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

FIRST SECTION

Application no. 4493/07
Stanislav Ernestovich ISARLOV
against Russia
lodged on 28 December 2006

STATEMENT OF FACTS

The applicant, Mr Stanislav Ernestovich Isarlov, is a Russian national, who was born in 1972 and lives in the town of Revda, Sverdlovsk Region. He is represented before the Court by Ms N. Yermilova, a lawyer practising in Yekaterinburg.

A. The circumstances of the case

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

On 19 December 2005 the applicant was arrested on suspicion of having falsely accused a number of persons of criminal offences. The prosecutor's case was that on a number of occasions the applicant had sent letters to law-enforcement authorities having accused officials of a municipal hospital of a number of criminal offences.

On the following day the Revda Town Court authorised the applicant's placement in custody. The detention order was quashed upon his appeal on 15 February 2006 by the Sverdlovsk Regional Court with a finding that the Town Court had failed to examine a possibility of applying a more lenient measure of restraint to the applicant. He was released.

The investigating authorities again applied to the Town Court seeking an authorisation of the applicant's detention on remand. They reasoned that the applicant was charged with a serious criminal offence and was liable to abscond, reoffend or pervert justice as he refused to take part in investigative actions, and he continued his disorderly behaviour towards the

hospital officials, having called them at least seventy times per day. That application was dismissed by the Town Court on 9 March 2006 with the finding that there was no evidence of the applicant's intention to go on a run or to tamper with witnesses.

The applicant learned that the Town Court scheduled the trial hearing for 11 July 2006. Neither the applicant nor his representatives, Mr G. and Ms Yermilova, whom the applicant had issued with a power of authority, were summoned to the hearing. The applicant and his representatives filed written requests with the Town Court seeking leave to appear at the hearing.

On 11 July 2006 the Revda Town Court found that the applicant had made false accusation of criminal acts against hospital officials. It, however, relieved the applicant from criminal responsibility, finding that he was mentally incapacitated. The Town Court ordered the application of compulsory measures of a medical nature to the applicant and his placement in a psychiatric hospital. The relevant part of the decision read as follows:

> "Having regard to the factual circumstances of the present case and the opinion of the legal representative of [the applicant] – Ms P., and despite the fact that [the applicant] committed a petty criminal offence, the court considers it possible to issue a decision on application of compulsory measures of medical nature to him, as [the applicant], given the state of his mental health, poses danger to himself and others around him which is confirmed by a forensic psychiatric expert examination of 22 May 2006 which lawyer M. also did not dispute in the court hearing".

The applicant's interests at the hearing were defended by a court-appointed lawyer, Mr M., and the applicant's mother, Ms P. The applicant and his two representatives, Ms G. and Ms Yermilova, were absent from the hearing. As it appears from the materials presented by the applicant, lawyer M. entered the criminal proceedings not earlier than 6 July 2006. At the trial the mother asked to admit the applicant for inpatient treatment in a psychiatric hospital as she "witnessed psychiatric deviations in his behaviour", the applicant had no intention to undergo outpatient treatment, his grandmother had also been writing complaints, similar to those sent by the applicant to various state officials, the applicant was unemployed and his mother had to support him financially.

The judgment of 11 July 2006 was not amenable to appeal by the applicant. Nevertheless, the applicant lodged an appeal statement. He also unsuccessfully asked lawyer M. to appeal. However, according to the applicant, lawyer M. refused to take any part in the proceedings after the hearing on 11 July 2006. With no formal appeal against the judgment having been made, it became final on 21 July 2006. The applicant was admitted to the hospital on 2 August 2006.

The applicant's representatives, Ms Yermilova and Mr G., applied to the Town Court asking to serve them with a copy of the judgment of 11 July 2006 and to inform them about the fate of the applicant's appeal. They also complained to various judicial authorities about the Town Court's refusal to afford them and the applicant an opportunity to take part in the trial.

On 25 October 2006 the Revda Town Court returned to Ms Yermilova the applicant's and her statements of appeal, having noted that they had had no standing to appeal against the judgment by virtue of Article 444 of the Russian Code of Criminal Procedure. The relevant part of the Town Court's letter read as follows:

"The materials of the case file do not contain any information that the investigator of the Revda Town prosecutor's office... allowed you to take part [in the proceedings] as [the applicant's] defender, and not a representative of his interests, as that is not a civil case.

By a decision of 6 June the investigator... accepted Ms P., [the applicant's] mother, as his legal representative in the case and she took part in the court hearing on 7 July 2006.

Moreover, by virtue of Article 438 of the Russian Code of Criminal Procedure on 6 July 2006 the court appointed lawyer M.... to act as in the [applicant's] interests and he took part in the hearing on 7 July 2006 and defended [the applicant's] interests. During the pre-trial investigation [the applicant's] defence was ensured by legal aid lawyer O."

On 5 April 2007 the Revda Town Court dismissed a request by the applicant's psychiatric hospital seeking the discontinuation of the compulsory measures of a medical nature and the applicant's release.

The applicant and his representative Ms Yermilova only learned about that decision in 2008. On 14 February 2008 they applied to the Town Court asking to restore the time-limit for lodging an appeal against that decision. The request was granted and on 14 November 2008 the Sverdlovsk Regional Court, having examined the statement of appeal and having heard the applicant and Ms Yermilova, upheld the decision of 5 April 2007. The reasoning was as follows:

"On 23 March 2007 [the psychiatric hospital] applied to the court with a request to annul [the applicant's] compulsory hospitalisation as following the treatment [the applicant] began understanding the factual character and social dangerousness of the acts committed by him in the past; given his state of health [he] may be relieved of the compulsory treatment.

By a court decision of 5 April 2007 [the hospital's] request... was dismissed and [the applicant] was to continue his compulsory inpatient treatment in the psychiatric hospital of general care. The court based its conclusions on statements by the head of the medical commission, Mr S., according to whom, in view of the fact that the hospital had not been provided with necessary medicines, in the last month it had been impossible to ensure the adequate medical treatment for [the applicant]. Improvements in his state of health which had been observed earlier decreased, improvements of his mental state are not stable and there are no guarantees that [the applicant] will not reoffend in the absence of control and treatment. In these circumstances, the court concluded that the grounds which led to the application of the compulsory medical measures to [the applicant] did not cease to exist...

Having studied the case file materials and having discussed the statement of appeal, the court does not see any reasons to accept it.

The decision of 5 April 2007 to continue the compulsory medical treatment of [the applicant] is well-founded and reasonable; it was based on the explanations by the head of the medical commission concerning the failure to provide [the applicant] with adequate treatment in the last month resulting in the decrease of the improvement of his health and that improvement becoming unstable; therefore, the grounds for the application of the compulsory medical treatment did not cease to exist. The court does not find any violations of the procedural law."

The Regional Court also noted that the compulsory treatment of the applicant had, in any case, been discontinued on 3 September 2007, upon the hospital's new application.

On 6 February 2009 the Revda Town Court dismissed a request by the psychiatric hospital to pronounce the applicant mentally and legally incapacitated and to place him under a permanent guardianship. Having examined a number of forensic psychiatric opinions, the Town Court found that the applicant's treatment in the hospital between 2 August 2006 and September 2007 had been a success and there was no evidence that his condition had deteriorated after his release from the hospital. That decision became final on 12 March 2009 when a prosecutor's office withdrew the appeal against it.

B. Relevant domestic law

1. For relevant domestic law provisions see the case of *Proshkin v. Russia* (no. 28869/03, §§ 37-60, 7 February 2012).

2. By decision no. 13-P issued on 20 November 2007 the Constitutional Court of the Russian Federation declared unconstitutional a number of provisions of the Russian Code of Criminal Procedure, including Article 444 of the Code, as long as authorities interpreted them as grounds to strip mentally ill defendants in criminal cases of their procedural rights, including a right to study case file materials, to attend court hearings, to lodge requests and motions, to initiate proceedings concerning the amendment or annulment of the measures and to appeal against any decision impairing their rights.

COMPLAINTS

1. The applicant complained under Article 5 § 1 (e) of the Convention that his detention in the psychiatric hospital had been unlawful as he had not been declared legally incapacitated and that, in any case, his detention for two months between 2 February and 5 April 2007 had lacked any legal grounds, as the court should have reviewed the grounds for his detention no later than 2 February 2007.

2. The applicant also complained under Articles 6, 13 and 14 of the Convention that he had not been afforded an opportunity to attend the trial and had been unable to appeal against the conviction.

3. The applicant further complained under Article 6 § 3 (c) of the Convention that he had not been able to defend himself with an assistance of a representative of his choice, as the authorities had not allowed Ms Yermilova or Mr G. to take part in the proceedings.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular, having regard to the applicant's absence at the trial and the authorities' refusal to allow Ms Yermilova or/and Mr G. to act as the applicant's representatives, was the applicant able to defend himself in person or though legal assistance of his own choosing, as required by Article 6 § 3 (c) of the Convention?

2. The Government are asked to provide detailed answers to the following questions and to support their submissions with evidence:

(a) Does the Russian law on criminal procedure set out specific rules regulating presence of a mentally ill defendant at the trial and issues of his legal representation, particularly those concerning his/her right to retain counsel?

(b) When was Mr M. appointed to act as the applicant's legal aid counsel and did he have meetings with his client before the trial hearings?

(c) Is there any procedural guarantees for a mentally ill defendant if his/her interests/position/line of defence runs contrary to that of his legal "defender" (the applicant's mother in the present case)?

3. Was Article 2 of Protocol No. 7 applicable in the present case to the proceedings by which the compulsory measures of medical character were applied to the applicant? If so, was the applicant afforded the right of appeal envisaged by Article 2 § 1 of Protocol No. 7? Did the absence of an appeal in the present case fall within the exceptions laid down by Article 2 § 2 of Protocol No. 7? Has the applicant suffered discrimination in the enjoyment of his rights under Article 6 of the Convention and Article 2 § 1 of Protocol No. 7 on the ground of his mental health, contrary to Article 14 of the Convention, given that the Russian law did not afford him an opportunity, as a mentally ill defendant, to appeal against the judgment by which the compulsory measures of medical character had been applied? What are the procedural rules governing representation of mentally ill-defendants at the appeal stage? Was the applicant represented by legal aid counsel on appeal? If so, the Government are asked to produce documents in support of their submissions. What procedural rules govern a situation when a mentally ill defendant's wish to appeal against the conviction is not supported by his legal aid lawyer and or/legal defender?

4. Given that the applicant was unable to appeal against the judgment of 11 July 2006, did he have at his disposal an effective domestic remedy, as required by Article 13 of the Convention?