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

Communicated on 5 November 2014

FIRST SECTION

Applications nos. 45743/09 and 13755/11
Nadezhda Yermilovna MEDVEDEVA against Russia
and and Oleg Vadimovich KIBIZOV against Russia
lodged on on 5 August 2009 and 4 February 2011 respectively

**STATEMENT OF FACTS**

# THE FACTS

The applicants are two Russian nationals. Since the applicants went into hiding, their detention was ordered *in absentia*. They were subsequently apprehended and detained for a prolonged period of time on the basis of such detention orders issued in their absence.

## A. The circumstances of the cases

The facts of the cases, as submitted by the applicants, may be summarised as follows.

### *1. The case of Ms Medvedeva (application no. 45743/09 lodged on 5 August 2009)*

The applicant in the present case is Ms Nadezhda Yermilovna Medvedeva, who was born in 1955 and lives in Kemerovo.

#### (a) The applicant's first arrest

On 16 June 2001 the applicant was charged with fraud and participation in financial pyramid schemes.

On 6 August 2001 the applicant was arrested by police officers of the Kemerovo Department of the Organised Crime Unit (UBOP).

On 31 August 2001 the Tsentralniy District Court of Kemerovo ordered her release on bail.

On an unspecified date after 11 September 2001 the applicant stopped responding to the investigator's summonses.

On 25 December 2001 the investigator ordered the applicant's detention on the ground that she did not appear and that the information she had given about her residence was false. The investigator also indicated that the applicant had continued her criminal activity and attempted to organise another financial pyramid. On the same day the applicant's name was placed on the search list and the investigation was suspended on the ground that the applicant's whereabouts were unknown.

On 1 October 2001 the applicant was charged with the same offences in Vladivostok and placed under an undertaking not to leave the city.

**(b) The applicant's arrest and detention**

On 14 or 15 September 2006 the applicant was arrested in Vladivostok. Between 26 September 2006 and 18 October 2006 the applicant was in transit from Vladivostok to Kemerovo.

On 8 November 2006 the Tsentralniy District Court of Kemerovo extended the applicant's detention until 1 March 2007. The applicant was present at the hearing.

Her detention was further extended on 30 November 2006, 26 February 2007, 31 May 2007, 16 August 2007, 4 September 2007, 17 October 2007 (this extension order was upheld by the Criminal Chamber on 6 February 2008), 15 January 2008, 18 March 2008 and 30 May 2008.

**(c) The applicant's complaints about the unlawfulness of her detention and her release**

On 13 June 2008 the applicant challenged the extension order of the Kemerovo Regional Court issued on 30 May 2008. She pointed out that she had been arrested in September 2006 on the basis of a decision issued by an investigator on 25 December 2001 and was detained on the basis of that decision after 1 July 2002 when the new Code of Criminal Code requiring a court order had entered into force.

On 20 August 2008 the Criminal Chamber of the Supreme Court of the Russian Federation quashed this extension order and ordered the applicant's immediate release. The Criminal Chamber held, with reference to the Constitutional Court's Ruling no. 6-P of 14 March 2002, that the applicant's detention after 1 July 2002 on the basis of a decision issued by an investigator on 25 December 2001, that is without a court order, was unlawful. The Supreme Court found as follows:

> "It results from the case-file materials that on 25 December 2001 the measure of restraint in the form of bail taken in respect of Ms Medvedeva N. E. was replaced by detention in accordance with Articles 89, 91, 92, 96, 101 of the RSFSR Code of Criminal Procedure.
>
> On 15 September 2006 Ms Medvedeva N.E. was apprehended in accordance with this decision and remains in custody.
>
> There is no other basis for her detention in the case-file.
>
> In the meantime, according to the Ruling of the Constitutional Court of the Russian Federation no. 6-P of 14 March 2002, provisions of the RSFSR Code of Criminal Procedure, including Article 96 as well as all other provisions allowing the apprehension of a person for more than forty-eight hours without a court order as well as the placement in detention and holding in detention without a court order are declared unconstitutional and should not be applied as from 1 July 2002.

> Moreover, since 1 July 2002 the new Code of Criminal Procedure entered into force and its Article 4 provides that the criminal law to be applied is the law which is in force at the moment when a procedural step is taken, unless the Code provides otherwise.
>
> By virtue of Article 29 § 2 of the Code of Criminal Procedure of the Russian Federation only a court can decide on the placement in detention."

On 21 August 2008 the prosecutor requested the Kemerovo Regional Court to remand the applicant in custody. On the same day, this request was rejected by the court.

On 6 November 2008 the Supreme Court rejected the prosecutor's appeal against the decision of 21 August 2008.

On 20 November 2008 a judge of the Supreme Court granted the Deputy Prosecutor General's request for supervisory-review against the decision of the Criminal Chamber of the Supreme Court of 20 August 2008 and referred it to the Presidium of the Supreme Court.

On 17 December 2008 the Presidium of the Supreme Court granted the Deputy Prosecutor General's supervisory-review and quashed the decision of the Criminal Chamber of the Supreme Court of 20 August 2008. It sent the matter back for reconsideration before its Criminal Chamber.

On 12 February 2009 the Criminal Chamber of the Supreme Court upheld the extension order of 30 May 2008 and rejected the applicant's cassation appeal. The Criminal Chamber found that the decision of 25 December 2001 was taken by the investigator in accordance with the provisions then in force. Since the applicant was on the run, this decision could only be implemented on 15 September 2006 when she was arrested. As the decision provided for the applicant's detention for two months, it was valid until 15 November 2006 in accordance with transitional provisions accompanying the entry into force of the new Code of Criminal Procedure. On 8 November 2006 the investigator initiated an extension request and on the same day the Tsentralniy District Court of Kemerovo extended the applicant's detention until 1 December 2006. Further extensions of the applicant's detention were all decided by courts (30 November 2006, 26 February 2007, 31 May 2007, 17 October 2007 confirmed by the Criminal Chamber on 6 February 2008, 15 January 2008, 18 March 2008, 30 May 2008). The Criminal Chamber also indicated that the applicant was released in accordance with the decision of the Kemerovo Regional Court of 21 August 2008 and that that decision was upheld by the Supreme Court of Russia on 6 November 2008.

On 18 February 2009 the Supreme Court rejected the applicant's supervisory-review application against the decision of the Kemerovo Regional Court of 31 May 2007. The applicant complained that after her apprehension in September 2006 she was detained without a court order as required by the new Code of Criminal Procedure but on the basis of a decision of 25 December 2001 issued by an investigator. The Supreme Court rejected her application on the ground that in accordance with the transitional provisions detention orders issued under the old Code of Criminal Procedure remained valid within the time-limits set therein.

**(d) The applicant's attempts to challenge the unlawfulness of her arrest in September 2006 and her subsequent detention**

On 15 April 2009 the applicant complained under Article 123 of the Code of Criminal Procedure about her unlawful apprehension in September 2006 and her ensuing detention in Vladivostok without a court order to the Prosecutor's Office of the Primorsk Region.

On 20 May 2009 she wrote a similar complaint to the Department of the General Prosecutor's Office for Far Eastern Federal District.

**(e) The applicant's attempts to obtain compensation for her unlawful detention**

On 7 October 2008 the applicant brought proceedings against the Federal Treasury and the Ministry of Finance for damage incurred in respect of her unlawful detention from 30 May 2008, date of the extension order quashed by the Supreme Court on 20 August 2008, to 21 August 2008, when she was released from detention. She relied on Article 133 § 3 of the Code of Criminal Procedure.

On 24 November 2008 the Zavodskoy District Court of Kemerovo partly granted the applicant's claim for unlawful detention. The district court found that the applicant had suffered non-pecuniary damage and that her unlawful detention contributed to the deterioration of her health. It consequently granted her 200,000 Roubles.

On 1 April 2009 the Kemerovo Regional Court quashed the judgment of the Zavodskoy District Court of 24 November 2008 following the cassation appeal lodged by the territorial department for the Kemerovo Region of the Treasury of Russia. The Regional Court found that the quashing of the extension order of 30 May 2008 did not constitute a rehabilitating ground.

On 13 May 2009 the Zavodskoy District Court found that the quashing of the extension order of 30 May 2008 could not constitute in itself a rehabilitating ground in the absence of an acquittal or termination of the criminal case. It consequently suspended the examination of the applicant's compensation claim pending the outcome of the proceedings in her criminal case.

*2. The case of Mr Kibizov (application no. 13755/11 lodged on 4 February 2011)*

The applicant in the present case is Mr Oleg Vadimovich Kibizov, who was born in 1975 and lives in Kopeysk.

On 24 December 2008 the applicant was arrested on suspicion of theft.

On 25 December 2008 he was released on an undertaking not to leave his place of residence.

On unspecified date in March 2009 the applicant's case was submitted to the Traktorozavodskoy District Court of Chelyabinsk.

The hearing was scheduled for 19 March 2009. The applicant failed to appear. According to his representative, he was taken to a hospital with pneumonia. On 23 and 24 March 2009 bailiffs made unsuccessful attempts to establish the applicant's whereabouts.

On 24 March 2009 the proceedings were suspended because the applicant had absconded on 19 March 2009. On the same day his name was

placed on the search list and the Traktorozavodskoy District Court ordered his detention, indicating that once apprehended the applicant should be transferred to the remand centre IZ-74/3 of Chelyabinsk.

In the meantime, the applicant was arrested and charged with theft committed in Mias. On 26 March 2009 his detention was ordered by the Miasskiy City Court.

On 16 April 2009 the Traktorozavodskoy District Court resumed criminal proceedings against the applicant, scheduled a hearing for 27 April 2009 and held that the measure of restraint should remain unchanged. The district court also ordered the applicant's transfer from remand centre IZ-4 of Zlatoust of the Chelyabinsk Region to IZ-74/3 of Chelyabinsk.

On 27 April 2009 the applicant was transferred from the remand centre IZ-4 of Zlatoust of the Chelyabinsk Region to IZ-74/3 of Chelyabinsk. On 15 May 2009 he was transferred back to Zlatoust.

On 27 May 2010 the Mias Town Court suspended the proceedings in the applicant's case. The applicant was released under an undertaking not to leave.

On an unspecified date the applicant absconded.

On 27 July 2010 the Traktorozavodskoy District Court ordered that the applicant's name be placed on the search list and confirmed that once arrested the applicant should be placed in detention and transferred to the remand centre IZ-74/3 of Chelyabinsk in accordance with the detention order of 24 March 2009. It appears that the applicant, having missed the ten-day time-limit for cassation appeal, lodged a supervisory-review request against this decision.

On 13 October 2010 the applicant was apprehended and placed in detention. It remains unclear whether the applicant was remanded in custody in accordance with the detention order of 27 July 2010 or of 24 March 2009.

On 28 October 2010 the Traktorozavodskoy District Court of Chelyabinsk scheduled the hearing in the applicant's case on 10 November 2010. It also held that the measure of restraint in respect of the applicant should remain unchanged. The applicant appealed on the ground that this decision was taken in his absence.

On 15 November 2010 the same district court held that the measure of restraint in respect of the applicant should remain unchanged until 15 April 2011. The applicant was present at the hearing.

On 9 December 2010 the Chelyabinsk Regional Court rejected the applicant's appeal but amended the decision of 28 October 2010 by excluding from its operative part the indication that the measure of restraint should remain unchanged. In the meantime, the Regional Court indicated that the applicant should remain in custody in accordance with the extension order of 15 November 2010. The applicant participated in the hearing by videoconference link.

On the same day the Chelyabinsk Regional Court in a separate decision rejected the applicant's appeal against the extension order of 15 November 2010 but amended it by indicating that the applicant should be remanded in custody until 13 April 2011.

On 17 February 2011 the applicant was convicted by the Traktorozavodskoy District Court. On 27 May 2011 his appeal was rejected by the Chelyabinsk Regional Court.

### B. Relevant domestic law and practice

A new Code of Criminal Procedure (CCrP) of 2001 entered into force on 1 July 2002. Under Article 108 of the CCrP, a court was empowered to order detention of an accused pending investigation.

Under the Transitional Law no. 177-FZ of 18 December 2001, detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them (section 10 of the Law).

The Constitutional Court of Russia stated with reference to the Transitional Law that non-judicial decisions relating to deprivation of liberty ceased to be applicable after 1 July 2002 (see, among others, judgment no. 6-P of 14 March 2002; decision no. 181-O of 27 May 2004 and decision no. 3-O-P of 18 January 2011). The Constitutional Court also clarified that detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them, the authorised period of detention starting from the date of their issue (decision no. 119-O-O of 19 January 2010).

Pursuant to Article 220-1 of the Code of Criminal Procedure of 1960, in force at the material time, a remand prisoner could apply for a judicial review of his pre-trial detention.

Article 125 of the new CCrP provides for judicial review of a decision or (in)action on the part of an inquirer, investigator or prosecutor, which has affected constitutional rights or freedoms of parties to criminal proceedings. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

## COMPLAINTS

Both applicants complained in substance under Article 5 of the Convention that after their respective arrests they were detained without a court order and/or on the basis of a court order delivered in their absence.

## COMMON QUESTIONS

1. Have the applicants exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, was the appeal against subsequent extensions of their detention an effective remedy within the meaning of this provision (see *Tarakanov v. Russia*, no. 20403/05, §§ 39-40, 28 November 2013 and *Arefyev v. Russia*, no. 29464/03, § 69, 4 November 2010)? If not, what other remedies were at the applicants' disposal?

2. Were the applicants brought promptly before a judge or other officer authorised by law to exercise judicial power following their arrest on 14 September 2006 and on 13 October 2010 respectively, as required by Article 5 § 3 of the Convention (see *Poghosyan v. Armenia*, no. 44068/07, 20 December 2011; *Ladent v. Poland*, no. 11036/03, 18 March 2008; *Salih Salman Kiliç v. Turkey*, no. 22077/10, 5 March 2013)?

3. The Government is invited to provide information on the legal framework governing the situation of persons who had been arrested *in absentia* and subsequently detained on the basis of such arrest warrant (see, for instance, *Salih Salman Kılıç v. Turkey*, no. 22077/10, §§ 10-11, 5 March 2013). In particular, the Government is invited to indicate whether the Code of Criminal Procedure provides for a possibility for a court of a different territorial jurisdiction to order a suspect's detention pending his or her transfer before a court competent to examine his or her case. The Government is also invited to indicate whether the person gone into hiding has a possibility to challenge the arrest warrant issued in his or her absence.