



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

FIRST SECTION

Application no. 37311/08
Roman Nikolayevich PETROV
against Russia
lodged on 10 July 2008

STATEMENT OF FACTS

The applicant, Mr Roman Nikolayevich Petrov, is a Russian national, who was born in 1978 and is serving a prison sentence the Nizhniy Novgorod Region.

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

On 27 June 2007 the applicant was arrest on suspicion of having manufactured and distributed child pornography.

On 29 June 2007 the Leninskiy District Court of Cheboksary authorised the applicant's remand in custody. In particular, the court reasoned as follows:

"... [the applicant] is suspected of a grievous offence ... entailing a custodial sentence exceeding two years. Regard being had to the circumstances of the case concerning [the distribution of child pornography], the [applicant's] character, the fact that he applied for a foreign travel passport, the court considers that, if at liberty, [the applicant] might abscond, interfere with administration of justice by way of communicating by electronic mail with the persons who purchased pornographic materials from him. Accordingly, the court considers that it is necessary to remand [the applicant] in custody. The court does not consider it possible to apply any other measure of restraint."

On 22 August 2007 the District Court further extended the applicant's detention until 9 October 2007 noting as follows:

"... [the applicant] is charged with a grievous offence ... entailing a custodial sentence exceeding two years. Regard being had to the circumstances of the case, the [applicant's] character, the fact that he lived earlier in Lithuania and that he worked

for a considerable period of time in law enforcement and had extensive connections in police, the court considers that, if at liberty, [the applicant] might abscond or interfere with administration of justice. ... The court does not consider it possible to apply any other measure of restraint.”

On 3 October 2007 the District Court extended the applicant’s pre-trial detention until 9 November 2007 noting that the circumstances underlying the applicant’s remand in custody did not cease to exist. On 12 October 2007 Supreme Court of the Chuvashiya Republic upheld the court order of 3 October 2007 on appeal.

On 6 November 2007 the District Court extended the applicant’s pre-trial detention until 9 December 2007 referring to the gravity of the charges against him and his prior service in law enforcement. On 26 November 2007 the Supreme Court upheld the said court order on appeal.

On 6 and 24 December 2007 the Moskovskiy District Court of Cheboksary extended the applicant’s pre-trial detention until 27 December 2007 and 27 January 2008 respectively. The court noted that the circumstances underlying the applicant’s remand in custody did not cease to exist. On 6 January 2008 the Supreme Court upheld the court order of 24 December 2007 on appeal.

On 25 January 2008 the District Court extended the applicant’s detention until 27 February 2008. The court noted as follows:

“Regard being had to the pending investigative activities, the gravity of the charges against [the applicant] ... and the fact that he might abscond, put pressure on the victim and witnesses or otherwise interfere with the administration of justice, the court considers it necessary ... to extend the [applicant’s] pre-trial detention”

On 4 February 2008 the Supreme Court quashed the court order of 25 January 2008 on appeal and remitted the matter for fresh consideration in view of the applicant’s exclusion from the court hearing. The court ordered the applicant’s release. It also noted that, in contravention of the rules of criminal procedure, the detention hearing of 25 January 2008 was held in the absence of the applicant’s counsel who had not been duly notified of its time and place.

On 8 February 2008 the applicant was summoned to the prosecutor’s office for questioning and re-arrested. He was released on 10 February 2008.

On 12 February 2008 the District Court again authorised the applicant’s remand in custody until 27 February 2008. The court noted as follows:

“Regard being had to the pending investigative activities ... , the gravity of the charges against [the applicant] ... and the fact that he might abscond, put pressure on the underage victim, who, due to his age and medical condition, might be influenced by an adult, the court considers it necessary to extend the [applicant’s] pre-trial detention”

On 22 February 2008 the Supreme Court upheld the court order of 12 February 2008 on appeal.

On an unspecified date the applicant was charged with several counts of child molestation.

On 26 February 2008 the District Court extended the applicant’s pre-trial detention until 27 March 2008 with reference to the gravity of the charges, the risk of absconding or putting pressure on the underage victim of the

crime. On 14 March 2008 the Supreme Court upheld the court order of 26 February 2008 on appeal.

On 27 March 2008 the applicant was released upon expiry of the maximum statutory time-limit for pre-trial detention.

On 28 March 2008 the District Court dismissed the investigator's application for the applicant's remand in custody and ordered the latter to pay the bail in the amount of 100,000 Russian roubles. On 31 March 2008 the applicant's father paid the said amount.

On an unspecified date the District Court received the case-file and fixed the preliminary hearing for 25 July 2008.

On 25 July 2008 the District Court found that the prosecutor had failed to duly authorise the extension of the time-limits for the investigation of the case and returned the case-file to the prosecutor's office. On 4 September 2008 the Supreme Court quashed the said decision and remitted the matter for fresh examination.

On 2 October 2008 the District Court fixed the trial for 15 October 2008.

On 12 April 2010 the District Court granted the prosecutor's request to remand the applicant in custody pending trial. In particular, the court reasoned as follows:

"In the course of the trial ... , since 1 April 2009 [the applicant] has been wilfully and frivolously interfering with administration of justice.

Even though [the applicant] was able to participate in the court hearings, he did not appear in court during the periods from 17 to 31 December 2009 and from 13 to 22 January 2010. Nor did [the applicant] appear in court from 6 to 9 April 2010.

The fact that [the applicant] was fit to attend the hearings is confirmed by the statements made by chief physician of [municipal hospital] on 15 January ... and 7 April 2010

Furthermore, as it follows from the statement made by O.N., the father of a minor A.N., also signed by A.N. and received by the court on 9 April 2010, [the applicant] constantly put pressure on their family. Without giving reasons, [the applicant] made them sign various documents and prevented them from participating in the court hearings. They asked to protect them from [the applicant].

The court perceives with certain criticism the written statement made by A.N., his parents and their counsel ... whereby they do not agree with the [applicant's] remand in custody. The court takes into account that [the applicant] lives next door to the victim and can put pressure on the underage victim and his parents.

It follows from the case-file that [the applicant] is charged with [grievous offences] entailing a custodial sentence from two to fifteen years' imprisonment.

Regard being had to the gravity of the charges and to the fact that [the applicant] lives next door to the victim and can put pressure on the underage victim A.N. and his parents, the court considers that, if at liberty, [the applicant] might interfere with administration of justice and put pressure on [A.N.]"

On 20 May 2010 the Supreme Court upheld the decision of 12 April 2010 on appeal.

On 5 July 2010 the District Court found the applicant guilty of several counts of manufacturing and distribution of child pornography, child rape and molestation and sentenced him to twelve years' imprisonment.

On 27 October 2010 the Supreme Court upheld the applicant's conviction on appeal.

2. Civil proceedings initiated by the applicant

On 12 April 2011 the applicant brought a claim against the Ministry of Finance of the Russian Federation for the authorities' failure to determine criminal charges against him within a reasonable time.

On 26 May 2011 the Supreme Court of the Chuvashiya Republic dismissed the applicant's claims. The court noted that the criminal proceedings against the applicant had lasted three years, four months and twelve days. With reference to the particular circumstances of the case and relying on the relevant criteria of the Court's case-law, the court considered such length reasonable. On 7 October 2011 the judgment of 26 May 2011 was upheld on appeal.

3. Conditions of detention

Pending investigation and trial the applicant was detained in a temporary detention centre, remand prison no. IZ-21/1 and a psychiatric hospital in Cheboksary during the following periods: from 27 June 2007 to 4 February 2008, from 12 February to 27 March 2008, from 12 April to 5 November 2010. According to the applicant, the conditions of his detention were inhuman and degrading.

COMPLAINTS

In the application form of 10 July 2008, the applicant complains under Article 5 § 3 of the Convention that his pre-trial detention from 29 June 2007 to 4 February 2008, from 8 to 10 February 2008 and from 12 February 27 March 2008 was unreasonably long. He further complains under Article 6 § 1 of the Convention about the excessive length of the criminal proceedings against him.

In the application form of 4 November 2010, the applicant alleges violations of Article 5 §§ 1, 3 and 4 of the Convention in respect of his remand in custody on 12 April 2010 as upheld on appeal on 20 May 2010. In particular, he submits, that the court failed to indicate the time-limit of his pre-trial detention.

In the application form of 24 February 2011, the applicant complains that his arrest on 27 June 2007 was unlawful.

In the application form of 19 March 2011, the applicant complains under Article 13 of the Convention about the authorities' failure to institute criminal proceedings against certain investigators who were in charge of his case.

In the application form of 19 April 2011, the applicant complains under Article 3 about the conditions of his detention in a temporary detention centre, remand prison no. IZ-21/1 and a psychiatric hospital in Cheboksary where he was held on numerous occasions from 27 June 2007 to 5 November 2010. He further alleges that during his arrest on 27 June 2007 he remained handcuffed for three hours in the absence of any resistance to

arrest on his part. He complains under Article 6 of the Convention that on many occasions the trial judge allegedly failed to comply with the rules of criminal procedure.

In the application form of 24 February 2012, the applicant complains under Articles 6 and 13 of the Convention that he could not obtain a compensation on account of a violation of his right to have trial within the reasonable time.

In the application form of 1 March 2012, the applicant complains under Article 6 of the Convention about the unfairness of the criminal proceedings against him.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, was the applicant's remand in custody on 12 April 2010 in accordance with a procedure prescribed by law (cf. *Logvinenko v. Russia*, no. 44511/04, §§ 35-39, 17 June 2010)?

2. Has the applicant's pre-trial detention been based on "relevant and sufficient" reasons and has it been compatible with the "reasonable time" requirement of Article 5 § 3 of the Convention (cf. *Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilikov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?

3. Did the length of the proceedings in the present case, by which the applicant sought to challenge the lawfulness of remand in custody on 12 April 2010, comply with the "speed" requirement of Article 5 § 4 of the Convention?