



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

FIRST SECTION

CASE OF PETR PONOMAREV v. RUSSIA

(Application no. 35411/05)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

10/09/2010

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

In the case of Petr Ponomarev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 35411/05) 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 Petr Andreyevich Ponomarev (“the applicant”), on 1 September 2005.

2. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that a period of his detention had not been covered by a judicial authorisation.

4. On 20 March 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 § 3 of the Convention).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lives in St Petersburg. The applicant is a lawyer.

7. On 25 June 2003 the applicant was arrested on suspicion of financial wrongdoings. On 27 June 2003 the Smolninskiy District Court of St Petersburg remanded him in custody.

8. On 20 August, 21 October and 23 December 2003 and 21 January 2004 the period of the applicant's detention was extended. It does not appear that the applicant lodged appeals against the extension orders.

9. On 17 February 2004 the first deputy prosecutor of St Petersburg set aside the investigator's decision to change the applicant's procedural status to that of an accused.

10. On 18 February 2004 the Kuybyshevskiy District Court of St Petersburg extended the applicant's detention until 24 March 2004. The applicant did not lodge an appeal.

11. On 1 March 2004 the investigator issued a new decision to change the applicant's status to that of an accused.

12. On 24 March 2004 the St. Petersburg Prosecutor's Office referred the case against the applicant to the Kirovskiy District Court for trial.

13. On 29 March 2004 the Kirovskiy District Court issued a decision fixing the date of a preliminary hearing for 26 April 2004. The decision did not mention the question of the applicant's detention.

14. On 26 April and 26 May 2004 hearings were adjourned.

15. On 24 August and 21 December 2004 and 18 March 2005 the Kirovskiy District Court extended the applicant's detention, each time for a further three months.

16. On 11 April 2005 the St Petersburg City Court examined the applicant's appeal against the decision of 29 March 2004. The applicant complained that he had been unlawfully held in custody because the authorised period of his detention had expired on 24 March 2004 and because the District Court had not taken any decision on the remand measure. The City Court rejected the appeal, finding as follows:

“The court finds that the said decision is lawful, justified and reasoned... The court had examined the issues listed in Article 228 of the Code of Criminal Procedure, which was reflected in the subsequent legal acts – of 24 August 2004 and others – including the remand matters.”

17. On 3 and 4 May 2005 the applicant made an objection to the trial judge. He alleged that someone had approached his father and his counsel on the judge's behalf and told them that the judge would set the applicant free in exchange for a large sum of money. Replying to the prosecutor's questions, the applicant was unable to furnish any details of the alleged extortion, such as the date of the phone call. Furthermore, the applicant claimed that the judge was biased because she had not promptly dispatched his appeals to the City Court.

18. The trial judge rejected the objections as not supported by concrete evidence. On 3 October 2005 the City Court upheld that decision on appeal.

19. On 6 June 2006 the Kirovskiy District Court found the applicant guilty of misappropriation of a private company's property and sentenced him to three years' imprisonment. On 29 May 2007 the St Petersburg City Court upheld the conviction on appeal.

II. RELEVANT DOMESTIC LAW

20. The Russian Constitution provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

21. The Code of Criminal Procedure ("CCrP") provides that the term of detention "during the trial" (that is, after the case has been sent for trial) is calculated from the date on which the court received the file up to the date on which 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 of no longer than three months each (Article 255 §§ 2 and 3 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

22. The applicant complained that his detention from 17 February to 1 March 2004 and then from 24 March to 24 August 2004 had been effected in breach of Article 5 § 1 which provides 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. Admissibility

23. The applicant claimed that his detention from 17 February to 1 March 2004 had been unlawful because in that period he had not had the procedural status of an accused and, accordingly, a remand measure could

not have been applied to him. The Court observes that it was open to the applicant to raise this issue in an appeal against the detention order of 18 February 2004. It does not appear, however, that he filed such an appeal. Furthermore, the period in question had ended more than six months before the applicant introduced his application to the Court on 1 September 2005. It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies and also as having been introduced out of time.

24. As to the period from 24 March to 24 August 2004, the Court considers that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The applicant submitted that on 24 March 2004 the authorised period of his detention had expired, but that the trial court had not made any decision on the remand matter. It had been only on 24 August 2004 that the trial court had issued a decision, by which the preventive measure had been extended for a further period of three months.

26. The Government submitted that at the time when the applicant's case had been under consideration the domestic courts had interpreted Article 255 of the Code of Criminal Procedure as permitting the detention of an accused without a court order for up to six months from the date of receipt of the case file by the trial court. Even though in 2005 the Constitutional Court had found that that practice was tainted with arbitrariness and therefore incompatible with the Constitution, at the material time such interpretation of Article 255 had been valid and endorsed by all Russian courts, including the Supreme Court. For that reason, the applicant's detention after the date on which the case file had been referred to the trial court was lawful in domestic terms.

27. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X).

28. On the facts, it is observed that on 24 March 2004, that is the day the prosecutor submitted the file to the trial court, the period of the applicant's

detention authorised by the decision of 18 February 2004 expired. However, no further decision on the remand matter was taken until 24 August 2004.

29. The Court has already found a violation of Article 5 § 1 of the Convention in many cases against Russia concerning the practice of holding defendants in custody solely on the strength of the fact that their case had been referred to the trial court. It held that the practice of keeping defendants in detention without judicial authorisation or clear rules governing their situation was incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Isayev v. Russia*, no. 20756/04, §§ 131-133, 22 October 2009; *Yudayev v. Russia*, no. 40258/03, §§ 59-61, 15 January 2009; *Belov v. Russia*, no. 22053/02, §§ 90-91, 3 July 2008; *Lebedev v. Russia*, no. 4493/04, §§ 55-58, 25 October 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 84-85, 28 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 88-90, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; and *Khudoyorov*, cited above, §§ 147-151).

30. The Court's findings in the above cases are applicable in the instant case and the Government did not advance any argument warranting a departure from the established case-law. Following the expiration of the detention order on 24 March 2004, the applicant's detention was not covered by a judicial authorisation up until 24 August 2004. This situation was incompatible both with the Russian Constitution and the requirements of Article 5 § 1 of the Convention.

31. In the light of the foregoing considerations, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 24 March to 24 August 2004.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant also complained under Article 6 § 1 of the Convention that his objections to the trial judge had been unreasonably rejected.

33. The Court observes that the applicant was unable to corroborate his allegations about the alleged bias of the trial judge with any factual submissions. He did not reply to the prosecutor's questions about the date or other details of the alleged extortion. It follows therefore that his objection was unfounded and that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. 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.”

35. 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 complaint concerning the alleged unlawfulness of the applicant's detention from 24 March to 24 August 2004 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President