



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

FIRST SECTION

CASE OF SERGEY BABUSHKIN v. RUSSIA

(Application no. 5993/08)

JUDGMENT
(Just satisfaction)

STRASBOURG

16 October 2014

FINAL

16/01/2015

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

In the case of Sergey Babushkin v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, 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. 5993/08) 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 Sergey Vladimirovich Babushkin (“the applicant”), on 24 December 2007.

2. In a judgment delivered on 28 November 2013 (“the principal judgment”), the Court held that there had been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy that would have enabled the applicant to complain about the conditions of his detention in the correctional colony where he was serving a prison sentence and a violation of Article 3 of the Convention on account of the conditions of the applicant’s detention in correctional colony no. IK-2 in Livny, Orel Region, from 6 November 1999 to September 2013 (see *Sergey Babushkin v. Russia*, no. 5993/08, §§45 and 58, 28 November 2013).

3. Under Article 41 of the Convention the applicant sought just satisfaction of 90,000 euros (EUR) in respect of non-pecuniary damage.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 64, and point 5 of the operative provisions).

5. The applicant and the Government each filed observations, but failed to reach an agreement.

THE LAW

6. 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

1. *The parties' submissions*

7. The applicant claimed EUR 90,000 in respect of non-pecuniary damage. He further restated his grievances under Article 3 of the Convention earlier examined by the Court, relying on its finding in the principal judgment that for over thirteen years he had been detained in cramped conditions.

8. The Government considered the applicant's claims excessive. In their opinion, an appropriate award in the applicant's case would be EUR 20,000. Referring to Court's case-law concerning conditions of detention in Russian remand prisons, the Government suggested that “[t]he length of stay in such conditions is undeniably the single most important factor that is relevant for the assessment of the extent of non-pecuniary damage” (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 172, 10 January 2012). However, they also pointed out that the present case should be distinguished from the case of *Ananyev* in view of the differences in the material conditions of detention in detention facilities of different types. Unlike the situation in pre-trial detention, the applicant had not been confined to the dormitory for the whole day. He had had the opportunity of at least two hours' outdoor exercise and could work outside of the dormitory or stay on the premises while other detainees were at work. In the Government's view, the compensation to be awarded in respect of the violation of Article 3 of the Convention on account of the conditions of detention in a correctional colony should be lower than that awarded in cases concerning the conditions of detention in a remand prison. Lastly, the Government referred to the case of *Yepishin* in which the Court had awarded the applicant compensation of EUR 19,000 in respect of non-pecuniary damage when assessing the violation of the applicant's rights with regard to his detention in appalling conditions in a correctional colony for approximately six years (see *Yepishin v. Russia*, no. 591/07, 27 June 2013).

2. *The Court's assessment*

9. The Court takes into account the Government's argument that the present case should be distinguished from the case of *Ananyev* which concerned the conditions of pre-trial detention in Russia. It further observes that the conditions in which the applicant was detained for over thirteen years while serving a prison sentence have been in contravention of Article 3 of the Convention and that the applicant did not have an effective and accessible remedy that would have enabled him to complain about the conditions of his detention. The Court considers that the applicant's situation must have caused him serious suffering and frustration and necessitates an award under Article 41. However, the Court accepts the Government's argument that the particular amount claimed by the applicant appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

10. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

11. 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. *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 25,000 (twenty-five thousand euros) in respect non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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;

2. *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 Nielsen
Registrar

Isabelle Berro-Lefèvre
President