



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

FIRST SECTION

Application no. 65415/09
Yelena Vladimirovna PUGILOVICH
against Russia
lodged on 26 November 2009

STATEMENT OF FACTS

The applicant, Ms Yelena Vladimirovna Pugilovich, is a Russian national, who was born in 1969 and lives in Klimovsk. She is represented before the Court by Ms Yu.S. Yanygina, a lawyer practising in Moscow.

A. The circumstances of the case

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

On 6 April 2009 the Moscow Interregional Transport Investigative Committee instituted criminal proceedings into smuggling.

On 8 April 2009 the applicant was arrested as a suspect in the case and on the same date she was charged with smuggling.

On 9 April 2009 the Meschanskiy District Court of Moscow ordered to remand the applicant in custody. The applicant appealed.

On 6 May 2009 the Moscow City Court quashed the decision of 9 April 2009. It stated that the first-instance court's decision was too brief. In particular, the Meschanskiy District Court failed to examine the defence's arguments concerning the application of other preventive measures and to substantiate the need to remand the applicant in custody relying on particular circumstances. At the same time the Moscow City Court ordered to remand the applicant in custody until 15 May 2009. No reasons were given in this respect.

On 12 May 2009 the Meschanskiy District Court of Moscow again ordered to remand the applicant in custody. In the hearing the representative of the investigating authorities argued that the applicant had to be remanded in custody as she was charged with an offence committed by an organised group that had accomplices in customs and law-enforcement agencies and vast international connections. Previous attempts to investigate the activities

of the group had been halted as its members had been able to interfere with the course of justice. The applicant's counsel argued that the applicant would not flee from the investigation as she had a permanent place of residence in the Moscow region and that charges against her were not sufficiently specified. The Meschanskiy District Court of Moscow stated that the applicant was charged with smuggling in an organised group that consisted of customs officials. More specifically, she was charged with preparation for legalisation of forged documents for smuggled goods and therefore, if released, she could put pressure on witnesses, destroy the evidence, flee from the investigation and the court, or otherwise interfere with the course of justice. The applicant appealed.

On 1 June 2009 the Moscow City Court upheld the decision of 12 May 2009.

On 5 June 2009 the Meschanskiy District Court of Moscow extended the applicant's detention until 11 September 2009. The court examined the investigating authorities' request to extend the term of pre-trial detention in respect of the applicant and three other co-accused. The applicant and her counsel argued that charges against her were unfounded, that there were no reasons to believe that she would flee, continue criminal activity or put pressure on witnesses; that the investigating authorities failed to refer to any factual circumstances; that the investigation was procrastinated; and that other preventive measures could be applied to the applicant, in particular, release on bail. The court stated that a significant number of investigative actions had yet to be carried out; that the applicant and the co-accused were charged with a grave offence committed by an organised group which included customs officials; that there were no grounds to change the preventive measure; and that there was no evidence of procrastination of the investigation. The court extended the pre-trial detention in respect of the applicant and the three co-accused and did not specifically address the applicant's request for release on bail. The applicant appealed.

On 24 June 2009 the Moscow City Court upheld the decision of 5 June 2009.

On 9 September 2009 the Meschanskiy District Court of Moscow extended the applicant's detention until 11 January 2010. The decision concerned only the applicant. She and her counsel again asked to apply other preventive measures such as release on bail. The court noted that a significant number of investigative actions had yet to be carried out. It further found that although the applicant had a permanent place of residence in Russia, it was not possible to change the measure of restraint for another that would not involve deprivation of liberty, including release on bail, taking into account her personality; the fact that she was charged with a grave offence committed by an organised group; that the grounds which had served as a basis for the applicant's placement in custody were still valid; that she could flee from the investigation and the court or otherwise interfere with the course of justice; and that there was no information that the applicant's state of health prevented her from being held in custody. The applicant appealed.

On 5 October 2009 the Moscow City Court upheld the decision of 9 September 2009.

On 11 January 2010 the Meschanskiy District Court of Moscow extended the applicant's detention until 8 April 2010. The court stated that that a significant number of investigative actions had yet to be carried out; that the applicant was charged with a grave offence; that the grounds which had served as a basis for her placement in custody were still valid; that the investigating authorities' arguments that the applicant could flee, put pressure on witnesses or otherwise interfere with the course of justice were corroborated by reports of several law-enforcement agencies. The reports were not quoted in the decision.

On 1 March 2010 the Moscow City Court upheld the decision of 11 January 2010.

On 7 April 2010 the Moscow City Court extended the applicant's detention until 11 July 2010. The court noted that under Article 109 § 3 of the Code of Criminal Procedure extensions of detention for a term exceeding twelve months may only be granted in exceptional cases with respect to persons charged with serious or particularly serious criminal offences. It further noted that the case at hand was exceptionally complex as it involved investigation into activities of an international organised group. The court found the investigating authorities' argument that, if released, the applicant would continue criminal activity unfounded. However, it found other arguments well-grounded. In particular, the court stated that, taking into account the gravity of charges, it was likely that, if released, the applicant would try to flee, interfere with the course of justice or put pressure on witnesses. At the same time the investigation still needed to conduct a number of important investigative actions. Having noted that the grounds which had served as a basis for her placement in custody were still valid, the court held that there were no grounds to change the preventive measure applied to the applicant. The applicant appealed.

On 25 May 2010 the Supreme Court of Russia upheld the decision of 7 April 2010.

At the same time in decisions of 12, 14 and 20 May 2010 respectively the Supreme Court of Russia altered decisions of the Moscow City Court extending pre-trial detention in respect of three co-accused and released them on bail.

On 7 July 2010 the Moscow City Court extended the applicant's detention until 8 October 2010. With a reference to Article 109 § 3 of the Code of Criminal Procedure the court noted that the case at hand was exceptionally complex as it involved twelve co-accused and fifty volumes of case materials, required collaboration with foreign counterparts and numerous expert examinations and concerned smuggling through the Russian border. It further stated that the investigation was still underway; that the grounds which had served as a basis for the applicant's remand in custody were still valid; that despite the applicant's having a permanent place of residence, given the gravity of charges, if released, she could try to flee, interfere with the course of justice and put pressure on witnesses who had only been questioned in the course of preliminary investigation and not before a court; that there was no information that the applicant's pre-trial detention was impossible due to medical or other reasons; and that therefore it was impossible to apply in respect of the applicant another preventive measure that would not involve deprivation of liberty. The court also

referred to certain reports of law-enforcement authorities as corroborating the risk of the applicant's feeling and interfering with the course of justice, however, they were not quoted in the decision. The applicant appealed.

On 6 August 2010 the Supreme Court of Russia upheld the decision of 7 July 2010.

B. Relevant domestic law

Since 1 July 2002 criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

1. Preventive measures

“Preventive measures” include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). When deciding on a preventive measure, the competent authority is required to consider whether there are “sufficient grounds to believe” that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99). In exceptional circumstances, and when there exist grounds provided for by Article 97, a preventive measure may be imposed on a suspect, taking into account the circumstances listed in Article 99 (Article 100). If necessary, the suspect or accused may be asked to give an undertaking to appear (Article 112).

2. Time-limits for pre-trial detention

(a) Two types of remand in custody

The Code makes a distinction between two types of remand in custody: the first being “pending investigation”, that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being “before the court” (or “pending trial”), at the judicial stage.

(b) Time-limits for detention “pending investigation”

A custodial measure may only be ordered by a judicial decision in respect of a person who is suspected of, or charged with, a criminal offence punishable by more than two years' imprisonment (Article 108). The time-limit for detention pending investigation is fixed at two months (Article 109). A judge may extend that period up to six months (Article 109 § 2). Further extensions may only be granted by a judge if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

(c) Time-limits for detention “pending trial”

From the time the prosecutor sends the case to the trial court, the defendant's detention is “before the court” (or “pending trial”). The period

of detention pending trial is calculated up to the date on which the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

COMPLAINT

The applicant complains under Article 5 §§ 1 (c) and 3 of the Convention that the decisions to remand her in custody were unlawful since they were not based on any valid grounds that could justify her pre-trial detention.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of her liberty in breach of Article 5 § 1 of the Convention? In particular, was the fact that Moscow City Court in its decision of 6 May 2009 adduced no reasons for its order to remand the applicant in custody compatible with Article 5 § 1 (c) of the Convention (see *Fursenko v. Russia*, no. 26386/02, §§ 80-82, 24 April 2008)?

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? Did the courts adduce relevant and sufficient reasons for the applicant's pre-trial detention, in compliance with this provision?