



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

FIRST SECTION

CASE OF BIK v. RUSSIA

(Application no. 26321/03)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bik v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 26321/03) 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 Yefimovich Bik (“the applicant”), on 5 August 2003.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his committal to a psychiatric hospital against his will had been unlawful.

4. On 19 June 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. The Court examined and dismissed their objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and lives in Moscow.

7. On 27 May 2002 the applicant's mother requested Psychiatric Outpatient Clinic No. 21 (Психоневрологический диспансер N 21) (the "Clinic") to examine her son, expressing concern about a change in his behaviour. He was afraid to leave the flat where he lived, had cut out all social contacts and was frightened by noises or the sound of the telephone ringing.

8. The applicant refused to be examined by the doctors at the Clinic and on 29 May 2002 Dr N., a psychiatrist from the Clinic, applied for a court order authorising the applicant's psychiatric assessment without his consent. She noted, on the basis of the information submitted by the applicant's mother, that the applicant might be suffering from a severe mental disorder that impaired his ability to meet the ordinary demands of life, and that his condition might deteriorate should he be left without psychiatric treatment.

9. On 31 May 2002 the Cheremushkinskiy District Court of Moscow authorised the psychiatric assessment. According to the applicant, he was informed of that decision at a later date.

10. On 5 June 2002 Dr N. examined the applicant at his home. The applicant's mother was present. The applicant was agitated, he shouted at the doctor and his mother and threatened them. He refused to talk and made them both leave. Dr N. concluded that the applicant suffered from paranoid schizophrenia and that his condition warranted committal to a psychiatric hospital for further assessment and treatment. At 7.20 p.m. the applicant was admitted to Psychiatric Hospital No. 15 (Психиатрическая клиническая больница N 15) (the "Hospital"). According to the applicant, he was first taken to a police station and then to the hospital.

11. On 7 June 2002 the applicant consented to treatment in the Hospital until 14 June 2002.

12. On Friday 14 June 2002 the applicant refused to stay in hospital any longer. At noon he was examined by three psychiatrists who provisionally diagnosed him as suffering from depressive syndrome and schizophrenia. They noted that the applicant was solitary and antisocial; he was unaware of his condition and expressed delusional ideas about his mother trying to manipulate him. They concluded that his mental disorder was serious enough to require inpatient treatment.

13. On Monday 17 June 2002 the Hospital administration applied to the court seeking an extension of the applicant's stay there. According to the medical report submitted, the applicant was suffering from a severe mental disorder and might cause serious harm to himself or others. On the same

day the Nagatinskiy District Court of Moscow provisionally authorised the applicant's further hospitalisation pending consideration of the case. The court stated no reasons in its decision.

14. On 21 June 2002 the Nagatinskiy District Court of Moscow authorised the extension of the applicant's stay in the Hospital. The hearing was held on the Hospital's premises. The applicant attended the hearing but was not represented. In particular, the court noted:

“After having heard [the applicant], the hospital's representative..., and the prosecutor who considered that the [hospital's] request should be granted, and after having studied the materials [in its possession], the court considers that the [hospital's] request to commit the applicant to the [hospital] against his will is well-substantiated and should be granted.”

15. On 27 June 2002 the applicant consented in writing to further treatment in hospital.

16. Once the applicant's condition improved, he was discharged from hospital on 4 July 2002.

17. On 23 January 2003 the applicant lodged an appeal against the decision of 21 June 2002. He submitted, in particular, that the court had failed to verify the lawfulness of his committal to hospital

18. On 20 March 2003 the Moscow City Court upheld the decision of 21 June 2002. Both the applicant and his lawyer attended the hearing. The court noted that the applicant's hospitalisation had been in accordance with the applicable laws. The court further indicated that the applicant's committal to hospital against his will had been necessary in view of his severe psychiatric disorder which made him dangerous to himself and others. Lastly, the court observed that it had been open to the applicant to ask for legal representation before the court at first level of jurisdiction. However, he had failed to do so and the decision of 21 June 2002 should not be quashed on that ground.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The involuntary admission of a patient to a psychiatric facility

1. Psychiatric Assistance Act of 2 July 1992 as amended (the “Act”)

19. A person may be subject to an involuntary psychiatric assessment if his or her behaviour gives reasonable grounds to believe that he or she may be suffering from a serious mental disorder and, because of the mental disorder, he or she (a) is likely to cause serious harm to himself or herself or another person or (b) does not have the capacity to take basic care of himself or herself or (c) is likely to suffer serious physical impairment or

mental deterioration in the absence of psychiatric treatment (Article 23 of the Act).

20. In the event of (b) or (c) above, a psychiatrist may decide to conduct psychiatric assessment without the person's consent, subject to prior judicial approval (Article 24 of the Act).

21. In the event of (a), (b), or (c) above, a person may be admitted to a hospital against his or her will if he or she is suffering from a severe mental disorder and requires psychiatric examination and treatment in a psychiatric hospital (Article 29 of the Act).

22. A person admitted against his or her will should be assessed within 48 hours by a psychiatric panel. Should the panel decide to keep the person in hospital, they should file a request to that effect with the judge within 24 hours, together with a supporting medical report (Article 32 of the Act).

23. The judge must then consider the request within 5 days (Article 34 § 1 of the Act). He or she must also authorise the person's continued hospitalisation pending the consideration of the matter by the court (Article 33 § 3 of the Act).

2. The Russian Code of Civil Procedure of 11 June 1964 as amended (the "old CCP")

24. The old CCP did not set forth special rules governing committal to a psychiatric hospital.

B. Computation of periods of time established by law or prescribed by civil courts

25. A period of time expressed as a number of years shall expire on the relevant day and month of the last year of that period. A period of time expressed as a number of months shall expire on the relevant day of the last month of that period. If the last day of the period of time falls on a non-working day, the next closest working day shall be considered as the last day of that period (Article 101 of the old CCP and Article 108 §§ 1 and 2 of the new Code of Civil Procedure of 1 February 2003 as amended).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (e) OF THE CONVENTION

26. The applicant complained that his committal to the psychiatric hospital from 14 to 27 June 2002 against his will had been unlawful. The

Court considers that the complaint falls to be examined under Article 5 § 1 (e) of the Convention, which reads 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:

...

(e) the lawful detention ... of persons of unsound mind....”

27. The Government contested that allegation. They considered that the applicant's placement in the psychiatric hospital had been in full compliance with the applicable domestic laws. When the applicant refused, on 14 June 2002, to stay voluntarily in hospital, at noon the same day a psychiatric panel had examined him and found that his condition warranted further hospitalisation. According to the Government, the hospital administration had been unable to file the application for judicial authorisation for the applicant's continued hospitalisation on the same day because of the substantial amount of time necessary to prepare such an application. As 14 June 2002 was a Friday, it had not been possible to apply to the court during the weekend since it was closed. Accordingly, the application had been filed on 17 June 2002, that is the first working day after the weekend of 15 and 16 June 2002. The Government opined that the hospital had acted in accordance with the applicable rules of civil procedure, notably Article 108 of the Code of Civil Procedure of the Russian Federation, which permitted such a delay in lodging an application should the prescribed time-limit expire on a non-working day.

28. The applicant maintained his complaint.

A. Admissibility

29. The Court considers that the 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

1. General principles

30. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law. However, the domestic law must itself be in conformity with the Convention, including the general principles

expressed or implied therein. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

31. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can, and should, exercise a certain power of review of such compliance (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III).

32. The Court further reiterates that an individual cannot be deprived of his liberty on the basis of unsoundness of mind unless three minimum conditions are satisfied: he must reliably be shown to be of unsound mind; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp*, cited above, § 39; *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75; *Johnson v. the United Kingdom*, 24 October 1997, § 60, *Reports of Judgments and Decisions* 1997-VII; and *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 48, ECHR 2003-IV).

2. Application of the principles to the present case

33. The Court observes that under Russian law, once a patient is committed to a psychiatric hospital against his or her will, he or she should be assessed by a psychiatric panel within 48 hours. Furthermore, a psychiatric hospital must apply for judicial authorisation to keep the patient against his or her will within twenty-four hours following his examination and assessment (see paragraph 22).

34. Turning to the circumstances of the present case, the Court notes that on 14 June 2002 the applicant withdrew his consent to remain in the psychiatric hospital. The hospital therefore had to examine him and, if it was decided that he should remain in hospital against his will, it had to apply within twenty-four hours for court authorisation to keep him there.

35. The Court accepts that the domestic authorities complied with the domestic procedure in so far as the applicant's examination was concerned. On 14 June 2002 the medical panel examined the applicant at noon and concluded that his further hospitalisation was necessary. It was then incumbent on the hospital administration, within twenty-four hours following his examination, that is no later than noon on 15 June 2002, to apply to the court for authorisation to keep the applicant in hospital. However, the application was filed two days later, on 17 June 2002. As a result, the applicant was kept in a hospital for three days in the absence of a court order.

36. The Court cannot subscribe to the Government's opinion that it was possible under domestic law to delay application for a court order authorising committal to a psychiatric hospital without the person's consent if the end of the time-limit prescribed by law for such an application fell on a non-working day. The domestic rules of civil procedure referred to by the Government govern only the computation of time-limits expressed in days, months and years and are obviously not applicable to the procedure for applying for judicial authorisation for committing a person to a psychiatric facility, where the time-limits are established in hours.

37. The Court does not consider it relevant that, as the Government pointed out, 15 and 16 June 2002 were non-working days and consideration of the applicant's case could not proceed until the beginning of the ensuing working week. Where the issue of a person's liberty is at stake, the States must ensure that their courts remain accessible, even during a vacation period or a weekend, to ensure that urgent matters are dealt with speedily and in full compliance with a procedure prescribed by law. However, no such provisions appear to have been made in the circumstances of the present case.

38. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities did not comply with the procedure prescribed by domestic law when applying for judicial authorisation for the applicant's committal to a psychiatric hospital. There has accordingly been a violation of Article 5 § 1 of the Convention.

39. In view of the above finding, the Court does not consider it necessary to examine separately the question of whether the applicant had been reliably shown to have been suffering from a mental disorder of a kind or degree warranting his compulsory confinement which persisted during his detention between 14 and 27 June 2002 (see *Storck v. Germany*, no. 61603/00, § 113, ECHR 2005-V).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicant alleged that he had not been provided with an opportunity to appeal against the decision of 31 May 2002, in contravention of Articles 3, 5 and 6 of the Convention. He further complained under Article 8 of the Convention that Dr. N's visit to his flat on 5 June 2002 had been an interference with his right to respect for his private life and that, on the basis of her decision of 5 June 2002 to admit him to hospital, he had been arrested and taken to a police station. He complained under Article 1 of Protocol No. 1 that his involuntary placement in a psychiatric hospital might warrant the restriction of his legal capacity, in which case he would be unable to sell or buy property. Lastly, without providing further detail, the applicant alleged a violation of his rights provided for in Articles 2, 4, 7 to 10, 13, 17, and 18 of the Convention.

41. However, having regard to all the material in its possession, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 350,000 euros (EUR) and 1/13 cents in respect of pecuniary and non-pecuniary damage.

44. The Government submitted that the applicant's allegations should not give rise to an award of any compensation for pecuniary or non-pecuniary damage. In any event, they noted that the applicant had failed to justify or substantiate the amount claimed.

45. 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 accepts that the applicant suffered distress and frustration resulting from his unlawful detention in a psychiatric hospital. Accordingly, the Court considers that the applicant should be compensated for the non-pecuniary damage sustained. However, the Court finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

47. The Court considers it appropriate that the default interest 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 applicant's involuntary confinement in a psychiatric hospital between 14 and 27 June 2002 admissible and the remainder of the application inadmissible;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (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 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President