



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

FIRST SECTION

CASE OF BOGOMOLOV v. RUSSIA

(Application no. 57502/12)

JUDGMENT

STRASBOURG

30 October 2014

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

In the case of Bogomolov v. Russia,

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

Khanlar Hajiyeu, *President*,

Julia Laffranque,

Erik Møse, *judges*,

and Søren Prebensen, *Acting Deputy Section Registrar*,

Having deliberated in private on 7 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 57502/12) 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 Dmitry Borisovich Bogomolov (“the applicant”), on 17 August 2012.

2. The applicant was represented by Ms Y. Gazizova, a lawyer practising in Naberezhnyye Chelny in the Republic of Tatarstan. 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. On 21 December 2012 the application was communicated to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1976 and lived in Solnechnogorsk of the Moscow Region prior to his arrest.

5. Between 30 June 2011 and 13 June 2012 the applicant was held in remand prison IZ-50/3 in the Moscow Region in connection with the criminal proceedings against him. The prison was overcrowded. Thus, cell 29 measuring 30 sq. m was equipped with 10 sleeping places and accommodated up to 15 inmates. In support of his allegations, the applicant submitted statements by two cellmates and a plan of the cell he had drawn up.

6. On 9 December 2011 the Balashikha Town Court of the Moscow Region found the applicant guilty of drug-related offences and sentenced him to six years' imprisonment.

7. On 16 December 2011 the applicant lodged a preliminary statement of appeal. The full statement was introduced on 29 December 2011 and contained the following paragraph:

"I request that the appeal complaint be examined in my absence".

8. On 21 February 2012 the Moscow Regional Court held an appeal hearing and upheld the conviction. The applicant was absent from the hearing, but his counsel was present and made oral submissions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

9. The applicant complained that the conditions of his pre-trial detention in remand prison IZ-50/3 between 30 June 2011 and 13 June 2012 had been inhuman and degrading in violation of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

10. The Court notes that this complaint 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

11. The Government have acknowledged the violation as claimed by the applicant.

12. The applicant took note of the Government's acknowledgement.

13. Having regard to the applicant's factual submissions and the Government's acknowledgement, the Court considers that the conditions of the applicant's detention in remand prison IZ-50/3 between 30 June 2011 and 13 June 2012 amounted to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicant complained under Article 6 of the Convention that his right to take part in the appeal hearing had been violated.

15. The Government submitted that the complaint was inadmissible as the applicant had explicitly requested the appeal court to hold the hearing in his absence. Moreover, the applicant had been represented by his counsel, who had attended the hearing and presented his position to the court.

16. The applicant admitted that he did not request his personal presence at the appeal hearing.

17. The Court finds that the applicant, unequivocally and of his own free will, waived his right to personal presence in the appeal hearing. As he was represented by his counsel at that hearing, the Court considers that the proceedings were attended by sufficient procedural safeguards. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

18. As to the remainder of the application, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects it as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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.”

A. Damage

20. The applicant claimed 75,000 euros (EUR) in respect of non-pecuniary damage.

21. The Government considered that amount to be excessive.

22. Having regard to its case-law in similar cases, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

23. The applicant also claimed EUR 2,340 for the legal costs incurred before the Court and EUR 10 for postal expenses. To that effect, he produced a legal assistance agreement with Ms Gazizova and copies of postal receipts.

24. In respect of the legal costs, the Government pointed out that there was no evidence that the sum had been actually paid. As to the postal expenses, they had no objections to awarding that amount to the applicant.

25. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant's representative submitted her observations on the admissibility and merits of the case as well as other pleadings. It thus accepts that some of the costs were actually and necessarily incurred and considers it reasonable to award to the applicant reimbursement for legal aid in the amount of EUR 850. Also, the Court awards to the applicant the sum of EUR 10 for the postal expenses.

C. Default interest

26. 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 complaint concerning the conditions of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of inhuman and degrading conditions of the applicant's detention in remand prison IZ-50/3 between 30 June 2011 and 13 June 2012;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 860 (eight hundred sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 30 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President