



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

FIRST SECTION

Application no. 21974/09
Ayrat Maslauviyevich SHARAFUTDINOV
against Russia
lodged on 4 April 2009

STATEMENT OF FACTS

The applicant, Mr Ayrat Maslauviyevich Sharafutdinov, is a Russian national, who was born in 1960 and lives in Oktyabrskiy, Bashkortostan Republic.

The circumstances of the case

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

On an unspecified date the applicant, a police officer at the time, was charged with several counts of abuse of power, breaking and entering and destruction of property.

On 6 April 2005 the applicant, when at the police station, attempted to strangle R. who insulted him.

On 27 July 2005 the Oktyabrskiy Town Court ordered the applicant's pre-trial detention in order to "prevent him from committing further wrongdoing".

On 19 September 2005 the Town Court, referring to the gravity of the charges, extended the applicant's pre-trial detention until 12 November 2005.

On 5 October 2005 the Town Court received the applicant's case-file. It appears that his detention was extended until 5 April 2006.

On 4 April 2006 the Town Court extended the applicant's detention until 5 July 2006. The court reasoned as follows:

"[The applicant] is charged with numerous offences ... His submissions are contradictory to those made by the victims. [The applicant] committed a number of offences after his case-file was transferred to the court. Accordingly, if at liberty, [the applicant] might put pressure on [the victims] and interfere with the establishment of the truth."

On 26 June 2006 the Town Court extended the applicant's detention until 5 October 2006 reiterating its reasoning contained in the previous detention order.

On an unspecified date the applicant underwent a forensic psychiatric examination. The forensic panel concluded that the applicant suffered from cyclothymic disorder¹ and could not be held legally liable for his acts.

On 14 July 2006 the prosecutor dropped charges against the applicant in respect of two counts of breaking and entering and destruction of property. It appears that on the same day the court established that the applicant was mentally incompetent to be held liable for those criminal acts and ordered his detention and treatment in a psychiatric hospital.

On 30 November 2006 the Supreme Court of the Bashkortostan Republic quashed the decision of 14 July 2006 ordering the applicant's placement in a psychiatric hospital and remitted the matter for fresh consideration.

On 12 January 2007 the Town Court, referring to the gravity of the charges, extended the applicant's pre-trial detention until 12 March 2007 and ordered that the applicant be detained in a psychiatric hospital in view of his diagnosis.

On 12 March 2007 the Town Court extended the applicant's detention in a psychiatric hospital until 12 June 2007. The court's reasoning remained unchanged.

On 26 March 2007 the Town Court established that the applicant was mentally incompetent to be held liable for the criminal offences he was charged with and ordered his detention and treatment in a psychiatric hospital.² It appears that the applicant did not attend the hearing. On 31 May 2007 the Supreme Court upheld, in substance, the judgment of 26 March 2007 on appeal. The applicant did not attend the hearing. His lawyer was present and made submissions to the court.

On 20 July 2007 the applicant was committed to a psychiatric hospital.

On 18 June 2008 the Presidium of the Supreme Court quashed the judgments of 26 March and 31 May 2007 on appeal and remitted the matter for fresh consideration for the lower courts' failure to ensure the applicant's participation in the proceedings.

On 17 July 2008 the Town Court extended the applicant's detention in a psychiatric hospital until 17 October 2008. The applicant was not present. The prosecutor and the applicant's counsel attended the hearing. In particular, the court noted as follows:

“... the court considers that the circumstances underlying the [applicant's] remand in custody did not cease to exist According to deputy medical chief of [the republican psychiatric hospital], [the applicant] undergoes an involuntary treatment.”

On 14 October 2008 the Supreme Court upheld the decision of 17 July 2008 on appeal. The applicant and his lawyer were present.

On 16 October 2008 the Town Court extended the applicant's detention until 17 January 2009. The applicant did not attend the hearing. His lawyer was present and made submissions to the court. The court noted as follows:

¹ A type of chronic [mood disorder](#) widely considered to be a milder or subthreshold form of [bipolar disorder](#). It is characterized by numerous extreme mood disturbances, with periods of hypomanic symptoms alternating with periods of mild or moderate depression.

² The applicant did not provide a copy of the relevant decision.

“... the court discerns no grounds justifying the replacement of the remand in custody imposed on [the applicant] with a less strict measure. [The applicant] is charged with grievous offences If at liberty, [the applicant] may interfere with the establishment of the truth or abscond. The reasons taken into consideration when [the applicant] was remanded in custody did not cease to exist.”

On 4 December 2008 the Supreme Court upheld the decision of 16 October 2008 on appeal. The applicant attended the hearing.

On 12 January and 3 April 2009 the Town Court extended the applicant’s detention until 17 April and 17 July 2009 respectively. The court reproduced the reasoning contained in its previous order of 16 October 2008.

On 12 May 2009 the Supreme Court upheld the decision of 12 January 2009 on appeal.

On 1 July 2009 the Town Court found the applicant guilty on one count of abuse of power and sentenced him to three and a half years’ imprisonment. The court considered that the applicant had already served the sentence and ordered his release from custody.

On 29 September 2009 the Supreme Court quashed the applicant’s conviction on appeal and remitted the matter for fresh consideration.

On 12 February 2010 the Town Court found the applicant guilty on four counts of abuse of power and sentenced him to three years and ten months’ imprisonment which the applicant had already served. The court also banned the applicant from holding a public office for two years and ordered him to pay damages to the victims.

On 3 June 2010 the Supreme Court upheld, in substance, the applicant’s conviction on appeal reducing the applicant’s sentence to three and a half years’ imprisonment.

COMPLAINTS

The applicant complains under Article 5 § 1 (c) of the Convention that he was detained pending investigation and trial in the absence of relevant and sufficient reasons.

The applicant complains under Article 5 § 3 of the Convention that he was unable to attend the detention hearings on 17 July and 16 October 2008.

The applicant complains under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

The applicant complains under Article 6 § 2 of the Convention that he *de facto* served a prison sentence before he was convicted by a competent court and that the trial court failed to question witnesses N. and R. and relied on their written statements.

The applicant complains that the criminal proceedings against him were unfair and that the courts were not impartial.

QUESTIONS TO THE PARTIES

1. 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)?

2. Was the length of the criminal proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention?