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

THIRD SECTION

DECISION

Application no. 34706/04
Nikolay Viktorovich ROGUSHIN
against Russia

The European Court of Human Rights (Third Section), sitting on 21 June 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 September 2004,

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

1. The applicant, Mr Nikolay Viktorovich Rogushin, is a Russian national, who was born in 1971 and lives in Bad Harzburg, Germany. He was represented before the Court by Mr A. Bilev, a lawyer practising in Moscow.

2. The Russian Government ("the Government") were initially represented by Mr A. Savenkov, First Deputy Minister of Justice of the Russian Federation, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

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

4. On 19 April 2000 the applicant was arrested on suspicion of murder, which took place on 15 April 2000, and on 21 April 2000 his pre-trial detention was ordered by a prosecutor.

5. Between 22 June and 20 July 2000 the applicant underwent his first psychiatric evaluation. The expert report concluded that he had suffered

from a temporary mental disorder – paranoid syndrome – and needed involuntary treatment before any assessment of his mental health in relation to the crime he had been accused of.

6. On 13 September 2000 an application for involuntary treatment was submitted to the Moscow District Court of St Petersburg (*Московский районный суд г. Санкт-Петербурга*)("the District Court"), which on 4 November 2000 held a hearing in presence of the defense counsel and ordered the treatment. A copy of the order was provided to the defense counsel.

7. In November 2000 the applicant was transferred to a psychiatric facility and his pre-trial detention was discontinued.

8. On 27 July 2001 the psychiatric facility lodged an application for discontinuation of the involuntary treatment due to improvement in the applicant's health. On 23 November 2001 the District Court granted the application and sent the criminal case back to prosecution for further investigation.

9. On 4 December 2001 the prosecutor ordered the applicant's pre-trial detention and the second psychiatric evaluation. A copy of the decisions was provided to the defense counsel.

10. On 20 December 2001 a panel of psychiatrists concluded that the applicant suffered from paranoid schizophrenia and could not understand or control his actions at the time the crime had been committed. They recommended his involuntary treatment.

11. On 9 January 2002 the applicant's criminal case was transferred to the District Court.

12. Between 13 February 2002 and 1 July 2002 several hearings on the case were adjourned due to repeated failure of the prosecution witnesses to appear, illness of one of the lay judges as well as other reasons.

13. On 1 July 2002 the applicant's pre-trial detention was extended until 1 October 2002. A copy of the order was provided to the defense counsel.

14. On 29 July 2002 the applicant requested another psychiatric evaluation alleging that previously he only pretended to have a mental disorder.

15. The hearing of 28 August 2002 was adjourned due to absence of the presiding judge for family reasons and the hearing of 12 September 2002 due to unclear reasons. During the latter hearing the applicant's pre-trial detention was extended.

16. On 20 November 2002 the District Court recognized the applicant's father, present at the hearing, as his guardian and legal representative.

17. On 20 December 2002 the District Court granted the applicant's request and ordered his third psychiatric evaluation. The applicant's pre-trial detention was extended until 1 April 2003 and a copy of the order was provided to the defense counsel. The applicant's father was present during the hearing and, having regard to the travelling expenses he incurred, the

court ordered them reimbursed by the State. Subsequently he was repeatedly notified of all the hearings, but chose not to attend them.

18. On 17 March 2003 the applicant's pre-trial detention was further extended and on 27 June 2003 the hearing was adjourned due to unclear reasons.

19. On 30 June and 30 September 2003 the hearings were adjourned for collection of further medical evidence necessary for the psychiatric evaluation and the pre-trial detention was further extended. The defense counsel appealed against the detention order of 30 June 2003; however it was upheld by the St Petersburg City Court (*Санкт-Петербургский городской суд*) on 7 October 2003.

20. On 23 December 2003 the applicant was diagnosed with an acute mental disorder barring his psychiatric evaluation. The psychiatrists recommended his involuntary treatment prior to evaluation.

21. On 29 December 2003 the applicant's pre-trial detention was extended pending completion of his psychiatric evaluation.

22. The hearings of 3 and 31 March 2004 were adjourned due to illness of a lay judge and failure of the witnesses to appear.

23. On 7 April 2004 the District Court ordered the applicant's involuntary treatment and on 3 June 2004 his pre-trial detention was discontinued.

24. On 3 February 2005 the applicant's treatment was discontinued due to improvement in his mental health. The District Court ordered his psychiatric evaluation and pre-trial detention. The proceedings on the case were adjourned.

25. On 3 May 2005 a panel of psychiatrists concluded that the applicant suffered from paranoid schizophrenia and could not understand or control his actions at the time the crime had been committed. They recommended his involuntary treatment.

26. The hearing of 14 June 2005 was adjourned due to failure of the witnesses to appear.

27. On 25 July 2005 the District Court established the principal facts of the murder. It concluded that the applicant had acted in a state of insanity, discontinued the criminal proceedings against him, and ordered his compulsory treatment in a psychiatric facility.

28. Between 24 August 2006 and 7 September 2007 the applicant completed his compulsory treatment.

COMPLAINTS

29. The applicant complained under Article 5 §§ 3 and 4 of the Convention about the length of his detention pending trial and failure of the domestic authorities to provide the defence with copies of detention orders.

He also complained under Article 6 of the Convention about the length of proceedings.

30. He further complained under Article 3 of the Convention about allegedly inadequate conditions of detention, ill-treatment by police and lack of medical assistance in 2000 and under Article 6 of the Convention about modalities of certain investigative actions and defects of legal assistance during the pre-trial investigation.

THE LAW

A. Alleged violations of Article 5 of the Convention

31. The applicant complained under Article 5 §§ 3 and 4 of the Convention about the length of his detention pending trial and the failure of the domestic authorities to provide copies of detention orders.

32. The Government contested that argument. In respect of the applicant's complaint under Article 5 § 3 of the Convention they stated that it was inadmissible for non-exhaustion of domestic remedies. They pointed out that only the District Court's decision of 30 June 2003 extending the applicant's pre-trial detention had been appealed, while the applicant's representative had been present during all the detention hearings and could appeal against the relevant orders. The applicant's complaint under Article 5 § 4 of the Convention the Government considered to be manifestly ill-founded, since his representative and guardian had been always notified of the hearings, participated in them and were provided with copies of detention orders.

33. In respect of the applicant's complaint under Article 5 § 4 of the Convention the Court observes that the applicant had been always represented by a defence counsel during the hearings concerning his pre-trial detention. Moreover, his father recognised as his legal guardian was present during the hearings of 20 November and 20 December 2002 and was duly notified of the other hearings, which he did not attend. Despite systematic representation by the defence counsel and his legal guardian there is no indication that the applicant raised the above complaint on the domestic level, nor does the applicant provide any evidence countering the Government's statement that the defence had been always provided with copies of the detention orders. Accordingly, having regard to all the materials in its possession and the statements by the parties the Court concludes that the above complaint under Article 5 § 4 of the Convention is inadmissible and must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

34. In respect of the complaint under Article 5 § 3 of the Convention the Court observes that only one out of at least eight detention orders was

challenged by the applicant on appeal (see paragraph 19 above). This appeal was dismissed on 7 October 2003 by the final decision St Petersburg City Court. Neither the applicant, nor his representative presented to this Court any coherent and substantiated by evidence explanation of their failure to use any of the available and effective domestic remedies against the detention orders. Accordingly, having regard to all the materials in its possession and the statements by the parties the Court concludes that this complaint under Article 5 § 3 of the Convention is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 6 of the Convention

35. The applicant's complaint under Article 6 of the Convention relates to the length of the proceedings, which began on 19 April 2000 and ended on 25 July 2005 with the decision of the District Court to discontinue the criminal proceedings and to order his compulsory treatment in a psychiatric facility. They therefore lasted five years and three months.

36. According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

37. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

38. The Court at the outset observes in respect of the domestic proceedings that they were relatively complex, since the authorities' final decision on the charge against the applicant had been contingent on the assessment of his mental health status during various periods of time.

39. The Court notes that the duration of the proceedings in the present case was largely dependent on the state of the applicant's mental health and the need to evaluate and manage it by medical professionals. The progress of the proceedings was interrupted twice by the involuntary treatment of the applicant's acute mental conditions: for fourteen months in 2000-2001 and for thirteen months in 2003-2005 (see paragraphs 6-8 and 20-24 above). The national authorities had no control over these periods of delay. The two psychiatric evaluations ordered by the investigative authorities in 2000 and 2001 (see paragraphs 5 and 9-10) lasted further two months. The applicant's request of 29 July 2002 for a repeated psychiatric evaluation (see paragraph 14 above) resulted in at least fifteen months delay in the proceedings. While the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interest (see, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A

no. 319-A, § 66), the Court is unable to attribute this delay to the responsibility of the national authorities. Accordingly, the applicant's psychiatric evaluations and treatments, which were essential for the proper conduct of the proceedings, covered a period of almost four years.

40. As regards the conduct of the domestic authorities within the remaining seventeen months of investigation and court proceedings, the Court concludes that the materials in its possession do not indicate any periods of unjustified inactivity. During this period the domestic courts scheduled at least twelve hearings on the applicant's criminal case and the majority of them were adjourned for compelling reasons, including failure of witnesses to appear, sickness of the presiding judge and lay judges, collection of further documentary evidence etc.

41. Having regard to all the materials in its possession and the conclusions above the Court considers that the proceedings on the applicant's case were in compliance with the reasonable time requirement of Article 6 of the Convention. Accordingly, the relevant complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Other alleged violations

42. Lastly, the applicant complained under Article 3 of the Convention about allegedly inadequate conditions of detention, ill-treatment by police and lack of medical assistance in 2000 and under Article 6 of the Convention about modalities of certain investigative actions and defects of legal assistance during the pre-trial investigation. Having regard to all the materials in its possession the Court concludes that they are inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 July 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President