



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

FIRST SECTION

DECISION

Application no. 49816/08
Oleg Grigoryevich ZAKHAROV
against Russia

The European Court of Human Rights (First Section), sitting on 9 December 2014 as a Committee composed of:

Mirjana Lazarova Trajkovska, *President*,

Paulo Pinto de Albuquerque,

Ksenija Turković, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 10 August 2008,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Oleg Grigoryevich Zakharov, is a Russian national, who was born in 1964 and lived in Arzamas in the Nizhniy Novgorod Region before his conviction.

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

3. Between 11 September 2007 and 5 August 2008 the applicant was held in IVS Arzamas, a temporary detention facility located in the Nizhniy Novgorod Region, and in remand prison IZ-52/1 in Nizhniy Novgorod. According to the applicant, both facilities were overcrowded and in a poor sanitary condition.

4. On 15 August 2008 the applicant sent his first letter to the Court, which read as follows:

“Preliminary complaint.

In connection with the grave violations of my Convention rights... in particular, [with] my unlawful detention and inhuman and degrading treatment, [with] charging me with a crime which I did not commit ... I consider it necessary to apply to the

European Court of Human Rights for the protection, as neither the Russian courts nor the prosecutors ... are capable of restoring the justice.

In view of the above, I request you to register my preliminary complaint and to send me an application form, which I will complete and return with all the necessary documents.”

5. By letter of 27 October 2008, the Court sent the applicant an application package.

6. On 5 May 2009 the Court received the completed application form which was dated 2 April 2009. It contained, among other things, a detailed description of the applicant’s conditions of detention in the above facilities.

COMPLAINTS

7. The applicant complained under Article 3 of the Convention about the conditions of his pre-trial detention in the IVS Arzamas and remand prison IZ-52/1 in Nizhniy Novgorod between 11 September 2007 and 5 August 2008.

THE LAW

8. The Government submitted that the complaint had been inadmissible, as the application form of 2 April 2009 had been returned after a long delay. Therefore, the date when it was signed should be taken as the date of lodging of the complaint. Given that the period of the applicant’s detention had ended on 5 August 2008, the complaint was lodged out of time.

9. The Court must therefore establish the date of introduction of the complaint. However, it does not consider it necessary to examine whether the application form was submitted with an undue delay for the following reasons.

10. The Court has consistently held that a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009; *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172, and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I).

11. In the present case the applicant’s first letter (see paragraph 4 above) did not sufficiently set out the subject matter of his complaint under Article 3 of the Convention with an indication of the factual basis of that complaint and the nature of the alleged violation (see *Zverev v. Russia* (dec.), no. 16234/05, § 13, 3 July 2012). His complaint pertaining to the

conditions of his detention was set out for the first time in the application form of 2 April 2009.

12. In these circumstances, the Court finds that the complaints about the conditions of the applicant's detention in the IVS Arzamas and in remand prison IZ-52/1 in Nizhniy Novgorod were introduced on 2 April 2009, seven months and twenty-seven days after the applicant's stay in those facilities had ended.

13. The Court considers therefore that the applicant's complaints concerning the conditions of his detention in the IVS Arzamas and in remand prison IZ-52/1 in Nizhniy Novgorod should be rejected as belated in accordance with Article 35 § 1 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President