



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

FIRST SECTION

CASE OF EDUARD SHABALIN v. RUSSIA

(Application no. 1937/05)

JUDGMENT

STRASBOURG

16 October 2014

FINAL

16/01/2015

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

In the case of Eduard Shabalin v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Julia Laffranque,

Paulo Pinto de Albuquerque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 23 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 1937/05) 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 Eduard Albinovich Shabalin (“the applicant”), on 3 December 2004.

2. The applicant was represented by Mr S. Obolentsev, a lawyer practising in Tula. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his remand in custody from 25 August 2004 to 25 February 2005 had been unlawful, and that the detention order issued on 21 August 2003 had been issued in absentia.

4. On 12 October 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Yefremov, Tula Region.

6. On 8 November 2002 criminal proceedings were opened against the applicant, who was suspected of murder. The same day he gave an undertaking not to leave town.

7. On 11 November 2002 the applicant was arrested. On 12 November 2002 the Yefremovskiy Town Court of the Tula Region (“the Town Court”) remanded him in custody. His detention was subsequently extended by court order on several occasions.

8. On 20 November 2002 the applicant was formally charged with murder and the illegal acquisition, keeping and wearing of a handgun and ammunition. On 28 February 2003 he was committed to stand trial before the Town Court.

9. On 21 August 2003 the Town Court extended the applicant’s detention pending trial for three months until 28 November 2003. Neither he nor his counsel were present at the hearing. No ordinary appeal was brought by them against that detention order; however, the applicant challenged the detention order in supervisory review proceedings.

10. On 27 February 2004 the Town Court extended the applicant’s remand in custody from 28 February until 28 May 2004 in his absence. His counsel was not present at the hearing either. Instead of bringing an ordinary appeal, the applicant lodged a request with the court to have supervisory review proceedings initiated in respect of the detention order.

11. On 26 May 2004 the Town Court convicted the applicant of murder and sentenced him to six years’ imprisonment, acquitting him of the other charges. He appealed.

12. On 25 August 2004 the Tula Regional Court quashed the judgment on appeal and remitted the case to the first-instance court for fresh examination. The appellate court noted in the operative part of its judgment that the preventive measure applied to the applicant should “remain unchanged”.

13. On 9 September 2004 the applicant’s criminal case file arrived at the Town Court.

14. On 6 October 2004 the Town Court examined a request by the applicant for release and dismissed it, stating:

“On 12 November 2002 the court remanded [the applicant] in custody. The reasons for that decision were the risk of him absconding and interfering with the investigation ...

The court does not see any reason to grant the request [for release]. Although the conviction of 26 May 2004 was quashed on appeal on 25 August 2004, the case was remitted for retrial ... The appellate court left the preventive measure unchanged. The [applicant’s] reference ... to the deterioration of his health while in detention is [inconclusive]. In the remand prison [he] receives the necessary medical assistance.”

The decision was amenable to appeal; however, it appears that no appeal was lodged.

15. On 25 February 2005 the Town Court ruled that the applicant was considered to have been detained “pending trial” from 9 September 2004 and that the maximum period of detention of that kind was to expire on

9 March 2004 [*sic*]. It extended his detention for three months until 9 June 2005. On 23 March 2005 the detention order was upheld on appeal.

16. On 15 August 2005 the Supreme Court of Russia, following the applicant's supervisory review complaint, initiated supervisory review proceedings in respect of the detention order of 21 August 2003 (see paragraph 9 above) and remitted the case to the Presidium of the Tula Regional Court for examination.

17. On 24 October 2005 the Presidium reviewed and upheld the detention order of 21 August 2003. It found that there had been no violation of the applicant's rights as a result of his remand in custody being extended in his and his lawyer's absence. The prosecutor was present at the hearing before the Presidium, but the applicant and his representative were not.

18. On 3 November 2005 the Supreme Court of Russia accepted the applicant's complaint and initiated supervisory review proceedings in respect of the detention order of 27 February 2004 (see paragraph 10 above). It ordered that the complaint be examined by the Presidium of the Tula Regional Court.

19. On 23 January 2006 the Presidium acknowledged that the applicant's defence rights had been violated as a result of his remand in custody being extended in his and his lawyer's absence, quashed the detention order of 27 February 2004 and remitted the matter to the first-instance court for fresh examination.

20. On 23 January 2006 the Town Court convicted the applicant as charged and sentenced him to eleven years' imprisonment. He appealed.

21. On 21 February 2006 the Town Court conducted a new hearing on the issue of the applicant's detention from 28 February until 28 May 2004 and authorised his detention for that period. He and his counsel were present at the hearing and made oral submissions. That detention order was upheld on appeal on 24 March 2006.

22. On 26 April 2006 the Tula Regional Court upheld the applicant's conviction on appeal, but reduced his sentence to eight years and six months' imprisonment.

23. It appears that in 2010 he was released on probation, having served only part of his sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Right to be heard in detention proceedings

24. The Code of Criminal Procedure of the Russian Federation ("CCrP"), in force from 1 July 2002, allows the court to remand a defendant in custody in his absence, only if an international warrant for his arrest has been issued (Article 108 § 5). The court cannot extend detention in the absence of a defendant, unless he is undergoing forensic psychiatric

examination in an inpatient institution, or where other circumstances making his presence impossible have been shown to exist by appropriate documentation. In these circumstances, the participation of defence counsel at the hearings is mandatory (Article 109 § 13).

25. In judgment no. 4-*P* of 22 March 2005 the Constitutional Court of the Russian Federation pronounced its opinion on the right of defendants to be heard in detention matters during the criminal proceedings and stated:

“3.3. ... Since deprivation of liberty ... is only permissible pursuant to a court decision taken at a hearing ... on condition that the detainee has been provided with an opportunity to submit his arguments to the court, the prohibition on issuing a detention order ... without a hearing shall apply to all court decisions, whether they concern the initial imposition of this preventive measure or its confirmation.”

B. Right to a reasoned detention order setting a specific time-limit

26. The CCrP provides that when quashing a verdict and remitting the matter for fresh consideration to the first-instance court for retrial, the appellate court must decide whether a preventive measure should be applied to a defendant (Article 378 § 1 (3) and Article 388 § 1 (8)). That decision is not amenable to ordinary appeal.

27. In its resolution no. 1 of 5 March 2004 “On the Application by Courts of the Russian Code of Criminal Procedure”, in force at the relevant time, the Russian Supreme Court noted that when deciding whether to extend a defendant’s detention pending trial, the court should indicate the grounds justifying the extension and set a time-limit (paragraph 16).

28. In its ruling no. 245-*O-O* of 20 March 2008, the Russian Constitutional Court noted that it had reiterated on several occasions (judgment nos. 14-*P* and 4-*P* of 13 June 1996 and 22 March 2005, and ruling nos. 417-*O* and 330-*O* of 4 December 2003 and 12 July 2005 respectively) that a court, when taking a decision under the Code of Criminal Procedure whether to place an individual in detention or extend a period of detention, is under an obligation to indicate the grounds justifying his or her deprivation of liberty and set a time-limit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

29. Relying on Article 5 of the Convention, the applicant complained that his remand in custody from 25 August 2004 to 25 February 2005 had not been covered by any lawful detention order. The Court considers that

this complaint falls to be examined under Article 5 § 1 (c) of the Convention which, in so far as relevant, 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 or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

30. The Government conceded that in its appeal judgment of 25 August 2004, the Tula Regional Court had failed to give any reasons for the applicant’s detention during the above period, in breach of domestic law and contrary to the requirements of Article 5 of the Convention.

31. The applicant maintained his complaint.

A. Admissibility

32. 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

33. The Court reiterates that it has previously found violations of Article 5 § 1 (c) of the Convention in many Russian cases where the domestic court has maintained a custodial measure in respect of applicants, without indicating any particular reason for such a decision or setting a specific time-limit for the continued detention or for a periodic review of the preventive measure (see *Strelets v. Russia*, no. 28018/05, § 72, 6 November 2012, with further references). The Court considered that such detention orders did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, and therefore applicants’ detention pursuant to such detention orders was not “lawful” for the purposes of Article 5 § 1 of the Convention.

34. Turning to the present case, the Court notes that on 25 August 2004 the Tula Regional Court quashed the first-instance judgment of 26 May 2004 by which the applicant had been convicted, and remitted the case for new consideration by the trial court and ordered that he remain in detention. It gave no reasons for its decision to keep him in custody, nor did it set any specific time-limit for his continued detention. The subsequent judicial

authorisation of his detention did not take place until 25 February 2005 (see paragraphs 12 and 15 above).

35. The Court notes that the Government have acknowledged that the applicant's detention from 25 August 2004 to 25 February 2005 had not been duly authorised and had thus been in breach of Article 5 of the Convention.

36. Having regard to its established case-law on the issue and the circumstances of the present case, the Court does not see any reason to hold otherwise. In view of the foregoing, the Court considers that the period complained of – 25 August 2004 to 25 February 2005 – was not covered by a lawful detention order.

37. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

38. The applicant complained of a violation of Article 5 of the Convention, because the detention order of 21 August 2003 had been issued by the Town Court in his and his counsel's absence. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

39. The Government acknowledged that the detention order of 21 August 2003 had been issued in the absence of the applicant, his legal counsel and the prosecutor and that none of them had been informed of the date and time of the hearing in question. They admitted that there had been a violation of Article 5 § 4 of the Convention in this respect.

40. The applicant maintained his complaint.

A. Admissibility

41. 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

42. The Court reiterates that in the case of a person whose detention falls within the ambit of Article 5 § 1 (c) of the Convention, a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). The

opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012).

43. The Court notes that on 21 August 2003 the applicant's remand in custody was extended by the Town Court until 28 November 2003 *in absentia* and that, as acknowledged by the Government, none of the parties to the proceedings (the applicant, his legal counsel or the prosecutor) had been informed of the hearing.

44. It follows that in the present case the defence was deprived of the opportunity to be heard in the procedure which ended in the detention order of 21 August 2003. The Court further notes that the above defect was not remedied in the subsequent proceedings (see, by contrast, *Yefimova v. Russia*, no. 39786/09, § 282, 19 February 2013).

45. The Court takes note of the Government's acknowledgment of the violation of Article 5 § 4 of the Convention and, in the circumstances of the present case, finds no reason to hold otherwise. It therefore concludes that there has been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant further complained that he had had no effective remedy against his unlawful remand in custody authorised by the Tula Regional Court on 25 August 2004, in breach of Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

47. The Government argued that the applicant had had effective remedies at his disposal. In particular, during the above period he could have obtained a judicial review of the lawfulness of his detention in the appeal proceedings. In support of this argument, they submitted several appeal decisions issued in detention proceedings decided in the detainees' favour. They added that compensation for damage sustained through an unlawful remand in custody could have been obtained under Article 1070 of the Civil Code in civil proceedings.

48. The applicant did not comment on the Government's objections.

49. The Court observes that the applicant's detention between 25 August 2004 and 25 February 2005 derived its legal basis from the detention order incorporated in the Tula Regional Court's appeal judgment of 25 August 2004, by which his conviction was quashed, the case was referred back to the trial court and his detention remained “unchanged” (see paragraph 34 above). It is true that under the domestic law (see paragraph 26 above) this

detention order was not amenable to ordinary appeal; however, Article 13 of the Convention does not, as such, guarantee a right to a second level of jurisdiction (see *Luchaninova v. Ukraine*, no. 16347/02, § 37, 9 June 2011, with further references). The mere fact that the decision of the highest judicial body is not amenable to further judicial review does not in itself infringe the provision in question (see *Murtazin v. Russia*, no. 26338/06, §§ 46-47, 27 March 2008, with further references).

50. The Court further notes that the applicant was, at any time during his detention on the basis of the detention order of 25 August 2004 (between 25 August 2004 and 25 February 2005), entitled to apply for release to the trial court and to appeal against its decisions. He availed himself of this opportunity during the above period and lodged an application for release, which was rejected by the Town Court on 6 October 2004 (see paragraph 14 above). It was open to him to appeal against that decision; however, for reasons unknown, he did not do so. It cannot therefore be said that the inability to lodge an appeal against the decision of 25 August 2004 seriously affected his rights under Article 13 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Lastly, the applicant submitted a number of other complaints under Articles 3, 5, 6 and 13 of the Convention related to his detention and trial.

52. The Court has examined the above complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. 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 44,400 euros (EUR) in respect of pecuniary damage for 888 days of his unlawful detention and EUR 50,000 in respect of non-pecuniary damage for the violations found.

55. The Government submitted that his claim for pecuniary damage was totally unsubstantiated. As for his claim for non-pecuniary damage, they stated that it was excessive.

56. The Court notes that the applicant's claim for pecuniary damage lacks any substantiation; it therefore rejects this claim. As regards non-pecuniary damage, the Court considers that he must have suffered distress and frustration resulting from the violations of Article 5 §§ 1 (c) and 4 found in the present case. However, the amount claimed by him appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

57. The applicant also claimed EUR 1,000 for the costs and expenses of his legal representation incurred before the Court. He submitted a copy of an agreement of 23 March 2010 made with Mr S. Obolentsev, a member of the Tula Bar Association, and a detailed invoice of his costs and expenses, which included research, drafting documents and correspondence with the Court, representing twenty-five hours of work at an hourly rate of EUR 40.

58. The Government did not comment on this claim.

59. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000, which represents the sum requested, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

60. 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 complaints concerning unlawfulness of the applicant's detention on remand between 25 August 2004 and 25 February 2005, and the applicant's and his lawyer's absence from the detention hearing of 21 August 2003 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent state at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representative's bank account in Russia;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President