

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

THIRD SECTION

CASE OF BULIN v. RUSSIA

(Application no. 8681/06)

JUDGMENT

STRASBOURG

29 March 2016

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



In the case of Bulin v. Russia,

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

Helen Keller, *President,*
Johannes Silvis,
Alena Poláčková, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 8 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 8681/06) 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 Anton Yuryevich Bulin ("the applicant"), on 6 January 2006.

2. The applicant was represented by Mr K. Pakin, a lawyer practising in Velikiy Novgorod. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 6 November 2009 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1989 and lives in Kresttsy, Novgorod Region.

5. On an unspecified date the applicant was charged with theft. On 16 December 2003 the case was settled and the criminal proceedings were discontinued.

6. On 28 July 2004 the applicant was arrested on suspicion of having committed a murder. The applicant was 15 years old at the time of the arrest.

7. On 29 July 2004 the Krestetskiy Federal Court of the Novgorod Region authorised the applicant's pre-trial detention noting as follows:

> "Having heard the parties to the proceedings and examined the materials, [the court] has established that there is reasonable suspicion that [the applicant] has committed

> the crime. The other participants in the crime confessed and incriminated [the applicant].
>
> Given that [the applicant] has been previously charged with criminal offences, that he is suspected of having committed a serious crime, it is impossible to apply a more lenient preventive measure."

8. On an unspecified date the applicant was charged with conspiracy to commit robbery.

9. On 27 September 2004 the Novgorod Town Court extended the applicant's pre-trial detention until 8 November 2004 noting as follows:

> "Regard being had to the [applicant's] character and the seriousness of the charges against him, the court considers that it is not possible to lift or replace the earlier imposed preventive measure because [the applicant] may interfere with the establishment of the truth or abscond."

10. On 4 November 2004 the Town Court extended the applicant's detention until 8 January 2005. It reiterated verbatim its earlier reasoning.

11. On 7 December 2004 the investigator dropped the murder charges against the applicant for lack of *corpus delicti*. He further re-classified the charge against the applicant as robbery committed by a group of persons.

12. On 30 December 2004 the Town Court extended the applicant's pre-trial detention until 28 January 2005. The court noted as follows:

> "Regard being had to the seriousness of the charges, the [applicant's] character and the negative references, the court does not discern grounds to change the earlier imposed preventive measure or to release [the applicant]."

13. On 25 January 2005 the Novgorod Regional Court upheld the decision of 30 December 2004 on appeal noting that, in view of the seriousness of the charges, the applicant might interfere with the establishment of the truth, abscond or re-offend.

14. On 14 February 2005 the Regional Court fixed the preliminary hearing of the applicant's case for 24 February 2005. The court also ruled that the applicant should be detained pending trial. On 28 April 2005 the Supreme Court of the Russian Federation upheld the said decision on appeal.

15. On 20 July 2005 the Regional Court rescheduled the preliminary hearing in the applicant's case for 4 August 2005. The applicant and his lawyer were present. The lawyer asked for the applicant's release into his mother's care pending trial. The court dismissed the request and extended the applicant's detention until 27 October 2005 noting that "the preventive measure earlier imposed on [the applicant] should remain unchanged". Both the applicant and his lawyer appealed.

16. On 21 September 2005 the Supreme Court upheld the decision of 20 July 2015 on appeal. The court decided to consider the matter in the applicant's absence noting that the applicant had attended the hearing on 20 July 2005 and had been provided with an opportunity to be heard. The

applicant's lawyer and the prosecutor were present and made submissions to the court. As regards the extension of the applicant's detention, the court ruled that the circumstances underlying the applicant's remand in custody continued to exist. In this connection the court noted as follows:

> "It follows from the materials of the case that [the applicant] has earlier committed another crime, that he had been absent from classes in school and had demonstrated anti-social behavior. He had not spent nights at home and had not lived with his mother for extended periods of time. His mother could not control his behavior; she did not pay due attention to his upbringing and had no influence over him. The [applicant's] release into his mother's care ... would not ensure his due behavior pending trial."

17. On 17 October 2005 the Regional Court extended the applicant's and two other defendants' detention until 27 January 2006. The court noted:

> "The defendants are charged with particularly serious offences; the circumstances of their remand in custody have not changed. The court does not discern circumstances that would allow it to apply a more lenient preventive measure, including the [applicant's] release into his mother's care."

18. On 15 December 2005 the Supreme Court upheld the decision of 17 October 2005 on appeal.

19. On 24 January 2006 the Regional Court extended the applicant's detention and two other defendants' detention until 27 April 2006. The court reiterated verbatim its reasoning of 17 October 2005.

20. On 13 February 2006 the Regional Court found the applicant guilty of robbery and sentenced him to four and a half years' imprisonment. On 27 September 2006 the Supreme Court of Russia upheld, in substance, the applicant's conviction on appeal.

21. On 2 August 2007 the Nevelskiy District Court of the Pskov Region released the applicant on parole.

THE LAW

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

22. The applicant complained about the excessive length of his pre-trial detention. He relied on Article 5 § 3 of the Convention read in conjunction with Article 13. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention alone (this provision being *lex specialis* in this field), which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

23. The Government contested that argument. They considered that the applicant could not have been released into his mother's care in view of his character. He had previously committed a theft, had been unwilling to study, and his family had been unable to supervise him.

24. The applicant maintained his complaint. While he considered that his remand in custody was justified given the seriousness of the charges, he argued that with the passage of time, that ground had become less relevant and the authorities had not referred to any other circumstances that would justify his pre-trial detention. The applicant had been a minor at the time. Accordingly there had been no risk that he would abscond or interfere with the proceedings. He had permanently resided with his family, had studied in school and worked part time.

A. Admissibility

25. 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

26. In the present case the period to be taken into consideration lasted from 28 July 2004, when the applicant was arrested, to 13 February 2006, when the applicant was convicted by the trial court. It amounted to one year, six months and seventeen days.

27. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant's detention relying essentially on the seriousness of the charges and using stereotyped formulae without addressing his or her specific situation (see, among many other authorities, *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012; *Romanova v. Russia*, no. 23215/02, 11 October 2011; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Logvinenko v. Russia*, no.44511/04, 17 June 2010; *Gultyayeva v. Russia*, no. 67413/01, 1 April 2010; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Belov v. Russia*, no. 22053/02, 3 July 2008; and *Shukhardin v. Russia*, no. 65734/01, 28 June 2007).

28. The Court observes that the Russian courts did not avoid that pattern of reasoning in the present case. When extending the applicant's detention, they consistently relied on the seriousness of the charges giving no heed to the applicant's personal situation and, particularly, to the fact that the charge of murder, which underlay the applicant's remand in custody, was already

dropped approximately four and a half months after the applicant's arrest. The Court accordingly considers that the national authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as sufficient to justify its duration of over a year and a half. In these circumstances it would not be necessary for the Court to examine whether the domestic authorities acted with "special diligence".

29. Having regard to the above, the Court finds that there has been a violation of Article 5 § 3 of the Convention.

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

30. The applicant complained that on 21 September 2005 the Supreme Court conducted an appeal hearing in his absence. He relied on 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."

31. The Government contested that argument. In their opinion, the applicant's absence from the appeal hearing had not been contrary to the requirements set out in Article 5 § 4 of the Convention. The applicant had taken part in the hearing concerning the extension of his pre-trial detention at the court of first level of jurisdiction. Accordingly he had ample opportunity to present his arguments and to appeal against the relevant court order. He had been represented by a lawyer who had attended the appeal hearing and made submissions to the court.

32. The applicant maintained his complaint.

A. Admissibility

33. 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

34. The Court reiterates that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). Although it is not always necessary for the procedure under Article 5 § 4 to be attended by the same guarantees as those

required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), 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 *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

35. Turning to the circumstances of the present case, the Court observes that the appeal hearing of 21 September 2005 concerned a possibility of the applicant's release into his mother's care. That issue had already been discussed, in the applicant's presence, by the court at the first level of jurisdiction on 20 July 2005. Furthermore, the Court discerns no evidence in the materials before it that the applicant's circumstances had materially changed since 20 July 2005. Nor does it appear from the content of the appeal decision that the court discussed any new issues or changed the basis for the applicant's detention.

36. Accordingly, against this background, the Court is satisfied that the applicant's personal attendance was not required at the appeal hearing and that counsel's presence was sufficient to ensure that the proceedings were adversarial and the principle of equality of arms was respected (see, by contrast, *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000, and *Mamedova v. Russia*, no. 7064/05, § 91, 1 June 2006).

37. Therefore there has been no violation of Article 5 § 4 of the Convention in that respect.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Lastly, the applicant alleged that the composition of the trial court had been unlawful and that his right to obtain vocational training had been infringed. He referred to Article 6 of the Convention and Article 2 of Protocol No. 1 to the Convention.

39. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government considered that the applicant's claim was unsubstantiated.

43. The Court observes that the applicant spent over a year and a half in custody awaiting determination of the criminal charge against him, his detention not being based on sufficient grounds. Making its assessment on an equitable basis, the Court awards EUR 1,600 to the applicant in compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant also claimed 20,000 Russian roubles (RUB) for the costs and expenses incurred before the domestic courts and RUB 76,701.7 for those incurred before the Court.

45. The Government did not comment.

46. 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 for costs and expenses under all heads.

C. Default interest

47. 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 the length and review of the applicant's detention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,600 (one thousand six 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;
   (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 29 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Helen Keller
Deputy Registrar	President