



Lengthy pre-trial detention without sufficient reasons continues to be structural problem in Russia, requiring authorities' long-term efforts

In today's **Chamber** judgment¹ in the case of **Zherebin v. Russia** (application no. 51445/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 3 (entitlement of a criminal suspect in detention to trial within a reasonable time or to release pending trial) of the European Convention on Human Rights.

The case concerned the pre-trial detention of a criminal suspect.

The Court found that the grounds on which the domestic authorities had relied to justify Mr Zherebin's pre-trial detention – in particular, the risk that he might abscond or interfere with the administration of justice – were not sufficient, given that the authorities had failed to consider whether his attendance at the trial could not be ensured by other preventive measures.

At the same time, the Court found it appropriate to consider the case under Article 46 of the Convention (binding force and execution of judgments). Having regard notably to the high number of judgments against Russia in which it had found violations of Article 5 on account of lengthy pre-trial detention, the Court considered that the violation of Mr Zherebin's rights originated in a structural problem. While welcoming the efforts made by the Russian authorities aimed at bringing domestic legislation in compliance with the Convention requirements, the Court underlined that consistent and long-term efforts had to continue in order to achieve compliance with Article 5 § 3.

Principal facts

The applicant, Pavel Zherebin, is a Russian national who was born in 1983 and lives in Tula (Russia).

In March 2009 Mr Zherebin was arrested on suspicion of a breach of public peace and order, committed in December 2008 together with an organised group. He was remanded in custody by order of a district court, which referred in particular to the serious offence with which he had been charged and to the risk that he might abscond or otherwise interfere with the administration of justice, given that he was unemployed and did not have a known place of residence. His pre-trial detention was subsequently extended, and in May 2009 the trial court ordered that Mr Zherebin should remain in custody pending trial. His appeals against the detention orders were rejected by the courts.

In October 2009 he was convicted as charged and sentenced to four years' imprisonment. The conviction was upheld on appeal in December 2009.

Complaints, procedure and composition of the Court

Relying in substance on Article 5 § 3 (entitlement of a criminal suspect in detention to trial within a reasonable time or to release pending trial), Mr Zherebin complained that he was detained during the investigation and trial without relevant and sufficient reasons.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The application was lodged with the European Court of Human Rights on 22 September 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"), *President*,
 Khanlar **Hajiyev** (Azerbaijan),
 Julia **Laffranque** (Estonia),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway),
 Ksenija **Turković** (Croatia),
 Dmitry **Dedov** (Russia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 3

The Russian Government had submitted a unilateral declaration acknowledging that Mr Zherebin's pre-trial detention had been in breach of Article 5 § 3, proposing to pay him compensation in respect of just satisfaction and asking the Court to strike the application out of its list of cases.

The Court rejected that request. It noted that the practice of holding a defendant in custody during criminal proceedings without relevant and sufficient reasons, in violation of Article 5 § 3, had been the subject of recurrent and numerous complaints before the Court in cases against Russia. When Mr Zherebin's application had been communicated to the Government, their attention had been drawn to that practice and they had been requested to address the question of whether the case showed that there was a systemic or structural problem which called for adequate general measures to be taken by the authorities. However, no such measures were mentioned in the unilateral declaration the Government had submitted. The Court therefore concluded that respect for human rights as defined in the Convention required it to continue its examination of the case.

It was uncontested between the parties that the reasonable suspicion that Mr Zherebin had committed the offences as charged had persisted throughout the criminal proceedings. In addition to citing the seriousness of the charges, the judicial authorities had justified his detention with the risk that he might abscond or interfere with the administration of justice. However, the Court could not find those grounds decisive given that the authorities had not properly considered whether his attendance at the trial could not be ensured by other preventive measures. In particular, it observed that the domestic courts had refused to consider guarantee statements signed by persons agreeing to vouch for him.

In refusing to release Mr Zherebin, the authorities had moreover argued that he had failed to provide evidence to disprove the prosecution's allegations that there was a risk that he might abscond or interfere with the administration of justice. The Court underlined that it had repeatedly found that the practice of shifting the burden of proof to the detained person in such matters was incompatible with Article 5, which made detention an exceptional departure from the right to liberty.

Mr Zherebin's pre-trial detention, from his arrest until his conviction, had lasted seven months and 20 days, which appeared to be a relatively short time against the background that a majority of length-of-detention cases which had come before the Court concerned longer periods. Nevertheless the Court had consistently found the authorities' failure to justify also shorter periods of detention in breach of Article 5 § 3.

In conclusion, Mr Zherebin's pre-trial detention had been extended on grounds which the Court could not regard as sufficient. There had accordingly been a violation of Article 5 § 3.

Article 46 (binding force and execution of judgments)

The Court found it appropriate to consider the case also under Article 46.

It noted that since its first judgment against Russia concerning the excessive length of pre-trial detention² the Court had delivered more than 110 judgments in cases against Russia finding a violation of Article 5 § 3 on account of that issue. In addition, approximately 700 applications raising an issue under Article 5 § 3 were currently pending before the Court. Furthermore, the Council of Europe's Committee of Ministers had considered this issue on several occasions and, in a memorandum of 2007, had stated that the Court's judgments against Russia finding repetitive violations of Article 5 of the Convention on account of lengthy pre-trial detention and the continuous flow of new similar applications to the Court revealed a major structural problem.

The Court moreover took note of statistical data of recent years published by the Russian Supreme Court which showed that the domestic courts granted around 90% of the prosecuting authorities' initial requests for remand in custody and more than 93% of requests for the extension of pre-trial detention.

Against this background, the Court found that the violation of Mr Zherebin's rights under Article 5 § 3 originated in a widespread problem resulting from a malfunctioning of the Russian criminal justice system which had affected, and might still affect in the future, a considerable number of persons charged in criminal proceedings.

The Court welcomed the efforts made by the Russian authorities aimed at bringing domestic legislation in compliance with the Convention requirements, namely a number of amendments to the Code of Criminal Procedure which had entered into force in 2010 and 2012 and which concerned, in particular, the possibility of replacing detention with a less restrictive preventive measure. The Court also took account of a ruling of the Russian Supreme Court of December 2013 which aimed to systematise the domestic practice in this matter.

At the same time the Court considered that in view of the extent of the systemic problem, consistent and long-term efforts had to continue in order to achieve compliance with Article 5 § 3. It stressed the importance of the presumption of innocence in criminal proceedings. Finally, it reiterated that in a recent resolution³ the Council of Europe's Parliamentary Assembly had made a number of recommendations to member States concerning pre-trial detention. Among other measures the Assembly had asked States: to raise awareness among judges and prosecutors of the legal limits placed on pre-trial detention by national law and the Convention and of the negative consequences of pre-trial detention on detainees, their families and on society as a whole; and to ensure that decisions on pre-trial detention were taken by more senior judges or by collegiate courts and that judges did not suffer negative consequences for refusing pre-trial detention in accordance with the law.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Zherebin 1,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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² *Kalashnikov v. Russia* (47095/99), Chamber judgment of 15 July 2002

³ Resolution no. 2077 (2015) adopted on 1 October 2015

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.