



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

## FIRST SECTION

Application no. 16120/07  
Aleksandr Vladimirovich GORBATENKO  
against Russia  
lodged on 16 February 2007

### **STATEMENT OF FACTS**

The applicant, Mr Aleksandr Vladimirovich Gorbatenko, is a Russian national, who was born in 1964 and lives in Moscow.

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

#### **A. Pre-trial proceedings**

On 15 July 2003 criminal proceedings were initiated against police officers Sh. and N. on suspicion of abuse of authority. On 31 July 2003 the applicant was questioned as a witness in those proceedings.

On 19 August 2003, in the framework of the above proceedings, the applicant was charged with extortion. The investigator in charge of the applicant's case imposed a written undertaking not to leave his place of residence.

#### **B. First examination of the case**

On 3 October 2003 the prosecuting authorities referred the case against the applicant and his co-defendants to Presnenskiy District Court, Moscow, ("the District Court") for trial.

On 9 November 2003 the District Court set the preliminary hearing of the case for 19 November 2003. The court also held that the applicant, as well as his co-accused, should remain subject to a written undertaking.

On 21 November 2003, after having held a preliminary hearing, the District Court set the case down for trial on 10 December 2003 and held that the applicant and his co-accused should remain subject to a written undertaking.

On 24 May 2004 the District Court found the applicant guilty as charged and sentenced him to three years' imprisonment suspended on three years'

probation. The court further held that the applicant should remain subject to a written undertaking until his conviction became final.

**C. Quashing of the applicant's conviction on appeal and the second examination of his case**

On 7 December 2004 Moscow City Court ("the City Court") quashed the judgment of 24 May 2004 on appeal by the prosecution and remitted the case to the District Court for re-examination. The applicant remained subject to a written undertaking.

On 5 April 2005 the District Court, after fresh examination, found the applicant guilty as charged and sentenced him to four years' imprisonment. The applicant was arrested in the courtroom.

On 31 October 2005 the City Court upheld the applicant's conviction.

**D. Quashing of the appeal decision of 31 October 2005 by way of supervisory review**

On 26 January 2006 the Presidium of the City Court quashed the appeal decision of 31 October 2005 by way of supervisory review and remitted the case to the City Court for re-examination on appeal.

**E. Quashing of the applicant's conviction on appeal and further decisions to keep the applicant in detention**

On 26 July 2006 the City Court, after fresh examination of the case on appeal, quashed the judgment of 5 April 2005 and remitted the case to the District Court for re-examination. By the same decision the City Court held that the applicant and his co-defendants should remain in detention.

On 21 August 2006 the District Court set the preliminary examination of the case for 31 August 2006. By the same decision the District Court held that the applicant and his co-defendants should stay in detention. However, it did not specify any reasons for its decision or set any time-limits on the accused's detention.

**F. Referral of the case for additional investigation and decision to keep the applicant in detention**

On 31 August 2006, after having held a preliminary hearing, the District Court referred the case to the prosecuting authorities for additional investigation. By the same decision the District Court held that the applicant and his co-defendants should remain in detention, having regard to the charges against them and the risk of them putting pressure on witnesses and victims and interfering with the proceedings. However, the District Court did not set any time-limit on the applicant's and his co-defendants' detention.

On 4 September 2006 the applicant appealed against the decision of 31 August 2006.

On 30 October 2006 the City Court upheld the decision of 31 August 2006.

### **G. Additional investigation and further extensions of the applicant's detention**

On 17 November 2006 the prosecuting authorities reopened the investigation of the case.

On 23 November 2006 the charges against the applicant were amended. He was charged with extortion committed in conspiracy with his co-accused.

On 16 January 2007 the District Court extended the applicant's detention until 28 February 2007, having regard to the charges against him and the risk of him influencing the victims and witnesses and interfering with the proceedings.

On 19 January 2007 the applicant appealed against the detention order of 16 January 2007 to the City Court. His appeal arrived to the City Court on 26 January 2007.

On 26 January 2007 the applicant was presented with the final version of charges against him.

On 30 January 2007 the City Court forwarded the applicant's appeal against the detention order of 16 January 2007 to the District Court for setting the date of the appeal hearing.

On 21 February 2007 the City Court quashed the detention order of 16 January 2007 and remitted the matter to the District Court for fresh examination. The City Court held that the applicant should stay in detention. However, it did not indicate the time-limits for his detention.

On 27 February 2007 the District Court, after fresh examination, extended the applicant's detention from 17 January until 28 February 2007 on the same grounds as before. By another decision adopted on 27 February 2007 the District Court extended the applicant's detention from 28 February until 30 April 2007 on the same grounds as before.

On 16 April 2007 the City Court dismissed the applicant's appeal against the detention order of 27 February 2007 by which his detention had been extended until 28 February 2007.

On 27 April 2007 the District Court extended the applicant's detention until 17 May 2007 referring to the same grounds as in its previous decisions.

### **H. Third examination of the case**

On 8 May 2007 the prosecuting authorities referred the case to the District Court for trial. On the same date the District Court set the preliminary hearing of the case for 16 May 2007. By the same decision the District Court held that the applicant and his co-defendants should remain in detention. The City Court did not specify any reasons for the applicant's detention or set any time-limits on it.

On 16 May 2007 the District Court adjourned the case until 30 May 2007. By the same decision the District Court held that the applicant and his

co-defendants should remain in detention. It did not set any time-limits on their detention.

On 13 June 2007 the District Court, after having held the preliminary hearing, set the examination of the case for 20 June 2007. The court further noted that the question relating to the applicant's detention had been resolved at the hearing of 16 May 2007 and that by the decision adopted on that date the District Court had decided not to alter the measure of restraint applied to the applicant and his co-defendants. By another decision adopted on 13 June 2007 the District Court dismissed the applicant's application for release.

On 25 June 2007 the City Court upheld the detention order of 27 February 2007 by which the applicant's detention had been extended until 30 April 2007.

On 23 July and 1 August 2007 the City Court upheld the detention orders of 16 May and 13 June 2007 respectively.

On 21 August 2007 the applicant requested the District Court to release him. He claimed, in particular, that the six-month period of detention pending trial had expired on 8 August 2007 and no other decision had been issued to extend his detention. On the same date the District Court dismissed his application for release. The court held that the six-month period of detention pending trial had started to run on 8 May 2007 when the criminal case had arrived to the District Court and therefore had not yet expired.

On 12 September 2007 the applicant and his co-defendants requested the District Court to release them. On the same date the District Court dismissed their applications for release.

On 11 October 2007 the District Court found the applicant guilty as charged and sentenced him to three years and two months' imprisonment.

On 15 October and 14 November 2007 the City Court upheld the decisions of 21 August and 12 September 2007 respectively.

On 10 December 2007 the City Court upheld the applicant's conviction.

On 4 June 2008 the applicant finished serving his sentence.

## COMPLAINTS

The applicant complains under Article 5 §§ 1, 3 and 4 of the Convention that his detention ordered on 31 August 2006 was unlawful, his pre-trial detention was unreasonably long and not properly justified and the domestic courts did not speedily review the lawfulness of his detention ordered on 31 August 2006 and 16 January 2007.

### **QUESTIONS TO THE PARTIES**

1. Was the applicant's detention in conformity with the requirements of Article 5 § 1 of the Convention? In particular, was the applicant's detention "lawful" and imposed and extended "in accordance with a procedure prescribed by law" as required by Article 5 § 1? Did the decision of 31 August 2006 ordering the applicant's detention set any time-limits on his detention? If not, was the applicant's detention compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion?

2. 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, did the authorities rely on "relevant and sufficient reasons" for the continuing detention of the applicant and were the proceedings conducted with "special diligence"?

3. Did the applicant have at his disposal an effective procedure by which he could challenge the lawfulness of his detention, as required by Article 5 § 4 of the Convention? Did the length of the proceedings in the present case, by which the applicant sought to challenge the lawfulness of detention orders of 31 August 2006 and 16 January 2007, comply with the "speed" requirement of Article 5 § 4 of the Convention?

The Government are requested to provide a list of all detention orders issued in the applicant's respect with indication of the dates on which those decisions were issued, the periods of detention which they covered and the dates of relevant appeal decisions (if any). The Government are also requested to provide copies of missing detention orders and decisions of the appeal court.