



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

FIRST SECTION

Application no. 42259/07
Vasiliy Vadimovich BOYKO
against Russia
lodged on 18 September 2007

STATEMENT OF FACTS

The applicant, Mr Vasiliy Vadimovich Boyko, is a Russian national, who was born in 1959 and lives in Moscow. He is represented before the Court by Ms K. Kostromina, a lawyer practising in Moscow.

The circumstances of the case

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

1. Criminal proceedings against the applicant

In February 2006 criminal proceedings were instituted on charges of fraudulent actions with land plots by way of forging ownership documents. In April 2006 the applicant, the head of a large dairy company, was interrogated as a witness. On 24 November 2006 he was charged with organising and heading a stable criminal group involved in a large-scale fraud. The applicant was summoned to the first interrogation on 27 November 2007.

The applicant, however, was unable to comply with the summonses, given that between 23 November and 4 December he had travelled to a number of Russian towns on business matters. His lawyer immediately informed the investigator of the applicant's schedule and asked to fix a new date for the interview. Despite the notification, on the same day the investigator issued an arrest warrant for the applicant.

On 22 December 2006 the applicant was served with summonses to interrogations which had been fixed for 25, 26 and 27 December 2006. The

applicant could not attend the interview on 25 December 2006 as his lawyer had been involved in other unrelated proceedings. In the night on 26 December 2006 the applicant was taken to a hospital with an attack of chronic cholecystitis. His wife immediately informed the investigator of the applicant's admission to the hospital.

2. Detention order of 1 February 2007

In the end of January 2007 an international arrest warrant was issued in respect of the applicant. On 1 February 2007 the Ostankinskiy District Court of Moscow authorised the applicant's placement in custody, in view of the gravity of the charges against him and his liability to abscond. The court relied on the information provided by police officials that the applicant had first left Russia for Ukraine and had stayed there until 3 January 2007 when he had moved to Hungary. The detention order of 1 February 2007 was issued in the applicant's absence. His lawyer, however, attended. Another lawyer was informed of the hearing in the evening on 31 January 2007 but could not attend.

On 9 February 2007 the applicant's lawyers appealed, having argued that the investigation had served the District Court with incorrect information about the applicant's alleged attempt to escape. They stressed that the applicant was in Russia, that he conducted a very active social life and was not hiding from the investigation.

On 15 February 2007 the applicant was arrested.

On 19 March 2007 the Moscow City Court, having heard the applicant and his four lawyers, upheld the detention order of 1 February 2007. The City Court agreed with the District Court's findings and also noted the risk of the applicant tampering with witnesses, given his alleged threats raised against a witness K. and the victims. Furthermore, the court took into account that the investigators had been unable to find the applicant at the place of his residence or any other known address and that they had been unable to reach the applicant in his office, as the security service of his company had not let the investigators in the building.

3. Detention order of 9 April 2007

A request for the extension of the applicant's detention was accepted by the Tverskoy District Court of Moscow on 9 April 2007. The detention was authorised until 15 August 2007 in view of the gravity of the charges and the applicant's liability to abscond and obstruct justice. The Tverskoy District Court relied on the Ostankinskiy District Court's finding pertaining to the applicant's attempts to go on a run.

On 11 April 2007 the applicant and his lawyers submitted an appeal against the detention order.

The detention order was upheld on appeal on 16 July 2007 with the City Court fully endorsing the District Court's reasoning.

4. Detention order of 31 July 2007

Another order extending the applicant's detention until 15 November 2007 was issued by the Tverskoy District Court on 31 July 2007. The reasoning was identical to the one employed by the District Court on the

previous occasion, save for a reference to the impossibility to release the applicant on bail or written undertaking. The order became final on 29 August 2007 when the City Court examined the lawyers' appeal statements submitted on 2 and 3 August 2007 and dismissed them.

5. Detention order of 19 October 2007

On 19 October 2007 the District Court extended the applicant's detention until 15 February 2008. In a very laconic reasoning the court concluded that the applicant, who had already attempted to abscond the investigation, was liable to go on a run, obstruct justice and reoffend.

On 26 December 2007 the City Court upheld the detention order, having endorsed the District Court's reasoning.

6. Detention order of 28 January 2008

The applicant's detention was again extended on 28 January 2008 until 22 February 2008. Having examined the lawyers' submissions that the applicant had the permanent place of residence in Moscow, strong family ties, that he was sick and that he been characterised in a positive way by a number of State officials and Russian Orthodox Church members, the District Court, nevertheless, concluded that the risk of the applicant's absconding or interfering with the investigation was too high and did not warrant the applicant's release.

An appeal brought by the applicant's defence team on 31 January 2008 was examined by the Moscow City Court on 7 March 2008 and dismissed as unfounded.

7. Detention orders of 5 February and 28 March 2008

Another request for extension of the applicant's detention until 22 June 2008 was accepted by the Moscow City Court on 5 February 2008 with the reasoning that the gravity of the charges, the complexity of the case (more than 2,000 witnesses heard and 100 volumes of evidence collected), the risk of the applicant's absconding and obstructing justice warranted his further detention.

On 18 March 2008 the Supreme Court of the Russian Federation, having examined the applicant's appeal of 14 February 2008, quashed the detention order and sent the case to the City Court for a new examination. The Supreme Court concluded that the City Court had violated the requirements of the criminal procedural law, having failed to examine thoroughly the applicant's argument that he had not absconded the investigation in November and December 2006 and having failed to consider a possibility of releasing the applicant on bail. At the same time, the Supreme Court noted that the applicant should remain in detention as the City Court needed time to examine the matter properly.

Ten days later the City Court, having re-examined the matter, again decided to authorise the applicant's detention until 22 June 2008. The City Court examined the applicant's behaviour prior to his arrest, observed that he had deliberately disregarded the investigators' summonses and had incited the resistance to the investigators' lawful orders during a search in

his company's headquarters, and concluded that there was still a strong risk of the applicant going on a run or interfering with the investigation.

On 5 May 2008 the Supreme Court of the Russian Federation upheld the order, having considered that the applicant's objections in his appeal statement of 7 April 2008 were ill-founded.

8. Detention order of 17 June 2008

By an order of 17 June 2008 the Moscow City Court, having employed a similar reasoning as in its previous orders, extended the applicant's detention until 15 August 2008. The City Court's biggest fear was that the applicant was liable to abscond. At the same time, the court rejected the investigator's arguments of the applicant's liability to tamper with witnesses or re-offend, having found them to be unsubstantiated.

Ten days later the lawyers lodged an appeal statement, having argued that the applicant's continued detention ran counter to the requirements of Article 5 of the Convention, having been entirely devoid of grounds.

That appeal was rejected on 29 July 2008 with the Supreme Court's finding of the risk of the applicant's absconding.

9. Detention order of 25 July 2008 and the applicant's release

Another extension issued by the City Court on 25 July 2008 with the same finding of the applicant's liability to escape was quashed on appeal by the Supreme Court on 2 October 2008. The Supreme Court considered that there was no evidence in support of the fear that the applicant would abscond or obstruct justice. It also noted that the investigation was pending for over two years of which the applicant spent more than a year and a half in detention. The Supreme Court concluded that that period was clearly in violation of the principle of "reasonableness" of the detention and authorised the applicant's release on bail.

10. Applicant's arrest on 6 October 2008

On 6 October 2008 the applicant was arrested.

Two days later the Tverskoy District Court dismissed the investigator's request for the applicant's placement in custody and authorised his release. The court did not find any support for the investigator's fears that the applicant was still liable to abscond, re-offend or interfere with the investigation or trial. That decision was upheld on appeal by the Moscow City Court on 29 October 2008.

11. Proceedings concerning the applicant's meetings with a priest and his family members

During his detention, after March 2007, the applicant sent a number of requests to the investigating authorities, seeking meetings with his relatives and a priest.

On 29 March 2007 the applicant received a letter from the investigator, informing him that a meeting with a priest cannot be granted, as it "could negatively influence the course of the investigation".

Another refusal was received by the applicant on 30 May 2007.

The applicant's lawyers appealed against the refusals to the Tverskoy District Court.

On 24 October 2007 the District Court examined and dismissed the complaint pertaining to the impossibility to see the priest, having noted that it was within the investigator's competence to determine the necessity of such visits, including those for religious purposes. In the court's view, the investigator was better equipped to determine whether the visit ran counter to the interests of the investigation.

Six days later the District Court partly dismissed another complaint by the applicant regarding the impossibility to see his relatives. The District Court established that between March and September 2007 the applicant's four requests for meetings with his wife, mother and two daughters were accepted. Since September 2007 the investigator considered that the meetings could run contrary to the interests of the investigation and did not permit them. The District Court accepted that the refusals to provide meetings with the applicant's children were unlawful and ordered the investigator to schedule such meetings. At the same time, the court rejected the part of the complaint, having found that after September 2007 when the applicant's wife and mother had been invited to the proceedings as witnesses, it was for the investigator to determine the necessity to provide the applicant with meetings with those family members.

It appears that both decisions were upheld on appeal by the City Court on 15 February 2008.

Criminal proceedings against the applicant are still pending.

12. Applicant's inability to see Ms Kostromina

On 10 December 2007 the applicant's representative before the Court, Ms Kostromina, sent a request to the head of the applicant's temporary detention facility, asking to authorise a meeting with the applicant. She provided the facility head with credentials showing that she was the applicant's representative before the European Court.

On 18 December 2007 the head of the facility transmitted the request to the investigator.

Ms Kostromina lodged a complaint with the Preobrazhenskiy District Court of Moscow, arguing that the actions of the head of the facility were unlawful, that he should have authorised her visit without any limitations as the applicant's right was guaranteed by Article 34 of the Convention.

On 15 February 2008 the District Court dismissed the complaint, having reasoned as follows:

“The legal analysis of the abovementioned Articles [of the Russian Code of Criminal Procedure] leads to the conclusion that documents provided by Ms Kostromina for the representation of [the applicant's] interests before the European Court of Human Rights do not serve as evidence that the lawyer, Ms Kostromina, was invited to the criminal proceedings as [the applicant's] lawyer, and therefore, cannot grant [Ms Kostromina] a right to act as his lawyer, as secured by Article 53 of the Russian Code of Criminal Procedure, including to exercise the right to have meetings with a client”.

On 6 May 2008 the Moscow City Court upheld the District Court's decision, having noted that the right to see a defendant in a criminal case

without any limitations has a lawyer who was officially invited to the criminal proceedings as a member of the defence team.

COMPLAINTS

1. The applicant complained under Article 5 §§ 1, 3 and 4 of the Convention that his arrest and detention had been unlawful and unreasonable, that his arrest had been authorised in his absence and that the courts did not examine speedily the issues of his continued detention.

2. The applicant further complained under Articles 3, 8, 9 and 13 of the Convention that the investigator had not authorised his meetings with a priest and with his relatives, that he had been detained for a long time despite his poor state of health and that the courts had refused to take his side.

3. In addition, the applicant complained under Article 34 of the Convention that he had not been allowed to have a meeting with Ms Kostromina to discuss his case pending before the Court.

3. The applicant further submitted a long list of complaints related to the substance of the criminal proceedings against him, including the authorities' failure to guarantee his right to defence, their inability to follow the law, their failure to safeguard the applicant's property rights, etc.

QUESTIONS TO THE PARTIES

1. Was the length of the applicant’s detention on remand in breach of the “reasonable time” requirement of Article 5 § 3 of the Convention? In particular, were the domestic courts’ decisions extending the applicant’s detention founded on “relevant and sufficient” reasons and were the proceedings conducted with a “special diligence” (see *Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?

2. Was the procedure by which the applicant sought to challenge the lawfulness of his pre-trial detention in conformity with Article 5 § 4 of the Convention? In particular, did the length of the proceedings in the present case, by which the applicant sought to challenge the lawfulness of his pre-trial detention, comply with the “speed” requirement of Article 5 § 4 of the Convention?

3. Were the restrictions on family visits to the applicant justified under Article 8 of the Convention? Was the quality of the law regulating the procedure for granting family visits to detainees sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness?

4. The Government are asked to provide the Court with copies of the investigator’s decisions attributing the status of witnesses to the applicant’s mother and wife and copies of records of interrogation interviews with the applicant’s wife and mother.

5. Were the restrictions on visits of a priest to the applicant justified under Article 9 of the Convention? Was the quality of the law regulating the procedure for granting visits for religious purposes to detainees sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness?

6. Was there any hindrance by the State in the present case with the effective exercise of the applicant’s right of application enshrined in Article 34 of the Convention? Reference is made to the events in December 2007 when the authorities refused to allow the applicant to see Ms Kostromina in a detention facility to complete the application to this Court.