



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

FIRST SECTION

Application no. 6357/06
Andrey Borisovich KARAVAYEV
against Russia
lodged on 23 December 2005

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Andrey Borisovich Karavayev, is a Russian national who was born in 1964 and lives in Yekaterinburg. He is currently serving a sentence of imprisonment in Kamensk-Uralskiy.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 5 January 2005 criminal proceedings were brought in connection of drug-trafficking. On the same date, in the context of those proceedings, the applicant was arrested by the police on suspicion of him being involved in that offence. According to the applicant, at the moment of his arrest he voluntarily gave out the drugs which he had on him.

On the same date the applicant was provided with a lawyer, who, according to the applicant, did not have the authority to take part in investigative actions.

On the same date formal charges of drug-trafficking were brought against the applicant.

On 6 January 2005 a court ordered the applicant's detention on remand.

In the applicant's submission, between 5 and 17 January 2005 police officers exercised pressure on him in an attempt to extract his confession, and his lawyer persuaded him to make such self-incriminating statements. It appears that subsequently that lawyer was replaced.

Also, in the applicant's submission, in March 2005 he was allegedly been beaten by unspecified persons in his cell in the pre-trial remand centre, where he was then kept, so that he confirmed his self-incriminating statements.

On 30 May 2005 the applicant's detention was extended by a court until 5 July 2005.

On 1 July 2005 the Verkh-Issetkiy District Court of Yekaterinburg further ordered that the term of the applicant's pre-trial detention be prolonged until 21 July 2005 inclusive.

On 19 July 2005 the applicant's case was sent to the Oktyabrskiy District Court of Yekaterinburg ("the Oktyabrskiy District Court") for trial.

On 25 July 2005 the Oktyabrskiy District Court scheduled a preliminary hearing in the applicant's case. It also held that "[the applicant's] measures of restraint – remand in custody – should remain unchanged". According to the applicant, neither he nor his lawyer was summoned to a court session of 25 July 2005, and they were therefore unable to attend it.

In two applications of 26 July 2005 the applicant's lawyer requested the head of the pre-trial remand centre where the applicant was kept to release him, stating that the period of his detention authorised by the court order of 1 July 2005 had expired on 21 July 2005 and that from 22 July 2005 he remained in detention unlawfully.

In a letter of 28 July 2005 and another undated letter, the head of the pre-trial remand centre replied to the applicant's lawyer that on 25 July 2005 a court had ordered that the applicant's preventive measure remain in place and that therefore his detention was lawful.

The applicant and his lawyer appealed against the decision of 25 July 2005. They argued, in particular, that from 22 to 25 July 2005 the applicant's detention had not been based on any court and had therefore been unlawful, and that the decision of 25 July 2005 had been taken in their absence.

On 12 October 2005 the Sverdlovskiy Regional Court rejected that appeal. The appellate court observed that the term of the applicant's pre-trial detention on the basis of the court order of 1 July 2005 had expired on 21 July 2005. It then noted that on 19 July 2005 the materials of the applicant's criminal case had been transmitted to a court. From that date onwards the applicant's detention was "before the court", and therefore there was no need for an authorisation of his continued detention. The appellate court also stated that the procedural law did not provide for the parties to the criminal proceedings to participate in court sessions similar to that of 25 July 2005 when a decision to fix a hearing was being taken.

The applicant's further attempts to have the decisions of 25 July and 12 October 2005 reviewed in a supervisory review procedure were to no avail. It appears that at least on one occasion, a supervisory instance returned the applicant's relevant application, stating that a duly certified copy of the decision of 25 July 2005 was not enclosed. According to the applicant, for some time he was unable to obtain that copy despite his requests.

On 27 April 2006 the Oktyabrskiy District Court convicted the applicant as charged and sentenced him to ten years' imprisonment. According to the applicant, he found out at the trial that a transcript of his interview in which he stated that he had voluntarily given out the drugs had been lost. He therefore requested the trial court to call and examine the investigator in charge to obtain his explanations as to why that transcript had been lost; however, the trial court refused that request.

It is unclear whether the judgment of 27 April 2006 was appealed against.

COMPLAINTS

The applicant complains under Article 3 of the Convention about ill-treatment during the preliminary investigation. He further complains under Article 5 § 1 of the Convention that his pre-trial detention from 22 to 25 July 2005 was not based on a court order, and therefore was unlawful. He also submits that the decision of 25 July 2005 by which his pre-trial detention was prolonged was taken in the absence of his lawyer and himself. The applicant complains that the trial court's refusal to call and examine the investigator in charge at his request breached his rights secured by Article 6 § 3 (d) of the Convention. Lastly, the applicant relies on Article 13 of the Convention stating that the fact that for some time he was not furnished with a duly certified copy of the decision of 25 July 2005 prevented him from applying for a supervisory review of that decision. This deprived him of effective domestic remedies.

QUESTIONS TO THE PARTIES

1. Was the applicant's detention on remand compatible with the requirements of Article 5 § 1 of the Convention? In particular:

(a) Did the applicant's detention from 22 to 25 July 2005 have any basis in national law, and was it in accordance with a procedure prescribed by law (see, for instance, *Khudoyorov v. Russia*, no. 6847/02, §§146-51, ECHR 2005-X)?

(b) Was the fact that the Oktyabrskiy District Court in its decision of 25 July 2005 ordering the applicant's continued detention did not specify the period and reasons for that detention compatible with the requirements of Article 5 § 1 (see *Khudoyorov*, cited above, §§ 134-143)?

(c) Were any other court decisions prolonging the applicant's detention taken in the period between 25 July 2005 and 27 April 2006? The Government are invited to produce copies of those decisions, if any. Were those decisions compatible with the requirements of Article 5 § 1 of the Convention?

2. Regard being had to the fact that neither the applicant nor his lawyer were able to attend a court session on 25 July 2005 when the applicant's continued detention was ordered, were those proceedings compatible with the requirements of Article 5 § 4 of the Convention (see, for instance, *Mamedova v. Russia*, no. 7064/05, § 89, 1 June 2006)?