



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

FIRST SECTION

Application no. 58973/08
Sergey Vladimirovich KHARITONOV against Russia
lodged on 6 November 2008

STATEMENT OF FACTS

The applicant, Mr Sergey Vladimirovich Kharitonov, is a Russian national who was born in 1975 and lives in Kineshma, a town in the Ivanovo region.

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

A. Criminal proceedings against the applicant and his detention

On 26 October 2006 police arrested the applicant on suspicion of extortion.

On 28 October 2006 the Oktyabrskiy District Court of Ivanovo (“the District Court”) granted the investigator’s request to extend the applicant’s arrest for further 24 hours, thus bringing its total duration to 72 hours.

On 31 October 2006 the District Court granted the investigator’s request to place the applicant in pre-trial detention. The District Court found, in particular, that the applicant had been suspected of a particularly serious offence, had a criminal history, was unemployed and had no means for living. It also noted that the applicant had applied violence to victims and might put pressure on them if released.

On 2 November 2006 the applicant was charged with extortion.

The domestic courts further extended the applicant’s detention on 25 December 2006 and on 28 April, 23 August, 23 October and 20 December 2007 on the same grounds as before. In particular, on 20 December 2007 the Regional Court extended the applicant’s detention until 28 February 2008, thus bringing its total duration to sixteen months and two days.

On 30 January 2008 prosecution authorities referred the criminal case against the applicant and his co-defendants to the Regional Court for trial.

At the preliminary hearing on 28 February 2008 the Ivanovo Regional Court determined that the case should be returned to the Ivanovo regional prosecutor to have factual inconsistencies and legal defects remedied within five days. As regards the custodial measure, the Regional Court held as follows:

“[The applicant and his co-defendants] stand accused of having committed, over a long period of time, a great number of serious and particularly serious crimes, in the framework of a numerous organised criminal group which was formed for commission of serious and particularly serious crimes. When deciding on the custodial measure, the court took the above-mentioned circumstances into account and also had regard to the fact that, if released, they may re-offend, abscond justice, interfere with the establishment of the truth or exert pressure on victims or witnesses. The said circumstances still obtain, which is confirmed by the number, nature and degree of public dangerousness of the crimes imputed to the defendants.

In this connection, the court sees no reason to vary the custodial measure.”

It is not clear whether the applicant or his counsel appealed against the decision of 28 February 2008.

On 14 March 2008 the Regional Court referred the case file to the prosecutor’s office.

On 17 March 2008 the Ivanovo regional prosecutor’s office received the case and resumed the proceedings.

On 18 March 2008 the applicant was presented with a final version of charges. In addition to the charges of extortion he was charged with participation in an organised criminal group.

On 19 March 2008 the investigator applied to the Regional Court with a request for extension of the applicant’s detention until 21 May 2005 in order to give him the time to familiarise with the materials of the criminal case.

On 20 March 2008 the Regional Court granted the investigator’s request. The decision stated that the applicant’s detention had to be extended for a further two months, i.e. until 21 May 2008, and that therefore the total duration of his detention would be 17 months and 8 days.

In his appeal against the detention order of 20 March 2008 the applicant complained that the Regional Court had made a mistake in calculation of the length of his detention because in fact the total duration of his detention ordered by decision of 20 March 2008 amounted to eighteen months and twenty five days.

On 6 May 2008 the prosecuting authorities resubmitted the case to the Regional Court for trial.

On 21 May 2008 the Regional Court upheld the detention order of 20 March 2008. It pointed out that the length of the applicant’s detention had been calculated correctly without taking into account the time during which the case had been in the Regional Court.

On 21 May 2008 the Regional Court held a preliminary hearing and set the examination of the case on 23 June 2008. By the same decision the Regional Court held that the applicant as well as some of his co-defendants had to stay in detention. In taking that decision the Regional Court referred to the same grounds as before. On 26 August 2008 the Supreme Court of the Russian Federation upheld that decision.

The applicant submitted that between 20 July and 5 December 2008 he had been put on numerous occasions into a punishment cell and was kept there in inhuman conditions.

Further extensions of the applicant's detention were ordered by the Regional Court on 6 November 2008 and on 6 February, 5 May and 6 August 2009.

On 18 September 2009 the jury found the applicant not guilty. On 27 November 2009 the Regional Court, on the basis of the jury's verdict, acquitted the applicant of all charges.

It follows from the information provided on the official site of the Regional Court that on 8 December 2010 the Supreme Court of the Russian Federation upheld the judgment of 27 November 2009.

B. Proceedings for compensation of non-pecuniary damage

It follows from the information provided on the official site of the Regional Court that on 11 April 2011 the Leninskiy District Court of the Ivanovo Region granted the applicant's claim against the Ministry of Finance of the Russian Federation for compensation of non-pecuniary damage caused by unlawful criminal prosecution and awarded him 1,050,000 Russian roubles. On 18 May 2011 the Regional Court upheld that decision.

COMPLAINTS

A. Complaints lodged on 6 November 2008

1. The applicant complained under Article 5 that:
 - (a) his detention between 29 February and 20 March 2008 had been unlawful;
 - (b) his pre-trial detention had been very long and had not been sufficiently justified;
2. The applicant complained under Article 6 of the Convention that the criminal proceedings against him were unreasonably long and that meetings with his counsel in remand prison had been tapped by the authorities.

B. Complaints lodged on 14 April 2010

1. The applicant complained under Article 3 that between 20 July and 5 December 2008 he had been put on numerous occasions into a punishment cell and was kept there in inhuman conditions.
2. The applicant complained under Article 5 that the decision of 28 October 2006 to extend his arrest up to 72 hours had been unlawful.
3. The applicant complained under Article 6 that because of his detention in a punishment cell he could not prepare for the court hearings of his criminal case.

QUESTIONS TO THE PARTIES

1. What is the current state of criminal proceedings against the applicant on charges of extortion and participation in an organised criminal group?

2. May the applicant still claim to be a victim within the meaning of Article 34 of the Convention of a violation of Article 5 § 3 of the Convention, having regard to the decision of 11 April 2011 of the Leninskiy District Court of Ivanovo, as upheld by the Ivanovo Regional Court on 18 May 2011? Was the decision of 14 April 2011 enforced fully and without delays?

3. If the applicant may still claim to be a victim of violation of Article 5 § 3, was the length of the applicant's detention in breach of the "reasonable time" requirement of that provision? In particular, did the authorities cite "relevant and sufficient reasons" for the applicant's continuing detention? Were the proceedings conducted with "special diligence"?

The Government are also requested to submit copies of the following documents:

- all court decisions extending the applicant's detention as well as the applicant's appeals against these decisions and the decisions of the appeal court
- decision of the Supreme Court of the Russian Federation of 8 December 2010;
- judgment of the Leninskiy District Court of 14 April 2011 and decision of the Ivanovo Regional Court of 25 May 2011.