



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

FIRST SECTION

Application no. 26627/05
Ravshan Salimovich KARIMBAYEV
against Russia
lodged on 12 July 2005

STATEMENT OF FACTS

The applicant, Mr Ravshan Salimovich Karimbayev, is a Russian national who was born in 1960 and lives in the town of Vladimir. He is represented before the Court by Mr M.V. Ovchinnikov and Mr F.V. Bagryanskiy, lawyers practising in the town of Vladimir.

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

A. Criminal proceedings against the applicant

1. Background information

The applicant is a businessman.

On an unspecified date criminal proceedings were brought against him on suspicion of having unlawfully obtained a loan in favour of his company from a bank.

During his detention on remand in the context of the first set of criminal proceedings against him, further charges have been brought against the applicant on suspicion of attempted murder of the applicant's business partner.

As a result, the two set of criminal proceedings took place simultaneously.

2. The first set of criminal proceedings

(a) Initial detention order

On 7 November 2004 the Frunzenskiy District Court of the town of Vladimir decided to place the applicant in custody pending the investigation.

(b) First extension order and the applicant's requests for release

By a decision of 28 December 2004 the detention on remand was extended until 5 February 2005.

On 5 February 2005 the time-limit for the applicant's detention expired and on 31 May 2005 his counsel asked the competent domestic court to release him.

This request was refused by the Leninskiy District Court of Vladimir on 2 June 2005.

The decision of 2 June 2005 was upheld on appeal by the Vladimir Regional Court on 5 July 2005.

(c) The applicant's detention pending trial proceedings

On 17 February 2005 the Frunzenskiy District Court commenced the trial proceedings and held a preliminary hearing in this connection. By the same decision the applicant was ordered to remain in custody pending the trial.

The applicant appealed against this decision in court.

The decision of 17 February 2005 was approved by the Regional Court on 29 November 2005.

By decision of 4 August 2005 the Leninskiy District Court extended the applicant's detention on remand until 8 November 2005

The applicant's appeal against this decision was dismissed by the Vladimir Regional Court on 15 September 2005.

On 3 November 2005 the Leninskiy District Court extended his detention until 8 December 2005.

This decision was upheld on appeal by Vladimir Region Court on 29 November 2005.

3. The outcome of the first set of criminal proceedings

By a first instance judgment of the Leninskiy District Court dated 26 December 2005 the applicant was convicted of having defrauded a bank by submitting false information concerning the financial situation of his business (Articles 33 (§§ 4 and 5), 176 § 1 and 69 § 3 of the Criminal Code of Russia) and sentenced to three years and nine months of imprisonment.

The judgment was upheld on appeal by the Vladimir Regional Court on 28 February 2006. The appeal court reduced the applicant's overall sentence to two years and six months of imprisonment.

4. The second set of criminal proceedings

(a) The applicant's charge

On 3 June 2005, whilst the applicant was detained in remand centre IK-7, a new set of charges was brought against him, this time on suspicion on him having conspired physically to eliminate one of his business rivals.

It appears that this set of charges was based entirely on various pieces of evidence obtained through wiretapping of the applicant's telephone conversation in the prison cell as well as a series of operative experiments conducted by the police agents posing as the applicant's fellow inmates and criminals.

According to the applicant, the possibility of assisting him in his "life troubles" had been mentioned for the first time by a police agent called S. posing as a criminal underboss with direct connection to a well-known criminal overlord nicknames Sever and two inmates, K. and So., who had apparently collaborated with the prison administration. The agent provoked the applicant by offering his help and actually incited him to order the death of his business rival. The agent, who could move in and out of the prison cell at will, brought a cell phone to the applicant so that the latter could discuss the conditions of the planned murder.

(b) The applicant's detention on remand in the context of the second set of criminal proceedings against him

It appears that in the context of this criminal case on 15 November 2005 a detention order was issued by the Frunzenskiy District Court.

This detention order was upheld on appeal on 25 November 2005 by the Supreme Court of Russia.

The detention was subsequently extended by the Frunzenskiy District Court on 12 January 2006 until 3 March 2006.

On the applicant's appeal, this detention order was upheld by the Vladimir Regional Court on 16 February 2006.

By decision of 1 March 2006 the Frunzenskiy District Court extended the applicant's detention until 3 April 2006.

This decision was upheld on appeal by the Vladimir Regional Court on an unspecified date.

On 22 March 2006 the applicant's detention on remand was extended by the Frunzenskiy District Court until 17 April 2006.

This extension was upheld on appeal by the Vladimir Regional Court on 25 April 2006.

On 28 March 2006 the applicant's criminal case was sent to the trial court.

On 21 April 2006 the Vladimir Regional Court returned the case to the prosecutor.

On 18 May 2006 the Frunzenskiy District Court yet again extended the applicant's detention on remand, this time until 12 June 2006.

This decision was upheld on appeal by the Vladimir Regional Court on 20 June 2006.

On 8 June 2006 the applicant's detention was extended by the Frunzenskiy District Court until 27 June 2006.

On 22 June 2006 the Vladimir Regional Court examined the applicant's criminal charges and decided to hold a preliminary hearing in his case as well as to extend the applicant's detention on remand pending the trial proceedings.

The applicant and his counsel consistently complained about the detention orders in his second criminal case as unnecessary and also asked the courts to release him pending the proceedings because of the appalling conditions of the detention.

(c) The trial and appeal proceedings

By a first instance judgment of 12 October 2006 the Vladimir Regional Court examined the applicant's criminal case and found the applicant guilty of having conspired to contract a killer for a murder of his former business partner. The applicant received a sentence of imprisonment of eight years and a half in a correctional colony of strict regime.

The judgment mentioned that:

“... In May 2005 [the police authorities] received an operative information about the intent of [the applicant to kill the victim]... view a view to thwarting these preparations [the police] came up with a plan of the operative action [оперативно-розыскного мероприятия] ... for the participation in which on a voluntary basis was used a private individual with operative name Petrov N.M. ...”

The court then described that on 20 May 2005 Petrov had a meeting with the applicant who gave him specific instructions concerning the method and other relevant conditions for the contract killing, such as the price and the approximate date. On 25 May 2005 the applicant called his female partner and confirmed the financial arrangements. On 27 May 2005 the moneys were paid and on 31 May 2005 the applicant was deliberately misinformed that the order had been executed. Witness S., a prison official in charge of the operative activities in the applicant's section of the prison, gave evidence to the court confirming that at the end of April he had learned from unofficial sources about the applicant's plan to murder his business partner. In response to the applicant's argument about the alleged incitement, witness S. denied these accusations and any knowledge of inmates K. and So. The court did not examine the applicant's argument in depth.

The sentence was upheld on appeal by the Supreme Court of Russia on 5 April 2007. Despite the applicant's attempts to defend himself with reference to the alleged incitement by the police, the appeal court did not address this argument at all.

B. Conditions of the applicant's detention

Between 7 November 2004 and 13 April 2005 the applicant was held in pre-trial detention centre IZ-33/1 of the Regional Department of Execution of Sentences of the Ministry of Justice.

According to the applicant, the institution was heavily overcrowded. The applicant did not have an individual sleeping place. Cellmates only had around 1.5 square metres of personal space. The WC area was not separated from the rest of the cell, was extremely dirty and was cleaned but very rarely. The cells were not equipped with ventilation system and so the air in the cells was quite humid and smelly due to the presence of heavy smokers

amongst the cellmates. The prison did not provide the cellmates with cleaning services in respect of their own bed linen and clothes. So each cellmate had to clean their belonging manually. The lighting was insufficient and at the same time it was never switched off, even during night time. The cells were infected with mice, cockroaches, insects and lice. The prison administration did not furnish cellmates with soap and other toilet products. There was no tap hot water at all and the prison administration furnished the cellmates with two bucketsful of hot water per day per cell. The shower service of fifteen minutes was only provided once each seven to ten days. It was refused if a cellmate was to be escorted to a court on that day. No quality drinking water was provided at all. The food was of terrible quality and it was not possible to install a fridge in the cell even at the cellmates' own expense. The applicant submits that the daily walks took place in a small covered area which was insufficiently spacey to fit in walking groups of up to twenty cellmates.

On the days when he was to be taken to a court, the applicant was usually woken up at 3 or 4 AM and moved to a collector room until around 9.30 AM. The convoy buses were overcrowded with three inmates per one sitting place.

On 3 April 2005 the applicant was transferred to facility OD-1/T-2 of the Department of Execution of Sentences of the Ministry of Justice of Russia located in the town of Vladimir. The conditions of detention were similar apart from the overcrowding problem.

The applicant complained regularly about the appalling conditions of his detention in his complaints concerning the detention on remand.

C. The applicant's transfer to IK-7

1. The applicant's initial submissions

Shortly after the applicant's conviction in the second criminal case against him on 12 October 2006, the applicant was transferred from facility OD-1/T-2 to a detention facility IK-7 (PFRSI FGU IK-7).

According to the applicant and his lawyers, the prison administration "put physical and psychological pressure" on the applicant to make him discontinue the proceedings both in Strasbourg and domestically. He was forced to sign a statement of withdrawal of his complaint before the European Court, in which he also declined the services of Mr M. Ovchinnikov. Furthermore, the applicant allegedly requested Mr Ovchinnikov not to pursue the Strasbourg proceedings on his behalf either. This request was transmitted to Mr Ovchinnikov through Mr Bagryanskiy, the applicant's second lawyer.

Mr Bagryanskiy made a written statement confirming that he had seen the applicant in that detention centre during a visit, that the applicant had looked frightened, his hands had been trembling and that he had whispering into Mr Bagryanskiy's ears out of fear of being heard. He alleged that he had been beaten by the prison staff and that they had threatened to kill him in case he continued to collaborate with Mr Ovchinnikov.

2. The Government's comments

By a letter of 21 December 2006 the Court invited the Government to comment on the applicant's allegations of pressure and ill-treatment and to provide the Court with detailed factual information concerning the applicant's correspondence in prison and the reasons for his transfer to IK-7.

On 18 January 2007 the Government responded to the applicant's submission, having generally denied them. They conceded only in so far as on 29 November 2006 the applicant had indeed made a written statement to the effect that he had asked to remain in facility IK-7 in the future, that he had no complaints or question about the regime or other conditions of his detention in this facility.

The Government submitted that the applicant's only correspondence in prison was with the Vladimir Regional Court (a letter concerning the examination of his complaint dated 13 November 2006 and an appeal of 20 December 2006), the Prosecutor General's office (a letter of the same date concerning his decision to retract his previous complaint) and the Supreme Court (an appeal dated 20 December 2006).

The Government also explained that the applicant was held in remand prison IZ-33/1 of the town of Vladimir starting from 12 November 2004, that on 13 April 2005 the applicant was transferred to facility T-2 and that on 7 November 2006 he was moved to facility IK-7. According to them, the latter transfer was lawful under Article 10 § 2 of the Law on the detention on remand and was necessary to decrease the number of inmates in ordinary remand prisons.

3. The applicant's further submissions and comments

In response to the Government's submissions, the applicant and his counsel insisted that the applicant had been forced to make at least two written statements and that at least one of these statements may have been among the correspondence mentioned by the Government. The applicant denied having sent any appeals on 20 December 2006.

On unspecified date the applicant's counsel asked the Vladimir Regional Court for a copy of the applicant's statement from the case file (presumably dated 13 November 2006), in which the applicant had refused to appeal against the judgment and refused the services of the counsel in question. According to the applicant, this statement was contained in volume no. 6 of the criminal case (pages 31 and 32, 69 to 71).

In response to this request, on 27 November 2006 judge I. refused, having referred to the lawyer's loss of his status of the applicant's counsel and also because the statement had been addressed to the court, and not to him.

The applicant and his counsel referred to publications in various media, mostly local newspapers, confirming their allegations of ill-treatment and pressure by the prison administration of IK-7 in respect of the inmates. More specifically, the relevant publications have been made in a newspaper published in the town of Kovrovo "Kovrovskie Vesti" and a newspaper published in the town of Vladimir "Tomiks. Vladimir". There were also complaints in this connection by a NGO "Za prava cheloveka" ("For Human Rights") to the Prosecutor General on 29 July 2004.

The applicant submitted hand-written statements of fellow inmates, confirming his allegations concerning the general pressure by the prison administration and the “atmosphere of fear”.

Mr Aleksey Yureyevich Voronkov, who was held in that prison as of 1 September 2005 and was released after his acquittal by the verdict of the Vladimir Regional Court of 18 July 2006, confirmed that the inmates had been routinely ill-treated by the guards and that the inmates had been in constant fear of reprisals.

Mr Yuriy Nikolayevich Krovyakov, who was detained in that prison between 30 June and 22 July 2006, confirmed having been ill-treated by some other inmates who had already been serving their sentences.

Mr Elshad Ragim Ogly Yusubov was detained in that prison between 17 August and 18 December 2006 and confirmed having been ill-treated and having witnessed the ill-treatment of other inmates as well as having received threats.

Mr Roman Novruzovich Baratov did not specify his dates of the detention, but also confirmed having been ill-treated by the prison guards.

The applicant also submitted that on 29 December 2006 he had been paid a visit by the prison officials S. (the same person who had posed as a criminal underboss, allegedly incited him to order a murder of his business partner and later acted as a witness against the applicant in court) and K. According to the applicant, the two officials threatened him to force him to withdraw his application in the Court.

As regards the Government’s explanation concerning the reasons for his transfer, the applicant disagreed and stated that the inmates had been sent to IK-7 selectively among those who had been resisting or refused to cooperate with the investigation and that the methods used by the prison administration in IK-7 had aimed at breaking the will of the inmates and facilitating their conviction.

COMPLAINTS

The applicant made a number of grievances in the application form dated 12 June 2005.

1. Under Article 3 of the Convention the applicant complained that the conditions of his detention had been appalling on account of, among other things, severe overcrowding of his prison cells.

2. The applicant also considered that his detention after 5 February 2005 had ceased to be domestically lawful and had therefore been contrary to Article 5 § 1 of the Convention.

3. Relying on Article 5 § 4 of the Convention, he complained about the lack of proper detention hearings after the case file was already pending before the trial court.

In his application form dated 23 December 2005 he made some additional complaints.

4. Under Article 5 of the Convention the applicant complained about the District Court’s failure to examine the lawfulness of his detention between

5 and 17 February 2005 during the preliminary hearing of 17 February 2005.

5. Relying on the same Convention provision the applicant also complained that the imposition of the detention order in the context of the second criminal case against him on 15 November 2005 by the Vladimir Regional Court had been unnecessary and unlawful.

In a letter dated 20 December 2006 the applicant made a number of complaints.

6. Relying on Articles 3 and 34 of the Convention, the applicant complained that prison administration of IK-7 had been forcing him to discontinue the Strasbourg proceedings, not to use the services of his lawyers and that, more generally, his transfer to that prison had been unjustified and aimed at breaking his will and resistance.

Lastly, in the application form of 4 June 2007 the applicant made one further complaint.

7. He complained about having been prompted to order a murder of his former business partner by police agent S. posing as criminal underboss and two inmates K. and So., who had been acting under S.'s guidance. With reference to Article 6 of the Convention the applicant complained that his conviction for this crime had been unfair because he would not have committed it had it not been for the active incitement by the police agent S. and his aides K. and So.

QUESTIONS TO THE PARTIES

1. Was Article 3 of the Convention respected in so far as the applicant's detention on remand in facilities IZ-33/1, OD-1 and IK-7 is concerned? 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?

2. The Government are requested to comment on the applicant's allegations of pressure and ill-treatment in IK-7 (and his references to

various testimonies of former fellow inmates and publications in press) and to respond to the following two questions:

a) Was the applicant subject to any treatment incompatible with Article 3 of the Convention during his detention in IK-7?

b) Did the prison authorities exercise any pressure on the applicant during his detention in IK-7? In particular, the Government are requested to submit copies of the applicant's letters sent out to the Vladimir Regional Court, the Prosecutor General's office and the Supreme Court.

3. Was the applicant's detention between 5 and 17 February 2005 compatible with the requirements of Article 5 § 1 and, more specifically, did it have any proper lawful basis?

4. Was the applicant's able to ask for review of the lawfulness of his detention between 5 and 17 February 2005 and to obtain his release, as required by Article 5 § 4 of the Convention?

5. Was the applicant's conviction in the second set of criminal proceedings against him fair within the meaning of Article 6 § 1 of the Convention? The reference is being to the applicant's allegation that he was incited to commit this crime by a State agent S. posing as a criminal? The Government are requested to submit all relevant information (including the materials from the police case file which were not included in the applicant's criminal case file examined by the courts) concerning the way in which the competent police authority and officer S. had obtained the information about the applicant's intention to order a murder of his former business partner.