



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

FIRST SECTION

Application no. 12436/11
Aleksey Kuzmich ILKIN
against Russia
lodged on 3 February 2011

STATEMENT OF FACTS

The applicant, Mr Aleksey Kuzmich Ilkin, is a Russian national, who was born in 1977 and lives in the Mordoviya Republic.

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

A. Criminal proceedings against the applicant

On 5 March 2009 the prosecutor's office opened a criminal investigation on suspicion of kidnapping and extortion in respect of the applicant and another policeman. On 2 April 2009 the applicant was charged. The day later his name was put on the wanted persons' list.

On 24 June 2010 the applicant was questioned by the investigator and released on his own recognisance. The next questioning was scheduled for 1 July 2010. On that day the applicant duly appeared at the prosecutor's office where he was arrested.

On 2 July 2010 the Ostankinskiy District Court of Moscow authorised the applicant's pre-trial detention until 1 August 2010. In particular, the court noted as follows:

"... the court ... considered that, in view of the [applicant's] character and the nature of the charges, if released, he might again abscond or otherwise interfere with administration of justice. [The applicant] is charged with offences entailing a custodial sentence exceeding two years. As it follows from the submitted materials, he absconded before and his name was put on the wanted persons' list. The court concludes that it is impossible to apply a more lenient measure of restraint, such as a bail."

On 28 July 2010 the District Court extended the applicant's pre-trial detention until 1 October 2010. The court noted as follows:

“When extending the [applicant’s] pre-trial detention, the court takes into account [his] character. Nevertheless, it does not discern any ground to cancel or replace the measure or restraint earlier imposed on [the applicant] ... , given that the circumstances underlying the [applicant’s] remand in custody have not ceased to exist. [The applicant] is charged with offences entailing a custodial sentence exceeding two years. Regard being had to the gravity of the charges and to the fact that he absconded and his name was put on the wanted persons’ list, the court is convinced that [the applicant] might abscond or otherwise interfere with the administration of justice.

The court dismisses as unsubstantiated the [applicant’s] allegations that he was unfit for detention because of his health condition. There are no documents in the materials of the case file [to the contrary]. Furthermore, the court notes that all persons detained in a remand prison receive necessary medical assistance as provided for in applicable legislation.”

On 18 August 2010 the Moscow City Court upheld the decision of 28 July 2010 on appeal.

On 8 September 2010 the City Court upheld the decision of 2 July 2010 on appeal.

On 29 September 2010 the District Court further extended the applicant’s pre-trial detention until 1 December 2010 noting as follows:

“... the court considers that there are no grounds justifying the lift or change of the measure of restraint imposed on [the applicant] in the court’s view, the defence’s request to release [the applicant] on bail will not have a restraining effect on the defendant as regards a possibility for him to interfere with administration of justice. Regard being had to a particular complexity of the case and the scope of the pending investigative activities, the court considers the investigator’s request to extend the [applicant’s] pre-trial detention well-founded. Accordingly the court rejects the request for bail lodged by [the applicant] and his defence.

Regard being had to the above, the gravity of the charges against [the applicant], the court does not consider it possible to apply a measure of restraint other than remand in custody”

On 25 October 2010 the City Court upheld the decision of 29 September 2010 on appeal.

On 29 November 2010 the District Court extended the applicant’s pre-trial detention until 1 January 2011. The court reasoned as follows:

“... the grounds underlying the [applicant’s] remand in custody did not cease to exist. [He] is charged with a grievous offence entailing a custodial sentence exceeding two years; he absconded earlier and his name was put on the wanted persons’ list; he is not employed and does not have an official source of income; he used to be a law-enforcement officer and has relevant knowledge and experience; he is privy to the personal data of the victim and a witness. The evidence, the circumstances and the [applicant’s] character presented to the court lead it to believe that, if released, [the applicant] might abscond, continue criminal activities, threaten the victim and the witness, put pressure on them or otherwise interfere with the investigation of the case.”

On 27 December 2010 the City Court upheld the decision of 29 November 2010 on appeal.

On 28 December 2010 the Butyrskiy District Court of Moscow fixed the trial for 12 January 2011. The applicant asked for release on bail in the amount of RUB 500,000 to be paid by his cousin. The court further extended the pre-trial detention in respect of the applicant and the other defendant until 17 June 2011 noting as follows:

“Defendant M is charged with grievous offences. [The applicant] is charged with grievous offences. Accordingly, [the court] considers that there are grounds to believe that, if released M. and [the applicant] might abscond or otherwise interfere with the proceedings. The court does not discern any circumstances justifying the lift or the change of the measure of restraint. The release of defendant M. or [the applicant] might significantly complicate the comprehensive, complete and objective assessment of the circumstances of the case. The court also dismisses the [applicant’s] request for release on bail as unsubstantiated.”

On 9 February 2011 the City Court upheld the decision of 28 December 2010 on appeal.

On 13 April 2011 the District Court found the applicant guilty of extortion and sentenced him to four years’ imprisonment. On 25 July 2011 the City Court upheld in substance the applicant’s conviction on appeal reducing his sentence to 3 years and nine months.

B. Conditions of detention and transport

1. Conditions of detention in remand prison no. IZ-77/4 in Moscow

On 2 July 2010 the applicant was placed in remand prison no. IZ-77/4 in Moscow. He was held there until 8 September 2011 with an exception of one period between October and November 2010 when he underwent medical treatment in remand prison no. IZ-77/1.

He was detained in cells nos. 913 and 914 measuring 6 metres by 5.5 metres. The cell was equipped with eight bunk beds, a table, two benches and a metal cabinet used for food storage. The toilet was located some 1.40 metres away from the living area of the cell and offered no privacy.

2. Alleged lack of medical assistance

The applicant suffers from chronic gastritis and post-traumatic brain dysfunction. Because of his condition, the applicant was eligible to special food regime which was not provided. The applicant’s relatives had to send him medicine and food product appropriate for his condition.

In October-November 2011 the applicant underwent medical treatment in a hospital of remand prison no. IZ-77/1 in Moscow.

In response to the applicant’s complaint, the Moscow City Ombudsman made an inquiry on the issue with the remand prison. The inquiry did not confirm the applicant’s allegations that he had been refused due medical care. The applicant was informed accordingly on 12 November 2010.

3. Conditions of transport

On approximately nineteen occasions the applicant was transported from the remand prison to the courthouse and back. On those days he normally had to wake up at 5 a.m. and was taken to a cell measuring approximately 3.0 square metres. The cell was equipped with a bed, a toilet and a sink. The window in the cell measured 0.30 m by 0.40 m and was covered by metal bars on both sides. The applicant had to spend some three hours in the morning and three hours in the evening in such a cell awaiting the transport to the courthouse together with three other inmates. They all smoked

constantly and the applicant, a non-smoker, was exposed to second-hand tobacco smoke.

The prison van had three compartments. The two bigger compartments measured 3.8 m by 2.35 m by 1.6 m. They housed twelve persons each. The third one was for single occupancy measuring 0.90 m by 0.90 m by 1.50 m. The applicant was usually transported in bigger compartments which held up to eighteen detainees. There were not enough seats for everyone and some people had to stand or sit on someone else's lap. On two occasions the applicant was transported in a single-occupancy compartment. The journey lasted approximately twelve hours. During that time the applicant did not receive any food. He was allowed to use the bathroom only once during the trip. During the winter the vans were not heated. The ceiling and the walls were covered with ice. The floor in the van was extremely dirty. It was covered with cigarette butts, food crumbs, plastic bottles and bags of urine. The natural ventilation of the van through the hatches was insufficient. All the detainees smoked in the van and the applicant was exposed to second-hand tobacco smoke.

4. Conditions of detention in the courthouse

On the days of the trial, the applicant was placed in a holding cell at the courthouse measuring 2.5 metres by 1.5 metres. It was dirty, poorly lit and unventilated. In the winter, the temperature did not exceed +14°C. The cell held two and more detainees. There was no toilet in the cell. The applicant spent about eight hours in such conditions.

COMPLAINTS

In the application form of 3 February 2011, the applicant complains under Article 3 of the Convention about the lack of medical assistance and conditions of his transport to and from the courthouse. He further complains under Article 5 of the Convention that his pre-trial detention was unlawful and unreasonably long and that the review of his remand in custody was not speedy.

In the application form of 13 April 2012, the applicant complains under Article 3 of the Convention about the conditions of his detention in remand prison no. IZ-77/4 in Moscow and at the courthouse during the trial. Lastly he complains under Article 6 of the Convention about the unfairness of the criminal proceedings against him.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's transport to and from the Ostankinskiy and Butyrskiy District Courts of Moscow compatible with Article 3 of the Convention?

2. Was the length of the applicant’s pre-trial detention in breach of the “reasonable time” requirement of Article 5 § 3 of the Convention?

3. Did the length of the proceedings in the present case, by which the applicant sought to challenge the lawfulness of his remand in custody on 2 July 2010, comply with the “speed” requirement of Article 5 § 4 of the Convention?