

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

FIRST SECTION

CASE OF LOGVINENKO v. RUSSIA

(Application no. 44511/04)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

17/09/2010

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

In the case of Logvinenko v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 44511/04) 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 Viktor Anatolyevich Logvinenko ("the applicant"), on 22 November 2004.

2. The applicant was represented by Mr V. Kostyushev, a lawyer practising in Ivanovo. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his detention from 23 September to 1 December 2005 had been unlawful and that the length of his pre-trial detention had been in breach of the "reasonable time" requirement.

4. On 9 October 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. 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

6. The applicant was born in 1984 and is serving a prison sentence in the Ivanovo Region.

A. The applicant's arrest and the first set of proceedings

7. On 2 January 2002 the applicant was arrested on suspicion of manslaughter.

8. On 5 January 2002 the prosecutor's office authorised the applicant's detention pending investigation. The applicant's detention was extended on several occasions. The parties did not submit copies of the relevant court orders. According to the Government, when deciding on the applicant's pre-trial detention, the domestic authorities noted that he had been charged with very serious offences, including two counts of manslaughter, and that he might abscond or interfere with administration of justice if released.

9. On 26 June 2003 the Regional Court authorised the applicant's detention pending the study of the case-file. In particular, the court noted:

> "... [the applicant] is charged with several criminal offences, including very serious ones. It is still necessary to keep him in custody. The court does not consider it possible to apply any other restrictive measure ...
>
> The materials submitted show that ... at school [the applicant] received satisfactory references concerning his character. He had a criminal record. In May 2001 he was found guilty by the Leninskiy District Court of Ivanovo of robbery, extortion and theft and received a conditional sentence. His criminal record was erased by virtue of the amnesty decree. He also has a history of administrative misdemeanours. The references concerning his character obtained from the place of his residence are negative. His parents cannot control his behaviour. His conduct is socially dangerous. He has [repeatedly] failed to comply with internal regulations at the remand centre.
>
> In such circumstances, the court concludes that the applicant should be detained pending the study of the case-file ..."

10. On 22 April 2004 the Leninskiy District Court of Ivanovo concluded the trial of six defendants. The District Court found the applicant guilty of trespassing and manslaughter and sentenced him to nine years and four months' imprisonment.

11. On 25 May 2004 the Ivanovo Regional Court upheld the applicant's conviction on appeal. The applicant and F., one of his co-defendants, sought supervisory review of the judgments.

12. On 23 May 2005 the Supreme Court of the Russian Federation granted their request for supervisory review.

13. On 22 June 2005 the Supreme Court quashed the judgments of 22 April and 25 May 2004 in respect of the applicant and F. and remitted the matter to the lower courts for fresh consideration. It further extended, without specifying the grounds, the defendants' detention pending trial until 22 September 2005.

B. The second set of proceedings and the applicant's detention pending trial

14. On 12 July 2005 the Leninskiy District Court of Ivanovo received the case file.

15. On 28 July 2005 the District Court scheduled the hearing of the case for 11 August 2005 and dismissed a request by the defendants for release. In particular, the court noted:

> "F. and [the applicant] are charged with ... a very serious criminal offence against life and health.
>
> In view of the above, the restrictive measure used in respect of F. and [the applicant] should remain unchanged."

16. On 11 August 2005 the District Court stayed the proceedings owing to F.'s counsel's failure to appear. On 8 September 2005 the Regional Court found the decision of 11 August 2005 unlawful and quashed it on appeal.

17. The decision of 28 July 2005 was upheld on appeal by the Ivanovo Regional Court on 25 August 2005.

18. On 1 December 2005 the District Court issued an order authorising the defendants' pre-trial detention until 12 April 2006. In particular, the court noted:

> "[The court] does not discern any grounds, as established by law, to change or lift the restrictive measure earlier applied in respect of [the defendants] since the circumstances taken into account by the court at the time the restrictive measure was applied have not ceased to exist. [The defendants] are charged with a very serious criminal offence ..."

19. On 12 January 2006 the Regional Court upheld the decision of 1 December 2005 on appeal. The court dismissed, *inter alia*, the applicant's complaint that his detention after 23 September 2005 had been unlawful. In particular, the court noted as follows:

> "The supervisory-review court quashed the verdict and subsequent judicial decisions in respect of [the applicant] and F. and decided to remit the criminal case for fresh consideration to the Leninskiy District Court of Ivanovo. In accordance with Resolution of the Constitutional Court of Russia no. 4-P as of 22 March 2005, it also decided to extend the pre-trial detention in respect of [the applicant] and F. for three months. This decision remained in force until the preliminary hearing of the case [by the trial court].

> When the trial court received the case-file, it considered the issue of the [defendants' pre-trial detention] in accordance [with applicable laws]. Pursuant to Article 255 § 2 of the Russian Code of Criminal Procedure, the pre-trial detention in respect of [the applicant] and F. shall be calculated as of the date when the trial court received the case-file, that is, as of 12 July 2005. As a general rule, the period of detention in question shall not exceed six months, notably 12 January 2006. Article 255 § 3 of the Russian Code of Criminal Procedure stipulates that the court may, upon expiry of the six-month period, extend the defendants' pre-trial detention if the defendants are charged with serious and particularly serious criminal offences. Each extension in that case cannot exceed three months. The Resolution of the Constitutional Court of Russia as of 22 March 2005 confirmed that Article 255 §§ 2 and 3 of the Russian Code of Criminal Procedure was not in breach of the Russian Constitution. The [defendants'] complaints in respect of [the alleged unlawfulness of their pre-trial detention] are based on an erroneous interpretation of the applicable rules of criminal procedure."

20. On 2 March 2006 the District Court further extended the defendants' pre-trial detention until 12 July 2006, noting as follows:

> "[The court] does not discern any grounds, as established by law, to change or lift the restrictive measure earlier applied in respect of [the defendants] since the circumstances taken into account by the court at the time the restrictive measure was applied have not ceased to exist. [The defendants] are charged with a very serious criminal offence ..."

21. On 25 April 2006 the Regional Court upheld the decision of 2 March 2006 on appeal.

22. On 7 June 2006 the District Court extended the defendants' pre-trial detention until 12 October 2006. The court reiterated verbatim the reasoning of the previous detention orders. On 4 July 2006 the Regional Court upheld the decision of 7 June 2006 on appeal.

23. On 21 August 2006 the District Court found the applicant guilty of manslaughter and sentenced him to seven years' imprisonment.

24. On 12 October 2006 the Regional Court upheld the applicant's conviction on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Russian Code of Criminal Procedure

25. 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").

26. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22). Under the old CCrP, a decision ordering

pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96). The new CCrP requires a judicial decision by a court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

27. 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 had committed. 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.

28. Under the new CCrP, "preventive measures" include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (Article 112). When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, re-offend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

29. Before 15 June 2001 the old CCrP set no time-limit for detention pending trial. On 15 June 2001 a new Article, 239-1, entered into force which established that the period of detention pending trial could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or at the request of a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences. The new CCrP provides that the term of detention pending trial is calculated from the date the court receives the file up to the date on which the judgment is given. The period of detention pending 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 §§ 2 and 3).

B. Resolution of the Supreme Court of Russia No. 1 of 5 March 2004 on Application by Courts of the Russian Code of Criminal Procedure

30. As regards the rule set forth in Article 255 § 3 of the new CCrP, the Supreme Court noted that, when deciding on extension of a defendant's

detention pending trial, the court should indicate the grounds justifying the extension and its time-limit (paragraph 16).

THE LAW

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

31. The applicant complained that from 23 September to 1 December 2005 his pre-trial detention had not been covered by a court order and had therefore been unlawful. The Court considers that the 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."

32. The Government contested that argument. In their view, at no time had the applicant been detained pending trial in the absence of a court order. All the court orders authorising the applicant's detention had been issued by a competent judicial body and had been subject to review by an appeal court. The applicant had attended all the court hearings. As regards the lawfulness of the applicant's detention from 23 September to 1 December 2005, the Government submitted that it had been covered by a court order issued on 28 July 2005 when the District Court had ruled that the restrictive measure imposed earlier on the applicant should remain unchanged. They suggested that even though the decision of 28 July 2005, had not referred to a time-limit for the applicant's detention, it should be interpreted, by virtue of the applicable rules of criminal procedure, as authorising the extension of the applicant's detention pending trial for another six months. They referred, in particular, to Article 255 of the Russian Code of Criminal Procedure which indicated that a defendant's detention pending trial should not exceed six months and could be further repeatedly extended for no longer than three months in respect of defendants charged with serious and particularly serious criminal offences. In sum, the Government considered that, in the applicant's case, on 28 July 2005 his detention pending trial had been extended until 6 January 2006. In line with the rules of criminal procedure,

the trial court had carried out a new review of the issue of the applicant's detention on 1 December 2005, that is, before the expiration of that six-month period, and lawfully authorised his further detention until 12 April 2006.

33. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

35. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see, among numerous other authorities, *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41 *in fine*, *Reports of Judgments and Decisions* 1996-III).

36. Turning to the circumstances of the present case, the Court observes that, as the Government explained, on 28 July 2005, with reference to the gravity of the charges against the applicant, the Leninskiy District Court of Ivanovo authorised an extension of his detention pending trial with reference to Article 255 of the CCrP. The Court accepts that the District Court acted within its powers. However, the Court also notes that the District Court did not indicate a time-limit for the applicant's detention pending trial.

37. In this connection the Court takes cognisance of the interpretation of Article 255 of the CCrP provided by the Supreme Court of Russia wherein the Supreme Court unequivocally stated that the law required that, when deciding on the extension of a defendant's detention, the trial court should specify its time-limit (see paragraph 30).

38. Having regard to the above, the Court rejects the Government's argument that, as a matter of law, the trial court was not required to indicate the time-limit of the applicant's detention and finds that the District Court failed to comply with the applicable rules of the domestic criminal procedure. It therefore considers that the applicant's detention from

23 September to 1 December 2005 was not "in accordance with a procedure prescribed by law".

39. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

40. The applicant complained that his pre-trial detention had been unreasonably long. The Court will examine the complaint under 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 ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

41. The Government claimed that the applicant's pre-trial detention was compatible with the "reasonable time" requirement. The applicant was arrested on the basis of a reasonable suspicion. Furthermore, he had been charged with several serious crimes and, if released, could have put pressure on other defendants and witnesses, abscond or otherwise interfere with the administration of justice. Those grounds for the applicant's detention had persisted throughout the whole period he had been in custody.

42. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

44. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany,* 27 June 1968, § 9, Series A no. 7, and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV). In view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by

a competent court" (see *Panchenko v. Russia*, no. 45100/98, §§ 91 and 93, 8 February 2005, with further references). Accordingly, the applicant's detention from 22 April 2004, the date of his original first-instance conviction, to 22 June 2005, the date on which that conviction was quashed by way of supervisory review and his case remitted for a new trial, cannot be taken into account for the purposes of Article 5 § 3. Accordingly, the period to be taken into consideration comprised two terms, the first lasting from 2 January 2002 to 22 April 2004 and the second from 22 June 2005 to 21 August 2006, and amounted in total to over three years and five and a half months (see, among other authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007).

45. As regards the reasons underlying the applicant's detention, the Court observes that the domestic authorities consistently relied on the gravity of the charges against him as the sole factor justifying his remand in custody. In this connection the Court reiterates 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). In the instant case, beyond a reference to the applicant's character and past criminal record in one decision (see paragraph 9), the domestic authorities did not mention any concrete facts corroborating the detention orders.

46. The Court further observes that during the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's 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). In the Court's view, 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 (see paragraph 27).

47. Lastly, the Court observes that the District 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 the applicant and his co-defendant, 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).

48. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying solely on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the applicant complained that his conviction of 22 April 2004 as upheld on 25 May 2004 had been based on inadmissible evidence; that he had not had sufficient time to prepare his defence during the first trial and that the overall length of the criminal proceedings against him had been unreasonably long. He further alleged that in January 2002 some newspapers and TV channels had broadcasted information about him. He relied on Article 6 §§ 1, 2 and 3 (d).

51. However, having regard to all the material in its possession, the Court finds that there is no 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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."

53. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lawfulness of the applicant's detention from 23 September to 1 December 2005 and the length of his pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention, in that the applicant's detention from 23 September to 1 December 2005 was not in accordance with a procedure prescribed by law;

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

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President