



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

FIRST SECTION

CASE OF MAKHMUDOV v. RUSSIA

(Application no. 35082/04)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

26/10/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Makhmudov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 July 2007,

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

and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Rustam Khamidovich Makhmudov (“the applicant”), on 27 September 2004.

2. The applicant was represented before the Court by Mr I. Puzanov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation before the European Court of Human Rights.

3. The applicant complained, in particular, about a violation of his right to freedom of assembly, unlawful detention at a police station in inhuman conditions and a lack of any compensation in this connection.

4. On 9 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Moscow. At the material time the applicant was a district councillor.

A. Public assembly on 4 September 2003

7. On 21 August 2003 the non-governmental organisation “City-wide public council for the protection of citizens' rights in town planning and for the protection of the environment” decided to hold an assembly of Krylatskoye district residents at the Zashchitnikov Neba Square in Moscow. The purposes of the assembly were:

(1) to protest against the Moscow mayor's failure to respond to the resolution of the assembly held in May 2003;

(2) to protest against the planned construction of several luxurious blocks of flats in the place of facilities for sports and children;

(3) to cast a vote of no confidence in the city authorities and call for their resignation;

(4) to discuss matters of local self-governance.

8. On 25 August 2003 the applicant, together with three other co-organisers of the assembly, informed the Prefecture of the Western Administrative District of Moscow – the residential district of Krylatskoye being in its jurisdiction – of the date, time, place and purposes of the assembly. The assembly was scheduled to take place from 6.30 to 8.30 p.m. on Thursday, 4 September 2003, with the participation of about a hundred persons.

9. On 29 August 2003 the prefect of the Western Administrative District of Moscow issued a decision to accept the notice and instructed the police to ensure public safety during the assembly.

10. The applicant and co-organisers informed residents of the Krylatskoye district about the planned assembly by way of bill-posting.

11. On 3 September 2003 the prefect cancelled his previous decision of 29 August 2003 “in connection with the operative information of law-enforcement authorities about an expected outbreak of terrorist activities in the Krylatskoye district and with a view to ensuring

festivals, the European champions road running cup, the Moscow cup of the automobile all round competition, the children's artistic and sport performance, sound and light show, students' parade, and many others – took place in major public thoroughfares. The applicant submitted media reports showing that no scheduled events had been cancelled and that the public festivities had been attended by thousands of people.

B. The applicant's overnight detention at the police station

14. The applicant left the Zashchitnikov Neba Square in a private car at about 8 p.m. At a nearby crossing the police blocked his car and, holding the driver at gun-point, took the applicant out of the car by force and escorted him to Krylatskoye district police station (*ОВД района «Крылатское»*).

15. According to the administrative-arrest record of 4 September 2003, the applicant was arrested for refusing to comply with a lawful order of the police.

16. Following the applicant's complaints about unlawful police actions, the Kuntsevskiy District Prosecutor interviewed the officers who had apprehended the applicant. Captain F., Officer D. and the driver, L., stated that they had been present at the meeting site since 6 p.m. At 8 p.m., when people were beginning to leave, they had arrested the applicant and taken him to the police station “for clarification of facts, namely the [legal] ground for holding a public assembly”. Mr N., who had been the duty officer at the police station, testified that at 8 p.m. the head of the police station had told him to prepare a report on an administrative offence of disobedience of police orders committed by Mr Makhmudov, who had been “detained for conducting an unauthorised meeting”.

17. At the police station the applicant was placed in a cell where he remained until he was brought before a judge on the following day (see below). The cell was dirty and covered with spittle; the applicant was not given any food or drink.

C. Administrative proceedings against the applicant

18. On 5 September 2003 the applicant was brought before a judge of the Kuntsevskiy District Court of Moscow. He was charged with disobeying lawful police orders and with organising an unauthorised assembly, these being administrative offences under Articles 19.3 and 20.2 of the Code on Administrative Offences. The two charges were examined separately.

1. The charge of disobeying lawful police orders

19. Examining the charge of disobedience, the judge found as follows:

“During the preparation and examination of the administrative case a number of breaches of the Code of Administrative Offences have been revealed. These breaches are the grounds for remitting the file to the head of the police station...”

20. The judge returned the material to Krylatskoye police station for correction of the above defects and ordered the applicant's release at 5.10 p.m.

21. On 7 October 2003 the police resubmitted the file to the court.

22. On 29 October 2003 the Kuntsevskiy District Court found that the police had not made good the defects identified in the decision of 5 September 2003. The judge opined as follows:

“Mr Makhmudov unambiguously declared himself not guilty of the imputed offence and listed the following [nine] witnesses as being ready to testify that he had not committed any illegal actions against the police officers.

Taking into account that the available material is insufficient for finding Mr Makhmudov guilty of the administrative offence, that the court has taken measures to make good the defects in the material and for supplementing the evidence, and that those defects have not been remedied, the court considers that all the measures for proving Mr Makhmudov's guilt of the offence have been exhausted and – as the available evidence is not sufficient for a finding of guilt – finds it necessary to discontinue the proceedings”.

23. Following the applicant's complaint that the legal basis for discontinuance of the proceedings had not been set out explicitly, on 2 December 2003 that decision was quashed by a higher court and the matter remitted for a new examination.

24. On 19 December 2003 the Kuntsevskiy District Court ordered the discontinuance of the proceedings on the ground that the two-month prescription period had expired.

2. The charge of organising an unauthorised assembly

25. Having examined the witnesses for the defence, who denied that the assembly had taken place, and the police officers who testified for the prosecution, the judge found that the applicant had been in breach of the established procedure for organising public assemblies. He had known that the prefect's decision of 29 August 2003 had been reversed but proceeded nevertheless with organisation of the assembly. The judge fined the applicant 1,000 Russian roubles (approximately 30 euros).

26. On 6 July 2004 the Moscow City Court upheld that decision on an appeal by the applicant.

D. Judicial review of the prefect's decision of 3 September 2003

27. The applicant challenged the prefect's decision of 3 September 2003 before the

continued as follows:

“In the court's view, the information of law-enforcement authorities about a possibility of subversive and terrorist attacks in Moscow in places of mass gatherings potentially presupposes the existing threat of violence not just against those citizens who intend to take part in the meeting but also against those citizens who had no intention of exercising their constitutional right to freedom of mass assemblies.

No evidence contradicting the information contained in the letter from the police command of the Western Administrative District to the prefect of the Western Administrative District has been produced before the court. The prefect's decision of 3 September 2003 was issued not in connection with the notice filed by the assembly organisers but in connection with a threat of increasing terrorist activities in the areas of mass gatherings, with a view to ensuring the security of the Krylatskoye District's residents...

Assessing the contested decision, the court finds that the prefect ... acted within the competence of the State body and [his actions] were appropriate to the presumed threat and complied with the Russian Constitution...”

As regards the forceful actions of the police in dispersing the meeting, the District Court found as follows:

“Taking into account the submissions by the claimant and his representatives, by the representatives of the police command of the Western Administrative District and of Krylatskoye police station, and having examined the video material submitted by the claimant and by Krylatskoye district council, the court finds that the actions of the Krylatskoye district police, which were aimed at preventing the mass action from taking place in connection with a real threat to life, health and security of citizens, were compatible with [the Moscow regulations on co-ordinated police action during mass assemblies] and the requirements of Article 17 § 3 of the Constitution which prohibits violations of rights and freedom of others, including during the exercise of the constitutional right to organise meetings, demonstrations, marches and pickets, having regard to the special conditions in the city of Moscow.”

33. The applicant lodged an appeal. He submitted, in particular, that not a single public gathering organised by the Moscow mayor's office in the framework of the “Day of the City”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Public assemblies

40. The Constitution guarantees the right to freedom of peaceful assembly and the right to hold meetings, demonstrations, marches and pickets (Article 31).

41. Decree of the Presidium of the USSR Supreme Council no. 9306-XI of 28 July 1988 (in force at the material time pursuant to Russian Presidential Decree no. 524 of 25 May 1992) provided that organisers of an assembly were to serve written notice on the municipal authorities no later than ten days before the planned assembly (§ 2). The authority was to give its response no later than five days before the assembly (§ 3). An assembly could be banned if its purpose was contrary to the Constitution or threatened public order or the security of citizens.

42. The provisional regulations on the procedure for notification of the executive branch of the Moscow authorities about meetings, street marches, demonstrations and pickets in streets, squares and other public places, approved by Presidential Decree no. 765 of 24 May 1993, provided that notice of an assembly was to be served by the assembly organisers on the executive body between the fifteenth and tenth day before the planned assembly (§ 2). The executive body could refuse to accept the notice if the purpose of the assembly was contrary to the principles of the Universal Declaration of Human Rights, generally accepted public morals, if there was no undertaking on the part of the organisers to ensure public

D. Compensation for unlawful deprivation of liberty

47. The State or regional treasury is liable – irrespective of any fault by State officials – for the damage sustained by an individual on account of unlawful criminal prosecution, unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, or an unlawful administrative penalty in the form of detention or community work (Article 1070 § 1 of the Civil Code). Damage incurred by an individual through unlawful acts of the investigation or prosecution authorities in a form other than listed above is compensated for in accordance with the general grounds giving rise to liability for damage, that is on the condition that the fault of the person who inflicted the damage has been proven (Article 1069 read in conjunction with Article 1064).

48. A court may hold the tortfeasor liable for non-pecuniary damage incurred by an individual through actions impairing his or her personal non-property rights, such as the right to personal integrity and the right to liberty of movement (Articles 150 and 151). Non-pecuniary damage must be compensated for irrespective of the tortfeasor's fault in the event of unlawful conviction or prosecution, unlawful application of a preventive measure in the form

the complaint. It follows that a complaint to a prosecutor was not a remedy to be exhausted. On the other hand, the applicant could, and did, make use of the possibility of obtaining judicial review of the prefect's decision by which the assembly authorisation had been revoked. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

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

B. Merits

successful celebration of the “Day of the City” in support of his argument that there had been no valid grounds for banning the assembly on 4 September 2003. They did not elaborate on this argument.

