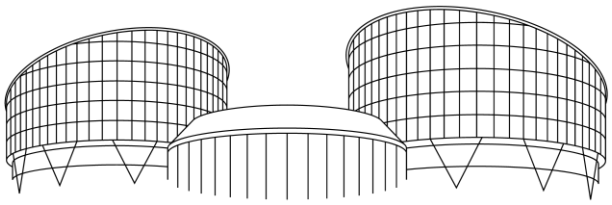

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 16242/08
by Aleksey ALEKSEYEV
against Russia
lodged on 15 February 2008

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Aleksey Aleksandrovich Alekseyev, is a Russian national who was born in 1973 and lives in Mozhaysk. He is represented before the Court by Mr V. Antonov, a lawyer practising in Cheboksary.

A. The circumstances of the case

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

On 13 August 2007 the applicant was arrested on suspicion of his participation in a rape committed by several persons. On 14 August 2007 he participated, on the investigator's instructions, in an identification procedure. On 16 August 2007 an arrest record was drawn. The applicant was interviewed. The record indicated that the applicant's next of kin had been informed of the arrest.

For unspecified reasons, the applicant had no legal assistance from 13 to 16 August 2007.

On 17 August 2007 a legal-aid lawyer was appointed by the investigator. It is unclear whether the applicant was afforded an opportunity to talk to this lawyer. On the same day, the Odintsovo Town Court of the Moscow Region held a detention hearing. It dismissed the applicant's request to hear a witness in relation to the circumstances of the arrest on 13 August 2007. The court ordered that the applicant should be kept in detention as a suspect in the criminal case for the following reasons:

> "Taking into account the circumstances of the case, the public dangerousness and the nature of the offence, the absence of permanent employment, [the applicant's] residence in another region, the absence of permanent residence in Moscow or Moscow region, the court orders detention. The court considers that there are reasons to believe that if at large, [the applicant] would flee justice and obstruct the proceedings."

The Town Court made no findings as regards the lawfulness of and reasons for the arrest carried out on 13 August 2007.

On 20 August 2007 the investigator issued a note confirming that Mr Antonov had been admitted as the applicant's counsel in the criminal proceedings.

On 24 August 2007 counsel was refused access to the applicant in a temporary detention centre. The administration of the detention centre required a visit permission issued by an investigator. Having obtained such permission, counsel was still refused access to the applicant for unspecified reasons. The applicant challenged the above refusals before national courts (see below).

On an unspecified date, the applicant was afforded an opportunity to see his counsel and to talk to him.

On 19 September 2007 the Moscow Regional Court upheld the detention order of 17 August 2007.

On 11 October 2007 the Town Court extended the applicant's detention to 16 December 2007 endorsing the reasoning of the first detention order.

On 25 October 2007 the Town Court upheld the refusal of visits on 24 August 2007 in the following terms:

> "The counsel's arguments concerning the refusal of visits are unfounded since the applicable legislation does not provide for visits in a temporary detention centre, due to the absence of premises for such visits..."

This court decision was upheld on 25 December 2007 by the Regional Court.

In the meantime, on 29 October 2007 the Regional Court upheld the detention order of 11 October 2007, while reducing the extended term to 13 November 2007.

The acting deputy head officer of the investigating authority sought an extension of the applicant's detention, indicating inter alia that the applicant "had taken an active part in the commission of the offence". On 12 November 2007 the Town Court extended the applicant's detention pending the investigation.

On an unspecified date the criminal case was submitted for trial before the Town Court. The applicant pleaded not guilty.

On 24 September 2008 the Town Court returned the case to the prosecutor. On 23 December 2008 the Regional Court upheld this decision.

On 21 January 2009 defence counsel was informed that a detention hearing was listed for 22 January 2009. On the latter date, at around 9 a.m., counsel sent a fax to the Town Court seeking an adjournment because the applicant needed a Russian-Chuvash interpreter. On 22 January 2009 the Town Court held a hearing and extended the applicant's detention for three days. On 26 January 2009 the Regional Court extended the applicant's detention until 25 March 2009.

On 16 February 2009 the investigating authority dismissed the request for an interpreter. The applicant brought judicial review proceedings under Article 125 of the Code of Criminal Procedure. However, these proceedings were discontinued because the criminal case against the applicant had already been submitted for trial.

On 18 March 2009 the Supreme Court of Russia set aside the decision of 26 January 2009 because the applicant's lawyer had not been informed of the date of the first-instance hearing. The Supreme Court ordered a re-examination of the detention matter and extended the applicant's detention to 1 April 2009 pending the re-examination by the lower court. However, it follows from the final considerations made by the appeal court that such detention was ordered until 25 March 2009.

In the meantime, on 23 March 2009 the Regional Court extended the applicant's detention, also to 25 March 2009. On 27 April 2009 the Supreme Court upheld this extension.

By a judgment of 18 August 2009 the Town Court convicted the applicant and his co-accused of rape and sentenced the applicant to nine years' imprisonment. The court stated that the prison term should be calculated from the date of the arrest, that is from 13 August 2007. The trial court relied on the victim's depositions before and during the trial, the pre-trial identification report, a forensic report and some other documentary evidence.

By a separate decision, the Town Court stated that a number of procedural documents at the pre-trial stage of the proceedings had wrongly indicated 15 or 16 August 2007 as the date of the arrest.

The applicant appealed. On 16 July 2010 the Regional Court upheld the trial judgment.

B. Relevant domestic law and practice

After the arrest (*задержание*) the suspect should be brought before an inquirer or investigator; a record of the arrest should be drawn within three hours and the person should be informed of his procedural rights under Article 46 of the Code, including the right to be informed of the accusation, the right to make stations or remain silent, and the right to legal assistance (Article 92 of Chapter 12 of the Code of Criminal Procedure, CCrP).

The suspect should be interviewed by an inquirer or investigator within twenty-four hours (Articles 46 § 2 and 92 § 4 of the CCrP).

If no extension of the arrest period and no detention on remand are ordered by a judge within forty-eight hours after the arrest, the arrestee should be released (Article 94 §§ 2 and 3).

By ruling of 29 October 2009, the Plenary Supreme Court of Russia stated that when dealing with a request for placement into custody the judge should be satisfied that the suspicion against the arrestee is reasonable, that the legal grounds for his arrest obtained and that the related procedure was respected. If the judge dismisses the prosecution's request, the suspect should be immediately released (§ 19). If the arrest is found to be lawful and justified, the judge may release him after the provision of financial sureties (§ 27).

Also, a court is empowered under Article 125 of the CCrP to examine complaint against any action or inaction on the part of an investigator or inquirer, if they were such as to cause damage to constitutional rights or freedoms of the person concerned or to impede his access to a court.

COMPLAINTS

1. The applicant complains under Articles 5 and 6 of the Convention that his arrest and detention from 13 to 16 August 2007 were unrecorded and were unlawful and that his related arguments were not properly examined; that he was refused an opportunity to examine witnesses at detention hearings; that his subsequent detention, in particular in early 2009, was unlawful; that his detention pending investigation and trial was not based on relevant and sufficient reasons; that he was not provided with the services of an interpreter, in particular at the detention hearings.

2. The applicant also complains under Articles 5 and 6 of the Convention that the detention judge violated the presumption of innocence on 12 November 2007.

3. Lastly, the applicant complains under Article 6 of the Convention that he was not provided with legal assistance during the first days of his detention; that his exercise of the right to legal assistance was adversely affected by the need to seek permission to receive visits from counsel in the detention facility; that he was refused legal assistance on 21-24 August 2007.

QUESTIONS TO THE PARTIES

1. Noting that the first letter enclosing the application form had been dispatched by Mr Antonov on behalf of the applicant on 15 February 2008 while the authority form was signed on 13 May 2008, has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention (cf. *Dobrić v. Serbia*, nos. 2611/07 and 15276/07, § 45, 21 June 2011; *Ahmed al Saady v. the Netherlands* (dec.), no. 199/10, 14 September 2010, and *Kemevuako v. the Netherlands* (dec.), no. 65938/09, 1 June 2010)? If so:

2. With reference to the applicant's specific allegations (in particular concerning the periods from 13 to 17 August 2007 and from 22 January to 23 March 2009), were his arrest and detention in compliance with the requirements of Article 5 § 1 of the Convention?

3. After his arrest on 13 August 2007, was the applicant brought "promptly" before a judge or other officer authorised by law to exercise judicial power, as required by Article 5 § 3 of the Convention? Did this judge/officer have power to order the applicant's release, in particular on

account of the alleged violations concerning the arrest and detention from 13 to 17 August 2007?

4. Was the length of the applicant's detention pending investigation and trial in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention?

5. Having regard to the applicant's specific allegations (see § 1 in "Complaints" section), was the procedure by which the applicant sought to challenge the lawfulness of his arrest and detention in conformity with Article 5 § 4 of the Convention? Did the alleged impediments to his exercise of the right to legal assistance, the alleged impossibility to obtain the services of an interpreter and the refusal of the detention court to hear witnesses violate that Article? Was it also violated on account of the alleged failure to examine the arguments concerning the applicant's arrest and detention from 13 to 17 August 2007? Did the above circumstances (also or alternatively) disclose a violation of Article 5 § 3 of the Convention, in particular as regards the initial period of detention?

6. Concerning the determination of the criminal charges against the applicant, was there a violation of Article 6 §§ 1 and 3 of the Convention on account of the alleged violations of the applicant's right to legal assistance in August 2007 (see § 3 in "Complaints" section)? In particular:

- When was the applicant first informed of his right to legal assistance? What was the exact scope of this right at the relevant stage of proceedings in August 2007? What was the exact wording by which such information was conveyed to the applicant? Was such information conveyed in a manner which allowed him to understand the scope of this right, including free legal assistance, and the significance of dispensing with the services of a lawyer?

- Did the applicant waive this right once/on a specific date or several times in August 2007? Was any such waiver recorded in the presence of a lawyer or after the applicant had access to legal advice on the question whether or not he should waive his right?
- When did he first talk to his counsel? Did he talk to counsel before the investigative measures, for instance before the identification parade (*опознание*)? Was counsel present during the investigative measures?

- Did the absence or delay of legal assistance in August 2007 entail "irretrievable" damage to the defence, thus leading to a violation of Article 6 of the Convention (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008; *Dayanan v. Turkey*, no. 7377/03, § 32, 13 October 2009; and *Mehmet Şerif Öner v. Turkey*, no. 50356/08, §§ 21-23, 13 September 2011)?

- In addition, was there a violation of Article 6 § 1 of the Convention on account of the use made of the tainted evidence at the applicant's trial (see for comparison *Pavlenko v. Russia*, no. 42371/02, §§ 114-120,

1 April 2010)? Was any evidence obtained during the relevant period of time (admissions, physical or documentary evidence, etc) used for convicting the applicant? Was the applicant's conviction based, solely or to a decisive extent, on such evidence? Were any alleged deficiencies arising of the pre-trial problem relating to legal assistance remedied at the trial and on appeal against the judgment of 18 August 2009?