

## FIRST SECTION

Application no. 4903/10  
Yuriy Nikolayevich GAYDUKOV  
against Russia  
lodged on 12 January 2010

### STATEMENT OF FACTS

The applicant, Mr Yuriy Nikolayevich Gaydukov, is a Russian national, who was born in 1962 and lives in the city of Moscow. He is represented before the Court by Mr D.V. Agranovski and Mr Ariel Gascon-Rétoré, lawyers practising in the town of Elektrostal and the city of Paris respectively.

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

#### **A. Background of the case**

At the relevant time the applicant, a serviceman in the rank of colonel of the Russian Army seconded to the Chamber of Auditors of Russia (“Счетная палата РФ”), was the head of the inspection overseeing privatisation of the federal property of that Chamber.

Between 11 December 2006 and 30 January 2008 he took part in the inspection of the use of the federal property at a number of the military space companies, including OAO “NPO Energomash”.

#### **B. Criminal proceedings against the applicant**

On 6 September 2007 the applicant was arrested by officers of the Federal Security Service of Russia (the FSB, “ФСБ РФ”) on suspicion of having participated in a bribery episode at the mentioned company and escorted for an interview with an investigator of the Prosecutor General’s office. From that date and until 11 November 2009 the applicant remained in detention.

It appears that at once after his arrest the applicant fainted. He was escorted to Moscow City Clinical Hospital no. 20. The applicant was diagnosed as suffering from a number of chronic conditions, such as ischemia, cardiac sclerosis, issues with blood circulation, arterial hypertension, the elevated cholesterol and osteochondritis. He was discharged from the hospital in satisfactory condition on 21 September 2007 and immediately escorted to remand prison no. 2.

### *1. The decision of 13 September 2007*

On 12 September 2007 the investigator of the Prosecutor General's office requested a court to detain the applicant.

This request was examined and granted by the Moscow Garrison Military Court (the Garrison Court) on 13 September 2007. The decision stated as follows:

“Having examined the request of the investigator and the materials in its support, the court concludes that the request should be granted on the following grounds.

[The applicant] is suspected of the commission of a particularly serious crime which is punished with a sentence of imprisonment of over two years.

In the case file materials submitted to the court there is an indication that [the applicant] is capable of influencing witnesses and other participants of the criminal proceedings, destroying the evidence or otherwise impeding the investigation of the case, because he had attempted to erase traces of his criminal activity and these circumstances are confirmed by the reports of the FSB official, which is why the court takes the view that [the applicant] may influence witnesses and other participants of the criminal proceedings, destroy the evidence and otherwise impede the proceedings.

In view of the above, [and taking in account] the information about the personality of the accused, his condition and family situation, the court considers that the presented materials are sufficient to render impossible the application of a milder measure of restraint than detention on remand, including the personal safety of an auditor of the Chamber of Auditors ...”

It appears that the mentioned reports from the FSB officials were dated 10 and 11 September 2007 and were signed by the Head of the First unit of Department “K” of the FSB. They stated that, whilst staying in hospital, the applicant had been responsible for an attempt to open a sealed safe in his office as well as to try to bribe various officials with a view to discontinuing the proceedings. The applicant was alleged to have tried to give indications to a third person with a view to concealing the traces of his criminal activity. According to the applicant, these reports remained unconfirmed by any materials.

The applicant appealed against this decision, arguing that his family situation, his health and his previous positive reference required his release pending the proceedings.

On 24 September 2007 the Moscow Military Circuit Court (the Circuit Court) upheld the decision of 13 September 2007, essentially deferring to the reasons given by the first instance court.

### *2. The decision of 8 November 2007*

On 14 September 2007 the applicant was accused of having received, through an intermediary, a large sum of money as a bribe.

On 8 November 2007 the applicant's remand in custody was extended by the Garrison Court until 6 February 2008 with reference to the same reasons as given in the decision of 13 September 2007.

### *3. The decision of 5 February 2008*

On 5 February 2008 the applicant's detention was extended by the Garrison Court until 6 May 2008. The decision stated that:

“[The applicant], being at large, may put pressure on witnesses and other participants of the criminal proceedings, destroy the evidence in the case, that is impede the course of pre-trial investigation.

These grounds did not cease to exist at present, because they seem real, well-grounded and are confirmed by credible information.

Thus, from reports of the FSB officials dated 10 and 11 September 2007 it follows that [the applicant], through his connections, was trying to pay out the illicit award to the law enforcement officials with a view to avoiding criminal liability, taking measures to conceal the traces of his criminal activity ...”

The applicant appealed against this decision, arguing that the reasons provided by the courts were not justified and generally insufficient.

This appeal was rejected by the Circuit Court on 29 February 2008.

#### *4. The decision of 29 April 2008*

On 29 April 2008 the Garrison Court extended the detention again, this time until 6 August 2008. The decision noted that:

“... the investigator pointed at the fact that the investigation of the case was complex because of the big volume of investigatory and procedural actions as well as the need to provide [the actors involved with an opportunity to study the case file materials] and [for the prosecution] to produce the bill of indictment ...”

“Taking into account the fact that the previously formulated reasons ... for [the applicant’s] detention have not ceased to exist and continue to confirm the need to isolate [the applicant], whilst [his] medical condition, according to the medical documents in the case file, does not impede [his] continued detention ..., the court concludes that there is a need to extend the term of [the applicant’s] detention on remand ...”

This decision was confirmed on appeal by the Circuit Court on 13 May 2008.

#### *5. The decision of 1 August 2008*

On 1 August 2008 the applicant’s detention was extended by the Garrison Court again, this time until 10 September 2008. The decision stated that:

“... the grounds which existed earlier ... did not cease to exist at present ...

The case file does not contain any materials, and the parties did not submit any such materials either, which could confirm exceptional circumstances, of which the courts could have previously been unaware ... and which could confirm the impossibility of [the applicant’s] detention for medical or social grounds ...”

On 12 August 2008 the Circuit Court rejected the applicant’s appeal against the decision of 1 August 2008.

#### *6. The decision of 5 September 2008*

On 5 September 2008 the Circuit Court extended the applicant’s detention until 6 December 2008.

This decision was quashed on appeal by the Supreme Court of Russia (the Supreme Court) on 6 October 2008, because a judge sitting in that case had participated in rendering the decision of 1 August 2008.

The applicant remained in detention pending the fresh round of proceedings.

*7. The decision of 8 October 2008*

On 8 October 2008 the Circuit Court extended the applicant's detention until 6 December 2008. The decision stated as follows:

“... there is no data confirming that the need for [the applicant's] stay in detention has ceased ..., because [the reasons that existed earlier] up to now have not changed ...

The court examined the medical documents, according to which [the applicant] has been suffering from ischemia, stenocardia, hypertonic disease... From [these] documents it follows that he is being constantly supervised by the doctors, including cardiologist. The supervision of [the applicant's] condition is confirmed, in particular, by the fact that he has been diagnosed in July 2008 with atherosclerosis of aorta ...”

The decision of 8 October 2008 was upheld on appeal by the Supreme Court on 6 November 2008.

*8. The decision of 4 December 2008*

On 3 December 2008 the applicant's charges were amended. He was now accused of an attempt to receive a bribe by an organised group, coupled with extortion of a bribe of a large amount and an attempt to commit a large scale fraud.

On 4 December 2008 the applicant's detention on remand was extended by the Circuit Court until 6 March 2009. The decision referred to the applicant's personality, the fact that there were four accused in the case, its complexity and the character of the criminal activity as well as the reasons already referred to previously.

This decision was upheld on appeal by the Supreme Court on 21 January 2009.

*9. The decision of 4 March 2009*

On 19 January 2009 the applicant's charges were again amended.

On 22 January 2009 the investigation was terminated and the applicant started to study the case file.

On 4 March 2009 the Circuit Court extended the applicant's detention on remand until 2 July 2009. It referred to the same reasons as previously.

This decision was upheld on appeal by the Supreme Court on 9 April 2009.

*10. The decision of 29 June 2009*

On 29 June 2009 the Circuit Court again extended the applicant's detention on remand, this time until 6 October 2009. The court referred essentially to the same reasons as previously.

The decision of 29 June 2009 was upheld by the Supreme Court on appeal on 16 July 2009.

*11. The decision of 30 September 2009*

The applicant's next extension was made by the Circuit Court on 30 September 2009. The detention was extended until 6 December 2009.

On 26 October 2009 the Supreme Court examined and granted the applicant's appeal. It quashed the decision of 30 September 2009 and decided to release the applicant on bail of 10,000,000 Russian roubles (around 243.000 euros), having noted that:

“... [the applicant] has been detained for over two years, his health in the condition of remand prison has deteriorated, previously he received positive references, has a family, minor children in need of attention, the [court] has decided to release him on bail ...”

The defence collected and paid the money in question on 6 November 2009.

The applicant was released on 11 November 2009.

The outcome of the criminal proceedings against the applicant remains unclear.

## COMPLAINTS

1. Relying on Article 3 of the Convention, the applicant complains that his detention on remand was incompatible with his health condition, having seriously deteriorated it.

2. Under Article 5 of the Convention the applicant was dissatisfied with the courts' unwillingness to release him on bail earlier in the proceedings. He also complained that between 6 and 11 November 2009 his detention had been unlawful.

3. The applicant also made a number of complaints about the alleged unfairness of the criminal proceedings against him under Article 6 of the Convention.

## **QUESTIONS TO THE PARTIES**

1. Was the applicant's detention on remand compatible with Article 5 § 1 (c) of the Convention between 6 and 11 November 2009? Reference is made to the applicant's allegation that the bail was paid on the former date, whilst the applicant was released five days later.

2. Was the length of the applicant's detention on remand compatible with Article 5 § 3 of the Convention? In particular, were there “relevant and sufficient reasons” for extending the applicant's detention? Also, did the investigator and the courts exercise “special diligence” in conducting the applicant's criminal case?