



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

FIRST SECTION

Application no. 35884/07
Aleksey Yefimovich FRENKEL against Russia
lodged on 31 July 2007

STATEMENT OF FACTS

The applicant, Mr Aleksey Yefimovich Frenkel, is a Russian national, who was born in 1971 and lived before his arrest in Moscow. He is serving his sentence of imprisonment in a correctional colony in the Krasnoyarsk Region. He is represented before the Court by Mr Yu. Korovko, Ms K. Moskalenko and Ms S. Davydova, lawyers practising in Krasnoyarsk and Moscow.

The circumstances of the case

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

1. Applicant's detention on remand and conviction

In 2000 the applicant was appointed the CEO of a private bank based in Moscow, the "VIP-Bank".

In June 2006 the Russian Central Bank suspended the operating licence of the VIP-Bank. The suspension was connected to the Central Bank's efforts to investigate and close down banks involved in money laundering. That campaign was headed by the Central Bank's first deputy chairman, Mr A. Kozlov.

On 13 September 2006 Mr Kozlov was shot in a street on his way home from a soccer match.

On 11 January 2007 the applicant was arrested on suspicion of having organised Mr Kozlov's murder. Investigators believed that the applicant had organised the hit for 300,000 US dollars as revenge for Mr Kozlov having initiated money laundering investigations into the VIP-Bank and for him having eventually put the applicant out of business.

On the following day the Basmannyy District Court of Moscow, acting in response to the applicant's request, authorized his detention for seventy-

two hours to provide the defense with additional time to collect evidence in support of their request for the applicant's release. The applicant's appeal against that decision was dismissed by the Moscow City Court on 12 February 2007. The City Court held that the detention order of 12 January 2007 had been issued in response to the applicant's request and that therefore there were no legal grounds for the appeal.

In the meantime, on 15 January 2007 the Basmannyy District Court renewed the examination of the detention matter and authorized the applicant's placement in custody, having cited the gravity of the charges, and the applicant's liability to abscond, tamper with witnesses or obstruct justice by other means. The latter risks were connected by the District Court to "information about [the applicant's] personality and his being in possession of a travel passport". The applicant's arguments put forward in support of his claim for release, such as his age, family situation, the state of his health and his standing in the community, did not convince the District Court.

On 12 February 2007 the Moscow City Court upheld the detention order on appeal, having endorsed the District Court's reasoning.

Another decision extending the applicant's detention on remand until 13 May 2007 followed on 6 March 2007 with the Basmannyy District Court having reasoned that the applicant's liability to abscond, reoffend or obstruct justice was based on the gravity of the charges against him, his personality, his failure to live at the place of his registered residence and lack of any information about "the type and sphere of his activities". The applicant's arguments about the ineffective nature of a police verification of his place of residence, the absence of a travel passport excluding his absconding, his standing in the society, as well as his pleas for bail or release under sureties given by public figures were not accepted by the District Court. The detention order became final on 23 April 2007.

By a similarly worded order of 10 May 2007 the Basmannyy District Court further extended the applicant's detention until 13 August 2007. The applicant's arguments concerning his family situation, health and alternative measures were again dismissed as unrelated. The applicant's and his lawyers' appeal against the detention order was dismissed on 2 July 2007 by the Moscow City Court which was fully satisfied with the District Court's reasoning for the extension of the applicant's detention.

The risks of the applicant absconding, re-offending or tampering with witnesses served as the basis for the following extension order on 9 August 2007. The Basmannyy District Court again found that the gravity of the charges outweighed the applicant's arguments in favor of his release. The District Court also noted that additional time was needed to acquaint the applicant and his defense team with the voluminous case file.

On 15 October 2007 the Moscow City Court found those reasons convincing, having upheld the detention order.

On 9 November 2007 the Basmannyy District Court accepted an investigator's request to extend the applicant's detention until 11 January 2008 in view of the fact that the defense required additional time to finish studying the case file. As usual, the District Court concluded that the gravity of the charges against the applicant and flowing risks of his absconding, reoffending and obstructing justice outweighed his claims of poor health,

stable family situation, high standing in the community and his ability to pose a substantive bail or provide sureties by a number of respected Russian businessmen or politicians. That extension order was also upheld on appeal.

In January 2008 the applicant was committed to stand trial before the Moscow City Court. On 9 January 2008 the City Court scheduled a pre-trial hearing and extended the applicant's detention, having found that the circumstances warranting his being kept in custody had not changed.

On 7 February 2008, as a result of the pre-trial hearing, the City Court collectively extended the applicant's and his co-defendants' detention, having merely mentioned that the necessity to continue detaining them had not ceased to exist. The applicant submitted that the Supreme Court of the Russian Federation had upheld that decision on appeal.

The following two collective detention orders were issued by the Moscow City Court on 21 July and 20 October 2008 with the defendants' detention having been extended until 24 October 2008 and 24 January 2009, respectively. The grounds for the extension remained the same: the gravity of the charges and the defendants' liability to obstruct justice. Both detention orders were upheld on appeal by the Supreme Court of the Russian Federation.

On 28 October 2008, by a jury verdict, the applicant was found guilty of having organized the murder of Mr K. The jury verdict had been accepted by the Moscow City Court with the applicant having been sentenced to nineteen years of imprisonment. On 16 November 2009 the Supreme Court of the Russian Federation upheld the applicant's conviction.

2. Representation issue

In July 2007 the applicant, for the first time, applied to the Court. Having received the Court's letter and having considered that his knowledge of the Russian law and the European Convention on Human Rights is insufficient, in October 2007 he asked lawyers from the Centre of Assistance to International Protection in Moscow (hereinafter – the Centre) to represent his interests before the Court. On 8 October 2007 Ms Moskalenko, a lawyer from the Centre, obtained a warrant from the Moscow Bar Association to represent the applicant. She met with the applicant in the temporary detention facility and received the power of authority to act on his behalf before the Court. She also agreed with the applicant that Ms Davydova, also a lawyer in the Center, would act as the applicant's main representative in the Strasbourg proceedings because Ms Moskalenko lived in Strasbourg and could not consult the applicant on the regular basis. Ms Davydova was to draft the complete application form, to prepare and mail necessary documents to the Court and to see the applicant in the detention facility whenever necessary for the preparation of the case.

Ms Davydova undertook the obligation to act as the applicant's representative, having signed an agreement and having obtained a warrant from the Moscow Bar Association.

On 25 October 2007 the applicant sent a request to an investigator from the Prosecutor General's office to authorize his meeting with Ms Davydova in the detention facility. On the following day Ms Davydova repeated the request, having attached the warrant to it. No response followed. However, when Ms Davydova came to the detention facility on 30 October 2007 she

was not allowed to see the applicant given that the meeting had not been allowed by the investigator.

Ms Davydova's complaints to the Basmannyy District Court were to no avail. By letters the District Court returned the complaints without any examination given that no document authorizing Ms Davydova to act on the applicant's behalf was attached to the complaints.

In November 2007 the Court received a letter signed both by Ms Moskalenko and Ms Davydova complaining about the latter's inability to meet with the applicant.

On 29 December 2007 the Basmannyy District Court examined the applicant's and Ms Davydova's complaints about the investigator's refusal to accept Ms Davydova as the applicant's representative before the European Court of Human Rights and to authorize a meeting in the premises of the detention facility. The applicant was brought to the court hearing where he clearly expressed his intention to be represented by Ms Davydova and argued that the investigator's continuous refusal to invite Ms Davydova as his representative violated his constitutional rights of the defense and his rights guaranteed by the Convention. The District Court, however, dismissed the complaint, having stated that there was no evidence that Ms Davydova had provided the investigator with a document empowering her to act as the applicant's lawyer in the criminal proceedings against him.

Both the applicant and Ms Davydova appealed, having argued that the District Court had misinterpreted the applicant's claims and had disregarded a number of documents attached to the complaint authorizing Ms Davydova to act as the applicant's representative before the European Court of Human Rights. They stressed that Ms Davydova had no intention to act as the applicant's counsel in the criminal proceedings against him and that the applicant needed her services to represent his interests in the Strasbourg proceedings.

It appears that the appeal was dismissed on 17 March 2008 with the Moscow City Court having been satisfied by the District Court's reasoning.

As follows from a letter sent to Ms Davydova by the Moscow City Court on 26 March 2008, it returned her complaint, as well as the attached documents, including a warrant for representation of the applicant's interests before the European Court of Human Rights. The City Court noted that Ms Davydova had not been authorized by the applicant to act his counsel in the criminal proceedings against him.

The applicant and Ms Davydova also unsuccessfully challenged in court a refusal by the director of the applicant's detention facility to authorize their meeting. The facility director cited provisions of the Russian Code of Criminal Procedure and stressed that a meeting could only be allowed between a defendant and his lawyer in a criminal case. Given that Ms Davydova was not part of the applicant's defense team in the criminal proceedings against him, a meeting between him and Ms Davydova could not be authorized.

In the meantime, in response to Ms Moskalenko's and Ms Davydova's letter to the Court, on 27 November 2007 the judge appointed as rapporteur in the case under Rule 49 § 2 of the Rules of Court decided that further information was required and asked the Russian Government whether

Ms Davydova could enjoy an unhindered access to the applicant in the detention facility for the preparation of his application to the Court.

In January 2008 the Russian Government submitted their response to the Court. Having explained the difference under the Russian law between the two notions of “counsel” and “advocate”, the Government stressed that counsel, that is a lawyer representing a defendant in a criminal case, only had an unlimited access to his or her client. Given that Ms Davydova did not have the status of counsel in the criminal case against the applicant and was only acting as “an advocate”, she could only see the applicant as “a private person”. She should have followed the procedure and should have asked the authorities’ permission to see the applicant in the capacity of “a private person”. The Government also pointed out another option opened to the applicant and Ms Davydova. Having cited a large number of meetings which took place between the applicant and his counsel in the criminal proceedings, the Government argued that it was open to Ms Davydova to join the applicant’s criminal defense team and, as followed, to see him on unrestricted basis.

It appears that Ms Davydova was only allowed to have a meeting with the applicant in November 2008. Following that date there is no indication that her access to the applicant was in any way restricted.

COMPLAINTS

1. The applicant complained under Article 5 § 3 of the Convention that his detention on remand had not had valid grounds.

2. The applicant complained under Article 34 of the Convention of his inability to have meetings with Ms Davydova, his representative in the Court proceedings.

QUESTIONS TO THE PARTIES

1. Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention?
2. The Government are asked to provide the Court with copies of the detention orders and appeal decisions in respect of the detention orders issued after January 2008.
3. Given the applicant's inability to have meetings with Ms Davydova between October 2007 and November 2008, has there been any hindrance by the State in the present case with the effective exercise of the applicant's right of application, ensured by Article 34 of the Convention?