



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

FIRST SECTION

CASE OF ZAVORIN v. RUSSIA

(Application no. 42080/11)

JUDGMENT

STRASBOURG

15 January 2015

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

In the case of Zavorin v. Russia,

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

Khanlar Hajiyev, *President*,

Erik Møse,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 9 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 42080/11) 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 Aleksey Leonidovich Zavorin (“the applicant”), on 6 May 2011.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 August 2013 the complaint about an allegedly excessive duration of the pre-trial detention was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

4. The applicant was born in 1976 and lives in Kemerovo.

5. On 1 March 2008 the applicant was arrested on suspicion of causing grievous bodily injuries to Mr K. On 3 March 2008 the Tsentralnyy District Court of Kemerovo remanded him in custody.

6. On 10 October 2008 the applicant and other persons were charged with running of a criminal syndicate, extortion and other offences. On 18 March 2010 the case was sent for trial to the Kemerovo Regional Court.

7. On 28 May 2013 the Kemerovo Regional Court, further to a verdict by a jury, found the applicant guilty and sentenced him to six years’ imprisonment.

8. On 11 February 2014 the Supreme Court of the Russian Federation quashed the conviction and remitted the case for a new trial. It decided that the applicant should stay in custody:

“Zavorin, P[.], K[.], Sp[.] and SI[.] stand accused of serious and particularly serious offences. Having regard to the gravity of the charges and the information on their

character which is available in the case materials, the court considers that the grounds listed in paragraph 1 of Article 97 of the Code of Criminal Procedure are present. The information about the case, taken in its entirety, gives reason to consider that, if the above individuals were to be released from custody, they might abscond and thereby prevent the case from being examined within a reasonable time (the time the proceedings before the first-instance court have already taken should not be discounted) or they might influence the witnesses or victims. Under these circumstances, the court considers that these individuals must be placed into custody for a period of three months”.

9. On 28 April 2014 the Kemerovo Regional Court returned the case to the prosecutor so that certain procedural defects could be remedied. It also extended the applicant’s and other defendants’ detention for a further three months, referring mainly to the gravity of the charges but also to the wording of the Supreme Court’s decision of 11 February 2014. In so far as the applicant sought to rely on the Government’s admission of a violation, the Regional Court held as follows:

“The defendant A. L. Zavorin filed an application for release on an undertaking to appear and to be of good conduct, relying on the fact that his prolonged detention in the present proceedings was deemed to be unjustified in the framework of the proceedings on his application before the European Court of Human Rights and that the [Russian] Government offered him compensation ... which he refused ...

A. L. Zavorin [and another co-defendant] submitted documents concerning the examination of their applications by the European Court of Human Rights which are in English; they are not translated into Russian or properly certified. The document in Russian which A. L. Zavorin submitted is not certified either. The court is not competent to translate the documents which the parties submitted ...

Having regard to the number and nature of the offences imputed to Sp[.], P[.], A. L. Zavorin and St[.] and the public danger they represent, the information on their character, the particular complexity of the criminal case, the time that the remedying of the defects and a subsequent trial will take, the court considers that their detention must be extended for a further three months, until 28 July 2014.”

10. On 28 July 2014 the senior investigator of the Investigations Committee ordered the applicant’s release, noting that he had spent in custody more than seventy-six months, whereas the Code of Criminal Procedure set the maximum duration of pre-trial detention at eighteen months.

THE LAW

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

11. The applicant complained that the duration of his pre-trial detention had been excessively long in breach of 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.”

A. The Government’s request for the case to be struck out under Article 37 of the Convention

12. On 1 November 2013 the Government submitted a unilateral declaration inviting the Court to strike out this complaint. They acknowledged that the applicant had been detained for a period of “five years, 2 months and 28 days from 3 March 2008 ... without ‘relevant and sufficient’ grounds on the basis of the decisions rendered by the courts of the Kemerovo Region which [had not complied] with the requirements of Article 5 § 3 of the Convention”. They offered to pay him a sum of money and invited the Court to accept the declaration as “any other reason” justifying the striking out of the complaint in accordance with Article 37 § 1 (c) of the Convention.

13. By letter of 19 December 2013, the applicant rejected the Government’s settlement offer. He pointed out that the sum was insufficient and that the Kemerovo courts continued extending the defendants’ detention by reference to the gravity of the charges.

14. Having studied the terms of the Government’s declaration, the Court is satisfied that the Government acknowledged a violation of the applicant’s right to release pending trial under Article 5 § 3 and also offered to pay compensation.

15. The Court further reiterates that so long as the applicant continues to be deprived of his liberty, despite the Government’s acknowledgement of a violation of his rights guaranteed under Article 5 § 3 of the Convention, respect for human rights as defined in the Convention and the Protocols thereto requires the Court to continue the examination of the complaint (see *Namaz and Şenoğlu v. Turkey*, no. 69812/11, § 27, 11 June 2013; *Zdziarski v. Poland*, no. 14239/09, §§ 22-23, 25 January 2011; and *Bieniek v. Poland*, no. 46117/07, § 22, 1 June 2010).

16. As it happened in the instant case, by the time the Government submitted their declaration in November 2013, the period of the applicant’s pre-trial detention to be taken into account for the purposes of Article 5 § 3 had ended with his conviction on 28 May 2013. Following the quashing of his conviction on 11 February 2014, the pre-trial detention resumed and continued until his release on 28 July 2014. According to the latest available information, the applicant is now at liberty. In these circumstances, respect for human rights would not normally require the Court to pursue the examination of the application (see *Namaz and Şenoğlu*, cited above, §§ 24-25).

17. Nevertheless, the Court observes that the Government's acknowledgement of a violation only covered the first period of the applicant's detention until his initial conviction in May 2013. The second period of the applicant's detention which took place in 2014, that is, after the communication of the present case to the Government, falls outside the scope of the settlement which the Government proposed. It has been the Court's constant position that, in accordance with national and international practice, it is competent to examine facts which occurred during the proceedings and constitute a mere extension or the facts complained of at the outset, in particular in matters of detention while on remand (see, as a classic authority, *Stögmüller v. Austria*, 10 November 1969, § 7, Series A no. 9; and the case-law cited in *Novokreshchin v. Russia*, no. 40573/08, § 16, 27 November 2014).

18. Without prejudging its decision on the admissibility and merits of the case, the Court considers, in the particular circumstances of the applicant's case, that the Government's declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *Sorokin v. Russia*, no. 67482/10, § 21, 10 October 2013).

19. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

B. Admissibility

20. The Government submitted that the application was not ready for examination by the Court as to its admissibility and merits because the criminal proceedings against the applicant were pending at domestic level and because their outcome remained unknown. In the Government's view, "the subject matter of the present proceedings before the Court has not been formulated".

21. The Court sees no merit in the Government's argument. It observes firstly that the eventual determination of the criminal charge against the applicant will have no bearing on his claim that the detention – which had already occurred – was not based on relevant and sufficient reasons and exceeded a reasonable time. Furthermore, the Court reiterates that, in case of the applicant's acquittal, a claim for compensation for wrongful prosecution which he may be entitled to bring in the framework of the "rehabilitation proceedings" is not an effective remedy for his complaint under Article 5 § 3 of the Convention that needs to be exhausted (see *Shalya v. Russia*, no. 27335/13, §§ 13-23, 13 November 2014).

22. The Court considers 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.

C. Merits

23. The Court reiterates that, generally speaking, when 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, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, most recently, *Idalov v. Russia* [GC], no. 5826/03, § 112, 22 May 2012; *Labita v. Italy* [GC], no. 26772/95, §§ 145-147, ECHR 2000-IV; and, as a classic authority, *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7).

24. In the instant case the applicant was first arrested on 1 March 2008 and given a custodial sentence on 28 May 2013. On 11 February 2014 the conviction was set aside but the applicant remained in detention until his release on 28 July 2014. His pre-trial detention, therefore, consisted of two separate periods which must be assessed cumulatively because the applicant had only been released at the end of the second period (see *Idalov*, cited above, §§ 129-130; and *Panchenko v. Russia*, no. 45100/98, § 92, 8 February 2005).

25. The period to be taken into consideration thus lasted for a total of five years, eight months and thirteen days. Such a length of pre-trial detention is a matter of grave concern for the Court. It reiterates that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such a long time (see *Korshunov v. Russia*, no. 38971/06, § 47, 25 October 2007; and *Korchuganova v. Russia*, no. 75039/01, § 71, 8 June 2006).

26. 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 gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive measures (see, among many others, *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; *Gulyayeva 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).

27. The most recent developments in the proceedings in the instant case illustrate the persistent malfunctioning of the Russian judicial system on account of an excessively lengthy detention on remand without proper justification (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 200, 10 January 2012). In extending the defendants' detention pending new trial, the Supreme Court of the Russian Federation issued a collective detention order in respect of four co-defendants, including the applicant, without making any distinction between their individual situations. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Kolunov v. Russia*, no. 26436/05, § 53, 9 October 2012; *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; and *Korchuganova*, cited above, § 76). The order had no regard to the fact that the applicant had already spent more than five years in custody and did not mention any concrete facts warranting his continued detention.

28. It is also a matter of serious concern for the Court that the Kemerovo Regional Court, in rejecting the applicant's request for release and extending the co-defendants detention for a further three months, refused to consider the Russian Government's acknowledgment of the excessive nature of the applicant's detention on purely technical grounds. The Court does not require any form of certification of the documents that the parties submit in the proceedings before it, and the domestic courts should have been aware – if need be, with appropriate legal advice – of these special features of the Strasbourg proceedings. Requiring the applicant to produce a certified copy of the Government's unilateral declaration imposed a burden on him which he was unable to discharge. In any event, if the Regional Court entertained any doubts as to the authenticity of the declaration, it was open to it to obtain confirmation directly from the office of the Representative of the Russian Federation at the European Court of Human Rights. Finally, the Court notes that the Kemerovo Regional Court's extension order was, as had been the Supreme Court's order before it, of a collective nature and did not mention any concrete facts that could support its conclusion that the applicant should remain in custody.

29. The foregoing considerations are sufficient to enable the Court to conclude that there was a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 150,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

32. The Government refused to make any comments on the applicant’s claims.

33. The Court awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant did not claim any costs or expenses.

C. Default interest

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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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 15 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President