



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

FIRST SECTION

Application no. 3205/09
Nikolay Ivanovich PSHENICHNYY
against Russia
lodged on 16 December 2008

STATEMENT OF FACTS

The applicant, Mr Nikolay Ivanovich Pshenichnyy, is a Russian national, who was born in 1954 and lives in Stavropol.

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 14 July 2007 the applicant was arrested on suspicion of illegal drug dealings.

On 15 July 2007 the Promyshlennyy District Court of Kursk authorised the applicant's detention pending investigation. The court noted as follows:

“... [the applicant] is charged with a particularly grievous offence. He does not have a permanent place of residence in Kursk.

Regard being had to the above, the court considers that the arguments presented by [the investigators] that ... [the applicant] might abscond are substantiated”

On 7 August 2007 the Kursk Regional Court upheld the decision of 15 July 2007 on appeal.

On 13 September, 13 November and 13 December 2007 the District Court extended the applicant's detention until 14 November and 14 December 2007 and 14 January 2008 respectively. Each time the court reasoned as follows:

“The court considers that, being charged with a particularly serious offence which entails a lengthy custodial sentence and not having a permanent place of residence in Kursk or Kursk Region, the applicant, if at liberty, might abscond in order to interfere with administration of justice.”

On 9 October 2007 the Regional Court upheld the decision of 13 September 2007 on appeal.

On 11 January 2008 the District Court extended the applicant's detention until 14 February 2008. The court reiterated verbatim the reasoning used in its previous orders.

It appears that the applicant's case was transferred for further investigation to the General Prosecutor's Office of the Russian Federation.

On 12 February 2008 the Ostankinskiy District Court of Moscow extended the applicant's detention until 12 April 2008. The court stated as follows:

"Having studied the submitted materials in respect of [the applicant], the court considers that the arguments furnished by the investigator and the prosecutor are convincing, have basis in law and their request should be granted. In view of a particular complexity of the criminal case, [the applicant] should be detained further. He is charged with a particularly grievous offence He is privy to the data concerning the witnesses in the [present] case. His accomplices are still at large. Furthermore, the circumstances underlying the [applicant's] remand in custody have not ceased to exist. There are accordingly grounds to believe that, if at liberty, the applicant may abscond, put pressure on witnesses, otherwise interfere with administration of justice and continue his criminal activities. [The court discerns] no grounds justifying the lift or change of the measure of restraint imposed"

On 11 April 2008 the District Court extended the applicant's detention until 12 May 2008. The court indicated as follows:

"... the court takes into account that [the applicant] is ... charged with a grievous offence which entails a custodial sentence of up to ten years, that the prosecution is in possession of the information confirming that [the applicant], [if released], might interfere with investigation. The court is convinced that, [if released], [the applicant] might abscond or continue criminal activity. ... the court considers that the circumstances underlying the [applicant's] remand in custody have not ceased to exist. It grants the investigator's request to extend the [applicant's] detention. [The court discerns] no grounds justifying the lift or change of the measure of restraint (including, bail as was asked by the defence). Such other measure of restraint will not have a deterring effect [on the applicant]"

On 30 April 2008 the Moscow City Court upheld the decision of 11 April 2008 on appeal.

On 8 May 2008 the District Court extended the applicant's detention until 12 July 2008. The court reasoned as follows:

"The court takes into account the particular gravity of the offence [the applicant] is charged with. It entails grave social consequences which justify the defendant's pre-trial detention

The court further notes that in the present criminal case there are grounds to believe that the necessity to protect public interest, despite the presumption of innocence, outweighs the right to personal liberty. Herewith [the court] takes into account the defendant's character and the particular charges against him concerning participation in illegal drug trafficking.

The defendant does not comment on the arrest and charges against him He told the court that his lawyer had deceived him. Accordingly, it is not currently possible to take into account the information about the defendant's law abiding behaviour and positive character that is known only to him.

The investigative authorities do not have ... information as regards the defendant's behaviour or the motives of his actions

The defendant's *modus vivendi* and ... the information that he unlawfully kept drugs at different locations, give the court reasons to believe that the defendant might abscond or continue his criminal activity.

The investigator submitted that the defendant might put pressure on other parties to the proceedings. ... the court notes that the defendant is privy to personal data of the accomplices. This fact coupled with the information that the defendant ... was a [professional] boxer gives reasons to believe that the defendant might interfere with administration of justice.”

On 26 May 2008 the City Court upheld the decision of 8 May 2008 on appeal.

On 7 July 2008 the District Court extended the applicant's detention until 14 July 2008¹. On 28 July 2008 the City Court upheld the decision of 7 July 2008 on appeal.

On 14 July 2008 the City Court extended the applicant's detention until 12 September 2008. The court noted as follows:

“The arguments presented by [the applicant] and [his lawyer] that [the applicant] can be released in view of his innocence and health condition, positive character references and that he can be released on bail in the amount of RUB 200,000 should be dismissed. [The applicant] is charged with a particularly grievous offence, he does not have a permanent place of residence in Moscow where the investigation is conducted. He can afford to travel freely from one region to another and the bail in the amount of RUB 200,000 would not fulfil the function of a measure of restraint. There are no data substantiating the allegation that [the applicant] is not fit for detention for health reason.”

On 12 August 2008 the Promyshlenny District Court of Kursk received the applicant's case-file and fixed the preliminary hearing of the case for 21 August 2008.

On 10 September 2008 the Supreme Court of the Russian Federation upheld the decision of 14 July 2008 on appeal.

On 16 January 2009 the Promyshlenny District Court of Kursk extended the applicant's detention until 12 April 2009. The court noted as follows:

“The arguments presented by [the applicant] and [his lawyer] that [the applicant] can be released in view of his innocence and health condition, positive character references and that he can be released on bail in the amount of RUB 200,000 should be dismissed. [The applicant] is charged with a particularly grievous offence, he does not have a permanent place of residence in Kursk where the trial is held. He can afford to travel freely from one region to another and the bail would not fulfil the function of a measure of restraint.

Regard being had to the above and taking into account the [applicants] character, the court concludes, that, if at liberty and knowing about the possible sentence, [the applicant] might abscond or interfere with administration of justice.””

On 5 February 2009 the Promyshlenny District Court found the applicant guilty as charged and sentenced him to five and a half years' imprisonment.

On 10 February 2009 the Kursk Regional Court upheld the decision of 16 January 2009 on appeal.

On 26 March 2009 the Regional Court upheld the applicant's conviction on appeal.

¹ The applicant did not submit a copy of the decision.

2. Conditions of detention

On 14 July 2007 the applicant was taken to a police station where he was placed in a dirty overcrowded cell which did not even have a place to sit. Then he was brought to a temporary detention centre in Kursk. He spent several hours in a cell which was not provided with a toilet. There was a metal barrel in the middle of the cell which the applicant had to use instead.

On an unspecified date the applicant was transferred to a remand prison in Kursk. The cell where he was placed was constantly overcrowded. It had twenty sleeping places and some 40-50 inmates who were held there had to take turns to sleep. There was no ventilation. The applicant fell ill but no medical assistance was provided. The only medicine available to him was the one sent by his family.

On 31 January 2008 the applicant was transferred to a remand prison in Moscow. At the very beginning he was detained in satisfactory conditions. The food was good and the applicant received medical assistance. Then he was placed in an overcrowded cell where the number of sleeping places was insufficient and the inmates took turns to sleep. The cell was dirty, damp, cold and infested with parasites. The toilet offered no privacy. The food was of low quality. The applicant was confined to the cell all day except for one-hour outdoor exercise. On the days of the court hearings the applicant was deprived of food or water for almost twelve hours.

On an unspecified date, in any event not later than 16 January 2009, the applicant was transferred to a remand prison in Kursk.

From April to May or June 2009 the applicant was held in a remand prison in Volgograd where the meals were scarce and the applicant lost almost 30 kg. The cell measured 50 square metres and housed 50 detainees.

COMPLAINTS

The applicant complains under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive.

In the application form of 22 September 2009, the applicant complains about his detention in appalling conditions from 14 July 2007 to March 2009; under Article 5 of the Convention that his arrest was unlawful; that he was informed of the reasons for his arrest one day after it; under Article 6 of the Convention about the length and prosecutorial stance of the criminal proceedings against him. He further alleges that his conviction was based on inadmissible and contradictory evidence; that he could not confront certain witnesses against him. He complains under Article 8 of the Convention about allegedly unlawful telephone tapping.

In the application form of 16 July 2010, the applicant complains about the conditions of his detention in a remand prison in Volgograd. He further alleges a violation of Articles 5 § 5 and Article 14 of the Convention.

QUESTION TO THE PARTIES

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; *Ilykov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001)?