



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

THIRD SECTION

**CASE OF BUKREYEV v. RUSSIA**

*(Application no. 60646/13)*

JUDGMENT

STRASBOURG

1 October 2019

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



**In the case of Bukreyev v. Russia,**

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

Alena Poláčková, *President*,

Dmitry Dedov,

Gilberto Felici, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 10 September 2019,

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

**PROCEDURE**

1. The case originated in an application (no. 60646/13) 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 Aleksandr Vasilyevich Bukreyev (“the applicant”), on 22 August 2013.

2. The applicant was represented by Mr O. Nikitin. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 18 December 2014 notice of the complaint concerning the examination of witnesses and the fairness of the domestic proceedings was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Voroshnevo.

5. At around 9 a.m. on 19 April 2013, while drunk, the applicant used foul language (*нецензурная брань*) in the presence of his neighbours, Kr. and Kor. When the police arrived, the applicant continued to use foul language, refused to accompany officer M. to the police station and tried to depart. At around 4 p.m. he was taken to the police station and formally arrested. He was accused of an offence under Article 20.1 § 2 of the Code of Administrative Offences (“the CAO”) (namely minor hooliganism, coupled with disobedience of a lawful order from a public official).

6. An administrative offence report was compiled. Kr. and Kor. lodged written complaints with the police and also made statements. Officer M. submitted a written report (*panopm*) to his superior.

7. On the same date, at the trial hearing before the Kurskiy District Court of the Kursk Region on 19 April 2013 the applicant pleaded not guilty and stated that he had not used any foul language, but that on 19 April 2013 he had been at home, ill with the flu.

8. By a judgment of 19 April 2013 the trial court convicted the applicant and sentenced him to ten days' administrative detention. The court stated that the applicant's guilt had been confirmed by the written complaints and statements made by Kr. and Kor., officer M's report to his superior, the offence report and the arrest report.

9. At some point on that same date, the police took the applicant to hospital where a doctor issued a certificate saying that the applicant had a mild fever of 37.5°C and a sore throat.

10. The applicant lodged an ordinary appeal under Article 30.6 of the CAO.

11. On 5 June 2013 the Kursk Regional Court held a hearing and heard evidence from the applicant. It can be seen from the written record of the appeal hearing that the applicant lodged a request to examine witnesses Kr., Kor. and M. at the appeal hearing. The appeal judge asked the applicant why he had not lodged a similar request at the trial. The applicant replied that he had been ill on that date and had asked the trial judge to postpone the trial, to no avail. The appeal judge dismissed the applicant's request.

12. By a decision of the same date, the appeal court determined that the alleged disobedience during officer M.'s attempt to arrest the applicant had taken place after the offence imputed to him of minor hooliganism in relation to, and in the presence of, Kr. and Kor., and after M's actions aimed at putting an end to that offence. The court reclassified the charge against the applicant under paragraph 1 of Article 20.1 of the CAO, and reduced the sentence to five days' detention.

13. The applicant served his sentence in July 2013.

14. The applicant lodged a request under Articles 30.12 and 30.16 of the CAO for a review of the above final court decisions. On 16 July 2013 the Deputy President of the Regional Court dismissed his application. On 21 August 2013 the Supreme Court of Russia dismissed a further application for review by the applicant. It held that the refusal to examine M., Kr. and Kor. "had not adversely affected the completeness and thoroughness of the determination of the charge".

## II. RELEVANT DOMESTIC LAW

15. For a summary of the CAO provisions relating to the examination of administrative charges, see *Butkevich v. Russia* (no. 5865/07, §§ 37-48, 13 February 2018).

16. Article 30.6 of the CAO concerns an ordinary appeal procedure in respect of judgments issued by a first-instance court. The appeal judge must ascertain the following points and/or take the following procedural decisions:

(i) Whether the defendant or his or her representative is present at the hearing and whether other people who were summoned are present.

(ii) The reasons for any absences and whether it is appropriate to proceed with the case in their absence or to adjourn.

(iii) An examination of any applications and requests.

(iv) To conduct a review (*проверить*), on the basis of the available material and any newly submitted material, of the legality and well-foundedness of the trial judgment. This is done by way of hearing evidence from the defendant and, where necessary, other people, or by way of examining material evidence.

Under Article 30.6 § 3 “the appeal judge is not bound by the grounds of appeal and shall review the case in its entirety”.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained under Article 6 of the Convention that the administrative-offence proceedings against him had been unfair, particularly as he had had no opportunity to examine the witnesses.

18. Article 6 of the Convention in its relevant parts reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

19. The Government’s argument before the Court was twofold: (i) by failing to lodge an application at the trial to hear evidence from those witnesses the applicant had waived that right and he had also abused his right of petition under Article 35 of the Convention; (ii) in his appeal

against the trial judgment the applicant had articulated no argument in relation to the absence of those witnesses from the trial or the trial court's reasons for allowing their pre-trial statements to be read out. At the same time, under Article 30.16 of the CAO a court reviewing a final judgment was not required to go beyond the scope of the grounds listed in the review appeal. Thus, the regional court had not been afforded an opportunity to deal with the issue which was subsequently raised before the Court. Thus, the applicant had not exhausted domestic remedies.

20. The applicant explained that, due to his state of health, he had not lodged a request to examine the witnesses at the trial. However, during the appeal proceedings he had lodged a request for the presence of witnesses M., Kr. and Kor. at the appeal hearing. The appeal court had dismissed that request.

### **A. Admissibility**

#### *1. Exhaustion of domestic remedies and waiver of a right*

21. Firstly, the Court observes that following the applicant's arrest at around 4 p.m. on 19 April 2013 both the pre-trial proceedings and the trial were then held on the same day. The case was examined in an expedited procedure under the CAO, which required that in cases concerning an administrative charge for an offence punishable by administrative detention, the police were to transmit the administrative-offence file to a court immediately after having compiled it, and the court was to examine the case on the same day or within forty-eight hours of the defendant's arrest. It appears that no adjournment was possible. The Court reiterates in this connection that recourse to that procedure when a "criminal charge" is to be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Butkevich v. Russia*, no. 5865/07, § 91, 13 February 2018).

22. It is common ground between the parties that the defence made no request for Kr. and Kor. to be examined at the trial, which the applicant explained was because he felt unwell and could not properly carry out his own defence at a trial that had swiftly followed his arrest and the start of the proceedings. Be that as it may, in the Court's view, it is questionable whether it would have been at all practicable (in view of the statutory time constraints and the swiftness of the trial – see paragraph 21 above) for the trial court to ensure the immediate presence of the witnesses against him, following such a request by the defence.

23. It is also uncontested that following his conviction the applicant lodged a statement of appeal and, *inter alia*, contested the incriminating evidence arising from Kr. and Kor. However, he made no specific argument pertaining to a procedural violation on account of a lack of opportunity to

examine Kr. and Kor. This being said, the Court notes that at the appeal hearing the applicant and his lawyer requested the appeal judge to summon and hear evidence from Kr. and Kor. The judge examined and rejected this application. It is noted that this application was not dismissed because under Russian law a defendant in a CAO case would be precluded from seeking – including by way of an application made orally during an appeal hearing – the examination of a witness for the first time on appeal having failed, without having a valid reason, to make that request at the initial trial. Furthermore, it does not appear that a court of appeal was precluded from assessing new evidence by way of hearing testimony beyond a mere examination of the existing case file (see paragraph 16 above). So the application was not manifestly devoid of any prospect of success.

24. Nothing in the Government's submissions in the present case challenges the above considerations. Their reference to Article 30.16 of the CAO is misguided since this provision concerns review proceedings in respect of a final judgment rather than ordinary appeal proceedings.

25. Therefore, the Court concludes that in the circumstances of the case, by requesting the examination of witnesses in the appeal proceedings under the CAO, the applicant has complied with the exhaustion requirement (see, in the same vein, *Gabrielyan v. Armenia*, no. 8088/05, § 85, 10 April 2012). The Government's objection regarding exhaustion of domestic remedies is therefore dismissed.

26. Lastly, in view of the above findings and taking account of those proceedings as a whole, it cannot be said that the applicant waived his right under Article 6 § 3 (d) of the Convention – seen in the light of the right to a fair trial under Article 6 § 1 – by failing to seek the witnesses' presence at the first-instance trial conducted under the Russian CAO (compare with *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 121-28, 18 December 2018 in the context of the rules applicable under the Russian Code of Criminal Procedure).

## 2. *Abuse of the right of petition*

27. The Court considers that the Government's argument about abuse of the right of petition is misconceived. It was open to the applicant to raise a complaint under Article 6 of the Convention before the Court, irrespective of whether he had complied with the admissibility criteria. A failure to comply with those criteria does not, *per se*, amount to an abuse of petition. That argument is therefore dismissed.

## 3. *Conclusion on admissibility*

28. 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**

29. The Court summarised the applicable principles in *Butkevich* (cited above, §§ 86-90).

30. The Court notes that according to the text of the trial judgment, the applicant was found guilty by reference to the written complaints and pre-trial written statements made by Kr. and Kor., a pre-trial report by officer M., the administrative-offence record, the arrest record and “other materials”. As regards the administrative-offence record the Court notes that it was also compiled by the police, who had initiated the proceedings against the applicant and brought the case before the trial court. It appears that, in substance, the administrative-offence record should have amounted to a bill of indictment, as it set out the charges that were then to be determined by a trial court. The record of administrative arrest does not appear to have had any particular probative evidentiary value regarding the defendant’s guilt in respect of the reprehensible conduct imputed to him. Similarly, officer M.’s pre-trial written report to his superior merely recounted the procedural history of the case and there is nothing to suggest that he had been an eyewitness to the relevant part of the offence, for instance (see, in this connection, the appeal court’s amendment to the charge against the applicant).

31. In that context the incriminating testimonial evidence given by Kr. and Kor. was, at the very least, decisive for the applicant’s conviction. The Court notes that there was no good reason for refusing to summon them, thereby impeding the defence’s right to examine them. In fact, the available material does not disclose that the appeal court provided any reasons for that refusal. Nothing suggests that the court weighed and implemented any counterbalancing measures. No related argument has been put forward by the Government before this Court.

32. Assessing the above factors cumulatively, the Court is not satisfied that the applicant’s conviction was as a result of a fair hearing, in so far as it was based on untested evidence (see, in the same vein, *Butkevich*, cited above, §§ 97-103).

33. The Court concludes that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

34. 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

35. The applicant claimed 70,000 Russian roubles in respect of non-pecuniary damage.

36. The Government stated that the applicant could request a reopening of the criminal proceedings, which was the appropriate form of reparation in the present case.

37. The Court reiterates that its primary role in respect of applications lodged under Article 34 of the Convention is to render justice in individual cases by way of recognising violations of an injured party’s rights and freedoms under the Convention and Protocols thereto and, if necessary, by way of affording just satisfaction (see *Nagmetov v. Russia* [GC], no. 35589/08, § 64, 30 March 2017). A judgment in which the Court finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*ibid.*, § 65).

38. The Court notes that unlike the other procedural Codes of the Russian Federation, the CAO contains no specific provision setting out grounds and a procedure for re-examining court decisions or reopening the proceedings on account of this Court finding a violation of the Convention or Protocols thereto, namely, and in so far as relevant in the present case, under Article 6 of the Convention. It has not been suggested by the Government, and there is nothing before the Court to confirm to the requisite degree of certainty, that the procedure under Article 30.12 of the CAO, normally applicable to reviews of final court decisions issued under the CAO, may serve that purpose for a “reopening” or “retrial” within the meaning of Article 46 of the Convention if the applicant so requests. This is particularly the case where an issue relating to the Convention has already been raised, either expressly or in substance, in earlier proceedings as Article 30.16 § 4 of the CAO normally prohibits a repeated application for review “on the same grounds”. It is noted in this connection that the Supreme Court of Russia has already dealt with a review application from the applicant (see paragraph 14 above).

39. The Court is therefore not satisfied in the present case that there are clear grounds and procedures, as well as a consistent and established practice of applying them, for any such “reopening” or “retrial” under the CAO.

40. On that basis, the Court considers that the finding of a violation is not sufficient to constitute in itself sufficient just satisfaction for any

non-pecuniary damage which the applicant may have suffered (see, *mutatis mutandis*, *Nagmetov*, cited above, § 90, albeit it is noted that that case relates specifically to the context of the lack of a valid “claim” for just satisfaction, which is not an issue in the present case; and contrast with *Zadumov v. Russia*, no. 2257/12, § 81, 12 December 2017, with further references, which relates to the prospects of reparation at national level following and relating to a judgment of the Court in relation to the specific right to examine prosecution witnesses in the context of the right to a fair trial under Article 6 §§ 1 and 3 (d) of the Convention). Having regard to the nature and scope of the violation found, the Court grants the amount claimed and awards the applicant 1,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable.

### **B. Costs and expenses**

41. The applicant claimed no sum on this account. Thus no award is made.

### **C. Default interest**

42. 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 6 §§ 1 and 3 (d) of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:  
EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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.

Done in English, and notified in writing on 1 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Alena Poláčková  
President