applicant was not required to exhaust that remedy (see *Chuprikov v. Russia*, no. 17504/07, § 98, 12 June 2014).

15. The Court considers that the application 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

16. The Government acknowledged that the applicant had been detained for longer than his sentence had required.

17. The Court reiterates that that the list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see *Shimovolos v. Russia*, no. 30194/09, § 51, 21 June 2011, and *Krupko and Others v. Russia*, no. 26587/07, § 38, 26 June 2014).

18. The one-year imprisonment to which the applicant was sentenced expired on 23 June 2013 and his continued deprivation of liberty was no longer covered by sub-paragraph (a) of paragraph 1 of Article. It clearly did not fall under sub-paragraphs (b), (d), (e) and (f). As to whether it could be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c), the Court notes that the applicant had already been tried and sentenced for the offence he had committed and that sub-paragraph (c) had ceased to apply on the date the conviction was pronounced. Hence, the deprivation of liberty to which the applicant was subjected did not have any legitimate purpose under Article 5 § 1 and was arbitrary. The Court also notes that the domestic courts did not identify any provisions of the domestic law which could have allowed the authorities to keep the applicant in custody after his having served the sentence in full. It follows that the applicant's detention was also unlawful in domestic terms.

19. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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.”

21. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage and 150,000 Russian roubles (EUR 2,144 at the exchange rate on the date of submission of the claim) in respect of legal costs.

22. The Government indicated that Article 41 was to be applied in accordance with the established case-law.

23. The Court awards the applicant the amounts claimed in respect of non-pecuniary damage and legal costs, plus any tax that may be chargeable. Further to the applicant’s request, the award in respect of legal costs shall be payable into his representative’s bank account.

24. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,144 (two thousand one hundred and forty-four euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred into the applicant’s representative’s bank account;
 - (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.

Done in English, and notified in writing on 21 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Branko Lubarda
President