

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

THIRD SECTION

CASE OF ABULADZE v. ESTONIA

(Application no. 12928/20)

JUDGMENT

STRASBOURG

24 January 2023

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



In the case of Abuladze v. Estonia,

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

Georgios A. Serghides*, President*,
Jolien Schukking,
Darian Pavli*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 12928/20) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 February 2020 by an Estonian national, Mr Georgi Abuladze, born in 1988 and living in Tallinn ("the applicant"), who was represented by Mr M. Tammann, a lawyer practising in Pärnu;

the decision to give notice of the application to the Estonian Government ("the Government"), represented initially by their Agent, Ms M. Kuurberg, Representative of Estonia to the European Court of Human Rights, and subsequently by Mr T. Kolk, her successor in that office;

the parties' observations;

Having deliberated in private on 13 December 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's allegations of excessive length of his pre-trial detention, which lasted approximately four and half years, in breach of Article 5 § 3.

2. The applicant was accused of being a member of a criminal organisation. He was arrested on 6 October 2015 and remanded in custody by a preliminary investigation judge on 8 October 2015. He remained in custody until his conviction by the first-instance court on 13 March 2020.

3. After the completion of the pre-trial investigation, the defence lawyers were given time to examine the criminal files on 7 March 2016, and on 22 March 2016 the statement of charges was sent to the court. Following a preliminary hearing, the applicant was committed for trial on 5 April 2016.

4. Charges were brought against nine persons in respect of eleven different criminal offences, including membership of a criminal organisation (other offences included, *inter alia*, physical abuse, torture, human trafficking, theft, fraud and extortion). The prosecutor had applied to examine more than sixty witnesses, victims and third parties. The applicant was suspected of having belonged to the criminal organisation at least since 2013.

5. During both the pre-trial and trial stages the domestic courts examined at regular intervals (once every six months at most) whether the applicant's pre-trial detention continued to be justified, either in response to his own

requests or of their own motion. On each occasion the courts confirmed that there was reasonable suspicion that the applicant had committed the offence he was accused of. As grounds for his detention, they relied on the risks of the applicant reoffending and obstructing the proceedings by influencing witnesses or otherwise tampering with evidence.

6. With regard to the risk of reoffending, the courts referred not only to the nature of the offence of membership of a criminal organisation (including the manner in which the organisation operated and divided its criminal proceeds), but also to the applicant's supposed role as collector of the financial proceeds from criminal activities on behalf of the criminal organisation and long-term membership in the organisation in question. Noting that the applicant was likely to have lived off illegal income, at least partially, for an extended period of time and considering that it was common for criminal organisations to take care of their members and their families (including those who had been detained), the courts found that, if released, the applicant could continue committing offences in order to maintain his own living standard as well as that of his co-defendants.

7. When examining the risk of obstruction of proceedings, the domestic courts took into account information in the criminal file according to which disobedient members of the organisation were physically punished, were threatened with punishment or were pushed to commit offences. In the present case not all of the alleged members of the criminal organisation in question were remanded in custody during the proceedings. The domestic courts pointed to a concrete example where one of the defendants had repeatedly tried to influence witnesses. The courts also referred to the applicant's role and authority in the organisation, noting that his task of collecting money from the organisation's lower-ranking members had not been a merely "technical" one. The courts regularly assessed the relevance of the risk of obstruction in relation to the state of proceedings, notably the progress made in hearing the witnesses, and noted in May 2019 that the risk had ceased because all the witnesses had been questioned.

8. The courts repeatedly dismissed the applicant's requests for pre-trial detention to be replaced with electronic surveillance as the latter measure would not have prevented him from communicating and meeting with other persons, and could thus not have sufficiently limited the risk of his reoffending.

9. During the trial a total of 108 hearings were held in a regular manner, apart from the longer gaps described below.

10. On five separate occasions during the trial the defendants, including the applicant on two occasions, informed the court shortly before the scheduled hearings that the client agreements with their chosen lawyers had been terminated. Consequently, while the applicant found a new lawyer for himself, some of the other defendants needed to have legal-aid lawyers

designated by the Bar Association (Article 43 of the Code of Criminal Procedure and section 18 of the State-Funded Legal Aid Act).

11. Setting hearing dates that would suit all the parties concerned was complicated by the fact that during some periods the applicant's lawyer, other defence lawyers (including legal-aid lawyers designated by the Bar Association) and the prosecutor were simultaneously involved in another criminal case concerning another criminal organisation. Trial in these parallel proceedings commenced on 8 March 2016 and ended with a final judgment on 6 January 2021.

12. The difficulty of finding suitable hearing dates, combined with the termination of the client agreements between some of the defendants and their lawyers, resulted in longer breaks between hearings from April 2016 until January 2017 and from April 2017 until January 2018. The applicant also pointed to gaps between hearings from June 2018 until September 2018 and from the end of May 2019 until the end of September 2019, which the Government did not comment on.

13. The case was assigned to a new judge of the Harju County Court in mid-November 2016, although this does not appear to have caused any delays in the proceedings. When it appeared that some of the defence lawyers, including the applicant's, could not attend the scheduled hearings, the judge refused to postpone them. Furthermore, relying on Article 44^1 of the Code of Criminal Procedure, the judge compelled the lawyers concerned to appoint substitute lawyers in good time before the scheduled hearings. The judge also advised to avoid situations where defence lawyers, who were already involved in complex large-scale criminal cases, would take up defence duties in simultaneous heavy cases.

14. While the domestic courts also considered the need for a substitute prosecutor due to his parallel involvement in a large-scale case and noted that the prosecutor's office should in future consider appointing several prosecutors to work on cases of such magnitude, domestic law did not provide for the possibility of the court ordering the appointment of a substitute prosecutor. The trial judge also dismissed the applicant's request for the removal of the prosecutor. Furthermore, the trial judge criticised the parties for having been unrealistic in their initial assessment of the need for scheduling hearing dates. As a result, extra hearing dates had to be scheduled on a number of occasions. For example, the defence lawyers had not revealed that they intended to ask that the secret surveillance recordings be played during hearings at the court – this stage had lasted for eighteen hearing days.

15. On other occasions the hearings had to be cancelled either because the judge, the defendants or their lawyers were ill or because defendants did not appear in court.

16. In a decision dated 7 February 2019, concerning another defendant in the same criminal case, the Supreme Court reiterated the arguments of the trial court in respect of the delays in the proceedings (see paragraphs 10-11

and 13-14 above). The Supreme Court noted, in particular, that the prosecutor's office had not chosen the most efficient conduct of proceedings by assigning the same prosecutor to several trials conducted at the same time, and criticised the Bar Association for appointing defence councils already acting in other large cases.

17. The applicant complained under Article 5 § 3 of the Convention that his detention on remand had been excessively long.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

19. The general principles regarding the application of Article 5 § 3 of the Convention have been set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, 102, ECHR 2016) and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222 and 225, 28 November 2017); for a more recent application of those principles in a case similar to the instant one, see *Štvrtecký v. Slovakia* (no. 55844/12, 5 June 2018).

20. The length of the applicant's detention on remand – approximately four and half years as calculated from his remand in custody until his conviction by the first-instance court (see *Buzadji*, cited above, § 85) – is a matter of great concern requiring very strong justification (see *Štvrtecký*, cited above, § 57, and *Trifković v. Croatia*, no. 36653/09, § 121, 6 November 2012).

21. The Court accepts that the reasonable suspicion that the applicant had committed the offences with which he had been charged persisted throughout the criminal proceedings leading to his conviction. This was verified by the domestic courts on each occasion when they reviewed whether the applicant's detention continued to be justified.

22. As to the grounds for the applicant's (continued) detention – namely the risk of reoffending and of obstructing the proceedings – the Court observes that the domestic courts were consistent in referring to them. While the applicant did not agree with the domestic courts' substantive assessment of those risks, it cannot be said that the courts relied on these grounds in an abstract manner, without showing how they applied to the specific circumstances of the applicant's case (see paragraphs 6-7 above).

23. Having examined the case file, the Court finds that the domestic courts gave relevant and sufficient reasons for the applicant's detention during the investigation and trial.

24. As to the conduct of the proceedings, the Court notes that they were of considerable scope and complexity, regard being had to the number of

defendants involved and the duration of the activities of the criminal organisation under investigation. Additional criminal cases were joined to the original case during the investigation stage and also during the trial phase. The proceedings required individual determinations to be made of the criminal responsibility of a number of the defendants in relation to a variety of separate criminal acts.

25. While the pre-trial proceedings could not be considered to have lasted an excessively long period of time, the trial proceedings lasted for approximately four years.

26. The Court is willing to acknowledge that the case – which concerned organised crime – presented, by definition, particular difficulties for the investigating authorities, and later for the courts, in relation to determining the facts and the degree of responsibility of each member of the group.

27. Nevertheless, the Court cannot overlook the fact that there were longer periods of inactivity in the proceedings, when no hearings were scheduled or held (see paragraph 12 above). The Court notes that attribution of each delay is disputed by the parties and may prove difficult in this case, where many delays resulted to a large extent from the prosecutor as well as some lawyers being involved in more than one set of proceedings simultaneously, the combined effect of last-minute terminations of the client contracts, the need to find new lawyers or designate legal-aid lawyers in cooperation with the Bar Association, the repeated need to schedule more hearing dates and the consequential difficulties of finding dates that would suit everyone concerned. In such a situation, the Court acknowledges that the trial judge took certain steps to avoid further delays in the proceedings (see paragraph 13 above).

28. However, what is in issue is not the possible responsibility of any particular national authority, but the international responsibility of the State (see *R.B. v. Estonia*, no. 22597/16, § 102, 22 June 2021). In that regard, the Court attaches particular weight to the delays that were caused by re-scheduling hearings due to the fact that the prosecutor's office had assigned the same prosecutor simultaneously to another large-scale criminal case (see paragraphs 11 and 14 above). As noted by the domestic courts, the power of assigning prosecutors to a trial lied entirely with the prosecutor's office and the trial court could not request the appointment of a substitute prosecutor (see also the remarks by the Supreme Court cited in paragraph 16 above). Although it does not appear that the applicant raised the issue of ineffective legal-aid assistance before the trial court, the domestic courts also pointed to the problem of assignment of legal-aid lawyers who were already involved in other large-scale criminal proceedings (see paragraph 13 above).

29. In conclusion, the Court finds that while the State cannot be held responsible for the actions of the applicant and his co-defendants, the criminal justice system nonetheless failed to handle the applicant's case with "special diligence".

30. It follows that in the present case there has been a violation of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant sought an award in respect of non-pecuniary damage in the application form, without claiming a specific sum and leaving the matter to the Court's discretion. He did not submit a claim regarding pecuniary or non-pecuniary damage during the contentious phase of the proceedings, submitting only the claim in respect of procedural costs and expenses.

32. The Court notes that the applicant failed to submit a claim in respect of pecuniary or non-pecuniary damage within the time-limit fixed therefor as required under Rule 60 of the Rules of Court. In the circumstances of the present case, the Court considers that there is no exceptional situation, within the meaning of its case-law (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 61 and 78-82, 30 March 2017), warranting the making of an award in that respect.

33. The applicant claimed 3,259 euros (EUR) in respect of costs and expenses incurred in the proceedings before the domestic courts and EUR 3,600 for those incurred before the Court. He also claimed EUR 874.80 in respect of translation costs. The Government submitted that the request should be dismissed in respect of the costs and expenses incurred before the domestic courts and should be granted only partially with respect to those incurred before the Court.

34. Regard being had to the documents in its possession and considering that in order to give rise to reimbursement, any costs and expenses must be necessarily incurred and reasonable as to quantum, the Court awards the applicant EUR 4,500 on that account.

35. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to him, 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 amount 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 24 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President