

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

THIRD SECTION

CASE OF BOGOSYAN v. RUSSIA

(Application no. 47230/11)

JUDGMENT

STRASBOURG

9 January 2018

This judgment is final but it may be subject to editorial revision.



In the case of Bogosyan v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 47230/11) 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 Vagan Stepanovich Bogosyan ("the applicant"), on 15 July 2011.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 1 December 2016 the complaint concerning a period of unlawful detention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1981 and lives in Sochi.

5. On 27 November 2010 the applicant, a police captain, was arrested for soliciting a bribe. He was taken into custody and his detention was extended on several occasions. On 4 July 2011 the case was submitted for trial in the Tsentralnyy District Court of Sochi.

6. On 8 July 2011 the District Court determined that the case was not ready for trial and returned the file to the prosecutor. By the same decision, it extended the applicant's detention until 10 August 2011.

7. On 9 August 2011 the director of the IZ-23/2 remand prison where the applicant was held reported to the Sochi prosecutor and to the president of

the Tsentralnyy District Court that, in the absence of an order extending the applicant's detention beyond 10 August, he would need to be released on that date. On the same date the Sochi prosecutor replied to him that there were no grounds for releasing the applicant because the date for hearing the prosecutor's appeal against the District Court's order of 8 July had been fixed for 17 August. The applicant was not released on 10 August. He complained about his unlawful detention to the head of the Investigations Committee and the regional head of the Ministry of the Interior but did not receive any reply.

8. On 17 August 2011 the Krasnodar Regional Court quashed the District Court's order on appeal. As regards the custodial measure, it held that no extension had been necessary because by virtue of Article 255 § 2 of the Code of Criminal Procedure the applicant could be held in custody for an initial six-month period starting from the date on which the case had been submitted for trial.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

9. The applicant complained that his detention had not based on a judicial decision in breach of Article 5 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:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ..."

A. Admissibility

10. The Government claimed that the applicant had failed to exhaust the domestic remedies. In their view, he should have first challenged the allegedly unlawful actions by public authorities in accordance with the procedure set out in Chapter 25 of the Code of Civil Procedure and later filed a civil claim for compensation under Article 1070 of the Civil Code.

11. The Court observes that judicial decisions, such as the Regional Court's judgment of 17 August 2011, cannot be challenged in accordance with the procedure under Chapter 25 of the Code of Civil Procedure. It further reiterates that, in the absence of an explicit and formal

acknowledgement by the domestic court of the unlawful nature of the applicant's detention, a claim for compensation under Article 1070 of the Civil Code had no prospects of success and the applicant was not required to exhaust that remedy (see *Yevgeniy Bogdanov v. Russia*, no. 22405/04, § 113, 26 February 2015, and *Chuprikov v. Russia*, no. 17504/07, § 98, 12 June 2014).

12. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

13. In the instant case the applicant was initially detained on the basis of the District Court's detention of 8 July 2011 which extended the authorised period of his detention up until 10 August 2011. He remained in custody after that date without a judicial decision, solely on the strength of the prosecutor's assertion that no extension had been required (see paragraph 7 above). Seven days later the Regional Court endorsed the prosecutor's view and set aside the detention order of 8 July 2011, finding that no extension had been required under domestic law since the case had already been submitted for trial.

14. The Court has previously noted that the domestic authorities interpreted Article 255 § 2 of the Code of Criminal Procedure as permitting the detention of an accused without a court order for up to six months from the date of receipt of the case file by a court. A judicial order was required only if detention "during the trial" exceeded six months. In 2005, the Constitutional Court determined that practice to be contrary to the Russian Constitution and Article 5 § 1 of the Convention (see *Yevgeniy Bogdanov*, cited above, §§ 63 and 113, and *Yudayev v. Russia*, no. 40258/03, § 56, 15 January 2009).

15. The Court has likewise found a violation of Article 5 § 1 in many cases against Russia concerning the practice of holding defendants in custody solely on the basis of the fact that the case has been submitted to the trial court. It held that the practice of keeping defendants in detention without judicial authorisation is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Fursenko v. Russia*, no. 26386/02, §§ 77-79, 24 April 2008; *Lebedev v. Russia*, no. 4493/04, §§ 52-59, 25 October 2007; *Melnikova v. Russia*, no. 24552/02, §§ 53-56, 21 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 86-93, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, §§ 55-59, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006, and *Khudoyorov v. Russia*, no. 6847/02, §§ 144-51, ECHR 2005-X).

16. The period of the applicant's detention from 10 August to 17 August 2011 was not covered by any detention order and was therefore arbitrary. In addition, after the detention order of 8 July 2011 was quashed on appeal, the entire intervening period from 8 July to 17 August 2011 was likewise not covered by any judicial authorisation. That situation was incompatible with the national law and the requirements of Article 5 § 1 of the Convention.

17. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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."

19. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage, and EUR 1,000 in respect of costs and expenses. He enclosed a chit written out by his lawyer.

20. The Government pointed out that he had not submitted a contract for legal services or any bills. They left the matter of non-pecuniary damage to the Court's discretion.

21. The Court rejected the claims in respect of pecuniary damage and costs and expenses which have not been substantiated. On the other hand, it awards the applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. 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. *Declares* the application admissible;

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 EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Branko Lubarda
Deputy Registrar	President