



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

FIRST SECTION

Application no. 12097/09
Sergey Georgiyevich YAKUNIN
against Russia
lodged on 30 December 2008

STATEMENT OF FACTS

The applicant, Mr Sergey Georgiyevich Yakunin, is a Russian national who was born in 1982 and is detained in the Mariy-El Republic.

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

A. The applicant's arrest and placement in custody

On 27 December 2007 the applicant's name was put on the list of fugitives from justice on suspicion of murder.

At about 8.30 p.m. on 1 April 2008 the applicant was arrested in the town of Volzhskiy in the Volgograd Region. He was brought to a local police station where he remained until the next day.

At about midday on 2 April 2008 the applicant was put in a police car and transported to Kazan where he arrived at about 3 a.m. on 3 April 2008. He was put in a cell at the Privolzhskiy District police station.

At about 8 a.m. of the same day the applicant was allegedly ill-treated and urged to confess to murder. He signed a confession statement.

At 2 p.m. on 3 April 2008 the investigator drew up an official record of the applicant's arrest. The record mentioned that the applicant was arrested at 2 p.m. on 3 April 2008 as a suspect on the basis of his confession statement.

On 4 April 2008 the Vakhitovskiy District Court of Kazan remanded the applicant in custody, finding that he was suspected of a serious criminal offence, had no permanent place of residence and was unemployed. He had fled from justice and had been put on the wanted persons' list. There were therefore sufficient reasons to believe that he might abscond, re-offend or interfere with the proceedings. The court found the applicant's arguments that he had a minor child and had relatives in Kazan who could

accommodate him during the criminal proceedings insufficient to warrant his release.

On an unspecified date the applicant lodged a complaint before the Vakhitovskiy District Court, claiming that the police had no grounds to arrest him on 1 April 2008, that no record of his arrest had been drawn up until 3 April 2008 and that he had not been brought before a court within forty-eight hours after his arrest, as required by Russian law.

On 10 June 2008 the Vakhitovskiy District Court rejected the applicant's complaint, finding that his arrest had been lawful. The arrest record had been drawn within three hours after his arrival to the investigator, as required by Article 92 § 1 of the Code of Criminal Procedure. On 18 July 2008 the Supreme Court of the Tatarstan Republic upheld that decision on appeal.

The applicant also complained to the Kazan Investigations Committee, asking to open criminal proceedings against the police officers who had arrested him on 1 April 2008 and who had ill-treated him on 3 April 2008.

On 10 June 2008 the Kazan Investigations Committee refused to open criminal proceedings against the police officers, finding no evidence of ill-treatment. It established that the applicant had been arrested in the town of Volzhskiy on 1 April 2008 by police officers Mr G., Mr S. and Mr O. No force had been used against the applicant during the arrest. He had been then transported to Kazan and handed over to police officers Mr I. and Mr R. Mr I. and Mr R. had denied ill-treating the applicant and had testified that the confession statement had been signed without any pressure or intimidation. Medical experts who had examined the applicant on 4 April 2008 had not recorded any injuries.

The applicant challenged that decision before the Vakhitovskiy District Court.

On 24 June 2008 the Vakhitovskiy District Court rejected the applicant's complaint as unsubstantiated, finding that the inquiry had been thorough and complete. The court upheld the Kazan Investigations Committee's finding that there was no evidence of ill-treatment. On 5 August 2008 the Supreme Court of the Tatarstan Republic upheld the decision on appeal.

B. Decisions concerning the extension of a custodial measure

On 9 April 2008 the applicant was formally charged with murder.

On 29 May 2008 the Privolzhskiy District Court of Kazan extended the applicant's detention until 3 July 2008. Referring to the gravity of the charge and the fact that the applicant had fled from justice, the court found that there was a risk of absconding. On 22 July 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal, finding that it had been lawful, sufficiently reasoned and justified.

On 2 July 2008 the Vakhitovskiy District Court extended the applicant's detention until 11 July 2008, referring to the gravity of the charge. The applicant's arguments that he had two minor children and had no intention of absconding could not warrant his release. On 18 July 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 9 July 2008 the Vakhitovskiy District Court extended the applicant's detention until 11 August 2008, referring to the gravity of the charge and the

applicant's character. On 22 July 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 7 August 2008 the Vakhitovskiy District Court extended the applicant's detention until 11 September 2008 for the same reasons as before. On 26 August 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 9 September 2008 the Vakhitovskiy District Court extended the applicant's detention until 19 September 2008, referring to the gravity of the charges and the fact that he had absconded and his name had been put on the list of fugitives from justice. There was therefore a risk of absconding or interfering with the proceedings. On 30 September 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 16 September 2008 the Vakhitovskiy District Court extended the applicant's detention until 3 October 2008 for the same reasons as before.

On 30 September 2008 the Vakhitovskiy District Court extended the applicant's detention until 19 November 2008 for the same reasons as before. On 17 October 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 5 November 2008 the Vakhitovskiy District Court extended the applicant's detention until 3 December 2008, finding that he might abscond, threaten witnesses, destroy evidence or interfere with the proceedings in any other way. He was at the moment studying the voluminous case file and it was therefore necessary to extend his detention. On 21 November 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 28 November 2008 the Vakhitovskiy District Court extended the applicant's detention until 20 December 2008 for the same reasons as before. On 23 December 2008 the Supreme Court of the Tatarstan Republic upheld the extension order on appeal.

On 5 December 2008 the case was sent for trial before the Privolzhskiy District Court.

On 18 December 2008 the Privolzhskiy District Court held a preliminary hearing and ordered the applicant's detention pending trial, referring to the gravity of the charge and the risks of absconding, re-offending or interfering with the proceedings.

On 27 May 2009 the Privolzhskiy District Court extended the applicant's detention until 5 August 2009 for the same reasons as before.

On 3 August 2009 the Privolzhskiy District Court of Kazan convicted the applicant of murder and sentenced him to nine years and six months' imprisonment.

COMPLAINTS

The applicant complains under Article 5 §§ 1 and 3 of the Convention that his detention from 1 to 4 April 2008 was unlawful. In particular, no record of his arrest was drawn up until 3 April 2008 and he was not brought before a court within forty-eight hours after his arrest, as required by

Russian law. He further complains that his detention pending trial was not based on sufficient reasons.

QUESTIONS TO THE PARTIES

1. Was the applicant's detention from 1 to 4 April 2008 "lawful" in the meaning of Article 5 § 1 (c) of the Convention? In particular, was there a violation of Article 5 § 1 on account of the alleged delay in compiling the arrest record, as a result of which the applicant's detention was unrecorded for a period of approximately forty-one hours and a half between 8.30 p.m. on 1 April 2008 and 2 p.m. on 3 April 2008 (see *Aleksandr Sokolov v. Russia*, no. 20364/05, §§ 70-73, 4 November 2010)? Having regard to the fact that applicant was detained without a judicial decision for more than forty-eight hours, was his detained "in accordance with a procedure prescribed by law"?

2. Was the applicant brought promptly before a judge or other officer authorised by law to exercise judicial power, as required by Article 5 § 3 of the Convention?

3. Was the applicant's detention based on "relevant and sufficient" reasons and were the proceedings conducted with "special diligence", as required by Article 5 § 3 of the Convention?