



Domestic awards for wrongful imprisonment were so low they violated the Convention right to compensation

In today's Chamber judgment¹ in the case of [Vasilevskiy and Bogdanov v. Russia](#) (applications no. 52241/14 and no. 74222/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 5 (right to compensation for wrongful imprisonment) of the European Convention on Human Rights.

The case concerned the applicants' complaint about the negligible amount of compensation they had been awarded for wrongful imprisonment.

The Court found in particular that the domestic awards were the equivalent of 7 euros and 2.70 euros per day of wrongful imprisonment, which was so low as to impair the essence of their right to compensation under the European Convention. By a majority decision of six to one, it awarded each applicant 5,000 euros in respect of non-pecuniary damage.

Principal facts

The applicants, Aleksandr Vasilevskiy and Yan Bogdanov, are Russian nationals who were born in 1973 and 1981 respectively and live in Blagoveshchensk and the Novgorod Region (both in Russia).

Mr Vasilevskiy, released from prison in June 2007, was awarded the equivalent of 3,320 euros for being held in jail for 472 days longer than he should have been after the sentencing courts had failed to take account of the time he had spent in pre-trial detention. He appealed unsuccessfully against the initial award, arguing that the figure was below the level of Strasbourg Court orders in similar cases.

Mr Bogdanov was sentenced to 12 years in prison in 2006 for supplying drugs, but the sentence was reduced in 2013 to six years and he was released after the courts found the police had incited some of the offences. He sought compensation for 119 days in custody beyond his adjusted release date. In March 2014 he was awarded the equivalent of 1,576 euros, which was further reduced to 324 euros by a higher court in July of the same year.

Complaints, procedure and composition of the Court

Relying on Article 5 § 5 (right to compensation), the applicants complained about the level of the awards in the domestic proceedings.

The applications were lodged with the European Court of Human Rights on 13 July and 7 November 2014.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Branko Lubarda (Serbia),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Fatoş Aracı, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 5

The Court noted that the Convention did not set specific levels for compensation and that it was for domestic courts to assess the level of suffering, distress, anxiety or other harmful effects of unlawful imprisonment.

Nevertheless, awarding a negligible or extremely low level of damages would render the right to compensation theoretical and illusory rather than practical and effective, as required by the Convention.

Mr Vasilevskiy had been wrongfully deprived of his liberty for one and a half years, while Mr Bogdanov had been wrongfully imprisoned for four months.

While accepting that the courts in the case of the two applicants had made a genuine effort to assess the damage they had been caused by their unlawful imprisonment, the Court observed that the amounts were equal to 7 euros and 2.70 euros per day of wrongful deprivation of liberty. Such sums were not just much lower than those the Court would have made, but were also not in proportion to the duration of their detention and were negligible in absolute terms.

In addition, the Court observed that Mr Bogdanov's compensation had been reduced five-fold by the appeal court, without a plausible explanation for such a drastic cut. The domestic court had not mentioned that his wrongful imprisonment had been caused by police incitement and the use of inadmissible evidence in criminal proceedings. The domestic courts should instead have considered it their duty to signal their disapproval of the police's actions with sufficient compensation.

Overall, the amounts awarded had been so low that they had undermined the essence of their right to compensation and there had been a violation of the Convention.

Just satisfaction (Article 41)

The Court held by six votes to one that Russia was to pay each applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

It also held that the award in respect of non-pecuniary damage did not extinguish the legal obligation on the domestic authorities to remedy the violation of the Convention that it had found.

Just as with violations of the right to a fair hearing, the Court held that an appropriate course of action would be a reopening of proceedings and a new adjudication of the compensation claim in line with Convention standards.

Separate opinion

Judge Serghides expressed a dissenting opinion about the amounts awarded under Article 41.

This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.