



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

FIRST SECTION

Application no. 2961/09
Mkrtych Semenovich DUMIKYAN against Russia
lodged on 11 December 2008

STATEMENT OF FACTS

The applicant, Mr Mkrtych Semyonovich Dumikyan, is an Armenian national who was born in 1970 and resides in the town of Kurgan, the Kurgan Region. He was represented before the Court by Mr Gabgulla G. Isakayev, a lawyer practising in that town.

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

A. The circumstances of the case

1. The events of 3 August 2008

On 3 August 2008 the applicant was arrested in the state of alcohol intoxication after having high-jacked a third person's car and crashed it into a tree. As a result of this incident the applicant received multiple injuries to his face and legs and was immediately hospitalised.

At once, the police inspected the site of the incident and on 6 August 2008 brought criminal proceedings in this connection under Article 166 § 1 (high jacking of a vehicle) of the Criminal Code of Russia (criminal case no. 03-15113-08).

2. Criminal investigation

(a) The applicant's stay in hospital

On an unspecified date doctor Su. of the Emergency Station of the Town Hospital of Kurgan wrote a letter to investigator of the Pervomayskiy District Department of the Interior of the town of Kurgan (District Department of the Interior) Pa. in charge of the applicant's criminal case. In this letter he informed her that the applicant was in need of permanent

in-patient treatment in the traumatology department on account of multiple injuries, including facial injuries, hip dislocation and fractures of hip ligaments, requiring medical care. The doctor confirmed that the applicant could not be transported or be brought to a court or an investigator to decide on the measure of restraint in his respect and that the conditions for his detention in either Temporary Detention Ward of the Regional Department of the Interior or remand prison SIZO no. 1 of the town of Kurgan were inappropriate.

On 8 August 2008 investigator Pa. reported the contents of this letter to the head of the District Department of the Interior.

On 12 August 2008, upon a request from an investigator, a medical examination of the applicant's condition was commenced by an expert Gr. of the Kurgan Regional Forensic Bureau. The examination report described the applicant's condition upon his admission to the hospital as "a traumatic hip dislocation" and "multiple tear-contused wounds on the face" and the condition as "serious". The applicant was unable to recall the circumstances at which the wounds had been inflicted. The expert examination was suspended pending treatment on 12 August 2008.

Between 26 August and 3 September 2008 the examination resumed, having concluded with the diagnosis that the applicant had "bruises on the face and head", "scratches on the nose", "a closed dislocation of the right hip", involving fractures. The injuries were the result of the accident which took place on 3 August 2008 and the damage was assessed at "medium" level.

(b) The applicant's arrest and detention proceedings

(i) First round of initial detention proceedings

It appears that on an unspecified date the Kurgan Town Prosecutor's office learned that the applicant had been wanted by the authorities of the Republic of Belarus on charges of murder allegedly committed on 27 February 2003 in the town of Minsk.

On 12 August 2008 the applicant has been taken into custody directly from the Town Hospital of Kurgan.

On the next day judge N. of the Kurgan Town Court (the Town Court) examined and granted the request of town prosecutor's office seeking to detain the applicant in remand prison SIZO no. 1 of the town of Kurgan pending the reception of the extradition request on account of the fact that he had been wanted by the authorities of Belarus. The judge ruled on the request in the applicant's absence, having relied on Article 108 § 5 of the Code of Criminal Procedure of Russia which in some cases allowed to rule on such matter in the absence of the person concerned as well as Articles 97, 99, 108 and 466 § 1 of the Code of Criminal Procedure and Article 60 of the Minsk Convention of 22 January 1993 (see the relevant domestic law section below).

The applicant appealed this decision and on 21 August 2008 the Kurgan Regional Court (the Regional Court) quashed the decision of 13 August 2008 because of the applicant's absence in court and remitted the case at first instance for a fresh examination. The court ordered the applicant to stay

in custody pending the proceedings without referring to any specific legal provision which would permit it to do so.

(ii) Second round of initial detention proceedings

By decision of 28 August 2008, this time after having heard the applicant, a judge of the Town Court decided to detain the applicant in view of the charges pending against him in Belarus. The judge mentioned that the applicant had been put on the list of fugitives on 26 June 2003, that on the same date a competent prosecutor had ordered to detain him and that on 5 July 2003 the applicant had been on the list of wanted fugitives internationally. The judge also noted that the applicant had been in hiding for a long time, that he had no permanent address in Russia and that in such circumstances a milder measure of restraint could not be used. In response to the applicant's argument concerning his medical condition, the court noted that there was no indication in the medical documents in the case file confirming that he could not be detained in a remand prison. The judge did not specify a time-limit for the applicant's detention.

The Regional Court examined the case on appeal and, having seemingly taken into account the applicant's medical condition, noted that "a medical condition as such cannot serve as an excuse not to detain a person [concerned]" and that medical aid could be provided to the applicant under the terms of Law no 103-FZ of 15 July 1995 "On detention on remand of the persons suspected or accused in the commission of crimes" (see the relevant domestic law section below). The court decided to uphold the decision of 28 August 2008.

The outcome of the extradition proceedings remains unclear.

(iii) Parallel detention proceedings in the applicant's criminal case

On 23 September 2008 a judge of the Town Court examined and granted the motion of the prosecutor to detain the applicant in the context of the criminal case against him for having high jacked a car on 3 August 2008.

On 2 October 2008 the Regional Court upheld that order on appeal.

On 22 November 2008 a judge of the Town Court decided to extend the applicant's detention in this criminal case until 5 December 2008 (or up to two months and twelve days). The judge took into account the pending charges against the applicant in Belarus and the lack of permanent address in Russia.

The applicant's detention on remand was extended further on 4 December 2008 up to three months and thirteen days until 5 January 2009 and then on 4 January 2009 once more, this time up to four months and eight days until 30 January 2009.

3. Trial and appeal proceedings

By a first instance judgment of 27 March 2009 the Town Court found the applicant guilty of having high jacked a car belonging to a third person. The applicant received a sentence of four years of residence in a correctional colony.

The judgment was upheld on appeal by the Regional Court on 26 May 2009.

4. The applicant's medical condition on 12 August 2008

According to the information contained in the applicant's medical file from the Town Hospital, he was admitted on 3 August 2008 and was forcefully taken away on 12 August 2008.

The entry of 11 August 2008 indicated that the applicant's condition was satisfactory, that the applicant's treatment in the form of the stretching of his injured leg with weight continued and that "... without consent of principal doctor Ve. the police was going to transfer [the applicant] to sizo...".

The entry of 12 August 2008 indicated that the applicant's condition was satisfactory, that the pain syndrome was decreasing, that the applicant's stitches were dry and that there was no signs of inflammation. It was recommended that the applicant continued his treatment and stayed under medical supervision at the next place of his residence and that he moved only on crutches. It was also mentioned that the applicant's transfer took place without consent of principal doctor Ve.

The temperature chart indicated that on 9 August 2008 the applicant had a temperature of 37.9 degrees, on 10 August 2008 – 37.7 degrees, on 11 August 2008 – 37.7 degrees, on 11 August 2008 – 37.4 degrees and on 12 August 2008, the date of his transfer to SIZO no.1, the temperature of 37.7 degrees.

5. Conditions of the applicant's detention in remand prison SIZO no. 1

The applicant submitted that the conditions of his detention in remand prison SIZO no. 1 of the town of Kurgan had been appalling on account of his medical condition, the lack of appropriate medical assistance and the general lack of space.

The applicant stated that all of the cells (cells 105, 113, 135, 134 and 94) had been affected by the problem of overpopulation.

Given his medical condition, the conditions of his detention were especially hard in cell no. 105 in which he was detained immediately upon arrival. It measured 6 to 7 metres, had a non-partitioned toilet area, was poorly ventilated and infested with bugs, mice and lice.

Between 19 and 27 August 2008 the applicant was held in a prison anti-tuberculosis hospital. According to the applicant, the treatment which had commenced prior to his detention, involving stretching of his leg, had not been continued and he was simply laying in his bed waiting for the wounds to heal. The leg eventually healed, but the lack of stretching lead to a deficient recovery, making it impossible for the applicant to walk normally.

B. Relevant domestic law

1. The Criminal Procedure Code (CPC)

Articles 108 and 109 of the Criminal Procedure Code (CPC) of 2002 contain provisions relating to pre-trial detention. They provide that detention can be imposed by a judge, on a reasoned request by the prosecutor, or an investigator upon the prosecutor's sanction, if no other measure of restraint can be applied. The presence of the accused person in

the court room is obligatory, unless he has been put on the international wanted list. The decision of the court to order detention can be appealed to a higher court within three days. The appeal must be considered within three days of the date of receipt. Article 109 sets out the following terms of pre-trial detention: the term of detention cannot exceed two months. If the investigation continues, it can be extended to six months by the court on an application by the prosecutor. After that it can be extended to 12 months on an application by the prosecutor of the region. In exceptional circumstances, on an application by the Prosecutor General or his deputy, pre-trial detention can be extended to a maximum of 18 months.

Article 125 of the CPC provides for judicial review of decisions of investigators that might infringe the constitutional rights of participants in the proceedings or prevent a person's access to court.

Chapter 54 of the CPC regulates extradition on criminal charges. Articles 462-463 state that a decision to extradite a person upon a request from another country is taken by the Prosecutor General or his deputy. Such a decision is subject to appeal to a regional court within 10 days from the date of notification of the decision to the person concerned. The complaint is reviewed at a public hearing in the presence of the person in question, his representative and the prosecutor. The decision of the regional court can be appealed to the Supreme Court.

Article 464 provides that extradition cannot take place if the person whose extradition is sought is a Russian national or if he has refugee status.

Article 466 contains provisions relating to detention of a person whose extradition is sought. Detention can be authorised by the Prosecutor General or his deputy on receipt of an extradition request. If a foreign court has authorised the person's arrest, the decision of the prosecutor does not need to be confirmed by a Russian court. The period of detention cannot exceed the normal periods of detention pending investigation laid down by the Code of Criminal Procedure for similar crimes.

2. The 1993 Minsk Convention

Article 57 of the CIS Convention on legal assistance and legal relations in civil, family and criminal cases (the 1993 Minsk Convention), to which both Russia and Belarus are parties, provides that extradition shall not take place if the person whose extradition is sought has the nationality of the requested Contracting Party.

Its other relevant provisions are as follows:

Article 61. Arrest or detention before the receipt of a request for extradition

“1. The person whose extradition is sought may also be arrested before receipt of a request for extradition, if there is a related petition (*xodamaïcmbo*). The petition shall contain a reference to a detention order ... and shall indicate that a request for extradition will follow. A petition for arrest ... may be sent by post, wire, telex or fax.

2. The person may also be detained without the petition referred to in point 1 above if there are legal grounds to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition.

3. In case of [the person's] arrest or detention before receipt of the request for extradition, the other Contracting Party shall be informed immediately.”

Article 61-1. Search for a person before receipt of the request for extradition

“1. The Contracting Parties shall ... search for the person before receipt of the request for extradition if there are reasons to believe that this person may be in the territory of the requested Contracting Party

2. A request for the search ... shall contain ... a request for the person’s arrest and a promise to submit a request for his extradition.

3. A request for the search shall be accompanied by a certified copy of ... the detention order

4. The requesting Contracting Party shall be immediately informed about the person’s arrest or about other results of the search.”

Article 62. Release of the person arrested or detained

“1. A person arrested pursuant to Article 61 § 1 and Article 61-1 shall be released ... if no request for extradition is received by the requested Contracting Party within 40 days of the arrest.

2. A person arrested pursuant to Article 61 § 2 shall be released if no petition issued pursuant to Article 61 § 1 arrives within the time established by the law concerning arrest.”

3. Other relevant legal instruments

Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees must be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees must be kept in conditions which satisfy health and hygiene requirements. They must be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate must have no less than four square metres of personal space in his or her cell.

COMPLAINTS

1. Relying on Article 3 of the Convention, the applicant complained that the conditions of his detention on remand had been appalling, that he had not been fit to be taken into custody by the authorities and that he had not received appropriate medical assistance in remand prison

2. Without relying on Article 5 of the Convention, the applicant complained that his detention on remand had been unlawful, unjustified and too long. He was specifically dissatisfied with the detention proceedings in connection with the charges against him in Belarus.

3. Under Articles 13 and 14 of the Convention the applicant complained about the lack of effective remedies in his case and the discriminatory treatment on account of his ethnic origin and nationality.

QUESTIONS TO THE PARTIES

1. Was the applicant's arrest and placement in SIZO no. 1 of the town of Kurgan compatible with Article 3 of the Convention, given his medical condition (an elevated body temperature), the lack of consent by the doctor in charge of the applicant's treatment and the seeming lack of appropriate accommodations in the remand prison? Was the applicant fit for his transfer from the Town Hospital of Kurgan to SIZO no. 1 of the town of Kurgan and did he receive an appropriate medical care while in prison? The authorities are requested to comment on the applicant's allegation that the treatment of his injured leg, involving stretching with weights, which had commenced in the Town Hospital of Kurgan, was never resumed in prison and lead to the deficient recovery of that leg.

2. Was Article 3 of the Convention respected in so far as the applicant's detention on remand in remand prison SIZO no. 1 of the town of Kurgan is concerned, given, in particular, his medical condition? In particular, in respect of each cell where the applicant was detained:

(a) What are the dimensions of the cells where the applicant was detained? How many persons were detained in each of the cells simultaneously with the applicant (the figures for each and every day of the applicant's detention)?

(b) Did the applicant have a personal sleeping place? Did he have to take turn sleeps?

(c) Was there natural light in his cells? Did the windows have metal shutters?

(d) What were the toilet and water facilities in the cell(s)?

(e) Were the cells ventilated? If so, was ventilation natural or mandatory?

(f) What was the average temperature in the cells in summer and in winter?

(g) Were the cells where the applicant was detained infested with cockroaches, lice and bugs? Did the administration disinfect the cells?

3. Was the applicant's detention on remand between 12 August and 23 September 2008 lawful, non-arbitrary and, more generally, compatible with Article 5 § 1 of the Convention? The Government are requested to comment on the following points:

- What was the exact domestic legal basis for the applicant's detention between 12 (the date of his arrest) and 13 August 2008 (the date on which the Kurgan Town Court authorised his detention for the first time) and between 21 August 2008 (the date of the appeal decision of the Kurgan Regional Court) and 28 August 2008 (the date on which the Kurgan Town Court authorised his detention for the second time)?

- Did the legal basis for the applicant's detention between 12 August and 23 September 2008 meet the Convention requirements in respect of the quality of law (see *Nasrulloev v. Russia*, no. 656/06, §§ 72 and seq., 11 October 2007)?

- the Government are requested to submit copies of all relevant documents concerning the applicant's extradition to Belarus and inform the Court about the applicant's present location.