



## 30-day detention of mentally disturbed boy was unjustified

In today's Chamber judgment in the case of [Blokhin v. Russia](#) (application no. 47152/06), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;**

**a violation of Article 5 § 1 (right to liberty and security); and,**

**a violation of Article 6 §§ 1 and 3 (right to a fair trial).**

The case concerned the detention for 30 days of a mentally disturbed 12-year old boy in a juvenile temporary detention centre.

The Court found in particular: that the boy had not received adequate medical care for his attention-deficit hyperactivity disorder and enuresis at the detention centre; his detention had not served an educational purpose and had not been justified by the need to prevent him from committing an offence; and, his defence rights had been violated because his confession had been obtained without legal assistance and the statements of two witnesses whom he was unable to question had served as a basis for his placement in the detention centre.

This was the first time the Court examined the special procedures applicable in Russia to minors who had committed a delinquent act before reaching the statutory age of criminal responsibility.

### Principal facts

The applicant, Ivan Blokhin, is a Russian national who was born in 1992 and lives in Novosibirsk (Russia).

On 3 January 2005, he was arrested and taken to a police station, where he was questioned and told that he had been accused of extortion by his 9-year-old neighbour. On being urged to do so by the police, he signed a confession statement, which he subsequently retracted after his grandfather, who was his guardian, had come to the police station. Mr Blokhin was 12 years old at the time, and suffered from attention-deficit hyperactivity disorder and enuresis. In December 2004 and January 2005, he was examined by two specialists who prescribed him medication and regular consultation by a neurologist and psychiatrist.

The prosecuting authorities found – relying on Mr Blokhin's confession and statements of the 9-year-old boy and his mother – that Mr Blokhin's actions contained elements of the criminal offence of extortion, but the authorities refused to open criminal proceedings because he had not reached the age of criminal responsibility. However, on 21 February 2005, a district court ordered his placement for 30 days in a temporary detention centre for juveniles to prevent him from being

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

involved in any further delinquency. The court noted that his recent delinquency had been confirmed by a statement made by the mother of the 9-year-old boy and by Mr Blokhin's confession statement. He was placed in the detention centre on the same day. On appeal by Mr Blokhin's grandfather – who stated that the detention was unlawful and incompatible with his grandson's state of health – the regional court quashed the detention order in March 2005. However, in May 2006 the same court re-examined the matter, and held that the original detention order had been lawful.

Upon his release from the detention centre after 30 days, Mr Blokhin was taken to hospital, where he received treatment for neurosis and attention-deficit hyperactivity disorder.

According to Mr Blokhin's submissions, he did not receive appropriate medical care in the detention centre. Access to the toilet was limited to certain periods, so that he had to endure bladder pain and humiliation, given that he suffered from enuresis. Inmates in the detention centre were kept in a large empty room all day and were rarely allowed to go outside. Classes in mathematics and Russian grammar were taught twice a week to a group of 20 children of different age and school levels in one class.

## Complaints, procedure and composition of the Court

Relying on Article 3, Mr Blokhin complained that the conditions in the temporary detention centre for juveniles had been inhuman and that he had not been provided with adequate medical care. He also alleged that his detention had been in breach of Article 5 § 1. Lastly, relying on Article 6 §§ 1 and 3, he maintained that the proceedings against him had been unfair both because he had allegedly been questioned by the police in the absence of his guardian, counsel or a teacher and because he had not been given the opportunity to cross-examine the two witnesses, whose statements represented the only decisive evidence against him.

The application was lodged with the European Court of Human Rights on 1 November 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,  
Khanlar **Hajiyev** (Azerbaijan),  
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),  
Julia **Laffranque** (Estonia),  
Erik **Møse** (Norway),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### Article 3

It was uncontested that Mr Blokhin had suffered from attention-deficit hyperactivity disorder and enuresis at the time of his detention in the temporary detention centre for juveniles. As regards the medical care he had received there, the Russian Government had failed to produce a copy of his medical records, despite the Court's request, claiming that the records had been destroyed as there was a three-year limit to store such data. However, the Court noted that the Government had not submitted a copy of the relevant provision and that it was clear from the officially published instructions of the Russian Ministry of Health that the time-limit for storage of medical records was ten years. The Court found that it could draw inferences from the Government's conduct, namely

that Mr Blokhin's allegations were well-founded. Moreover, Mr Blokhin's grandfather had consistently informed the authorities about his health problems; there was therefore no reason to doubt that the staff of the detention centre had been aware of them.

The Court concluded that Mr Blokhin had not received adequate medical care for his attention-deficit hyperactivity disorder and enuresis in the temporary detention centre. It considered that this lack of medical treatment amounted to inhuman and degrading treatment, in violation of Article 3. In view of that finding, it was not necessary to examine the remainder of Mr Blokhin's complaint under that Article.

#### Article 5

The Court underlined that Mr Blokhin had been deprived of his liberty within the meaning of Article 5. It observed that the detention centre for juveniles had been closed and guarded, making it impossible to leave the premises without authorisation.

As regards the grounds for the deprivation of liberty, the Russian Government had argued that Mr Blokhin's placement in the detention centre had served the purpose of "educational supervision" for the purpose of Article 5 § 1 (d). However, the Court noted that temporary detention centres for juveniles were only designed for short-term detention and, unlike closed educational institutions providing long-term accommodation, were clearly not meant to provide educational supervision within the meaning of Article 5. Mr Blokhin had been placed in the centre for the prevention of delinquent acts, not as a custody measure prior to his placement in a closed educational institution. He had not received any regular and systematic educational supervision while in the centre. The Government had not submitted any document which would have refuted his submissions that the classes had been irregular, the curriculum incomplete and that children of different ages were taught together in one class. His detention could therefore not be justified under Article 5 § 1 (d).

The Russian courts had held that the main purpose of Mr Blokhin's detention was to prevent him from committing new delinquent acts. The question was thus if it could have been "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c). The Court underlined that the provision only gave States a means of preventing a concrete and specific offence, in particular as regards the place and time of its commission and its victims. However, in Mr Blokhin's case, neither the Russian authorities nor the Government in their submissions to the Court had mentioned any concrete and specific delinquent acts which he had to be prevented from committing.

Moreover, Article 5 § 1 (c) only covered pre-trial detention imposed in connection with criminal proceedings, in that it required that detention to prevent a person from committing an offence was done "for the purpose of bringing him before the competent legal authority". It was clear, however, that Mr Blokhin's placement in the temporary detention centre for juveniles had not served that purpose. Since the Russian authorities and the Government had not referred to a concrete delinquent act which Mr Blokhin had to be prevented from committing, his detention could neither be justified under Article 5 § 1 (b) to "secure the fulfilment of an obligation", as under the Court's case-law an obligation not to commit a certain offence had to be concrete and specific as regards the place and time of its imminent commission.

Finally, Mr Blokhin's placement in the detention centre could not be regarded as "lawful detention after conviction by a competent court" within the meaning of Article 5 § 1 (a). He had not been convicted of an offence because he had not reached the statutory age of criminal responsibility.

His detention had therefore not been covered by any of the relevant sub-paragraphs of Article 5 § 1. There had accordingly been a violation of Article 5 § 1.

## Article 6

The Court noted the Russian Government's argument that no criminal proceedings had been opened against Mr Blokhin, which could be interpreted as an objection to the applicability of Article 6 in his case. However, the Court observed that, although the decision to place Mr Blokhin in the detention centre had been taken in proceedings formally unrelated to the criminal inquiry, there was a close link between the two. Indeed the wording of the decision clearly showed that his placement had been a direct consequence of the prosecution authorities' finding that his actions had contained elements of the criminal offence of extortion. Moreover, he had been subject to a quasi-penitentiary regime for 30 days, which clearly contained punitive elements. While acknowledging that States were entitled to draw the line between what offences belonged to the criminal sphere and what did not, the Court concluded that the nature of Mr Blokhin's alleged offence, together with the nature and severity of the penalty, were such that the proceedings in his case had to be considered criminal proceedings. Article 6 was therefore applicable.

On the basis of the evidence before it, the Court found it established that Mr Blokhin had not had an opportunity to contact his family or obtain legal assistance when questioned by the police. Given his young age, the circumstances surrounding the interview had been psychologically coercive and conducive to breaking down any resolve he might have had to remain silent. Moreover, he had undoubtedly been affected by the restrictions on his access to a lawyer. His confession obtained without legal assistance had served as a basis for finding that his actions had contained elements of a criminal offence and that it was thus necessary to place him in the temporary detention centre. His defence rights had therefore been irretrievably prejudiced and the fairness of the proceedings had been undermined as a whole.

In view of that finding it would normally have been unnecessary to examine separately Mr Blokhin's complaint that the fairness of the proceedings was also breached on account of the denial of an opportunity to cross-examine the witnesses against him. However, since it was for the first time that the Court had an opportunity to examine the special procedures applicable in Russia to minors who had committed a delinquent act before reaching the statutory age of criminal responsibility, it considered that the examination of the other aspects of those special procedures was required. The Court observed that apart from Mr Blokhin's confession, which had been obtained without the benefit of legal advice and later retracted, the statements by the 9-year-old boy and his mother were the only, thus the decisive, evidence against him. However, no effort had been made to ensure their appearance at court, and there had not been any counterbalancing factors to compensate for Mr Blokhin's inability to cross-examine the witnesses.

Mr Blokhin's defence rights had thus been restricted to an extent which was incompatible with the guarantees provided by Article 6, due to the special legal regime applicable to his situation, namely the fact that he had not reached the statutory age of criminal responsibility. There had accordingly been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) and (d).

## Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Blokhin 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,493 in respect of costs and expenses.

*The judgment is available only in English.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

## Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.