

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

THIRD SECTION

CASE OF NEGULYAYEV v. RUSSIA

(Application no. 49330/16)

JUDGMENT

STRASBOURG

8 March 2022

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



In the case of Negulyayev v. Russia,

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

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 49330/16) 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") on 11 August 2016 by a Russian national, Mr Maksim Vladimirovich Negulyayev, born in 1979 and detained in Yoshkar-Ola ("the applicant") who was represented by Mr V.I. Prilepskiy, a lawyer practising in Moscow;

the decision to give notice of the complaint under Article 6 § 2 to the Russian Government ("the Government"), represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office;

the decision to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 8 February 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns an alleged violation of the presumption of innocence.

2. A trial court convicted the applicant and twenty other defendants of fraud and participation in an organised criminal group. The applicant was also convicted of organising the criminal group. On 2 June 2016 the Moscow City Court quashed the applicant's conviction on procedural grounds and remitted his case to the trial court for fresh consideration. When upholding, by the same judgment, the conviction of the other twenty defendants on appeal, the City Court amended the text of the trial court judgment as follows:

> "... regard being had to the fact that the judgment in respect of Mr M.V. Negulyayev was quashed, it should be considered established («следует считать») that the defendants committed the crimes in concert («совместно») with a person whose case is being considered in a separate set of criminal proceedings."

3. By the final judgment of 10 April 2018 issued in the new round of proceedings the applicant was convicted of organisation of a criminal group and four counts of fraud.

4. The applicant complained under Article 6 § 2 of the Convention that the City Court's above statement, made in the appeal judgment of 2 June 2016

at the same time when his initial conviction had been quashed, had breached the presumption of innocence.

THE COURT'S ASSESSMENT

5. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

6. Relevant principles are summarised in *Karaman v. Germany* (no. 17103/10, §§ 41 and 63, 27 February 2014).

7. It is true that the appeal judgment of 2 June 2016 concerned persons other than the applicant and, as argued by the Government, it was inevitable that the judicial authorities had to refer to the applicant's role when assessing the acts committed by those persons who were under his command (see *Karaman*, cited above, § 64). Admittedly, the City Court did not refer to the applicant by name in the second part of the statement in question and it did clarify that the criminal proceedings against him were still pending. Nevertheless, the Court considers that the wording employed by the City Court in the impugned sentence read as a whole reflected an unequivocal opinion that criminal offences had been committed and that the applicant had been guilty of those offences (see, by contrast, *Karaman*, cited above,§ 69). Indeed, the judgment contained a statement to the effect that the other defendants had committed the crimes in concert with the applicant. The national legislation defines a crime as an intentional act. Accordingly, it cannot be said that, by asserting that the crimes had been committed "in concert" with the applicant, the City Court limited itself to describing a state of suspicion in respect of the applicant or, for instance, certain elements of a penal provision (see, *mutatis mutanids*, *Krebs v. Germany*, no. 68556/13, § 57, 20 February 2020; and contrast to *Perica Oreb v. Croatia*, no. 20824/09, §§ 142-43, 31 October 2013; *N.A. v. Norway*, no. 27473/11, § 49, 18 December 2014; and *Fleischner v. Germany*, no. 61985/12, § 63, 3 October 2019). In the Court's view, the City Court's statement amounted to a clear declaration, in the absence of a final conviction, that the applicant had committed the crimes in question (see *Karaman,* cited above, § 63).

8. Lastly, the Court considers that, contrary to the Government's submission, the observance of due process in the ensuing proceedings cannot eliminate a violation of the presumption of innocence by the appellate court.

9. The foregoing considerations are sufficient to enable the Court to conclude that the City Court's statement to the effect that crimes were committed in concert with the applicant was contrary to the presumption of innocence. There has accordingly been a violation of Article 6 § 2 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. The applicant sought just satisfaction of non-pecuniary damages, leaving its amount to the Court's discretion.

11. The Court awards the applicant 6,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

12. The Court further 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 6 § 2 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 6,000 (six 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.

Done in English, and notified in writing on 8 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President