

## EUROPEAN COURT OF HUMAN RIGHTS

188

10.3.2009

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT  
BYKOV v. RUSSIA

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment<sup>1</sup> in the case of *Bykov v. Russia* (application no. 4378/02).

The Court held:

- unanimously that there had been a **violation of Article 5 § 3** (right to liberty and security) of the European Convention on Human Rights on account of the insufficient reasons given for extending the applicant's pre-trial detention;
- unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the use of a surveillance technique which was not accompanied by adequate safeguards against possible abuses;
- by 11 votes to six that there had been **no violation of Article 6** (right to a fair trial).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant, by 12 votes to five, 1,000 euros (EUR) in respect of non-pecuniary damage and, unanimously, EUR 25,000 for costs and expenses. ([The judgment is available in English](#) and [French](#).)

## 1. Principal facts

The applicant, Anatoliy Petrovich Bykov, is a Russian national who was born in 1960 and lives in Krasnoyarsk (Russia). He was chairman of the board of the Krasnoyarsk Aluminium Plant from 1997 to 1999. At the time of his arrest in October 2000 he was a major shareholder and an executive of a corporation called OAO Krasenergomash-Holding. He was also a member of the Krasnoyarsk Regional Parliamentary Assembly.

The applicant complained, in particular, about a covert recording used as evidence in the criminal proceedings against him and about the length of his pre-trial detention.

In September 2000 Mr Bykov allegedly ordered V., a member of his entourage, to kill Mr S., a former business associate. V. did not comply with the order, but on 18 September 2000 he reported the applicant to the Federal Security Service ("the FSB").

The FSB and the police decided to conduct a covert operation to obtain evidence of the applicant's intention to murder S. On 29 September 2000 the police staged the discovery of two dead bodies at S.'s home. They officially announced in the media that one of those killed had been identified as S. The other man was his business partner, Mr I.

On 3 October 2000 V. went to see the applicant at his home. He carried a hidden radio-transmitting device while a police officer outside received and recorded the transmission. Following the instructions he had been given, V. engaged the applicant in conversation, telling him that he had carried out the murder. As proof he handed the applicant several objects borrowed from S. and I. The police obtained a 16-minute recording of the conversation between V. and the applicant.

On 4 October 2000 the applicant's house was searched. The objects V. had given him were seized. The applicant was arrested and remanded in custody. He was charged with conspiracy to commit murder and conspiracy to acquire, possess and handle firearms.

The applicant's pre-trial detention was extended several times and his numerous appeals and requests for release were rejected because of the gravity of the charges against him and the risk that he might abscond and bring pressure to bear on the witnesses.

Two voice experts were appointed to examine the recording of the applicant's conversation with V. They found that V. had shown subordination to the applicant, that the applicant had shown no sign of mistrusting V.'s confession to the murder and that he had insistently questioned V. on the technical details of its execution. They established that V. and the applicant had a close relationship and that the applicant had played an instructive role in the conversation.

On 19 June 2002 the applicant was found guilty on both counts and sentenced to six and a half years' imprisonment. He was conditionally released on five years' probation. The sentence was upheld on appeal on 1 October 2002.

On 22 June 2004 the Supreme Court of the Russian Federation examined the case in supervisory proceedings. It found the applicant guilty of "incitement to commit a crime involving a murder", and not "conspiracy to murder". The rest of the judgment, including the sentence, remained unchanged.

## 2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 December 2001 and declared admissible on 7 September 2006. On 22 November 2007 the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber<sup>2</sup>. A hearing was held in Strasbourg on 18 June 2008.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), *President*,  
 Christos **Rozakis** (Greece),  
 Nicolas **Bratza** (United Kingdom),  
 Peer **Lorenzen** (Denmark),  
 Françoise **Tulkens** (Belgium),  
 Josep **Casadevall** (Andorra),  
 Ireneu **Cabral Barreto** (Portugal),  
 Nina **Vajić** (Croatia),  
 Anatoly **Kovler** (Russia),  
 Elisabeth **Steiner** (Austria),  
 Khanlar **Hajiyev** (Azerbaijan),  
 Ljiljana **Mijović** (Bosnia and Herzegovina),  
 Dean **Spielmann** (Luxemburg),  
 David Thór **Björgvinsson** (Iceland),  
 George **Nicolaou** (Cyprus),  
 Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),  
 Nona **Tsotsoria** (Georgia), *judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

## 3. Summary of the judgment<sup>3</sup>

### Complaints

Relying on Article 5 § 3 (right to liberty and security), the applicant alleged that his pre-trial detention had been excessively long and that it had been successively extended without any indication of relevant and sufficient reasons. Under Article 6 § 1 (right to a fair trial), he complained that the proceedings against him had been unfair, as the police had set a trap to trick him into incriminating himself in his conversation with V. and the court had admitted the recording of the conversation in evidence at the trial. The applicant also complained that the covert operation by the police had involved an unlawful intrusion into his home and that the interception and recording of his conversation with Mr V. amounted to interference with his private life and his correspondence, in breach of Article 8 (right to respect for private and family life).

## Decision of the Court

### Article 5 § 3

The Court reiterated that continued pre-trial detention could be justified only if there were specific indications of a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention. It noted that in the present case the applicant had been kept in pre-trial detention for one year, eight months and 15 days and that all his applications for release had been refused on the grounds of the gravity of the charges and the likelihood of his fleeing, obstructing the course of justice or exerting pressure on witnesses. The Court found, however, that those grounds had not been at all substantiated by the courts concerned, particularly during the initial stages of the proceedings, and that there had therefore been a violation of Article 5 § 3.

### Article 6 § 1

The Court reiterated that Article 6 guaranteed the right to a fair trial as a whole, and did not lay down any rules on the admissibility of evidence as such, even evidence obtained unlawfully in terms of domestic law. In that connection it observed that the applicant had been able to challenge the methods employed by the police, in the adversarial procedure at first instance and on appeal. He had thus been able to argue that the evidence adduced against him had been obtained unlawfully and that the disputed recording had been misinterpreted. The domestic courts had addressed all these arguments in detail and had dismissed each of them in reasoned decisions. The Court further noted that the statements by the applicant that had been secretly recorded had not been made under any form of duress; had not been directly taken into account by the domestic courts, which had relied more on the expert report drawn up on the recording; and had been corroborated by a body of physical evidence. The Court thus concluded that the applicant's defence rights and his right not to incriminate himself had been respected and that, accordingly, there had been no violation of Article 6 § 1.

### Article 8

The Court observed that it was not disputed that the measures carried out by the police had amounted to interference with the applicant's right to respect for his private life. It pointed out that for such interference to be compatible with the Convention, it had to be in accordance with the law and necessary in a democratic society for one of the purposes listed in paragraph 2 of Article 8.

The Court noted that the Russian Operational-Search Activities Act was expressly intended to protect individual privacy by requiring judicial authorisation for any operational activities that might interfere with the privacy of the home or the privacy of communications by wire or mail services. In Mr Bykov's case, the domestic courts had held that since V. had been invited to the applicant's home and no wire or mail services had been involved (as the conversation had been recorded by a remote radio-transmitting device), the police operation had not breached the regulations in force.

In that connection the Court reiterated that in order for the lawfulness requirement in Article 8 to be satisfied with regard to the interception of communications for the purpose of a police investigation, the law had to give a sufficiently clear indication as to the circumstances in which and the conditions on which the police authorities were empowered to resort to such measures. In the present case it considered that the use of a remote radio-transmitting device to record the conversation between V. and the applicant was virtually identical to telephone tapping, in terms of the nature and degree of the intrusion into the privacy of the individual concerned. It noted in that connection that since the law regulated only the interception of communications by wire and mail services, the legal discretion enjoyed by the police authorities had been too broad and had not been accompanied by adequate safeguards against various possible abuses. As this risk of arbitrariness was inconsistent with the requirement of lawfulness, there had been a violation of Article 8.

Two concurring opinions were expressed, by Judges Cabral Barreto and Kovler. Judge Costa expressed a partly dissenting opinion. Judge Spielmann, joined by Judges Rozakis, Tulkens, Casadevall and Mijović, also expressed a partly dissenting opinion. The opinions are attached to the judgment.

\*\*\*

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

### **Press contacts**

**Stefano Piedimonte** (telephone : 00 33 (0)3 90 21 42 04)

**Tracey Turner-Tretz** (telephone : 00 33 (0)3 88 41 35 30)

**Paramy Chanthalangsy** (telephone : 00 33 (0)3 88 41 28 30)

**Kristina Pencheva-Malinowski** (telephone : 00 33 (0)3 88 41 35 70)

**Céline Menu-Lange** (telephone : 00 33 (0)3 90 21 58 77)

*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.*

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

<sup>3</sup> This summary by the Registry does not bind the Court.