CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46468/06
by Vasiliy Georgiyevich ALEKSANYAN
against Russia

The European Court of Human Rights (First Section), sitting on 24 January 2008 as a Chamber composed of:

Christos Rozakis, *President,*
Loukis Loucaides,
Nina Vajić,
Anatoli Kovler,
Elisabeth Steiner,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 16 November 2006,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr V. Aleksanyan, is a Russian national who was born in 1971 and lives in Moscow. He is represented before the Court by Mr D.P. Holiner, a lawyer practising in London. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Background

The applicant is a former practicing member of the Moscow Bar. He represented Mr Khodorkovskiy and Mr Lebedev, as one of their lawyers, in criminal proceedings which are now the subject of complaints before the Court (applications nos. 5829/04, 4493/04, 13772/05, 11082/06). He also provided legal services to the oil company Yukos ("the company") in matters related to that company's application before this Court (application no. 14902/04).

Mr Khodorkovskiy and Mr Lebedev were the senior executives of Yukos. They were arrested in 2003 on suspicion of having committed large-scale fraud and tax evasion. At the same time the tax authorities sued the company, seeking to recover unpaid corporate taxes. In 2004-2006 the courts delivered several judgments ordering the company to pay considerable tax arrears and penalties. Enforcement proceedings commenced.

According to the applicant, in early 2006 investigators from the General Prosecutor's Office ("the GPO") started questioning staff members of Yukos and affiliated companies. The questioning sessions were accompanied by threats of criminal prosecution if the staff members cooperated with the senior executives appointed by the then major shareholders of the company. Those threats were also made to the applicant.

On 20 March 2006 the applicant was appointed as executive vice-president of the company. On 22 March 2006 he was summoned by a GPO investigator and questioned. During the questioning the investigator warned the applicant to "stay far away" from the company's affairs. When the applicant replied that he had no intention of leaving his post at the company, the investigator responded: "This is the first time I see a person volunteer to go to prison".

In the meantime bankruptcy proceedings against the company commenced. On 28 March 2006 the Commercial Court of Moscow imposed a supervision order on the company and appointed a trustee. A week later the applicant, as a vice-president of the company, started a reorganisation of its management structure. Apparently, that reorganisation was regarded by the trustee and the major creditor of the company – the State – as an attempt to hinder the bankruptcy proceedings.

On 4 August 2006 the company was declared bankrupt and the court replaced the company's previous management with a bankruptcy trustee.

B. The applicant's arrest and the first detention order

In January 2004 the GPO opened an investigation into the activities of several of the company's senor executives, including Mr L.N., Ms S.B., Mr D.G. and others. They were suspected of having embezzled the shares of

several Siberian oil refineries in 1998-1999. Mr L.N., Mr D.G. and several others left Russia, while Ms S. B. was arrested.

On 4 and 5 April 2006 the Simonovskiy District Court, at the GPO's request, authorised searches in the applicant's home and country house. The court identified the items or information sought as "documents in paper or electronic format, correspondence, drafts and handwritten notes, other documents and objects important for the investigation". The court gave no reasons for its decision. On the same day the applicant's premises were searched by the GPO investigators and certain documents were seized.

On 6 April 2006 the Deputy Prosecutor General requested the Simonovskiy District Court of Moscow to authorise criminal prosecution of the applicant in connection with his alleged participation in the embezzlement. In the proceedings the GPO claimed that in 1998-1999, when the applicant had been the head of the legal department of Yukos, he had advised the company's executives and thus participated in their criminal activities. The GPO relied, in particular, on statements by Ms S.B. and the results of the searches in the applicant's premises. The applicant and his lawyer opposed that view, but the court concluded that the applicant's involvement with the company's activities in 1998-1999 contained "elements of a criminal offence". Consequently, the court authorised criminal prosecution of the applicant.

At 2.50 p.m. on the same day the applicant was arrested and charged; on that date the GPO lodged a request with the Basmanny District Court of Moscow, seeking the applicant's further detention pending investigation.

On 7 April 2006 the court examined the detention request. The applicant and his lawyer were present at the detention hearing. They pleaded that the applicant should not be remanded in custody. The applicant's arguments may be summarised as follows. The prosecution case against the applicant was very weak and was based on inadmissible evidence. The Simonovskiy District Court had not done its job adequately and had not provided reasons for its conclusions. The applicant had always cooperated with the GPO in the course of the investigation; the investigation had already lasted over two years and the applicant had always gone to the GPO offices when investigators needed to question him. The applicant had not made any attempt to flee from justice or otherwise obstruct the course of the investigation. The applicant was the single parent of a minor child and the only support for his old parents. Finally, the applicant maintained that his poor health was incompatible with detention.

Having examined the parties' arguments, the court held that the applicant should be remanded in custody. The court held that the request for the applicant's detention had been lodged by a duly authorised prosecution official and that all the necessary formalities had been complied with. The court also held that if the applicant was dissatisfied with the decision of the Simonovskiy District Court, it was still possible to appeal against it. As to

the applicant's allegation that the case against him was very weak and based on inadmissible evidence, the court held that it was not competent to examine this aspect, since that would amount to an examination of the merits of the case, which was not the court's task at that time. The court also held as follows:

> "The court takes into account that [the applicant] is charged with having committed criminal offences which are qualified as serious or especially serious and which are punishable with imprisonment of more than two years. The circumstances in which those crimes were committed, information about the applicant's personality and his occupation give the court enough reasons to conclude that, if he remained at liberty, [the applicant] might flee from the investigative or judicial bodies, adversely influence the victims, witnesses and other participants in the criminal proceedings, take measures to destroy evidence and objects and documents which are important for the investigation but which have not yet been found by the investigative bodies, might contact his accomplices who are hiding from justice and [thus] obstruct the course of the proceedings, which is confirmed by the results of the search (case-file no. 2, pages 127-130) and by the report of the [Ministry of Internal Affairs] to [the GPO] as to information concerning [the applicant's] plans to leave Russia. The court also takes into account the applicant's age, family situation and medical condition and the fact that he has a minor child and lives permanently in Moscow."

On an unspecified date the applicant appealed against the decision of the Simonovskiy District Court of 6 April 2006. On 17 May 2006 the Moscow City Court dismissed the appeal.

The applicant lodged several appeals: against the decisions of 4 and 5 April (authorising searches), 6 April (authorising criminal prosecution of the applicant) and 7 April 2006 (ordering his detention).

On 17 May 2006 the Moscow City Court dismissed the first appeal and confirmed the decisions of 4 and 5 April 2006. The City Court held that the decisions of the Simonovskiy District Court were "sufficiently reasoned and lawful".

On 22 May 2006 the Moscow City Court dismissed the defence's second appeal and upheld the decision of 6 April 2006. The City Court held, *inter alia*, that at that stage it was not its task to examine the specific acts with which the applicant was charged or the evidence produced by the parties. Otherwise its work would amount to an examination of the case on its merits. The defence could not therefore rely on alleged violations of domestic or international law.

On 31 May 2006 the Moscow City Court dismissed the appeal against the decision of the Basmanniy City Court of 7 April 2006.

C. Extensions of the applicant's detention on remand

On 2 June 2006 the Basmanniy District Court, at the request of the prosecution, extended the applicant's detention until 2 September 2006.

At the hearing the GPO claimed that they needed to perform a number of additional investigative actions, namely, to obtain expert reports, to obtain replies to the court's rogatory letters and to obtain decisions on the extradition of Mr L.N. and Mr D.G. to Russia. Further, the GPO had to "question witnesses, seize documents in ... organisations, banks, tax inspectorates and, based on the evidence thus collected, bring new charges against [the applicant] and perform other investigative actions aimed at completing the preliminary investigation".

The parties' arguments before the court were broadly similar to their previous position. The prosecution emphasised that the applicant's accomplices had fled from justice. The applicant, in turn, provided the court with more detailed information about his state of health. Further, he claimed that while in detention he had never been questioned in connection with his case.

The court's reasoning was almost identical to that in the decision of 7 April 2006. The court concluded that the applicant's situation had not changed, and that therefore there was no reason to apply a measure of restraint milder than detention. As to the applicant's state of health, the court noted that despite information about the applicant's diseases, there was no evidence that his medical condition was incompatible with detention.

The applicant's lawyers appealed against that decision. They submitted to the court of appeal additional documents concerning the applicant's state of health. They also complained that the District Court had not examined the possibility of applying a milder measure of restraint. However, on 19 July 2006 the Moscow City Court dismissed their arguments and upheld the decision of 2 June 2006.

On 23 August 2006 the GPO requested an extension of the applicant's detention on remand. At the hearing the applicant opposed that request, repeating his earlier arguments. Thus, the applicant claimed that the GPO's allegations that he would abscond or interfere with the course of justice were not based on any facts. Finally, the applicant alleged that he should not be detained because of his bad health.

The applicant's defence also claimed that his initial arrest had been unlawful. The decision of the Simonovskiy District Court of 6 April 2006, authorising criminal prosecution of the applicant, became final only on 22 May 2006. Before that date the GPO had no power to perform any investigative actions in his respect, let alone to arrest him.

The court noted that the case under investigation was quite complex and that the applicant's detention on remand should therefore be extended. The court also repeated the wording of the first two detention orders justifying detention. As to the lawfulness of the initial detention order, the court noted that, since the decision of 7 April 2006 had been confirmed by the court of

appeal, the applicant's detention was lawful. As a result, the applicant's detention was extended anew, until 2 December 2006.

The defence appealed, claiming, *inter alia*, that the continued detention of the applicant amounted to inhuman and degrading treatment. On 9 October 2006 the Moscow City Court dismissed the appeal.

It appears that in the following months the applicant's detention on remand was further extended.

On 12 December 2006 the investigation was completed. On 20 December 2006 the applicant obtained a copy of the investigation file.

The applicant's medical condition

Upon his arrest the applicant was examined by prison doctors. They established, *inter alia*, that the applicant had serious sight problems; he had floaters in one eye and overall impairment of visual acuity.

On 15 September 2006 the applicant was found for the first time to be HIV-positive. It was recommended that he receive Highly Active Anti-Retroviral Therapy (HAART). Over the following months medical examinations showed a further deterioration in his medical condition as a result of HIV infection.

In November 2006, at the investigator's request, the applicant's medical file was examined by a group of doctors. The doctors concluded that the applicant was fit to be detained and to participate in the investigative activities. At the same time the doctors noted that the applicant's condition was worsening, and recommended HAART treatment and regular monitoring of his health in a specialised medical institution (every 12 weeks, or more often if necessary).

In July 2007 the applicant developed severe headaches and was referred to the Moscow Aids Centre for examination. He was informed about possible side effects of the HAART treatment; however, he signed a paper in which he expressly accepted the treatment. He was, however, concerned about the prison staff administering the drugs to him without proper medical supervision and monitoring. As he was not confident that there would be adequate monitoring, he did not begin the medication prescribed within the HAART treatment.

From September 2007 the applicant suffered from a swinging fever of between 36 and 39°C, lost over 10 per cent of his body weight and was anaemic. In addition, he developed a number of other diseases. Thus, he contracted shingles and developed stomatitis, with evidence of oral candidiasis and associated dysphagia. There was evidence of marked neurological problems, with encephalopathy, poly-neuropathy, optic atrophy and corneal dystrophy. His eyeballs were sunken and he had chronic plepharitis. Further investigation apparently indicated persistent liver lesions with evidence of chronic cholecystitis, and other diseases.

On 16 October 2007 the applicant underwent yet another medical examination, which revealed a dramatic worsening of his condition as a result of HIV infection. On 23 October 2007 he was examined in the Moscow Aids Centre. A report by Dr Galina and Dr Oskina concluded that the applicant was suffering from Aids (3rd (4th) stage "B"). The applicant's condition was described as "moderately severe (unsatisfactory)".The report also recommended that the applicant undergo in-patient examination and treatment in the Moscow Aids Centre.

The defence contacted Dr David A. Hawkins, a British expert on Aids and Consultant Physician at the Chelsea and Westminster Hospital, London. Having examined the applicant's medical record, Dr Hawkins concluded as follows:

> "It is my opinion that [the applicant's] medical condition is such that there is imminent treat to his life should he remain untreated both in respect of the opportunistic infections, and the HIV infection itself. There is also a major imminent risk of irreparable damage to his health should these treatments not be initiated straight away.
>
> Were [the applicant] to be imprisoned in the UK, he would undoubtedly be released on compassionate grounds or at least transferred to a specialist hospital until his condition have been diagnosed, treated and stabilised. It is of great concern that his numerous serious and indeed life- (and sight-) threatening problems have not been urgently addressed."

D. Application for release of 31 October 2007

Following the results of the medical examination the defence submitted an application for release to the GPO investigator.

On 29 October 2007 the investigator decided that, due to the critical state of the applicant's health, he should be released on bail. However, the applicant was not released; instead, on 31 October 2007 the investigator brought a motion before the Basmanniy District Court, seeking to obtain the applicant's release on bail. The amount of bail requested by the prosecution was 2,500,000 Russian roubles. In the application for release the investigator stated, *inter alia*, that the applicant's diseases could not be treated in the conditions of the detention centre.

On 2 November 2007 the Basmanny District Court of Moscow examined the investigator's request. According to the applicant, at the hearing a GPO representative opposed the applicant's release.

The court decided that it was not competent to deal with the matter. The court also noted that, under the Code of Criminal Procedure, it was the investigator in charge of the case who was competent to order a suspect's release on bail.

On 9 November 2007 the investigator took a new decision, this time dismissing the application for release. The investigator noted that it was for the detention centre administration to decide whether the applicant should

be treated in a civil hospital. The investigator further stated that, according to the information received from the detention centre's medical facility, the applicant had refused the treatment proposed by the doctors working there. The investigator also took into account the decision of the Basmanny District Court of 2 November 2007 dismissing the application for release. The investigator concluded that he was not competent to decide whether the applicant should be transferred to a specialised medical institution.

The defence appealed, but to no avail.

E. Application of Rule 39

On 26 November 2007 the applicant's lawyer requested the Court to apply interim measures under Rule 39 of the Rules of Court. He complained that, although the applicant had been recognised as unfit for detention, the court and then the investigator had refused to examine his application for release and to grant bail.

On 27 November 2007 the President of the Section to which the case has been allocated decided to indicate to the Government of Russia, under Rule 39 of the Rules of Court, interim measures which consisted of the following. The Government was invited to secure immediately, by appropriate means, the in-patient treatment of the applicant in a hospital specialised in the treatment of Aids and concomitant diseases. The Government were further requested to submit a copy of the applicant's medical file by 5 December 2007.

According to the applicant, on the same day (that is, on 27 November 2007) the GPO investigator Ms R., in the presence of the applicant's lawyer, put pressure on him to make a false confession and give false testimony against other persons, in exchange for release for medical treatment.

On 4 December 2007 the Government informed the Court that the interim measure had not been yet implemented since "it required additional time".

On 21 December 2007 the Court indicated to the Government additional interim measure, confirming, at the same time, the validity of the old one (the transferral of the applicant to a specialised institution). The Government were invited to form a medical commission to be composed on the parity basis, to diagnose the applicant's health problems and suggest treatment. The commission was also supposed to decide whether the applicant's medical conditions could be adequately treated in the medical facility of the detention centre. The Government was invited to report about the implementation of this additional measure by 27 December 2007. On that date the Government replied that the applicant could have received adequate medical treatment in the medical facility of the detention centre, and that his examination by a mixed medical commission was against the Russian law.

COMPLAINTS

1. The applicant complained under Article 3 that, in light of his medical condition, his detention amounted to inhuman and degrading treatment.

2. Under Article 5 of the Convention, the applicant complained that:

(a) his detention was motivated by the political and economic persecution of the company and its managers;

(b) the reasons given by the courts for the detention order and the subsequent extensions lacked any factual substantiation and were therefore arbitrary.

3. Under Article 6 of the Convention, the applicant complained that his prosecution was politically motivated and that the criminal proceedings against him were unfair.

4. Under Article 6 § 2, the applicant complained that the courts had refused to assess the quality of the evidence relied upon by the prosecution in support of the charges against him. At the same time the courts had relied heavily on the severity of the prosecution's allegations. According to the applicant, this had amounted to a violation of his right to the presumption of innocence.

5. Under Article 8, the applicant complained that:

(a) the court orders authorising searches of his house had been inadequately formulated, and thus the searches had been unlawful, arbitrary and excessive;

(b) the detention order had imposed a disproportionate burden on the applicant's family life, given that he had an underage son.

6. Under Article 13 in conjunction with Articles 5 and 6, the applicant complained that the courts had been precluded from assessing the quality of the evidence relied upon by the prosecution in deciding on the prosecution requests for detention and authorisation of criminal proceedings.

7. Under Article 18 of the Convention, in conjunction with Articles 5, 6 and 8, the applicant complained that the authorities had abused their powers of prosecution, detention and search, that these had been done not for the purpose of a legitimate criminal prosecution, but rather for political and commercial reasons, that is, to further the hostile takeover of Yukos oil company by the State.

THE LAW

1. The applicant complained under Article 6, combined with Article 18 of the Convention, that he was prosecuted for political reasons, and that the criminal proceedings against him were unfair. In so far as relevant, the Convention provisions referred to by the applicant provide:

Article 6 – Right to a fair trial

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 18 – Limitation on use of the restriction of rights

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Court notes that the proceedings against the applicant are still pending. His case has not yet been transmitted to a trial court. Therefore, the Court cannot, at this stage, speculate on whether the applicant will be convicted and whether his trial will be fair as a whole, or, as he suggested, unfair and politically-driven. In sum, at present all the complaints under Article 6 of the Convention, taken in conjunction with Article 18 (except for the complaint under Article 6 § 2, which will be examined below) are premature (see *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004). It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained that by relying on the prosecution's account of events the authorities had breached the principle of presumption of innocence. Article 6 § 2 of the Convention, relied on by the applicant, provides:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court notes that on 6 April 2006 the Simonovskiy District Court ruled that the applicant could be prosecuted because his actions revealed "elements of a criminal offence". Furthermore, on 7 April 2006 the Basmanniy District Court noted that the prosecution suspected the applicant of committing serious crimes. However, in the Court's opinion neither of these statements was tantamount to a declaration of the applicant's guilt. The courts merely expressed an opinion that there was a suspicion against the applicant, warranting certain procedural measures. Whether or not that suspicion was well supported by evidence may be open to doubt. However, this is not the question to be decided under Article 6 § 2 of the Convention.

The Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. The applicant made a number of other complaints concerning the criminal proceedings against him. He referred to Articles 3, 5, 8, 13, in conjunction with Article 18 of the Convention. In particular, the applicant complained about the alleged lack of medical treatment in the detention centre, his detention, the searches of his premises, the alleged lack of effective remedies to challenge the institution of criminal proceedings

against him and his continuing detention. He also complained that his criminal prosecution was part of a plan for a hostile take-over of the company by the State.

Having examined all the documents in its possession, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Articles 3, 5, 8, 13, in conjunction with Article 18 of the Convention;

Declares the remainder of the application inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President