



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

## FIRST SECTION

Application no. 25894/09  
Nikolay Nikolayevich GONTAREV  
against Russia  
lodged on 17 April 2009

### STATEMENT OF FACTS

The applicant, Mr Nikolay Nikolayevich Gontarev, is a Russian national, who was born in 1974 and lives in the town of Berezovskiy, the Kemerovo Region.

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

#### **A. The criminal proceedings against the applicant**

In May 2006 a criminal investigation into a theft of a car by a group of persons was opened.

On 27 February 2007 several policemen, acting on an investigator's order, performed a search in the applicant's apartment and arrested the applicant. The next day he was charged with aggravated theft.

On 1 March 2007 the Tsentralniy District Court of Kemerovo ("the district court") remanded the applicant in custody, finding as follows:

"... despite the facts that Mr Gontarev has a registered residence in Kemerovo, is married, was not convicted in the past, the gravity of the charges ... the specificity of the [imputed] crime – committed as an organised criminal gang, the information about his personality – according to the [police] reference Mr Gontarev is an active member of an interregional criminal gang, does not appear at his registered address and conceals his true place of residence, is cunning, greedy and impudent, has connections with persons belonging to the criminal society, the investigation considers it probable that [the applicant] could physically threaten the witnesses, the victims and their relatives; moreover, taking into account that items resembling picklocks, which could be used for hijacking cars were discovered during the search, that [Mr Gontarev] is unemployed, the court considers that if at liberty, Mr Gontarev might reoffend, obstruct the course of the investigation, as according to the [police] reference, the members of the gang spend a part of their financial means for bribing law-enforcement officials and witnesses ..., [moreover,] Mr Gontarev might as well abscond. Thus, a more lenient measure of restraint would be ineffective in his respect."

On the same day the district court decided that the search in the applicant's apartment had been lawful. It appears that no further appeals were lodged in that regard.

On 13 March 2007 the Kemerovo Regional Court ("the regional court") upheld the detention order on appeal.

On 26 March 2007 the applicant was additionally charged with another episode of aggravated theft and of organising a criminal gang.

On 23 April 2007 the district court stated that the grounds for the applicant's detention pertained, extended it until 25 May 2007. The court also noted that:

"... [the applicant] was directly involved in car thefts and is formally unemployed, which allows to suggest that the said criminal activity was Mr Gontarev's only source of income ..."

On 22 May 2007 the district court, referring to the same grounds as before, extended the applicant's detention until 25 June 2007.

On 6 June 2007 the regional court ordered a preliminary hearing of the case, rejected the applicant's request for release and authorised his further detention until 28 November 2007, stating that none of the grounds for keeping the applicant in custody had disappeared.

The applicant appealed. He alleged that the decisions authorising and extending his detention were not reasoned and based on incorrect data, as he was employed, had a permanent residence and did not abscond even if he could do so.

On 12 September 2007 the Supreme Court of Russia found that the order of 6 June 2007 was lawful and motivated, and dismissed the appeal.

On 26 November 2007 the regional court extended the applicant's detention until 28 February 2008, stating that the grounds for it pertained.

It appears that between February and August 2008 the applicant's detention was extended several more times.

By orders of 20 August and 24 November 2008 and 26 February, 27 May and 27 August 2009 the regional court extended the applicant's detention, for three months at a time. In addition to the previous grounds for the detention, it referred to the necessity to examine numerous witnesses in the trial.

On 19 November 2008 and 21 April, 19 May, 6 August and 12 November 2009 accordingly, the Supreme Court of Russia dismissed the applicant's appeals against the above extension orders, ruling in a summary fashion that they were lawful and reasoned.

On 27 November and 24 December 2009 the regional court granted the prosecution's motions to extend the applicant's detention. It found that the grounds for the detention pertained, that the trial court needed to examine numerous witnesses, other evidence and decide upon requests concerning admissibility of evidence lodged by the defence. On 9 March 2010 the Supreme Court of Russia found the order of 24 December 2009 to be lawful and reasoned and dismissed the applicant's appeal.

On 27 February 2010 the regional court examined a request of the prosecution to change the applicant's measure of restraint and ordered to release the applicant under a written undertaking not to leave his place of residence, holding that:

“The court considers it possible ... to change Mr Gontarev’s measure of restraint to an undertaking not to leave his place of residence.

The court arrived at that conclusion on the following grounds. Mr Gontarev has a permanent place of residence, a family, his references are positive and he has no criminal record, [moreover] he has spent a lot of time (3 years) in detention.

The court takes into account that the charges against Mr Gontarev are not particularly grave.

The court finds that the above circumstances... indicate that the interests of justice could be achieved without remanding Mr Gontarev in custody ...”

On 29 October 2010 the regional court, having examined the prosecution’s decision to drop all charges against the applicant, ruled to discontinue the criminal proceedings in his respect.

### **B. The conditions of the applicant’s detention in remand prison**

The applicant spent the whole period of his pre-trial detention from March 2007 to February 2010 in remand prison IZ-42/1 of Kemerovo in the following conditions.

Cell no.	Surface (sq. m)	Design Capacity	Actual population
3	12.5	no data	4
35	36	24	12-30
36	36	24	12-30
65	18	no data	9
71	36	24	12-30
73	36	24	12-30
74	36	24	12-30
79	33.6	24	no data

There existed no ventilation in the cells and the fresh air could flow in only through windows. The toilets were separated from the rest of the cells by a small partition 1.1-1.2 m high and were close to the tables where the inmates ate.

There was not enough natural light in some cells during the daytime, whereas the artificial lighting was on all night and made it difficult to sleep.

### **C. The conditions of the applicant’s transport**

From 2007 to 2010 the applicant was regularly transported from the remand prison to the Kemerovo Regional Court to take part in the trial.

The trips usually lasted several hours as the prison van had to wait for a clearance to exit or enter the remand prison territory.

During that time the detainees were exposed to the region’s extreme temperatures, as low as -40 ° C in the wintertime, and searing hot in the summer.

## COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the allegedly inadequate conditions of his pre-trial detention in remand prison IZ-42/1 of Kemerovo.

2. With reference to the same provision, he complains about the conditions of his transfer from the remand prison to the courthouse.

3. The applicant alleges under Article 5 § 3 that his pre-trial detention was excessively long and the grounds for keeping him in custody were not relevant and sufficient.

### **QUESTIONS TO THE PARTIES**

1. Were the conditions of the applicant's detention in remand prison IZ-42/1 of Kemerovo compatible with Article 3 of the Convention? If the Government consider that the information given by the applicant (in particular, the occupancy numbers) was inaccurate, they are invited to produce extracts from the prison population register covering at least one day per week during the entire period of the applicant's detention.

2. Were the conditions of transport of Mr Gontarev to/from the remand prison or the courthouse compatible with Article 3 of the Convention? In particular, the Government are requested to indicate in respect of the applicant:

- (a) How many times was he transported to/from the custodial facilities or the courthouse and on which dates?
- (b) How long was the way?
- (c) How much space was allowed for the applicant in the prison van?
- (d) Did the applicant have access to toilet during the trip?
- (e) Was drinking water available to him?
- (f) Were the transportation compartments ventilated on hot days and heated on cold days?

3. Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? Were the domestic courts' decisions extending his detention founded on "relevant and sufficient" reasons?