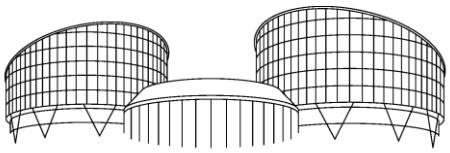

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZIMIN v. RUSSIA

(Application no. 48613/06)

JUDGMENT

STRASBOURG

6 February 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zimin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov,

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 14 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 48613/06) 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 Vladimir Stanislavovich Zimin ("the applicant"), on 28 October 2006.

2. The applicant, who had been granted legal aid, was represented by Ms O. Druzhkova and Ms A. Polozova, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his detention pending investigation and trial had not been based on sufficient and relevant reasons.

4. On 8 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Ulyanovsk.

6. On 23 December 2002 the Commercial Court of the Ulyanovsk Region declared V.T., a closed joint stock company (the "Company"), insolvent and appointed the applicant as its liquidator.

7. On 29 June 2005 the Ulyanovsk Regional Department of the Interior opened an investigation into the Company's insolvency proceedings. On 29 August 2005 the applicant was removed from office. According to the applicant, in the course of the investigation he was repeatedly questioned as a witness.

8. On 29 March 2006 the investigator from the Regional Department of the Interior issued an indictment against the applicant on the charges of fraudulent trading during the Company's insolvency proceedings and embezzlement. In particular, the applicant was accused of having unlawfully transferred the Company's real property to a third party.

9. According to the materials in the applicant's criminal case file, he was duly asked to appear at the investigator's office to be served with the indictment. The investigator sent the telegram to the applicant's known address. When the postman tried to deliver the telegram the persons present in the applicant's flat did not open the door. They claimed that the applicant was not there. They also refused to sign for the delivery of the telegram. The investigator's subsequent summons remained unanswered by the applicant. He was not found at his place of residence either. The police questioned the applicant's wife and other relatives, who appeared to be unaware of the applicant's whereabouts. On 5 April 2006 the applicant's name was put on the list of wanted persons.

10. On 29 April 2006 the applicant was arrested in Moscow and then transferred to Ulyanovsk. The investigator asked the court to authorise the applicant's pre-trial detention given that (1) he had absconded, (2) he was charged with a serious offence (embezzlement) and, if found guilty, might be subjected to a custodial sentence exceeding two years, and (3) if released, he might abscond or interfere with the administration of justice.

11. On 30 April 2006 the Leninskiy District Court of Ulyanovsk granted the investigator's request. In particular, the court noted as follows:

> "[The applicant] has provided positive references as to his character and has two minor children. However, in the light of the severity of the charges and the fact that he might abscond, [the court] does not consider it possible to apply any restrictive measure other than custody."

12. The applicant appealed, alleging, *inter alia*, that the District Court could have applied a less strict preventive measure and that the investigator failed to substantiate his argument that the applicant might abscond. On 11 May 2006 the Ulyanovsk Regional Court upheld the detention order of 30 April 2006 on appeal.

13. On 19 June 2006 the investigator refused to extend the time-limit established for the applicant to be able to study the case file. On 11 July 2006 the First Deputy Prosecutor of the Ulyanovsk Region quashed the investigator's decision.

14. In the meantime, on 23 June 2006 the District Court extended the applicant's detention until 29 July 2006, stating as follows:

> "In view of the severity of the charges and [the applicant's] character, the court considers that he might abscond if released.
>
> The grounds justifying [the applicant's] detention ... have not ceased to exist. There are no new circumstances that would allow any less restrictive measure to be applied."

15. The applicant appealed, alleging that the District Court could have considered the application of a less strict preventive measure. On 6 July 2006 the Regional Court upheld the detention order of 23 June 2006 on appeal.

16. On 19 July 2006 the District Court further extended the applicant's detention until 29 August 2006. The applicant asked to be released, arguing that he had no prior convictions, that he had a permanent place of residence, that he was married with two minor children and that he would not abscond. The court dismissed the applicant's request, noting as follows:

> "[The applicant] is charged, [*inter alia*] with a serious offence and, if found guilty, is liable to a custodial sentence exceeding two years. In the light of the above, and taking into consideration the fact that [the applicant] had earlier been put on the list of wanted persons, [the court] pays special attention to the prosecution's argument that [the applicant] might abscond, if released...
>
> In the light of the above, the court cannot release [the applicant] and considers it necessary to extend his detention."

17. On 16 August 2006 the Zavolzhskiy District Court of Ulyanovsk scheduled the first hearing of the case for 24 August 2006. The court refused to release the applicant pending trial, noting as follows:

> "[The applicant] is charged with a number of offences, one of which is considered a serious one. This fact is sufficient to assume that [he] might abscond. There are no other circumstances... that would allow custody to be replaced by another less restrictive measure".

18. On an unspecified date the prosecution dropped the charge of embezzlement against the applicant.

19. On 29 December 2006 the Zavolzhskiy District Court found the applicant guilty of fraudulent trading and sentenced him to one year and one month's imprisonment and a fine of 50,000 Russian roubles discharging him from serving the prison sentence. The applicant was released from custody in the courtroom.

20. On 21 February 2007 the Ulyanovsk Regional Court upheld the judgment of 29 December 2006 on appeal.

II. RELEVANT DOMESTIC LAW

21. "Preventive measures" or "restrictive measures" can be imposed on a defendant in order to assure the execution of the sentence, if it is subsequently imposed, or for the extradition purposes (Article 97 § 2 of the Russian Code of Criminal Procedure (the "CCrP")).

22. "Preventive measures" or "restrictive measures" include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 98 of the CCrP).

23. The court may remand the defendant in custody provided there are grounds to believe that he might abscond, continue criminal activities, threaten a witness or other parties to the criminal proceedings, destroy evidence or otherwise interfere with administration of justice (Article 97 § 1 of the CCrP).

24. When deciding whether to remand an accused in custody, the competent authority is required to take into account the seriousness of the charge, information on the defendant's character, his or her profession, age, state of health, family status and other circumstances (Article 99 of the CCrP).

25. The defendant may be remanded in custody if the charge carries a sentence of at least two years' imprisonment and it is not possible to apply a less severe preventive measure (Article 108 § 1 of the CCrP).

THE LAW

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

26. The applicant complained that his detention pending investigation and trial from 29 April to 29 December 2006 had been unreasonable, in particular since it had not been based on relevant and sufficient reasons in contravention of Article 5 § 1 and 3 of the Convention. The Court will examine the complaint under Article 5§ 3, which, in so far as relevant, 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."

27. The Government contested this argument. They considered that, in view of the gravity of the charges against the applicant and the risk of his absconding, the length of his pre-trial detention had been reasonable. Furthermore, the criminal case against the applicant had been complex. The case file comprised fifteen volumes. The judicial authorities were due to question twenty witnesses. Accordingly, regard being had to the overall length of the criminal proceedings against the applicant, the domestic authorities had demonstrated sufficient diligence in dealing with his case.

28. The applicant maintained his complaint. In his view, when extending his pre-trial detention, the domestic court had failed to justify their decisions. In particular, their finding that the applicant might have absconded had not been confirmed by the circumstances of the case. When

questioned as a witness, the applicant had always appeared when summoned by the investigator. Nor had the investigator at the time in any way restricted the applicant's ability to travel. Accordingly, the applicant had happened to be in Moscow when the investigator had decided to indict him and could not have received the summons or appeared for questioning. Furthermore, the courts had not substantiated their conclusion that it had been impossible to apply restrictive measures other than detention in the applicant's case. Lastly, he argued that the domestic authorities had failed to demonstrate "special diligence" in bringing his case to trial.

A. Admissibility

29. The Court notes 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.

B. Merits

1. General principles

30. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq., ECHR 2000-XI).

31. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative

measures of ensuring his appearance at trial (see *Jabłonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

32. The responsibility falls in the first place on the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable length. To this end they must examine all the arguments for and against the existence of a public interest justifying a departure from the rule in Article 5, paying due regard to the principle of the presumption of innocence, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

2. Application of the general principles to the present case

33. The applicant was arrested on 29 April 2006 and convicted on 29 December 2006. Accordingly, the period to be taken into consideration lasted eight months.

34. The Court notes that the domestic courts advanced two principal reasons for keeping the applicant in detention pending investigation and trial, namely that he was charged with serious offences and that he might abscond if released.

35. As regards the domestic authorities' reliance on the gravity of the charges, the Court accepts that this is one of several factors which should be taken into consideration, in particular since this element, as in Russian law, is one of the pre-conditions for the detention on remand. Whereas the Court has held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005), it is satisfied that the domestic courts verified correctly domestic law when considering whether the charges against the applicant were such that detention on remand could be ordered.

36. As regards the danger of the applicant's absconding, the Court observes that the possibility of a severe sentence alone is not sufficient after a certain lapse of time to justify continued detention based on the danger of flight (see, among other numerous authorities, *Chraidi v. Germany*, no. 65655/01, § 40, ECHR 2006-XII, and *Shikuta v. Russia*, no. 45373/05, § 45, 11 April 2013). Accordingly, it is the Court's task, in the present case to establish whether the domestic courts referred to other specific facts which might justify their conclusion that the applicant might have absconded, if released.

37. The Court observes that in the third detention order of 19 July 2006 (see paragraph 16 above) the domestic court noted that the applicant had been put on the list of wanted persons. Apparently, the court referred to the episode when the applicant had failed to appear for indictment and,

following a police investigation into his whereabouts, he had been arrested in Moscow and transferred to Ulyanovsk for trial. In the circumstances the Court is satisfied that the risk of absconding was sufficiently demonstrated in that detention order.

38. The Court notes, with regret, that in the remaining three detention orders the domestic courts did not mention this fact explicitly. Nevertheless, it is prepared to accept, on the basis of the overall context of the case, that they evaluated the "risk of absconding". That fact created a strong presumption against application of alternative measures of restraint.

39. Regard being had to the above, the Court considers that, in the particular circumstances of the case, a substantial risk of the applicant's absconding persisted throughout his eight-month detention and accepts the domestic courts' finding that no other measures to secure his presence would have been appropriate.

40. The Court therefore concludes that there were relevant and sufficient grounds for the applicant's continued detention. Accordingly, it remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

41. The Court notes that, following the applicant's placement in custody on 29 April 2006, the investigation was completed within less than four months and the District Court opened the trial, which took slightly over four months. There is nothing in the materials submitted to the Court to show any significant period of inactivity on the part of the prosecution or the court. In such circumstances, the competent domestic authorities cannot be said to have displayed a lack of special diligence in handling the applicant's case.

42. There has accordingly been no violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. Lastly, the applicant complained of a violation of his rights set out in Article 6 § 3 (b) of the Convention.

44. Having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the allegedly unreasonable length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 6 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President