CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46082/99
by Konstantin Vladimirovich KLYAKHIN
against Russia

The European Court of Human Rights (Second Section), sitting on 14 October 2003 as a Chamber composed of:

Mr J.-P.COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr A. KOVLER, *judges*

and Mrs S. DOLLÉ , *Section Registrar*,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Konstantin Vladimirovich Klyakhin, is a Russian national, who was born in 1966 and lives in Armavir (Krasnodar Region), Russia.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Detention on remand and criminal proceedings

On 13 August 1997 the applicant was detained and intimidated by a group of people, allegedly because they wanted him to testify against his relative K., an officer of the Armavir Town Prosecutor's office.

On 26 August 1997 the applicant was arrested on suspicion of involvement in a robbery, together with K. and a third person, U. The denunciation of the applicant was made by the people who had allegedly intimidated him.

From 26 to 29 August 1997 the applicant was interviewed several times by an investigator of the prosecution service, sometimes in the presence of the Armavir Town Prosecutor. A lawyer was appointed, but the applicant refused to accept his services as he did not trust him.

On 29 August 1997 the Armavir Town Prosecutor authorised the applicant's detention on suspicion of theft. On 5 September 1997 the applicant was officially charged with involvement in a robbery.

The applicant appealed against his detention on 11 September 1997. The Government submit in their observations that the Armavir Town Court reviewed his complaints twice - on 14 September and 6 October 1997. The applicant submits that on 14 September, which was his birthday and which he remembered particularly well, he remained in his cell and that no judicial review of any kind took place. He submits that the Armavir Town Court dismissed his appeal on 6 October 1997 (14 October 1997 in his previous submissions). Following the transfer of the case to the Armavir Town Court on 26 January 1998, all complaints and requests submitted by the applicant to other authorities were forwarded to that court, in accordance with Section 217 of the Code of Criminal Procedure (CCP).

The investigation was completed on 24 January 1998 and the applicant was allowed access to the case-file between 24 and 27 January 1998. A lawyer was present at this stage, whom the applicant later dismissed. The indictment was sent to the Armavir Town Court on 27 or 28 January 1998.

On 16 February 1998 the Armavir Town Court scheduled the first hearing for 4 March 1998. The judge ordered the continued detention of the applicant and two other co-accused, K. and U., without giving reasons.

On 4 March 1998 a judge of the Town Court adjourned the hearing because the applicant had not had sufficient access to the case-file. Between 19 February and 27 March 1998 the applicant was allowed additional access to the case-file and was officially served with the indictment. The applicant submits that he was allowed only short periods of time over several days to

review about 600 pages of documentation in the case file. He also submits that he was handcuffed while accessing it, and had difficulties copying the relevant documents.

On 20 April 1998 the scheduled court hearing did not take place due to the absence of the victims and one of the representatives. On 22 April 1998 the judge ordered an expert psychiatric report on U. and adjourned the hearing. It appears that further hearings were scheduled, but were adjourned or cancelled on 31 August 1998, 30 September 1998, 5 January 1999 and 20 January 1999.

The European Convention on Human Rights entered into force in respect of Russia on 5 May 1998.

On 30 September 1998 the Armavir Town Court rejected the requests of the applicant and his co-accused K. for release from detention, because "at this stage of proceedings their release could influence the further trial hearing". The Government submit in their memorandum that on 11 November 1998 the Krasnodar Regional Court rejected the applicant's appeal against this order, but the applicant submits that he was not aware of this review.

On 21 January 1999 the case was adjourned due to the illness of U. By the same decision, the applicant's further detention on remand was confirmed. On 25 January 1999 the applicant complained to the Armavir Town Prosecutor about his continued detention on remand. On 5 March 1999 he was informed that his detention was lawful and that he could challenge it before the Town Court.

The trial resumed on 29 March 1999 and on 6 April 1999 the Armavir Town Court returned the case to the prosecutor's office for an additional investigation.

On 8 and 16 April 1999 the applicant lodged complaints with the President of the Armavir Town Court in respect of his detention on remand. No response was received.

On 27 April 1999 the Armavir Town Prosecutor appealed against the order of 5 March 1999, by which the case had been sent for additional investigation. On 16 June 1999 the Krasnodar Regional Court quashed it and instructed the Town Court to consider the case on the merits. The Regional Court also ordered the continued detention of the applicant and his co-accused, K. and U., without giving reasons.

On 4 August 1999 the hearings resumed, and on 16 August 1999 the applicant was convicted of robbery and sentenced by the Armavir Town Court to five years' imprisonment. He was represented by a lawyer. The applicant appealed, and on 20 October 1999 the Krasnodar Regional Court confirmed the judgment of the Town Court. It appears that the applicant was not present at the appeal hearing and that he was informed of its outcome on 12 November 1999. The conviction of 16 August 1999 subsequently entered

into force and the applicant was sent to a detention centre to serve his sentence.

On 2 December 1999 the Presidium of the Krasnodar Regional Court, acting by way of supervisory review upon a request lodged by the Chairman of the Krasnodar Regional Court, quashed the conviction of 16 August 1999 (as confirmed on 20 October 1999) for procedural irregularities and remitted the case to the first instance court. On 30 December 1999 the applicant was returned to the Armavir town detention centre (*СИЗО 18/2*).

The case-file was returned to the Armavir Town Court on 20 December 1999. A judge was appointed to hear the case on 23 March 2000.

On 17 April 2000 the hearing opened, and on 18 April the Armavir Town Court ordered a medical examination of the applicant in a psychiatric hospital. The report was required because of the applicant's "strange behaviour which raised doubts about his mental health". The behaviour manifested itself in an "inadequate reaction to questions, [and] the constant submission of fictitious and ill-founded requests". The applicant was not given a copy of that order for several months. He appealed against that decision and his continued detention on remand to the Armavir Town Court on 19, 24 and 25 April 2000, as well as on 12, 23 and 25 May 2000, but received no reply. He also appealed to the Armavir Town Prosecutor on 25 April 2000, and to the Krasnodar Regional Prosecutor's office on 21 April 2000. Both replied that his complaints had been forwarded to the Armavir Town Court.

The case-file was transferred to the Krasnodar psychiatric hospital on 3 May 2000. On 28 June 2000 the file was returned to the Town Court, no report having been prepared. On 20 July 2000 the judge of the Town Court ordered another report to be done on an out-patient basis. The applicant declared a hunger-strike in the court room, which, it appears, lasted until 30 July 2000. He alleged that the judge presiding in the case was not impartial, and that he had made threats to his relatives.

The applicant appealed against the order for a psychiatric expert's report to the Armavir Town and Krasnodar Regional Prosecutors, to the Regional Court, to the Krasnodar Qualification Board of Judges and other administrative bodies. On 9 and 24 August 2000 the Qualification Board forwarded the applicant's complaints to the Armavir Town Court. On 28 September 2000 the Regional Court informed the applicant that his complaint had been forwarded to the Town Court, which was to forward the case-file for an appeal hearing before the Regional Court. No hearing took place.

On 29 September 2000 the Chairman of the Armavir Town Court replied to the applicant and to the Krasnodar Qualification Board that no violations of the domestic law had been committed in the handling of the case. He dismissed the applicant's allegations that the presiding judge had threatened his relatives as "fictitious and ill-founded". The letter concluded that there

were no reasons to question the impartiality and qualifications of the presiding judge.

On 9 October 2000 a medical commission examined the applicant in the detention centre and found him to be of sound mind.

Between February and December 2000, the applicant submitted nine requests to the Armavir Town Court to get additional access to the case-file. His request was granted for a period from 8 to 15 December 2000, when he was allowed to have access to and make hand-written copies of relevant documents. The applicant submits that he was allowed about one and a half hours to consider the case-file of about 500 pages.

On 18 December 2000 a hearing took place in the Town Court and the case was further adjourned. On 21 December 2000 the applicant appealed against the adjournment to the Krasnodar Regional Court, but his appeal was not reviewed.

On 23 January 2001 the hearing in the Armavir Town Court resumed and on 9 February 2001 the applicant was convicted of attempted robbery and sentenced to four years' imprisonment. The applicant did not appeal against the conviction, which entered into force ten days later. The applicant was released from detention on 9 February 2001, as he had by that time spent three years five months and 13 days in detention and he was granted an amnesty. The two co-accused, K. and U., were also sentenced to prison terms, but the sentences were not executed due to the Amnesty Act.

2. Correspondence with the Court

The Government submit in their memorandum that the applicant sent two letters addressed to the European Court while in prison - on 8 June 2000 and on 5 January 2001. Both were posted. The applicant received three letters from the Court in response, all of which were transmitted to him.

The applicant claims that in June 1998 the administration of SIZO - 18/2, where he had been detained on remand, refused to forward his application to the Court. The applicant forwarded the letter through his relatives, who posted it on 24 July 1998.

The explanatory notice attached to the Court's Registry letter of 14 August 1998 was not given to the applicant.

The applicant further claims that on 25 March 1999 he forwarded a letter to the Court, with attachments, which never reached the Court. On 10 June 1999 the applicant sent the letter again via his mother.

A letter from the applicant to the Court dated 8 June 2000 was posted on 20 October 2000. The applicant lists a number of attachments to that letter, none of which arrived. The applicant sent them again on 29 December 2000.

The applicant was not allowed by the administration of the prison to keep the correspondence from the Court, which was given to him for a day and was then taken away.

It also appears that in December 2000 the applicant attempted to sue the postal service for failure to deliver his letter of 8 June 2000 to the European Court. On 16 January 2001 the Armavir Town Court refused to consider in substance his claim for pecuniary and non-pecuniary damages against the Armavir postal service. On 15 March 2001 the Krasnodar Regional Court quashed and remitted the decision of 16 January 2001. It further appears that on 11 May 2001 the Armavir Town Court rejected the applicant's claim on the substance, and the applicant failed to appeal against that judgment.

B. Relevant domestic law and practice

The Code of Criminal Procedure (CCP), in force at the relevant time, provided in Article 217 that, after the investigation had been completed, the prosecutor should approve the bill of indictment and forward the case to the court. Thereafter, all complaints and requests should be forwarded directly to the trial court.

Under Articles 220-1 and 220-2 of the CCP, an appeal against an order extending periods of detention lies to a court.

Articles 223-1 and 230 of the CCP provided that, when the accused was in detention, the judge should set the date for the first hearing within 15 days from receiving the case-file from the prosecutor. In his order the judge should also decide on whether the accused should be remanded in custody.

Article 331 of the CCP excluded appeals against certain orders (*определения и постановления*) of the trial court, such as setting dates for the hearing, forwarding the case for additional investigation, or requesting an in-patient mental health report. This Section was found unconstitutional by the Constitutional Court on 2 July 1998, to the extent that it prevented persons in detention from appealing against court orders which had the effect of extending their detention.

The Federal Law of 15 July 1995 No. 103-FZ "On pre-trial detention" provides in Sections 17 and 21 that detainees have an unlimited right to submit complaints and letters to governmental and non-governmental bodies. The complaints addressed to the prosecutor, courts and other authorities charged with supervising the legality of detention are not subject to censorship and should be forwarded to the addressee in a sealed envelope. Other letters and complaints are subject to censorship by the administration and are to be forwarded by it within three days of their submission. Any decision of the administration of a detention centre can be appealed in the hierarchical order, to a prosecutor and to a court. Similar provisions are contained in Section 9 of the Internal Rules of pre-trial detention centres of 1995 and 2000 (*Правила внутреннего распорядка следственных изоляторов уголовно-исполнительной системы Министерства внутренних дел Российской Федерации, утв. приказом МВД РФ от 20 декабря 1995 г. N 486*; *Правила внутреннего*

распорядка следственных изоляторов уголовно-исполнительной системы Министерства юстиции Российской Федерации, утв. приказом Минюста РФ от 12 мая 2000 г. N 148, с изменениями от 21 февраля 2002 г.).

COMPLAINTS

1. The applicant complains about the length of his detention on remand and the absence of a trial within a reasonable time, as required by Article 5 § 3 of the Convention.

2. Invoking Article 5 § 4 of the Convention, the applicant complains that he did not have access to a procedure to challenge the lawfulness of his detention. The only time the lawfulness of his detention was examined was, in effect, on 14 October 1997. After that, the courts automatically continued his detention.

3. Under Article 6 § 1 of the Convention, the applicant complains that he did not have his case examined within a reasonable time.

4. Under Articles 8 and 34 of the Convention, the applicant complains about the interference by the prison authorities with his correspondence to and from the Court.

5. Finally, the applicant complains that he was denied effective remedies in respect of the alleged violations of the reasonable length of criminal proceedings and in respect of his correspondence complaints. He invokes Article 13 of the Convention.

THE LAW

1. The Government raise a preliminary objection that the applicant has abused the right of petition, within the meaning of Article 35 § 3 of the Convention. They submit that certain statements in the applicant's observations concerning the Representative of the respondent Government were offensive and amounted to such an abuse.

The Court recalls that while the use of offensive language in proceedings before it is undoubtedly inappropriate, an application may only be rejected as abusive in extraordinary circumstances, for instance if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, 5.10.2000, § 36).

The Court considers that although some of the applicant's statements were inappropriate, they did not give rise to such extraordinary circumstances justifying a decision to declare the application inadmissible as an abuse of the right of petition. The Court further notes that the

Government's preliminary objection is not based on the lack of veracity of the applicant's submissions. It follows that the preliminary objection must be dismissed.

2. The applicant complains that his right to be tried within a reasonable time or to be released from detention pending trial was violated. He refers to Article 5 § 3 of the Convention, which provides 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."

The Government submit that the period of the applicant's detention on remand was not unreasonable and that it was in accordance with the national legislation. The Government also submit that the period of the applicant's detention prior to 5 May 1998 is outside of the Court's competence *ratione temporis*.

The applicant submits that it was not necessary to take him into custody and to keep him in detention for an extensive period of time as there was no indication that he was trying to obstruct the establishment of the truth in the case, or that his detention served to prevent his committing an offence or fleeing after having done so. The reasons given by the authorities to justify his detention were not relevant or sufficient.

The applicant also reiterates that while the period prior to 5 May 1998 lies outside the Court's jurisdiction *ratione temporis*, he asks the Court to take into account the fact that by that date he had already been in custody for over eight months.

The Court considers, in the light of the parties' submissions, that this part of the application raises complex issues of law and of fact under the Convention. It concludes, therefore that this part of the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. Under Article 5 § 4 of the Convention the applicant complains that he could not obtain a judicial review of his detention. Article 5 § 4 of the Convention 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."

The Government submit that domestic law, namely Article 220 § 1 of the Code of Criminal Procedure of 1960, had provided the applicant with a right to seek judicial review of his detention. The applicant used this right by applying to the Armavir Town Court which, on 14 September and 6 October 1997, reviewed his detention and found it lawful. His subsequent complaints about lawfulness of detention were the subject of review by the courts of higher instance.

The applicant pointed out that his complaint against the lawfulness of detention was reviewed by the Armavir Town Court only on 6 (or 14) October 1997, and then on 30 September 1998. His numerous other appeals to the authorities, including the Town and Regional Courts, were not properly examined.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. The applicant complains under Article 6 § 1 of the Convention that the criminal charges against him were not determined within a reasonable time. He also complains under Article 13 that he had no effective remedies in respect of the excessive length of criminal proceedings.

Article 6 § 1 first sentence reads in so far as relevant as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ..."

Article 13 of the Convention, insofar as relevant, provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ... ."

The Government submit that the period to be considered lasted from the transmission of the applicant's case to the Armavir Town Court on 2 February 1998 until the pronouncement of its judgment on 9 February 2001. The Government dispute that this time was unreasonable. They submit that during this period the case was reviewed before three judicial instances, including the Town Court twice. They also maintain that the applicant contributed to the length of the proceedings by filing multiple applications, including requests for access to the case-file, which required adjournments of the hearing.

As to available remedies against excessive length, the Government submit that the applicant could have appealed to a higher court certain procedural orders of the trial court. They refer to the decision of the Krasnodar Regional Court of 11 November 1998, which confirmed the earlier decision of the Armavir Town Court to release the applicant from detention.

The applicant submits that the period to be taken into account began on 16 February 1998, when the Town Court accepted the case for consideration and fixed a hearing date, and ended on 9 February 2001.

As regards his conduct, the applicant submits that his complaints and requests submitted within the course of proceedings were justified by the need to familiarise himself with the case-file and to defend himself. He points out that his requests for access to the case-file were twice granted by

the Town Court, though after considerable delays. It was thereby acknowledged that his right to have full access to the case-file before the start of the hearing had been violated.

As to the conduct of the authorities, the applicant points out that his access to the case-file was strictly regulated by the authorities, and it was beyond his control to complete its examination any faster. He also submits that there were other reasons, such as failure of other participants to appear at the hearing, which cannot be attributed to him. Finally, the applicant submits that he was not aware of the decision of the Krasnodar Regional Court of 11 November 1998 to which the Government refer.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. The applicant complains that the prison authorities interfered with his correspondence with the European Court of Human Rights. The complaint is made under Articles 8, 13 and 34 of the Convention, which read, insofar as relevant, as follows:

Article 8

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others."

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ... ."

Article 34

"The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Government do not dispute that the letters sent by the applicant to and received from the European Court of Human Rights were opened by the prison administration.

As to the alleged hindrance of the correspondence, the Government submit that the applicant addressed only two complaints to the European Court via the prison authorities - on 8 June 2000 and on 5 January 2001 - and that both were forwarded to the Court. Three replies received from the

Court were transmitted to the applicant. This part of the complaint the Government therefore find unsubstantiated.

As to effective remedies, the Government recall that the legislation imposes no restrictions on the right to correspondence with international organisations, including the European Court of Human Rights. Any alleged violations of the prisoners' right to correspondence can be the subject of a complaint to the authorities, including the courts. The applicant did not use these possibilities and therefore failed to exhaust available domestic remedies.

The applicant submits that he wrote to the European Court of Human Rights on several occasions, as of 1998. However, the prison administration refused to send his letters and he was forced to send them through his relatives. He submits that his letter of 8 June 2000 was only posted in November 2000, and without attachments. He also submits that the answers from the Court were opened by the prison administration and that certain documents were missing.

As to effective remedies, the applicant questions the efficacy of any appeal to government bodies and submits that he has on numerous occasions complained about hindrance with his correspondence to various bodies, including prosecutors at all levels. The applicant further submits that he applied to the Armavir Town Court with a complaint against the postal services, which was rejected.

The Court observes that two separate issues arise:

a) One is related to the fact that all of the applicant's correspondence with the Court was monitored by the prison authorities and the availability of domestic remedies in this respect. This complaint falls under Articles 8 and 13 of the Convention. The applicant's submissions in this part are not disputed by the Government, and no effective remedy is suggested for this complaint.

In these circumstances, the Court considers that this part of the application cannot be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

b) The second issue concerns the alleged refusal of the prison authorities to forward the applicant's letters to the Court, delays in posting the letters and an alleged failure of the authorities to give the incoming letters from the Court to the applicant. This part of the complaint raises an issue under Article 34 of the Convention.

The Court recalls that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect

acts or contacts designed to dissuade or discourage applicants from using a Convention remedy. The issue of whether or not contacts between the authorities and an applicant amount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In the context of the questioning of applicants about their applications under the Convention by authorities exercising a domestic investigative function, this will depend on whether the procedures adopted have involved a form of illicit and unacceptable pressure which may be regarded as hindering the exercise of the right of individual application (see, e.g. the Aydin v. Turkey judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 1899-1990, §§ 115-117; *Salman v. Turkey* [GC], 21986/93, § 130 with further references, ECHR 2000-VIII). While in the present case there is no allegation of undue pressure, interception of letters by prison authorities can hinder the applicants in bringing their cases to the Court.

As to exhaustion of domestic remedies in this respect, the Court observes that Article 34 of the Convention imposes an obligation on the Contracting States not to interfere with the right of the individual effectively to present and pursue his application before the Court. Such an obligation confers upon the applicant a right distinguishable from the rights set out in Section I of the Convention or its Protocols. In view of the nature of this right, the requirement to exhaust domestic remedies does not apply to it. Given the importance attached to the right of individual petition, it would be unreasonable to require the applicant to make recourse to a normal judicial procedure within the domestic jurisdiction in every event where the prison authorities interfere in his correspondence with the Court.

In these circumstances, the Court considers that the applicant's complaint under Article 34 cannot be rejected for failure to exhaust domestic remedies. It finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. This part of the application cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

S. DOLLÉ
Registrar

J.-P. COSTA
President