



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

FIRST SECTION

Application no. 56360/07
Natalya Aleksandrovna VOLKOVA
against Russia
lodged on 29 November 2007

STATEMENT OF FACTS

The applicant, Ms Natalya Aleksandrovna Volkova, is a Russian national, who was born in 1987 and lived in Voronezh prior to her arrest. She is represented before the Court by Mr V. Sivchenko and Mr V. Anisimov, lawyers practising in the Moscow Region.

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

A. The applicant's arrest and detention

In the night on 14 July 2007 the applicant, together with her friend Ms B., travelled to Moscow by car. At about 3.40 a.m. the police stopped the car; two men from the narcotics unit approached the car and asked the passengers to step out and produce their identity documents and luggage for inspection. One of the officers opened the sports bag which, according to the applicant, her friend had asked her to take to another friend in Moscow, and found a black plastic bag. The applicant stated that she was not aware of its contents. The officers then put the black bag into the truck of the police car and took the applicant and B. to the premises of the narcotics unit.

The applicant and B. were taken to different offices and interviewed. In the morning she was brought to another office, in which one female officer, a forensic expert and two individuals who were introduced as attesting witnesses were present. The applicant was told to open the black bag and show its contents. In the bag, there were four plastic bags containing yellow and green herb and cash money. At 8.15 a.m. the police drafted the report

on the seizure of objects and substances. The expert later determined that the herb was marijuana having a total weight of almost 3 kg.

At 6 p.m. a senior investigator of the narcotics unit instituted criminal proceedings against the applicant and B. on suspicion of an attempted large-scale sale of drugs.

At 8.15 p.m. the investigator compiled the arrest record. According to the record, the applicant was arrested at 7.50 p.m. on 14 July 2007.

On 15 July 2007 the applicant was formally charged and the investigator applied to a court for a detention order.

The detention hearing before the Zyuzinskiy District Court of Moscow began at 7.15 p.m. on 16 July 2007 and lasted for twenty minutes. Counsel for the applicant submitted to the District Court that in view of the actual time of the applicant's detention, the maximum statutory period of forty-eight hours had already expired. However, the court did not give heed to that argument and ordered that the applicant be detained on remand because the gravity of the charges against her.

Counsel lodged an appeal with the Moscow City Court, complaining in particular about the unlawfulness of the applicant's detention in excess of forty-eight hours without a judicial decision.

On 24 and 27 August 2007 the City Court heard the appeal and dismissed it in a summary fashion, noting that "the pre-trial investigation authorities did not commit any substantial breaches of the rules of criminal procedure".

B. Trial

The case against the applicant was referred for trial to the Babushkinskiy District Court of Moscow.

The defence believed that the attesting witnesses who had been present during the opening of the bag were in fact employees of the narcotics unit rather than independent observers as required by law. Both of those witnesses – Ms P. and Ms A. – did not appear before the trial court. Instead, a court bailiff submitted identically worded reports about his unsuccessful attempts to ensure their attendance. The reports were dated 20, 24, 27 and 31 March 2008 and contained the same wording that the witness could not be reached on the phone, that no one opened the door at her residence and that unidentified neighbours told the bailiff that they had not seen her for a long time.

Counsel for the applicant requested the court to obtain the visitors journal from the reception of the narcotics unit. Since the unit was located within a security perimeter, all civilian visitors were to be recorded in a journal. The trial court refused the motion, without giving any reasons. It further held that there existed "exceptional circumstances" for the absence of witnesses Ms P. and Ms A. and allowed their pre-trial statements to be read out, overriding the objections from the defence.

Likewise, the trial court authorised the reading-out of the pre-trial statement of Mr F., the driver of the car, of which the applicant and B. had been passengers. The bailiff submitted a similarly worded reports to the effect that Mr F. was unavailable on the telephone and at his residence.

By judgment of 8 April 2008, the District Court found the applicant and B. guilty as charged and sentenced each of them to eight years'

imprisonment in a high-security correctional colony. It held in particular that the applicant's claim that she ignored the presence of marijuana in her friend's bag was rebutted with the report on the seizure of material of 14 July 2007 and the statements by the witnesses Ms P. and Ms A.

On 28 July 2008 the Moscow City Court examined and rejected her appeal against the conviction.

COMPLAINTS

The applicant complains under Article 5 §§ 1, 3 and 4 of the Convention that her arrest was not based on a "reasonable suspicion", that the maximum statutory time-limit for detention without a judicial decision was exceeded, and that the appeal proceedings took too long.

The applicant complains under Article 6 §§ 1 and 3 (d) of the Convention that she could not obtain the attendance and examination of the witnesses Ms P., Ms A. and Mr F.

QUESTIONS TO THE PARTIES

1. Was there a violation of Article 5 § 1 of the Convention, having regard to the fact that the applicant's detention was unrecorded for a period of approximately sixteen hours between 3.40 a.m. and 7.50 p.m. on 14 July 2007?

2. Was it compatible with Article 5 § 3 of the Convention that the applicant was brought before a judge approximately two days and sixteen hours after her arrest?

3. Was it compatible with Article 5 § 4 of the Convention that it took the Moscow City Court more than thirty days to examine the appeal against the arrest warrant?

4. Was there a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the trial court's failure to ensure the attendance and examination of witnesses A., P. and F. in the criminal proceedings against the applicant? Why did the courts refuse to obtain the information contained in the visitors journal of the narcotics unit?