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

FIRST SECTION

Application no. 42412/13
Vladimir Pavlovich GRODETSKIY
against Russia
lodged on 2 July 2013

STATEMENT OF FACTS

The applicant, Mr Vladimir Pavlovich Grodetskiy, is a Russian national, who was born in 1951 and lives in Izhevsk. He is currently in detention in Moscow. He is represented before the Court by Mr A.A. Smetskoy, 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.

1. Arrest and detention

The applicant is the former director of one of the largest Russia's defence industry enterprises, *Izhmash* (1996-2011).

On 22 November 2012 the Main Investigative Directorate of the Ministry of the Interior of Russia (*ГСУ ГУ МВД России*) opened criminal investigation file no. 34016. According to the applicant, in February 2013 his home and office in Izhevsk were searched in relation to this criminal case.

On 9 April 2013 the applicant was charged with large-scale swindling (Article 159 § 4 of the Criminal Code). The bill of indictment, signed by the applicant on 10 April 2013, stated that the incriminated acts had been committed in 2006-2007, in Izhevsk, when the applicant had been a member of the board of directors of joint stock company *OAO Sarapulskiy Radiozavod* ("the SRZ"). The SRZ implemented State contracts in the area of defense, and was thus classified as a "strategic enterprise". As the bill of indictment stated, the applicant in association with unidentified persons had given orders for transfer of over 35,000,000 Russian rubles (RUB) to the bank accounts of a number of legal entities in Moscow. The bill of indictment further stated that these legal entities had been "shams" and that no real contracts for the production or services had been concluded. The

applicant had then withdrawn and appropriated the money from these accounts.

On 10 April 2013 the applicant was arrested. On the same day he was questioned, in the presence of his lawyer.

On 12 April 2013 the Tvesrkoy District Court of Moscow granted the investigator's request to place the applicant in pre-trial detention. The applicant and his lawyer pointed to the fact that the applicant was a permanent resident of Izhevsk, a retired person of a certain age, that he held numerous State distinctions and was a respected member of the society. They noted that the criminal charges had been brought in relation to non-enforcement of civil contracts and thus fell into the area of business activity which excluded application of pre-trial detention. Finally, they argued that the applicant's medical condition required constant supervision and could not be ensured in a detention facility. Two options were offered: the use of bail of RUB 5,000,000 or home arrest, which could be served in the applicant's son's flat in Moscow. The court accepted the investigator's arguments that the applicant, who had been charged with a serious crime potentially punishable by up to ten years of prison term, could continue to engage in criminal activity, put pressure on the unidentified collaborators in his criminal scheme, tamper with evidence or escape from justice. As regards the applicant's medical condition, the court noted that he had suffered from the following diseases: diabetes of the II type, obesity of III degree, unstable glucose level, chronic hepatitis developing into cirrhosis, heart ischemia. The court found that these illnesses did not preclude his pre-trial detention. Furthermore, upon the applicant's placement in the temporary detention ward (IVS) a medical commission of four doctors of the clinical hospital no. 119 of the Federal Medico-biological Agency (*КБ № 119 ФМБА России*) while confirming the main diseases indicated above, concluded that the applicant could be placed in detention. The court concluded that it had no reasons to exclude the applicant's placement in detention and authorised it until 10 June 2013.

The applicant appealed against this decision on 15 April 2013. He stressed that the decision had been taken in breach of the applicable procedural norms, in particular those applicable to pre-trial detention of the persons accused of crimes committed in the sphere of entrepreneurial activities, and once again requested to apply bail or home arrest. The applicant's medical condition had been raised again.

On 3 June 2013 the Moscow City Court confirmed the decision of 12 April 2013. The court noted that at the time of examination of the complaint the applicant was in prison hospital, his condition on 30 May 2013 was described by the hospital as "satisfactory" and there was an improvement. He could participate in the investigative measures. The court stated that it "had found no reasons to apply a measure of restraint not associated with deprivation of liberty".

On 6 June 2013 the Tverskoy District Court of Moscow extended the applicant's pre-trial detention until 10 September 2013. It repeated the same reasons as previously and rejected the applicant's request to apply bail or house arrest. The applicant lodged appeals on 10 and then on 28 June against the said decision.

On 15 July 2013 the Moscow City Court on appeal confirmed the lawfulness of extension. The applicant's lawyers stressed that the criminal events imputed to the applicant had taken place five or six years previously, that there was no evidence that he had tampered with the evidence or put any pressure on the witnesses, that there was no indication that the applicant had planned to flee from justice. They argued that not a single investigation act with the applicant had taken place in the three months since he had been arrested. They, again, pointed to the applicant's serious medical condition and to the fact that the doctors who had supervised him previously had not been allowed to access him in detention. They repeated the requests to release the applicant on bail of RUB 5,000,000 or to place him under house arrest at his son's flat in Moscow. The Moscow City Court referred to the same arguments as the Tverskoy District Court: the lawfulness of the previously adopted decisions, the seriousness of the charges, the applicant's personality and decided that there were no reasons to change the previously taken decision to leave the applicant in detention.

2. The applicant's medical condition

According to various medical documents submitted, the applicant suffers from diabetes of the II type, obesity of the III degree, unstable glucose level, chronic hepatitis developing into cirrhosis, heart ischemia, hypertonia of the III degree (risk of IV), encephalopathy of the II degree, portal hypertension, swellings, a number of gastric and blood circulation diseases.

Since arrest the applicant remained in prison and civilian hospitals, which produced somewhat divergent opinions on his medical condition and its compatibility with detention. At present he is at the prison hospital of SIZO-1 of the Federal Service of the Execution of Sentences (SIZO-1, high-security pre-trial detention centre, *ФБУ СИЗО №1 УФСИН России*). In response to the President's request for information, the Government submitted copies of the medical reports and examinations carried out on the applicant between April and July 2013. An outline of the examinations, treatment and doctors' conclusions was prepared on 11 July 2013 by the head of the prison hospital of SIZO No. 1 and comprised twelve pages.

On 13 April 2013 the applicant was brought to the Moscow city hospital No 20 by ambulance. On 19 April 2013 he was brought to the prison hospital of the SIZO-1.

On 25 April 2013 his condition worsened and was described as "pre-coma", resulting from acute brain failure – toxic encephalopathy. The applicant was prescribed drug therapy and transfer to a multi-profile hospital. Between 26 and 29 April 2013 the applicant was in intensive care unit of the surgery of the prison hospital, and then was transferred to the therapeutic ward of the same hospital.

On 27 May 2013 three experts of the State Forensic and Criminological Expert Reports of the Ministry of Defence (*111 Главный Государственный Центр Судебно-Медицинских и Криминалистических Экспертиз Министерства обороны РФ*), upon the applicant's lawyer's request, issued their report, based on the applicant's clinical history and medical documents produced between 2008 and 2011. The report concluded that "the cardio-vascular and liver diseases were serious, chronic, progressive and mutually complicating pathologies, which

cannot be successfully treated. Correct and adequate treatment could only alleviate the patient's suffering, but not lead to his recuperation. Taking into account the advanced age of the patient and active development of the diseases and their complications ... Grodetskiy Vladimir Pavlovich requires treatment in a specialised multi-profile medical institution. [The applicant's] placement in a pre-trial detention centre cannot ensure medical assistance in the required amount. ... [The applicant] has grounds to be urgently placed in a hospital." The expert report concluded further that two of the applicant's diseases – hypertension of the III type and active cirrhosis of the liver with concomitant diseases – fell under the descriptions of serious illnesses preventing application of pre-trial detention, under the Government Decree No 3 of 14 January 2011 "On the medical examination of suspects or accused of crimes" (Decree No 3).

On 3 June 2013 the medical expert commission of the prison hospital of SIZO No. 1 concluded that there existed "persistent failures of the body functions and complications leading to a significant reduction of life-sustaining activities and calling for lengthy treatment [of the applicant] in a specialized hospital". On the basis of this conclusion, the head of the prison hospital ruled to send the applicant for examination of compatibility of his condition with pre-trial detention, under the guidelines of Decree No 3.

In the meantime, on 4 June 2013 the applicant's lawyer asked the investigator to appoint a medical examination in order to determine whether the applicant could be kept in detention. On 5 June 2013 the investigator refused, referring to the fact that no originals of medical documents have been submitted.

On 5 June 2013 the investigator declined the applicant's request to release the applicant from detention in view of his medical condition, referring to the information from the prison hospital of 24 May 2013. The patient's condition was described by the hospital as "satisfactory" and there was an improvement. The illnesses did not fall into the list of diseases preventing detention.

Between 11 and 19 June 2013 the applicant was placed to the Moscow City hospital No 20, special cardio-therapeutic department. The conclusion of that hospital of 19 June 2013 found that the applicant had not suffered from a medical condition which would be incompatible with pre-trial detention, under the guidelines of Decree No 3.

Between 19 and 24 June 2013 the applicant was at the prison hospital of SIZO-1. Upon discharge, his condition was judged "stable and not requiring urgent medical assistance; he could be monitored on the outpatient basis while in SIZO".

However, on 30 June 2013 the applicant was again hospitalised to the prison hospital of SIZO-1. His condition upon admission was described as that of "medium gravity" and was noted to have deteriorated since the last visit. On 11 July 2013 the head of the hospital concluded, once more, that the applicant's condition should be evaluated in the light of Decree No 3 if it was compatible with detention. As it appears, the applicant and his lawyer have not been made aware of that document.

The applicant's lawyer also insists, in his submissions of 18 July 2013, that neither he nor the applicant had seen the conclusion of 19 June 2013, in breach of the relevant procedural rules. On 10 July 2013 he seized the head

of the prison hospital of the SIZO-1 and the investigator in charge of the case with requests to obtain a copy of that document, and also to allow a group of highly qualified doctors selected by the applicant to examine him and to evaluate the compatibility of his condition with continued detention. In both letters the lawyer stressed, without referring to any documents or facts, that the applicant's health condition had deteriorated and there was a risk of his death.

On 22 July 2013 the applicant was again sent by the prison hospital of the SIZO-1 to the Moscow Central Institute of gastric diseases to evaluate whether he could be detained, in line with Decree No 3. In their detailed medical report of 26 July 2013 three doctors (one professor, one doctor of medical sciences and the applicant's treating physician) concluded that the applicant should be treated in a specialized gastroenterological institution, which covered his most serious illness.

On 26 July 2013 the applicant was returned to the prison hospital of the SIZO-1.

On 2 August 2013 the experts of the State Forensic and Criminological Expert Reports of the Ministry of Defense, issued a medical expert upon the applicant's lawyer's request and on the basis of the medical documents. The report was largely similar to the one issued by them on 27 May 2013. Having regard to the latest medical documents, they stressed that the applicant was in life-threatening condition, and could at any moment require urgent medical assistance in a specialised hospital. Failure to obtain such help could lead to the patient's death.

3. Expert report of 2 August 2013 and subsequent events

On 2 August 2013 a commission of medical experts composed of four doctors of the Moscow Central Institute of gastric diseases concluded, under the procedure provided for by the Decree No. 3, that the applicant's state of health was incompatible with pre-trial detention (expert conclusion No. 9).

On 7 August 2013 the Acting President of the Section of the Court granted the applicant's request to apply Rule 39 of the Rules of Court and indicated the following preliminary measure to the Government:

> "In view of the applicant's current medical condition as attested by relevant documents, including the conclusions of the medical expert commission no. 9 of 2 August 2013 (*медицинское заключение от 2 августа 2013 г №09, Центральный научно-исследовательский институт гастроэнтерологии ДЗ г. Москвы*), the Government should ensure the applicant's immediate transfer to a specialised hospital which is equipped to examine and treat the applicant in his current condition."

On 8 August 2013 the head of the SIZO-1 confirmed that the results of the expert conclusion No 9 had been forwarded to the investigation authority in charge of the criminal case.

By 23 August 2013 the applicant remained in detention at the prison hospital of the SIZO-1.

B. Relevant domestic law

1. The Code of Criminal Procedure

Chapter 13 of the Code of Criminal Procedure ("CCrP") "Measures of restraint" governs the use of measures of restraint, or preventive measures (*меры пресечения*), while criminal proceedings are pending. Such measures include placement in custody.

Custody may be ordered by a court following an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive measure of restraint cannot be used (Article 108 §§ 1 and 3).

Article 108 § 1.1 stipulates that pre-trial detention cannot be applied to persons charges with crimes under, inter alia, Article 159 of the Criminal Code, if these crimes have been committed in the "sphere of entrepreneurial activates" (this section has been introduced by the Federal Law of 29 December 2009 and then amended in April 2010 and November 2012).

The judicial decision to place a person in custody may be appealed against to a higher court within three days. The higher court must decide the appeal within three days of the date on which the appeal is lodged (Article 108 § 11).

Article 110 § 1.1 of the CCrP stipulates that pre-trial detention should be changed for a more lenient measure of restraint if the accused suffers from a serious illness which prevents his placement in custody and which is confirmed by a proper medical expert report. The list of such diseases and the order of carrying out the medical examination are determined by the Government of Russia.

2. Government Decree no. 3 of 14 January 2011 'On Medical Examination of Suspects and Persons Accused of Criminal offences'

The Decree sets out the procedure for medical examination of a detainee in order to determine whether he could remain in custody. Such examination can be triggered by a request lodged by the detainee or his lawyer and supported by appropriate medical documents, or by the head of the prison hospital (medical unit) where the detainee is treated. The investigator in charge or the head of the detention facility reviews such requests within one day and can decide either to send a person for examination to a state or municipal health facility, or to dismiss such request. If he decides to carry out the examination, the detained individual is immediately informed and is dispatched for such examination within three working days.

The examination is carried out by a medical expert body, comprised by the local health authorities. The examination should normally take place within five working days after receipt of the decision by the local health authority. The decision of the medical expert body is transmitted to the head of the detention facility within one working day. A copy is also given to the detained individual and/or his lawyer and the investigator in charge of the case.

If the medical examination concluded that there were no grounds for release, but the medical condition of the detained individual deteriorates, as

attested by relevant medical documents, a new request for examination can be lodged under the same rules.

A refusal to grant the request for medical examination can be challenged in the usual order.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that he does not receive sufficient medical aid while in detention and that his continued detention amounts to inhuman and degrading treatment, in view of his condition.

2. The applicant complains that his initial detention and its extension were not compatible with the provision of Article 5 § 3 of the Convention, which guarantees not only "trial within reasonable time", but also "release pending trial". He stressed that the domestic courts' decisions lacked substantiation, were based solely on the seriousness of the charges brought against him and ignored his personal and health situation.

QUESTIONS TO THE PARTIES

1. Taking into account the applicant's medical condition, have the Government met their obligation to ensure that that applicant's health and well-being are being adequately secured by, among other things, providing him with the requisite medical assistance (see *Mkhitaryan v. Russia*, no. 46108/11, § 72-74, 5 February 2013), as required by Article 3 of the Convention, in the present case?

What is the usual procedure to follow in case an individual is found to suffer from a medical condition incompatible with detention, in line with the Government Decree No 3 of 14 January 2011? The Government are asked to describe the procedural steps and time limits which apply in such circumstances.

2. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, was his detention after the conclusion No. 09 of the medical expert commission of 2 August 2013 compatible with the provisions of Article 110 § 1.1 of the Code of Criminal Procedure?

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? In particular, were there "relevant and sufficient" reasons for the applicant's continued detention?