



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

FIRST SECTION

CASE OF BULDAKOV v. RUSSIA

(Application no. 23294/05)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

08/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Buldakov v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyev,

Julia Laffranque,

Linós-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 23294/05) 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 Andrey Vladimirovich Buldakov (“the applicant”), on 31 May 2005.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 6 November 2009 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and is currently serving a prison sentence in Chernorechenskiy in the Komi Republic.

A. The applicant’s arrest and trial

5. On 25 November 2001 the applicant was arrested in connection with a series of gang robberies that had taken place from September to November 2001 in a number of St Petersburg massage parlours.

6. On 27 November 2001 the authorities opened a criminal case and drew up a record of the applicant's arrest.

7. On 28 November 2001 the applicant was charged with robbery and on the same day he was remanded in detention by the decision of a prosecutor.

8. On an unspecified date in 2001 and later, in 2003, the applicant asked to be tried by a jury. Both his requests were dismissed.

9. On 13 June 2002 the applicant was newly charged with banditry and organised robbery.

10. On 15 October 2002 the charges against the applicant were finalised, and now also included charges of organisation and management of a criminal gang, ten organised robberies with further aggravating factors, and illegal carrying and storage of arms.

11. On 17 October 2002 the pre-trial investigation was completed, following which the applicant and his counsel spent until 21 November 2002 studying the case file.

12. On 27 November 2002 the case was referred to the St Petersburg City Court ("the City Court").

13. On 10 December 2002 the City Court fixed a preliminary hearing for 12 March 2003. On that date the hearing was postponed to 25 March 2003, according to the applicant, on account of the prosecutor's failure to appear.

14. At the hearing of 25 March 2003 the applicant filed a number of requests for the striking-out of some of the evidence as inadmissible, the summoning of witnesses, the dropping of the banditry charge, the transfer of the case to a district court, and the selection of a non-custodial measure of restraint. These requests were dismissed at the next hearing on 1 April 2003, which was further adjourned following a decision to summon the victims and witnesses.

15. At the hearings that took place on 29 April, 17 June, 22 August, 1 October and 20 November 2003 the trial court questioned the victims and witnesses in the case.

16. The next two hearings did not take place on account of the unavailability or illness of counsel.

17. The hearings continued on 22 January, 5, 11 and 24 February, and 10 and 11 March 2004.

18. By a judgment of 25 March 2004 the City Court convicted the applicant of aggravated robbery and sentenced him to thirteen years' imprisonment.

19. The applicant appealed and his grounds of appeal and two supplements to it were returned to him for insufficient reasoning. The new grounds of appeal and a request for the extension of the time-limit for appeal were also rejected for the same reasons on 24 May 2004. That decision was overturned on appeal by the Supreme Court of Russia on 16 September 2004, when the time-limit in question was extended.

20. On 27 January 2005 the Supreme Court of Russia modified the judgment in the part concerning the legal classification of the criminal acts and upheld the remainder of the conviction.

B. Decisions concerning application of a custodial measure

1. Imposition of a custodial measure and ensuing extension

21. On 28 November 2001 the prosecutor of the Tsentralnyy District of St Petersburg authorised the applicant's pre-trial detention in accordance with the old Code of Criminal Procedure. This decision was upheld in a final decision of the City Court of 2 July 2002.

22. On an unspecified date the prosecutor extended the applicant's detention until 27 August 2002.

2. Extension of the applicant's detention from 27 August to 27 November 2002

23. On 20 August 2002 the Kuybyshevskiy District Court of St Petersburg, citing the gravity of the charges against the applicant, extended his detention until 27 November 2002. On 15 October 2002 the City Court upheld the extension order on appeal. However, on 13 October 2004 the Presidium of the City Court quashed the decisions of the lower courts by way of supervisory review on the ground that the applicant had not appeared at the hearing, and ordered the re-examination of his detention in respect of the above-mentioned period.

24. On 9 November 2004 the Kuybyshevskiy District Court discontinued the examination of the request to extend the applicant's detention since on 25 March 2004 the applicant had been convicted. On 18 January 2005 the City Court set aside this decision on appeal and remitted the matter for fresh consideration. On 8 February 2005 the Kuybyshevskiy District Court approved the extension of the applicant's detention from 27 August to 27 November 2002 and on 13 April 2005 the City Court upheld that decision.

3. Subsequent extensions of the applicant's detention

25. On 10 December 2002 the City Court held that the measure of restraint applied to the applicant should remain unchanged. A copy of that decision was made available to the applicant on 14 February 2003, that is, after the expiry of the statutory time-limit for lodging an appeal. In March 2005 the applicant sought to have the time-limit for introducing his appeal extended, but on 25 August 2005 the Supreme Court, at final instance, dismissed his request since by that time his conviction had become final.

26. On 13 May, 22 August, 20 November 2003 and 24 February 2004 the City Court extended the applicant's detention until 27 August and 27 November 2003, and 27 February and 27 May 2004, respectively. On 7 August, 5 November 2003 and 16 February and 21 April 2004 the Supreme Court upheld the above extension orders on appeal.

C. Correspondence with the Court

27. On 29 July 2005 the applicant submitted to the special registry office (*отдел специального учета*) of remand centre SIZO-1 of St Petersburg and the Leningrad Region a completed application form with enclosures of 910 pages addressed to the Court. On the same day the mailing was registered by the special registry office and handed over to the dispatch office. However, the mailing was never dispatched.

28. The applicant brought this issue before the prosecutor's office of St Petersburg on 9 March 2006. Following an inquiry, the town prosecutor established that the mailing had never been dispatched and had subsequently been lost. The prosecutor issued a special statement addressed to the head of the SIZO-1 remand centre following which, according to the Government, the official responsible was disciplined. The Government further submitted that the applicant had received two new application forms from the officials of the prison system to compensate him for the loss of his mailing.

29. In 2009 the applicant brought proceedings against the remand centre and the federal penitentiary agency seeking compensation for non-pecuniary damage sustained as result of the loss of the mailing. By a judgment of 23 June 2009 the Kalininskiy District Court of St Petersburg dismissed the applicant's claim, finding that he had not been irreversibly deprived of the opportunity to lodge a complaint with the Court. That judgment was upheld on appeal by the City Court on 15 April 2010.

II. RELEVANT DOMESTIC LAW

30. Federal Law no. 68-Φ3 "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" of 30 April 2010 (in force from 4 May 2010) provides that in the case of a violation of the right to trial within a reasonable time or of the right to enforcement of a final judgment, Russian citizens are entitled to seek compensation for non-pecuniary damage. Federal Law no. 69-Φ3, adopted on the same day, introduced the pertinent changes into Russian legislation.

31. The transitional arrangements (section 6.2 of Federal Law no. 68-Φ3) provided that everyone who had a pending application before the European Court of Human Rights concerning a complaint of the type

described in the law had six months to lodge the complaint with the domestic courts.

THE LAW

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

32. The applicant complained that the criminal proceedings against him had taken too long. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

33. The Government argued that the complaint was manifestly ill-founded and should be rejected in accordance with Article 35 § 3 (a) of the Convention. In their additional observations they contended that the applicant had not exhausted the new domestic remedy that provided for compensation for violation of the right to trial within a reasonable time, available from 4 May 2010.

34. The Court takes cognisance of the existence of a new remedy introduced by federal laws nos. 68- Φ 3 and 69- Φ 3 in the wake of the pilot judgment adopted in the case of *Burdov v. Russia (no. 2)* (no. 33509/04, ECHR 2009-...) and accepts that the new remedy has been available to the applicant since 4 May 2010. At the same time, it notes that in the pilot judgment cited above it stated that it would be unfair to request applicants whose cases had already been pending for many years in the domestic system and who had come to seek relief at the Court, to bring their claims again before domestic tribunals (*Burdov (no. 2)*, cited above, § 144). In line with this principle, the Court decides to proceed to the examination of the present case.

35. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

36. The Government asserted that the length of the proceedings had been due to the complexity of the case, which had involved eight volumes of evidence, three co-defendants, twenty-nine victims and a large number of witnesses. Most of the victims resided outside St Petersburg or were foreign citizens, which complicated their participation in the court hearings. The applicant had filed numerous requests during the proceedings, while the trial court had done what could have been reasonably expected of it to balance expedition with the interests of justice. In one year and four months the trial court had scheduled twenty-one hearings, the majority of which had taken place as planned without undue intervals between them. As to the ten-month length of the proceedings before the appeal court, the Government submitted that it had been justified since the applicant had failed on several occasions to submit admissible grounds of appeal, which had later led to the necessity to consider an extension of the time-limit for appeal. In addition, the appeal court had had to send copies of the appeals to all the parties and duly notify them of the appeal hearing, which also took up some time.

37. The applicant contested some of the Government's submissions. In particular, he stated, on the date of its arrival at the trial court the evidence had consisted of only four volumes, which were examined by the court in one hearing on 10 March 2004. All of the individuals questioned by the court lived in St Petersburg, and the eleven victims had been questioned in three hearings. In addition, five of the hearings had been fixed only to extend his detention.

2. The Court's assessment

38. The Court observes that the criminal proceedings against the applicant commenced on 25 November 2001 and ended on 27 January 2005. Accordingly, it took the domestic authorities approximately three years and two months to examine the case at two levels of jurisdiction.

39. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

40. The Court accepts that the applicant's case could be characterised as complex. It notes that the three co-accused were charged with grave crimes committed in a series of episodes and involving a large number of victims and witnesses, although their numbers were disputed between the parties. It

can be seen from the text of the judgment that the trial court questioned no less than twelve victims in the proceedings.

41. As to the conduct of the authorities, the Court is satisfied that the pre-trial investigation ended within a year of the applicant's arrest, which does not appear unreasonable given the number of individuals involved and the volume of evidence. Regarding the conduct of the trial, the Court considers that the first-instance court scheduled regular hearings and did not allow any undue delays. As to the appeal proceedings, their length was also justified by the nature of the case and the applicant's initial failure to comply with the statutory standards set for grounds of appeal.

42. In view of the complexity of the case and the lack of any visible misconduct on the part of the authorities, the Court concludes that there has been no breach of the "reasonable time" requirement in the present case.

43. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED BREACH OF ARTICLE 34 OF THE CONVENTION

44. The applicant complained that the prison administration had not dispatched his mailing of 29 July 2005 to the Court and that the domestic authorities, having acknowledged the wrongdoing, had not provided him with any redress. He relied on Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Submissions by the parties

45. The Government admitted that the applicant's mailing to the Court containing an application form and documents had been lost but argued that this had not been deliberate and, furthermore, the authorities had taken certain measures to restore his right of individual petition and to discipline the official responsible. They did not provide the name or position of the person who had allegedly been disciplined, nor did they specify the nature of the disciplinary measure.

46. The applicant stated that, in his opinion, the prison authorities had removed his application form with the attachments on purpose to prevent him from communicating with the Court, since the alleged loss had occurred within the institution where he had been serving his sentence. He insisted that simply losing a parcel consisting of almost a thousand pages would have been difficult in those circumstances. As to the direct

consequences of the disappearance of the mailing, the applicant claimed that the time-limit for some of the complaints raised in the application form of 29 July 2005 had been missed. He further contended that the national law did not provide for the availability of free copies of criminal case documents after conviction. Had he chosen to pay for such copies, he could not have had them made as he did not remember which pages of his criminal case file were concerned. In any event, the lost documents included not only the material in the case file but also responses to his complaints from various State bodies which were not included in the criminal case file.

B. The Court's assessment

47. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without any pressure from the authorities (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV). The expression “any form of pressure” must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a “chilling effect” on the exercise of the right of individual petition by applicants and their representatives (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV, with further references; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; and *Nurmagomedov v. Russia*, no. 30138/02, § 6, 7 June 2007).

48. It is not in dispute between the parties that the correspondence in question was not dispatched to the Court as intended and that it was neither returned to the applicant nor discovered subsequently by anyone else. The Court, like the applicant, is struck by the fact that the rather heavy mailing disappeared shortly after it was submitted to prison authorities which had a special responsibility to ensure strict control and supervision of detainees' correspondence. Against this background, the Court finds it difficult to accept the Government's assertion that the mailing was inadvertently misplaced and subsequently lost. To the contrary, the applicant's allegation that the prison authorities mislaid the mailing on purpose does not appear unreasonable.

49. However, even assuming that the mailing was lost through negligence, this does not in itself relieve the authorities of their responsibility under the Convention, all the more so since the applicant had no other way to correspond with the Court than through the prison administration. The Court observes that the Government's allegations of a disciplinary action against a prison official responsible were rather vague

and unsupported by any evidence. It also takes into account the applicant's argument undisputed by the Government that all or most of the documents included in the first mailing could not be restored. In these circumstances the Court takes the view that the prison administration's failure to send the first application form with its voluminous attachments was serious enough to interfere with the proceedings before the Court and may even be perceived as discouraging the effective exercise of the right of individual petition by the applicant.

50. In view of the foregoing, and considering in particular the nature of the applicant's correspondence and the doubtful manner in which it disappeared within the penitentiary institution, the Court concludes that the respondent State failed to comply with its obligations under Article 34 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant finally submitted a number of complaints under Article 5 and 6 of the Convention related to his arrest, detention and trial.

52. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in these provisions. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 10,000 euros (EUR) for the alleged violation of Article 6 of the Convention and a further EUR 50,000 for the hindrance of his correspondence with the Court in breach of Article 34 of the Convention. He also claimed compensation for pecuniary damage resulting from unfair conviction, without specifying the amount.

55. The Government contested both claims.

56. The Court reiterates that it has found no violation of Article 6 of the Convention in respect of the complaint concerning the length of the

proceedings. Furthermore, the Court has dismissed all other complaints related to the applicant's trial. It therefore rejects the applicant's claims in this part. On the other hand, the Court accepts that the applicant must have suffered considerable anxiety and distress as a result of the misplacement of his mailing by the prison administration. Having regard to this and making an assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 100 for the postal expenses incurred in the domestic proceedings and before the Court.

58. The Government submitted that the applicant had not provided any documents supporting his claim.

59. Regard being had to the fact that the applicant failed to substantiate his claim, the Court rejects it.

C. Default interest

60. The Court considers it appropriate that the default interest 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 length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on 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;

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

Done in English, and notified in writing on 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President