



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

FIRST SECTION

DECISION

Application no. 62413/09
Dmitriy Ionasovich TAMAROVICHUS
against Russia

The European Court of Human Rights (First Section), sitting on 16 September 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Khanlar Hajiyeu,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*

Having regard to the above application lodged on 27 July 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Dmitriy Ionasovich Tamarovichus, is a Russian national, who was born in 1964. He had no permanent place of residence prior to his arrest. Ms O.V. Preobrazhenskaya and Ms V.S. Ilyukhina, lawyers practising in Strasbourg and Moscow, are his representatives before the Court.

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. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 28 January 2009 the applicant, charged with murder, was detained on remand.

5. On 18 March 2009 the applicant was placed in the police ward (IVS) Olkhovatka in the Voronezh Region. The conditions of his detention in that facility were characterised by the following elements: there was no toilet or water tap in the cell and no possibility to take a shower; no drinking water was available; the window was blocked with glass bricks; there was no table; there was no outdoor exercise.

6. On 23 April 2009 the Olkhovatskiy District Court of the Voronezh Region found the applicant guilty as charged and sentenced him to nine years' imprisonment.

7. On 28 April 2009 the applicant left the IVS Olkhovatka.

8. On 23 June 2009 the Voronezh Regional Court upheld the judgment on appeal.

9. It appears that on 27 July 2009 the applicant sent a letter to the Court from the correctional colony IK-8 of the Voronezh Region. The fact of the dispatch was reflected, in particular, in a certificate issued by the colony's acting director on 17 August 2009, which contained the relevant entry from the prison correspondence registration log. However, due to unknown reasons the letter has never reached the Court.

10. On 30 October 2009 the applicant submitted another letter titled "[The] Repeated Complaint". It reached the Court on 16 November 2009 and was treated as the applicant's first contact with the Court. The letter contained, in particular, a detailed description of the conditions of his detention in the police ward (IVS) Olkhovatka in the Voronezh Region. In the text of the letter the applicant several times mentioned his complaint of 27 July 2009 and referred to the specific paragraph numbers therein.

COMPLAINTS

11. The applicant complained that the conditions of his detention in the IVS Olkhovatka in the period between 18 March and 28 April 2009 had violated Article 3 of the Convention. He further claimed that there existed no effective domestic remedy in respect of that grievance as prescribed by Article 13.

12. Under Article 6 the applicant complained about the allegedly erroneous assessment of his criminal case by the domestic courts.

THE LAW

A. The date of introduction of the application

13. The Government submitted that 30 October 2009, the date of the applicant's first communication which reached the Court, should be regarded as the date of introduction of the application.

14. The applicant claimed that 27 July 2009, the date of his missing letter, should be taken as the date of introduction of the case.

15. The Court recalls that Rule 47 § 5 of the Rules of Court (in force at the time) provided that:

“The date of introduction of the application... shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application... The Court may for good cause nevertheless decide that a different date shall be considered as the date of introduction.”

16. The Court finds at the outset that the certificate of 17 August 2009 produced by the acting director of the correctional colony (see paragraph 9 above), the authenticity of which the Government did not dispute, provides a sufficient documentary evidence that the letter of 27 July 2009 existed and was indeed submitted by the applicant to the colony administration for posting on that date.

17. The Court further observes that the letter of 30 October 2009 contained multiple references to the complaint of 27 July 2009, both general and specific (see paragraph 10 above). In the Court's view, this indicates that the missing letter presented a detailed text which raised essentially the same issues as those submitted in the subsequent correspondence.

18. In these circumstances, the Court finds that the applicant's correspondence of 27 July 2009 was “the first communication setting out the subject matter of the application” in the meaning Rule 47 § 5 of the Rules of Court in force at the time and accepts that date to be the date of introduction of the present application.

B. Admissibility of the complaints

19. Under Articles 3 and 13 of the Convention the applicant complained about the conditions of his pre-trial detention in the police ward Olkhovatskiy during several periods between 18 March and 28 April 2009 and the lack of an effective domestic remedy in that respect.

20. In line with their argument above, the Government claimed that these complaints were first introduced on 30 October 2009, six months and two days after the applicant had left the IVS, and therefore were belated.

21. Having regard to its finding in paragraph 18, the Court considers that these complaints were introduced on 27 July 2009, within the time-limit set by Article 35 of the Convention, and rejects the Government's objection.

22. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. Therefore, without prejudging the merits of the case, the Court declares the applicant's complaints about the conditions of his pre-trial detention in the police ward Olkhovatskiy and the lack of effective domestic remedies in that respect admissible.

23. As to the complaint under Article 6, having regard to all the material in its possession, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the conditions of his detention in the police ward Olkhovatskiy and the alleged lack of an effective domestic remedy in that respect, and the remainder of the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President