



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

FIRST SECTION

CASE OF SHAPOSHNIKOV v. RUSSIA

(Application no. 8998/05)

JUDGMENT

STRASBOURG

29 July 2010

FINAL

29/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shaposhnikov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 8998/05) 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 Igor Borisovich Shaposhnikov (“the applicant”), on 10 February 2005.

2. The applicant was represented by Mr O. Yadonist, a lawyer practising in Dimitrovgrad in the Ulyanovsk Region. The Russian Government (“the Government”) were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, the representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his pre-trial detention from 4 to 13 January 2005 was unlawful contrary to Article 5 § 1 of the Convention.

4. On 26 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

5. The Government objected to the joint examination of the admissibility and merits of the application, but the Court rejected this objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

7. On 16 September 2004 he was arrested on suspicion of drug trafficking.

8. On 18 September 2004 the applicant was charged with the attempted sale of a particularly large quantity of drugs. On the same date the Dmitrovgrad Town Court of the Ulyanovsk Region ("the Town Court") authorised his pre-trial detention. The court did not set any time-limit. However, it referred to Article 108 of the Criminal Code of the Russian Federation ("the CCrP", see paragraph 19 below).

9. On 16 December 2004 the investigation was completed and the prosecution submitted the case to the Town Court for trial.

10. On 22 December 2004 the Town Court scheduled a preliminary hearing for 30 December 2004 and held, without further details, that the applicant should stay in detention. The time-limit for the extension was not specified.

11. On 30 December 2004 the Town Court carried out a preliminary examination of the case and noticed various shortcomings and defects in the investigation. With reference to Article 237 § 1 of the CCrP (see paragraph 24 below) the court decided to return the file to the prosecutor to remedy the violations within five days. The court further ruled that the measure of restraint applied to the applicant "should remain unchanged", without setting any time-limit or providing any reasons for that decision.

12. On an unspecified date the prosecutor of the Town Court received the case file. On 11 January 2005 the prosecutor forwarded the file to the investigator.

13. By a decision of 12 January 2005 the investigator observed that the five-day time-limit set out to remedy the violations had expired on 4 January 2005. However, the decision stated that the time-limit was not respected for a valid reason, namely because 1-10 January 2005 were public holidays in Russia and it was therefore impracticable to complete the actions required by the Town Court's decision of 30 December 2004. The investigator accordingly decided to "reinstate the missed five-day time-limit for remedying the violations" and "to consider 14 January 2005 as the expiry date of the five-day time-limit".

14. On the same date the investigator applied to the Town Court for an extension of the investigation period until 25 January 2005 on account of the impossibility of remedying the violations by 14 January 2005. By a separate motion the investigator applied for an extension of the applicant's pre-trial detention until 25 January 2005 because the time-limit for the investigation had been extended for a valid reason and the corrections to the investigation file could not have been made by 14 January 2005. The investigator, in particular, reasoned as follows:

"On 12 January 2005 the period of the investigation of the present criminal case was extended until 25 January 2005, and therefore it has become necessary to extend the

period of [the applicant's] detention, which is due to expire on 14 January 2005, for a further eleven days, that is until 25 January 2005”

15. On 13 January 2005 the Town Court allowed the application, having found, in particular, as follows:

“The investigator applied for an extension of [the applicant's] detention ... until 25 January 2005... in order to complete the investigation ... on the ground that the period of the investigation had been extended...while the period of the applicant's detention was due to expire.

[...] The court considers the request well-founded and upholds it because the investigation cannot be completed within the established time-limit. ”

The court further held that the applicant did not have a permanent place of residence, was charged with a serious criminal offence and was liable to abscond and reoffend, as well as threaten witnesses and obstruct the course of justice if at liberty. With reference to Article 109 of the CCrP the court extended the applicant's detention for an additional eleven days, until 25 January 2005. Therefore, the period of detention would amount to four months and nine days in total.

16. On 17 January the applicant appealed against the decision. He argued that after 4 January 2005 he had been held in custody unlawfully and that the domestic law of criminal procedure did not allow for the reinstatement of time-limits for pre-trial detention. The period of public holidays could not be excluded from the overall duration of the pre-trial detention and did not constitute a valid reason for any extension. Moreover, the first-instance court had remitted the case unlawfully on account of the necessity to complete the investigation because, in accordance with CCrP, if the case file was sent back to the prosecutor to remedy the violations, no further investigative activities could be carried out.

17. On 4 February 2005 the Ulyanovsk Regional Court upheld the extension order. The court established that the applicant had been placed in custody on 18 November 2004 and thereafter the detention was extended until 25 January 2005, in accordance with Article 108 § 1 and 109 § 2. When authorising the extension, the lower court had correctly taken into account the applicant's character, his family status, the gravity of the charges against him and other relevant circumstances. The appeal court rejected the applicant's arguments as having no basis in domestic law.

18. On 22 March 2005 the Dmitrovgrad Town Court convicted the applicant as charged and sentenced him to eleven years' imprisonment. His detention from 16 September 2004 counted toward the applicant's prison term.

II. RELEVANT DOMESTIC LAW

19. Article 108 §§ 1, 3-6 of the CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor, supported by appropriate evidence, before a defendant can be detained or his or her detention extended.

20. The CCrP makes a distinction between two types of remand in custody: the first being “during investigation”, that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being “before the court” (or “during trial proceedings”), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

21. After arrest, the suspect is placed in custody “during the investigation”. A period of detention during the investigation of criminal offence shall not last longer than two months. If it is impossible to complete the preliminary investigation within two months and there are no grounds for modifying or lifting the preventive measure, this time-limit may be extended by up to six months by a judge of a district or military garrison court of the relevant level. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention “during the investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9)

22. From the date the prosecutor forwards the case to the trial court, the defendant's detention is “before the court” (or “during the trial”). The CCrP establishes that the term of detention “during the trial” is calculated from the date the court receives the file to the date the judgment is given. The period of detention during “the trial” may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions (Article 255 §§ 2 and 3).

23. Upon receipt of the case file the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 228 § 3 and 231 § 2 (6) of the CCrP).

24. The trial judge can return the case to the prosecutor to remedy the defects impeding the trial, for instance if the judge has identified serious deficiencies in the bill of indictment or a copy of it was not served on the accused (Articles 236 § 1 (2), 237 § 1 of the CCrP). The judge must require that the prosecutor comply within five days and must also decide on a preventive measure in respect of the accused (Article 237 § 2).

25. At any time during the trial the court may order, vary or revoke any preventive measure, including detention (Article 255 § 1). When returning the case to the prosecutor, the judge has to decide upon the measure of restraint to be applied to the accused (Article 237 § 3).

26. An appeal against such a decision lies to the higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 255 § 4 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

27. The applicant complained invoking Article 5 § 1 of the Convention that his detention from 4 to 13 January 2005 had been unlawful. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

A. The parties' submissions

28. The applicant argued that his detention from 4 to 13 January 2005 had not been authorised by a proper authority in accordance with the procedure prescribed by law. He submitted that the lawful term of his detention had ended on 4 January 2005 when the five-day period for the remedying of the violations by the prosecutor had expired. On 13 January 2005 the Town Court had authorised the detention during the disputed period retroactively, in violation of the domestic law of criminal procedure.

29. The Government contested that argument. They submitted that the applicant had not exhausted domestic remedies because he had failed to appeal against the decision of 30 December 2004 in the part concerning the extension of the pre-trial detention. In any event, the applicant's detention from 4 to 13 December 2005 was duly authorised by the decision of 30 December 2004, compatible with the domestic procedural rules and free from arbitrariness. Given that the applicant remained in detention “pending trial” until the date of the receipt of his case by the prosecutor, Article 255 of the CCrP was applicable. In accordance with that provision, the applicant could have remained in detention “pending trial” for up to six months (see paragraph 22 above). As regards the five-day time-limit set out by the

domestic court, it only concerned the remedying of the violations in the investigation file by the prosecutor, but not the applicant's pre-trial detention. The five-day time-limit set out for remedying the violations, in its turn, started running from the day the investigator received the file, which was 11 January 2005, immediately after the public holidays. Upon receipt of the case file, the investigator duly asked for an extension of the time-limit for the investigation and the applicant's detention pending the investigation. Such an extension was authorised by the Town Court's decision of 13 January 2005. Therefore, the applicant's detention was lawful. The Government contended that under the judgment of 22 March 2005 the period between 4 and 13 January 2005 had counted toward the applicant's prison term.

30. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

31. As regards exhaustion of domestic remedies, the Court reiterates that the complaint intended to be made to the Court must first have been made – at least in substance – to the appropriate domestic body and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many others, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). Turning to the application at hand, the Court notes that the applicant complains solely of the lawfulness of his detention during the period from 4 to 13 January 2005 whereas he does not dispute the legality of his detention either before or after these dates. Therefore, in the eyes of the Court the crux of the applicant's problem was not the extension of his detention after 30 December 2004 in itself, but the exact duration and the grounds for the detention after 4 January 2005, as well as the manner in which the authorities interpreted and applied the extension order of 30 December 2004. The Court notes that the applicant raised this issue in the court proceedings concerning the extension on 13 January 2005 and subsequently on appeal on 4 February 2005. In particular, he submitted in the grounds of appeal that his detention on 4-13 January 2005 had been unlawful. The domestic courts examined the substance of these arguments and rejected them as unfounded. In the Court's view, in these particular circumstances the applicant had exhausted the domestic remedies available to him (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007). The Government's objection must therefore be dismissed.

32. As regards the Government's argument that a deduction had been made from the applicant's sentence, and insofar as they may be understood

to raise the objection concerning the loss of the victim status, the Court considers that it was not properly substantiated; it thus rejects it.

33. Given that the applicant does not raise any complaint as regards his detention beyond the period from 4 to 13 January 2005, the Court does not consider it necessary to examine the lawfulness of the whole period of the applicant's pre-trial detention of its own motion. However, the Court will have regard to the relevant circumstances for its analysis in relation to the applicant's detention on the disputed dates.

34. The Court further notes that the complaint in respect of the above period of pre-trial detention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

35. The Court reiterates that a trial court's decision to maintain a custodial measure would not breach Article 5 § 1 provided that the court had acted within its jurisdiction, had power to make an appropriate order, and had given reasons for its decision to maintain the custodial measure, for which it had also set a time-limit (see *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006, and *Pshevecherskiy v. Russia*, no. 28957/02, §§ 41-46, 24 May 2007).

36. The Court observes that the latest domestic judicial decision addressing the issue of the applicant's detention was that of 30 December 2004, whereby the domestic court decided that the measure of restraint should remain unchanged.

37. The Court accepts that on 30 December 2004 the trial court acted within its powers and there is nothing to suggest that its decision to maintain the applicant's custodial measure was invalid or unlawful under domestic law at the relevant time. The question thus arises as to whether the decision that the measure of restraint should remain unchanged could be considered to be "an appropriate order".

38. At the outset, the Court observes that judicial decision of 30 December 2004, as well as that of 22 December 2004, merely upheld the previously ordered measure of restraint, without either setting any time-limit or stating reasons for maintaining the applicant in custody or for a periodic review of the preventive measure.

39. First, turning to the duration of detention, the Court notes that the main controversy between the parties relates to the issue of whether the decision of 30 December 2004 set, albeit implicitly, any time-limit for the applicant's detention, and if so, whether such a time-limit extended beyond the five days granted by the court to correct the mistakes in the investigation file.

40. The Court notes in this respect the Government's argument that in the present case the five-day time-limit referred to by the applicant was only

set by the domestic court for remedying the violations by the investigator and did not apply to the applicant's pre-trial detention. The Court accepts this submission.

41. The Court further notes that it has on many occasions examined the peculiar feature of the Russian legal framework consisting of detention “pending investigation” and detention “pending trial”, and the corresponding methods of calculating relevant periods of detention. In such a framework, several non-consecutive periods of detention within one set of criminal proceedings can be classified as “pending investigation” or “pending trial”, for instance when the trial judge returns the case to the prosecutor (see, among others, *Shteyn (Stein) v. Russia*, no. 23691/06, § 91, 18 June 2009).

42. Since the order of 30 December 2004 did not cite any legal basis, it is unclear whether rules of Article 109 or 255 of the Code of Criminal Procedure applied during the contested period of time. The Court notes the Government's submission that the period from 30 December 2004 to 11 January 2005, when the prosecutor received the file, was covered by Article 255 of the CCrP. They argued, in other words, that until the date of receipt of the file by the prosecutor, the applicant was detained “pending trial” and could be held in such detention for up to six months. The Court observes, however, that the order of 30 December 2004 did not refer to Article 255 of the CCrP. The remand judge did, however, cite Article 237 of the CCrP, which required that, after receipt of the case file from the judge, the prosecutor should comply with his or her instructions within five days. That was not done in the present case. Indeed, from 30 December 2004 until an unspecified point before 11 January 2005, when the Dmitrovgrad town prosecutor received the file, the applicant's case was neither with the trial judge nor with the prosecuting authority.

43. The Court further notes the Government's argument that the five-day time-limit for remedying the violations by the prosecution had started running from the date of receipt of the file by a prosecutor. However, while the prosecutor was indeed bound by the five-day time-limit once in possession of the case file, the period preceding the receipt appeared to be virtually unlimited, given the absence of sufficiently precise rules concerning the legal grounds for detention between the return of the case to the prosecutor and the receipt of the file by the prosecution authority.

44. Therefore, the applicant was placed in a situation of uncertainty as to the exact duration of his continued detention at that stage (see, *mutatis mutandis*, *Shteyn (Stein) v. Russia*, cited above, § 92).

45. Second, the Court observes that on 30 December 2004 the Town Court gave no reasons for its decision to remand the applicant in custody. In this respect the Court has already held in a number of cases that the absence of any grounds given by judicial authorities in their decisions authorising detention is incompatible with the principle of protection from arbitrariness

enshrined in Article 5 § 1 (see, *mutatis mutandis*, *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). In the present case, the applicant was in a state of uncertainty as to the grounds for his detention from 30 December 2004 to 13 January 2005, the date on which the court re-examined the provisional measure of restraint in respect of him.

46. Third, it appears from the case materials that the domestic authorities dealing with the case did not interpret the detention order of 30 December 2004 uniformly. Indeed, as it clearly follows from the prosecutor's decision of 12 January 2005 to apply for an extension of the applicant's detention, the prosecution authority itself had considered that the applicant's pre-trial detention was to expire on 14 January 2005 (see paragraph 14 above). Likewise – and contrary to the Government's submission – it appears from the prosecutor's decision of 12 January 2005 to reinstate the time-limits for the investigation (see paragraph 13 above) that the five-day time-limit set out for remedying the violations had expired on 4 January 2005, which was within five days of the date of the delivery of the respective court decision.

47. Having regard to the inconsistent and mutually exclusive positions of the domestic authorities on the issue of legal regulation and the exact duration of the applicant's detention during the period when the case was neither with the court nor with the investigator, as well as the lack of reasons in the extension order of 30 December 2004, the Court considers that the latter order did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the “lawfulness” of detention within the meaning of Article 5 § 1.

48. Therefore, and having regard to its conclusions in the paragraph 33 above concerning the scope of the complaint, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 4 to 13 January 2005.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

50. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President