



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

FIFTH SECTION

CASE OF SHCHEGLYUK v. RUSSIA

(Application no. 7649/02)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shcheglyuk v. Russia,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr R. MARUSTE,

Mr A. KOVLER,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 7649/02) 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 Vitaliy Viktorovich Shcheglyuk ("the applicant"), on 16 November 2001.

2. The applicant was represented before the Court by Mr Ye. Ievlev, a lawyer practising in St. Petersburg. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 5 June 2005 the Court decided to communicate the complaint concerning the length of the applicant's pre-trial detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in St. Petersburg.

6. On 5 July 1993 the Investigations Division of the St. Petersburg police department opened a criminal case into extortion committed by an organised criminal group.

7. On 5 July 2000 an arrest warrant was issued against the applicant. On 12 July 2000 he was placed on the list of fugitives from justice.

8. On 12 December 2000 the applicant was apprehended and placed in custody. He was charged with organisation of, and participation in, a criminal enterprise and unlawful possession of firearms (Articles 209, 210 and 222 of the Russian Criminal Code).

9. On 9 February 2001 the prosecutor of the Primorskiy district of St. Petersburg extended the applicant's detention to 12 March 2001.

10. On 12 February 2001 the applicant's counsel asked the Primorskiy District Court of St. Petersburg to release the applicant on bail. He submitted that the applicant had a permanent place of residence and employment in St. Petersburg, that he had to provide for his wife and a small child, that he had never attempted to abscond and that the strength of evidence was not sufficient to warrant his detention.

11. On 19 February 2001 the Primorskiy District Court refused the application for release. It found that the investigators had had (unspecified) grounds to charge the applicant and to place him in custody, that the preventive measure had been imposed lawfully because the applicant was charged with particularly serious offences and because he had a previous conviction of a particularly serious offence. Furthermore, pursuant to Article 96 of the RSFSR Code of Criminal Procedure, the dangerousness of the imputed crimes could be the sole ground for placement in custody. The applicant did not appeal against the decision.

12. On 13 March and 11 April 2001 the prosecutor of the Primorskiy district granted further extensions of the applicant's detention until 12 and 27 April 2001.

13. On 11 April 2001 the applicant's counsel introduced a new application for release, referring to the insufficient evidentiary basis for the charges against the applicant.

14. On 26 April 2001 the Primorskiy District Court refused the application for release. It held that the extension of detention had been lawful and justified because the extension order had been issued within the statutory time-limits and because the applicant was charged with particularly grave crimes, whose dangerousness alone was a sufficient ground for his detention. Noting the applicant's positive reference from his workplace and the fact that he had a wife and ailing child as dependants, the court stated that these circumstances would be taken into account as extenuating circumstances during the examination of the merits of the charge.

15. On 22 May 2001 the St. Petersburg City Court upheld the decision of 26 April 2001, on an appeal by the applicant's lawyer. The entire reasoning ran as follows:

“There have been no breaches of the RSFSR Code of Criminal Procedure either when the preventive measure in the form of placement in custody was imposed on [the applicant], or when the detention was extended – the first-instance court has correctly found so in its decision and the appellant does not contest it. [The applicant] is charged with particularly serious crimes. The choice of the preventive measure is justified, as are justified all further extensions of his detention.”

16. On 3 May 2001 the applicant was committed for trial before the St. Petersburg City Court.

17. On 9 June 2001 the St. Petersburg City Court held a directions hearing. It ordered the joinder of the applicant's case with another case for organisation of a criminal enterprise against twenty defendants. The court refused the applicant's lawyer's new application for release on bail on the ground that the applicant was charged with “crimes presenting grave public danger”.

18. On 28 December 2001 the Supreme Court of the Russian Federation examined appeals against the decision of 9 June 2001, lodged by eight defendants, including the applicant. It found as follows:

“Preventive measures in respect of all defendants, including Mr A[.] and [the applicant] who appealed against this part of the decision, were imposed in accordance with the law. The [city] court did not commit any breaches of the criminal procedure law which could have called for quashing of that decision”.

19. On 4 March 2002 the applicant filed an application for release. He referred to financial difficulties experienced by his wife and sick child in the absence of his support, his deteriorating health and an insufficient evidentiary basis for the case against him.

20. On 13 March 2002 the St. Petersburg City Court examined his application for release and three applications by his co-defendants and refused release in the following terms:

“[The applicant and three co-defendants] are charged with particularly serious crimes and the prosecutor adduced evidence in support of the charge... Their placement in custody is directly linked to the gravity of the charge and until such time as the merits of the case have been examined, neither hard conditions of detention, nor the defendants' state of health, even if they suffer from various diseases..., nor the conditions of their families' lives may be considered as privileged or sufficient grounds for changing the preventive measure [imposed on them].”

The applicant did not appeal against the decision.

21. On 1 July 2002 the St. Petersburg City Court, of its own motion, extended the detention of the applicant and sixteen other defendants until 30 September 2002 on the sole ground that they were charged with particularly serious crimes. The defendants were neither present nor represented.

22. On 16 September 2002 the Supreme Court of the Russian Federation quashed the decision of 1 July 2002 because the defendants had not been apprised of the hearing concerning the extension of their detention and because no hearing record had been compiled. The remand matter was referred for a fresh examination. The Supreme Court also rejected the applicant's request for release, stating that his arguments would be taken into account during the new examination.

23. On 25 September 2002 the St. Petersburg City Court issued two decisions concerning remand matters. The first decision extended the detention period in respect of the applicant and sixteen other defendants to 30 September 2002 and the second decision granted a further extension to 30 December 2002. The extension orders were justified as follows:

“The gravity of the charges carrying a term of imprisonment of more than two years, is so great that until such time as the merits of the charges have been considered, neither hard conditions of detention in the remand centre, nor the state of health of the defendants – even though some of them are disabled, nor the conditions of their families' lives may be considered as privileged or sufficient grounds for changing the preventive measure [imposed on them]...

The court cannot accept the argument by the defence about the length of the proceedings because during that entire period the main ground for adjourning court hearings was counsel's absences for various causes.”

24. On 23 December 2002 the St. Petersburg City Court released the applicant from custody against a written undertaking not to leave the town.

25. On 15 July 2004 the St. Petersburg City Court gave judgment. The applicant was acquitted of all charges for lack of incriminating evidence. Many of his co-defendants were sentenced to a term of imprisonment.

26. On 17 March 2005 the Supreme Court of the Russian Federation examined notices of appeal lodged by the applicant's co-defendants but not by the applicant himself and upheld the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, “the old CCrP”). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the new CCrP”).

28. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96). The amendments of 14 March 2001 repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they were charged with. The new CCrP reproduced the amended provisions (Articles

97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

29. After the arrest the suspect is placed in custody pending the investigation. The period of detention pending the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 of the new CCrP).

30. Before 14 March 2001 the old CCrP set no time-limit for detention during the trial. On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention during the trial could not generally exceed six months from the date the court received the file. That limitation did not apply to defendants charged with particularly serious criminal offences. The new CCrP establishes that the detention during the trial may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

31. The applicant complained that the length of his pre-trial detention had not been justified in breach of Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.”

A. Admissibility

32. The Government claimed that the applicant had failed to exhaust domestic remedies. Following his acquittal he could have filed a civil claim for pecuniary and non-pecuniary damages arising from unlawful prosecution and detention. Furthermore, he had not filed an appeal against the Primorskiy District Court's decision of 19 February 2001 and two extension orders by the St. Petersburg City Court of 25 September 2002.

33. The applicant retorted that at the material time he had unsuccessfully pleaded all domestic authorities for release.

34. As regards the possibility for the applicant to file a civil action for damages incurred through unlawful prosecution and detention, the Court

reiterates that the right to trial within a reasonable time or to release pending trial is not the same as the right to receive compensation for unlawful detention. Paragraph 3 of Article 5 of the Convention covers the former and paragraph 5 of Article 5 the latter. The court invited to rule on an action for damages caused by unlawful detention examines the matter after the events and therefore does not have jurisdiction to order release if the detention is unlawful or has exceeded a “reasonable time”. A civil action for damages has accordingly no bearing on the question of exhaustion of domestic remedies in respect of the applicant's complaint under Article 5 § 3 (see, most recently, *Nakhmanovich v. Russia* (dec.), no. 55669/00, 28 October 2004; and also *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, § 79).

35. The Court will next examine the Government's contention that the applicant failed to appeal against three extension orders. It reiterates that the purpose of the rule requiring domestic remedies to be exhausted is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). In the context of an alleged violation of Article 5 § 3 of the Convention, this rule requires that the applicant give the domestic authorities an opportunity to consider whether his right to trial within a reasonable time has been respected and whether there exist relevant and sufficient grounds continuing to justify the deprivation of liberty.

36. Following his arrest on 12 December 2000 the applicant continuously remained in custody until his release on 23 December 2002. It is not disputed that he did not lodge an appeal against the District Court's decision of 19 February 2001 confirming the lawfulness of his detention and rejecting his application for release. He did, however, challenged a later decision of the District Court before the City Court which, on 22 May 2001, held that his arrest and the entire intervening period of detention had been lawful and justified (see paragraph 15 above). In these circumstances, the Government's objection of non-exhaustion of domestic remedies must be dismissed in so far as it concerned the applicant's failure to appeal against the decision of 19 February 2001.

37. The most recent date on which an appeal court examined the remand issues concerning the applicant was 16 September 2002 when the Supreme Court quashed the City Court's extension order that had been issued on 1 July 2002 in the absence of detainees and their representatives. On 25 September 2002 the City Court issued two new extension orders prolonging the applicant's detention. Since the applicant did not file an appeal, he did not give an opportunity to the Supreme Court to consider whether these further extensions were compatible with his Convention right to trial within a reasonable time or release pending trial. The Court accepts therefore the Government's objection of non-exhaustion of domestic

remedies in so far as it concerned the applicant's failure to appeal against the City Court's extension orders of 25 September 2002.

38. Accordingly, the Court declares inadmissible the applicant's complaint under Article 5 § 3 in the part concerning the period after 25 September 2002 and until his release on 23 December 2002. The Court further notes that, in so far as the complaint concerned the applicant's detention before 25 September 2002, it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

39. The Government submitted that the applicant's detention during the investigation stage had been compatible with the requirements of the RSFSR Code of Criminal Procedure which permitted holding the persons charged with particularly serious criminal offences in custody for up to eighteen months. After the beginning of the trial, the applicant's detention was extended on several occasions because of the gravity of the charges against him. The length of the trial was accounted for by "objective causes", such as the victims' and counsel's failure to appear, illness of a defendant, the presiding judge's involvement in other proceedings and the need to decide on motions and requests lodged by the defendants.

40. The Court notes that the domestic authorities consistently relied on the gravity of the charges against the applicant as the sole factor justifying the deprivation of liberty. Even though the circumstances that could have warranted his detention may have existed, they were not mentioned in the domestic decisions and it is not the Court's task to establish them and take the place of the national authorities who ruled on the applicant's detention (see *Panchenko v. Russia*, no. 45100/98, §§ 99 and 105, 8 February 2005; *Ilijkov v. Bulgaria*, no. 33977/96, § 86, 26 July 2001).

41. As regards the domestic authorities' reliance on the gravity of the charges as the sole and decisive element, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Panchenko*, cited above § 102; *Ilijkov*, cited above, § 81; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51). This is particularly true in the Russian legal system where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov v. Russia*,

no. 6847/02, § 180, 8 November 2005). Counsel for the applicant repeatedly pleaded for his release, pointing out that the evidentiary basis for the charges against his client was deficient and weak; that argument, however, was never addressed by the domestic courts. As matters later transpired, the applicant was finally acquitted of all charges for the lack of incriminating evidence.

42. It is of particular concern for the Court that in the present case the domestic courts refused to take into account any specific facts put forward by the applicant and his counsel in the applications for release. The courts expressly held that the gravity of the charges carried such a preponderant weight that no other circumstances could have obtained the applicant's release (see, for instance, the City Court's decision cited in paragraph 20 above). The Court reiterates that any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, with further references). In the instant case, beyond a reference to the applicant's past conviction in just one decision, the domestic authorities did not mention any concrete facts corroborating the detention orders.

43. At no point in the proceedings did the domestic authorities consider whether the length of the applicant's detention had exceeded a "reasonable time" within the meaning of Article 5 § 3 of the Convention. The Government's contention that the maximum time-limit permitted by the domestic law was not exceeded, is not a decisive element for the Court's assessment. The calculation of the domestic time-limits depended solely on the gravity of the charges (see paragraphs 29 and 30 above) which, as the Court has observed, was decided upon by the prosecution and was not subject to an effective judicial review.

44. The Court further observes that during the entire period under consideration the authorities did not consider the possibility of ensuring his attendance by the use of other "preventive measures" – such as bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. In that context, the Court would emphasise that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring his appearance at trial when deciding whether a person should be released or detained. Indeed, the provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Khudoyorov*, cited above, § 183; *Dolgova v. Russia*, no. 11886/05, § 47, 2 March 2006). Given that the applicant's trial would not be able to begin for a considerable time owing to events wholly unrelated to his conduct, the authorities should either have considered having recourse to such alternative measures or at minimum explained in their decisions why

such alternatives would not have ensured that the trial would follow its proper course. This failure is made all the more inexplicable by the fact that after 1 July 2002 the Code of Criminal Procedure expressly requires the domestic courts to consider less restrictive “preventive measures” as an alternative to custody.

45. Finally, the Court observes that the City Court's decisions extending the applicant's detention during the trial had no regard to his individual circumstances. The trial court used the same summary formula to extend detention of seventeen defendants, without describing their personal situation in any detail. The Court reiterates that this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 since it has permitted the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or compliance with the “reasonable-time” requirement in respect of each individual member of the group (see *Khudoyorov*, § 186; and *Dolgova*, § 49, both cited above).

46. The Court finds that by failing to address concrete relevant facts and by relying on the gravity of the charges, the authorities failed in their duty to justify the applicant's detention pending trial.

There has therefore been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. The applicant also complained under Article 3 of the Convention about the inhuman conditions of his detention and under Article 6 of the Convention about the trial court's refusal to provide him with a copy of the cassette on which statements by a prosecution witness had been recorded.

48. The Court notes that the applicant did not complain about his conditions of detention to any domestic authority and did not lodge an appeal on the merits after he had been acquitted. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 10,700 euros (EUR) in respect of pecuniary damage, representing his loss of earnings during the detention period and

the value of food and clothing parcels he had received in prison. He further claimed EUR 90,000 in respect of non-pecuniary damage.

51. The Government responded that the applicant failed to apply to domestic courts for compensation for pecuniary and/or non-pecuniary damage. In any event, he did not produce receipts for food and clothing parcels.

52. The Court notes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. There was no causal link between the violation found and the alleged loss of earnings (see *Nakhmanovich*, cited above, § 102). Furthermore, the applicant's complaint concerning the conditions of his detention was declared inadmissible. Accordingly, the Court does not make an award in respect of pecuniary damage.

53. As regards the claim for non-pecuniary damage, the Court observes that the applicant, who was not convicted of any criminal offence, spent a long period of time in custody without relevant and sufficient grounds. In these circumstances, his suffering and frustration cannot be compensated for by a finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

54. The applicant also claimed EUR 100 for translation of his observations into English and EUR 700 in legal fees. He submitted receipts for the translation services.

55. The Government pointed out that the claim for legal fees was not supported with any documents.

56. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the supporting documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100 for the translation costs.

C. Default interest

57. 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* unanimously the complaint concerning an alleged violation of the applicant's right to trial within a reasonable time or release pending trial in the period until 25 September 2002 admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* unanimously
 - (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 Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President