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

Communicated on 10 February 2014

FIRST SECTION

Application no. 27297/07
Denis Borisovich KOLOMENSKIY
against Russia
lodged on 26 May 2007

STATEMENT OF FACTS

The applicant, Mr Denis Borisovich Kolomenskiy, is a Russian national, who was born in 1973 and lives in Kirov.

A. The circumstances of the case

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

1. Background to the case

On 18 September 2001 the Commercial Court of the Kirov Region declared the joint-stock company *Zarechny kirpichny zavod* ("the company") insolvent and opened insolvency procedure. The applicant, a lawyer by profession, was appointed as liquidator of the company.

2. Criminal proceedings against the applicant

On 18 January 2006 a criminal case was opened against the applicant under Article 160 § 3 of the Criminal Code into embezzlement of RUB 429.264 (about EUR 10.750) of the company's funds while being its liquidator.

On 2 February 2006 the investigator in charge of the applicant's case issued a certificate with the following content:

> "...today at 9 a.m. Ms K. phoned [me] and informed that she had just been phoned by [the applicant] who demanded her to tell him the content of her testimony given [to the investigator] during interrogation on 1 February 2006. In her words, [the applicant] also expressed his concern that Ms K. will now be taken to numerous interrogations, confrontations and to court."

The applicant and his legal counsel, Mr E., were summoned to appear before the investigator on 17, 22 and 26 February 2006. According to their letter addressed to the investigator they were unable to do so as the summons had reached them belatedly. According to the post mark on the envelope with summons for 26 February 2007, the letter reached the local post office on 27 February 2007.

On 31 May 2006 a criminal case was opened against the applicant into arrogation (*самоуправство*), a crime under Article 330 § 1 of the Criminal Code. According to the prosecution authorities, the applicant refused to pay rental payments for a tractor rented by the company from a private individual and refused to return the tractor to the owner. Both cases were joined and a charging document against the applicant was issued *in absentia* the same day.

On 1 June 2006 the Pervomayskiy District Court of Kirov ("the District Court") remanded the applicant in custody. The court based its order on the gravity of charges brought against the applicant and the risk of interfering with the course of justice following from his behaviour during the investigation. In particular, the court noted that the applicant had put pressure on the witness Ms K. by demanding her to tell him the content of her testimony given to the investigator and that he had failed to appear before the investigator on several occasions.

On 2 June 2006 the applicant was formally charged with the imputed criminal offences in the absence of his legal counsel, Mr. E.

On an unspecified date the applicant and his legal counsel appealed against the detention order of 1 June 2006. They submitted that the applicant had not put any pressure on the witness K. but just asked her how the questioning was. They further argued they had not been able to appear before the investigator due to belated notification of the summons. Moreover, each time after the belated notification they called the investigator on his phone and asked when they should appear.

On 13 June 2006 the Kirov Regional Court ("the Regional Court") dismissed those submissions as unsubstantiated and upheld the detention order. Both courts in their decisions did not examine the issues when the summons had been sent and received by the applicant and whether he had been able to meet the appointments.

On 19 July 2006 the applicant was committed to stand trial. Ms K. was not listed in the bill of indictment among the witnesses.

On 31 July 2006 the District Court held a preparatory hearing in the applicant's case and ordered, without setting any time limit, that his preventive measure should remain unchanged. The court gave the following reasoning for its decision:

> "There are no grounds to change the [applicant's] preventive measure. When the measure was chosen, the court took into account that he had been charged with two criminal offences, one of them being serious. Taking into account the [applicant's] behaviour in the course of investigation, the court reached the conclusion, that, if at large, he might interfere with the course of justice".

On an unspecified date the applicant's legal counsel lodged an appeal against the detention order, arguing that the District Court had failed to give any specific reasons for its detention order of 31 July 2006.

On 22 August 2006 the Kirov Regional Court upheld the detention order in summary fashion.

On 26 September 2006 the defence asked the District Court to change the preventive measure in respect of the applicant to an undertaking not to leave the place of residence. Referring to case-law of the European Court of Human Rights, the defence argued that the grounds given by the court did not justify the applicant's detention, that the court had failed to consider an alternative preventive measure, that the detention order of 31 July 2006 was based on distorted information as the case file contained no information about the dispatch of the investigator's summons addressed to the applicant and his legal counsel and that the letters of the legal counsel informing the investigator about belated receipt of the summons had not been included in the case file. They further argued that there was no conclusive information that the applicant had exercised any pressure on the witness Ms K. and referred to his family situation (wife on maternity leave with three children, the applicant being the only bread-winner), his positive characteristics and completion of the investigation. They added that the applicant had been suffering from passive smoking in the remand prison and presented a letter from the prison administration that it was impossible to place the applicant in a cell with non-smokers.

On the same date, the District Court dismissed the request for release with the following reasoning:

> "The grounds [for the applicant's detention] ... have not been changed. No information about new circumstances [in favour of release] ... has been submitted to the court. The court is not in possession of information that the [applicant's] state of health is incompatible with [his] detention. The trial has not been finished. [The applicant] completely denies the charges; the court receives documents which were not submitted during the investigation, therefore, the court finds the assumption reasonable that [the applicant], if at large, might obstruct the establishment of truth."

According to the applicant, he received a copy of that decision only on 26 October 2006 and immediately challenged it before the appeal court.

In the meantime, on 23 October 2006 the District Court convicted the applicant of embezzlement of RUB 247.000 (about EUR 6.200) and sentenced him to two years' imprisonment. At the same time, the applicant was acquitted of other charges. It appears that the witness, Ms K. was not examined during the trial.

On 28 November 2006 the Kirov Regional Court upheld the applicant's conviction on appeal and dismissed his appeal against the decision of 26 September 2006, that ruling being incorporated in the appeal judgment.

On 31 January 2007 the Presidium of the Kirov Regional Court, by the way of supervisory review proceedings, quashed the judgments issued in the applicant's criminal case and remitted the case to the prosecutor. The Presidium found, *inter alia*, that the applicant had been charged on 2 June 2006 in the absence of his legal counsel, Mr E., and thus in breach of his right to defence. At the same time, the Presidium left the preventive measure unchanged, stating that there were "no reasons to grant the request to change the preventive measure chosen in respect of [the applicant]". The Presidium did not specify the time-limit for the applicant's detention. The applicant lodged a supervisory review complaint with the Supreme Court of Russia against the detention order incorporated in the judgment.

On 14 February 2007 the investigator in charge of the applicant's case submitted to the District Court an application for extension of his detention.

On 19 February 2007 the District Court granted the request and extended his detention until 15 March 2007 with the following reasoning:

> "[The applicant] is accused of ... a serious crime punishable ... by up to six years' imprisonment, the investigation has submitted sufficient grounds that [the applicant] had failed to appear before the investigator on his requests and had frustrated the investigative measures and [that] he, being at large, might threaten the witness, other participants of the criminal proceedings or obstruct the proceedings in other way. The preventive measure [was] chosen by the court and the [its] grounds have not been changed... No information about [new] circumstances [in favour of release] ... has been submitted to the court."

On an unspecified date the applicant contested the detention order complaining that he had not been formally charged in breach of ten-day time-limit stipulated by Article 100 of the Code of Criminal Procedure.

On 13 March 2007 the Kirov Regional Court upheld the detention order of 19 February 2007 in a summary fashion. As to the applicant's argument, the court noted that the charging document of 2 June 2006 had not been quashed and, therefore, it remained in force and Article 100 of the Code of Criminal Procedure was not applicable to the applicant's situation.

In the meantime, on 26 February 2007, the applicant was charged anew with embezzlement and arrogation.

On 14 March 2007 the District Court issued a detention order extending the applicant's detention until 22 April 2007 and stated as follows:

> "It is established at the hearing that [the applicant] is charged with a serious crime, that [he] obstructed investigative measures on several occasions, attempting this way to delay the investigation and to put pressure on a witness. No new circumstances [in favour of release] have been presented to the court. Therefore, the court sees no reasons to change or lift the preventive measure in the form of detention imposed on [the applicant] previously."

On 27 March 2007 the Kirov Regional Court, endorsing the District Court's reasoning, dismissed the applicant's appeal against the detention order and, in addition, referred to the need to conduct a number of investigative actions in the applicant's case, in particular, to have him study the case file, to prepare the bill of indictment and to have it approved by a prosecutor.

On 13 April 2007, the District Court received the applicant's case for examination on the merits.

On 20 April 2007 the District Court ordered that the preventive measure chosen in respect of the applicant should remain unchanged "during the trial" (Copy of the detention order is missing). The applicant appealed arguing, *inter alia*, that his confinement in a cell with smokers had a negative impact on his health. He proposed a bail in the amount of RUB 247,000 (about EUR 6.200).

On 15 May 2007 the Kirov Regional Court upheld the detention order of 20 April 2007 on appeal.

On 7 May 2005 the District Court, having identified some procedural shortcomings made by the prosecution authorities, remitted the case to the prosecutor and ordered to rectify them within five days. At the same time, the court ordered that the applicant should remain in custody. Its reasoning was as follows:

> "The court sees no reasons to change the [applicant's] preventive measure ... in connection with the return of the case to the prosecutor.
>
> The circumstances on the basis of which such a severe preventive measure was chosen in respect of [the applicant] have not changed – [he] is charged with two intentional crimes, one of which is ... classified as serious [and is] punishable by up to six years' imprisonment. If follows from the decision to remand [the applicant] in custody ... that during the investigation he had put pressure on the witness in order to obtain information about [her] testimony given to the investigator, [that he] on several occasions had frustrated the investigate measures by avoiding the appointments with the investigator.
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> Those circumstances taken into account by the court [in the initial detention order] ... have not been changed so far; no information about new circumstances [in favour of release] ... has been submitted to the court.
>
> The court sees no reasons for preventing the [applicant's] detention in remand prison."

On 14 May 2007 a judge of the Supreme Court of Russia dismissed the applicant's supervisory review complaint lodged against the judgment of 31 January 2007 issued by the Presidium of the Kirov Regional Court as ill-founded. The following statement was made in the ruling:

> "Having examined the arguments of the supervisory review complaint of the *convict* [the applicant], I believe that there are no reasons to grant it".

On 29 May 2007 the Kirov Regional Court, having heard the prosecutor, upheld the detention order. The applicant's request for participation in the hearing was dismissed, his presence being considered not necessary. His legal counsel was absent as well. The appeal court did not examine the issue whether the counsel was summoned to the hearing.

On 24 May 2007 the Town Court held a preparatory hearing, and noted that on 20 April 2007 the preventive measure in respect of the applicant had been left unchanged for the period of the trial and ordered that it should remain unchanged.

On 30 May 2007 a judge of the Kirov Regional Court dismissed the applicant's supervisory review complaint lodged against the detention order of 20 April 2007 and the appeal decision of 15 May 2007 as ill-founded. The ruling contained the following passage:

> "The court has examined the reasonableness and lawfulness of the preventive measure chosen, taking into account the gravity of the crime imputed [to the applicant], the information about the personally of the guilty offender (*виновный*)."

On 7 June 2007 the Kirov Regional Court examined the applicant's appeal against the decision of 24 May 2007 and decided to discontinue the proceedings. The court held that this decision was not subject to judicial review as it did not amount to any detention order because the applicant's detention pending trial had been duly authorised by the detention order of 20 April 2007, being upheld on appeal on 15 May 2007. The decision of 7 June 2007 was taken in the absence of the applicant, his legal counsel or prosecutor. The applicant's request for participation in the hearing was dismissed because his presence was considered not necessary. The appeal court did not examine the issue whether the counsel was summoned to the hearing.

On 3 July 2007 the District Court convicted the applicant of embezzlement of RUB 247.000 (about EUR 6.200) and sentenced him to one year and six months' imprisonment. Whether the applicant appealed against the judgment is unknown.

3. Conditions of detention

(a) Conditions in remand prison

Between 1 June 2006 and at least 26 May 2007 the applicant was held in remand prison IZ-43/1 of Kirov. The applicant provided the following description of his conditions of detention:

On 2 June 2006 he was placed in cell no. 145 measured 16 sq. m. with 6 cellmates detained in it at the same time. He changed several cells during his detention, but the number of detainees remained below the sanitary standards almost all the time. Most of the cellmates smoked in the cell. Due to insufficient heating, the cell was very cold in the winter.

(b) Conditions of the applicant's transport to and from, and confinement at, the court

The applicant submitted that in 2006 and 2007 he had on several occasions been transported between the District Court and the remand prison in connection with his trial, detention proceedings and other court proceedings following his numerous complaints. On each occasion he had been taken out of the cell at 5.30 a.m. and had to bring his mattress, along with other prisoners, to a stockroom. The mattresses were collected in the morning and distributed in the evening. Some of them were infested with parasitic insects. Then, detainees had been brought to the "waiting unit" or "assembly cell" of the remand prison measured 6 to 8 sq. m. which was occupied for several hours by up to 5 prisoners in the morning and up to 19 prisoners in the evening. Most of the prisoners smoked there.

The prison van had no windows and was extremely uncomfortable. Sometimes he was transported in a very small compartment of the van (*стакан*). In sitting position his knees there rested against the wall. On every pothole the knees collided with the wall and were hurt. The Detainees as well as the convoy officers smoked in the van.

At the court, before and after the hearing, the applicant was kept in a cell without windows but together with smokers. The smoking caused a headache affecting his concentration and preparation to defence. He remained handcuffed during the court hearings.

According to the applicant, on the court days he was subjected to "torture with hunger". On those days he was excluded from the food distribution list in the remand prison and, instead, he received dry rations which could not be properly consumed without hot water. However, according to letter by the Police Department of the Kirov Region dated 27 June 2007, no hot water was provided to the detainees because of security considerations. The applicant suffered from gastric ulcer and, according to a medical certificate of 20 September 2004, he had to have a diet of four good quality meals a day.

The applicant returned to his cell on several occasions at 8 or 9 p.m.

(c) Passive smoking

The applicant, a non-smoker, was subjected to constant passive smoking during his detention (in the cell, and – on the court days – in the "assembly cell" of the remand prison, prison van and convoy premises of the court-house. Up to 90 percent of the detainees smoked heavily. That caused him considerable distress in the absence of adequate ventilation. According to a letter by the remand prison administration of 22 September 2006, the separation of non-smokers from smokers was materially impossible. According to the medical certificates submitted, on 12 July and 4 October 2006 as well as on 15 February 2007 the applicant was diagnosed with neurasthenia and received an out-patient medical treatment in this regard.

(d) Lack of dental care

The applicant was not provided with adequate dental care during his detention. He had dental problems and suffered from toothache. Initially, there was no dentist in the remand prison at all. At some point, the prison administration arranged visits by an external dentist once a week. However, his dental care was limited to extraction of the teeth.

In support of most of his submissions made above, the applicant produced affidavits by his former cellmates, Mr A.K, Mr O.K. and Mr U.T.

B. Relevant domestic law and practice

1. Detention during criminal proceedings

Since 1 July 2002, criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the "CCrP").

"Preventive measures" (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, re-offend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

After arrest the suspect is placed in custody "pending investigation". The maximum permitted period of detention "pending investigation" is two months but it can be extended for up to eighteen months in "exceptional circumstances" (Article 109 §§ 1-3). The period of detention "pending investigation" is calculated up to the date on which the prosecutor sends the case to the trial court (Article 109 § 9).

From the time the prosecutor sends the case to the trial court, the defendant's detention is “before the court” (or “pending trial”). The period of detention “pending trial” is calculated up to the date on which the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10).

Under Article 237 of the Code, the trial judge can return the case to the prosecutor for defects impeding the trial to be remedied, for instance if the judge has identified serious deficiencies in the formal notice of charges given to the suspect. The judge must require the prosecutor to comply within five days (Article 237 § 2) and must also decide on a preventive measure in respect of the accused (Article 237 § 3). By a federal law no. 226-FZ of 2 December 2008, Article 237 was amended to the effect that, if appropriate, the judge should extend the accused's detention with due regard to the time-limits in Article 109 of the Code.

In its Ruling no. 4-P of 22 March 2005 the Constitutional Court confirmed that detention of a criminal suspect or accused was to be authorised by a court decision issued in accordance with the requirements of the law of criminal procedure. When quashing a conviction by way of supervisory review, the supervisory-review court was under an obligation to examine the issue of detention. In so doing, it was to be guided by the requirements set out in Articles 10, 108, 109 and 255 of the CCrP and to proceed on the assumption that the preventive measure chosen during the previous round of proceedings had ceased to apply after the judgment convicting the defendant had become final. The quashing of the conviction did not automatically restore the preventive measure and if the court considered that the accused was to remain in custody it was to ascertain, with the proper participation of the interested parties, whether there were grounds, including factual circumstances, calling for his or her detention in the new round of proceedings. Such detention order could be issued after the parties had been provided with an opportunity to state their position before the court, so as to enable it to carry out its own assessment of the circumstances of the case, rather than base its decision solely on arguments raised by the prosecution or mentioned in a previous detention order. Moreover, the supervisory-review court was to take into account the stage of the criminal proceedings, which could entail the emergence of new circumstances calling for the preventive measure to be varied. At the same time, irrespective of the procedural stage, a decision to place a person in custody or to extend his or her detention needed to reflect the factual circumstances examined by the court. Such court's assessment could be made in a separate decision or be part of a decision to set aside the conviction.

2. Conditions of detention and detainees' right to free food

Section 23 of the Pre-trial Detention Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

Section 33 of the Act provides that, if possible, smoking and non-smoking detainees should be kept in different sells

Section 22 of the Act provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. In particular, detainees have the right to receive free food when they are taking part in court hearings (section 17 § 9).

On 2 August 2005 the Ministry of Justice adopted rules on supply of dry rations (as approved by its Decree no. 125), under which those suspected or accused of criminal offences should be supplied with dry rations (bread, precooked first and second courses, sugar, tea, tableware) during their presence at a court-house. Detainees should be supplied with hot water to consume with the rations (annex no. 6 to the Decree).

3. Dental care in detention

Section 29 of the Health Care Act (Federal Law no. 5487-I of 22 July 1993) provides that detainees have a right to medical assistance, such assistance being provided if necessary in public or municipal medical institutions and at public or municipal expense.

Detailed regulation of medical care in detention is provided in a Regulation adopted by the Federal Ministry of Justice and the Federal Ministry of Health and Social Development (Decree no. 640/190 of 17 October 2005). It provides that medical assistance in detention should be the same as that guaranteed by the general programme of free health care provided in Russia (Rule 9). Article 17 of the Regulation provides that the medical unit of a remand prison shall be equipped with a dentist's room. In the absence of the dentist in the medical unit, dental care, mainly in urgent cases, should be provided by a paramedic within his or her competence (Rule 69).

COMPLAINTS

The applicant complains under Article 3 of the Convention that his detention in the remand prison and confinement at the courthouse amounted to torture. In particular, he complains about the overcrowding, passive smoking, lack of adequate food on court days and lack of appropriate mental care while in detention. Under Article 13 he complains that he has not had any effective remedy in respect of his complaints made under Article 3.

The applicant complains under Article 5 § 1 of the Convention that the detention order incorporated in the judgment of 31 January 2007 by the Presidium of the Kirov Regional Court neither contained any reasons nor set any time-limit for his detention.

The applicant complains under Article 5 §§ 1 and 3 about insufficient reasoning given by the courts in their detention orders and their failure to consider alternative preventive measures.

The applicant complains under Article 5 § 4 that on 29 May 2007 and 7 June 2007 the Kirov Regional Court examined his appeals against the detention order of 7 May 2007 and the decision of 24 May 2007 refusing his application for release respectively in his absence, despite his requests for participation in these hearings.

The applicant complains under Article 5 § 4 that he was provided with a copy of the decision of 26 September 2006 refusing his request for release only one month later and that his appeal against the decision was examined by the appeal court only on 28 November 2006. Under the same Convention provision he complains that it took the appeal court 20 days to examine his appeal against the detention order of 19 March 2007.

The applicant complains under Article 6 § 2 of the Convention that in the decisions of 14 May 2007 by the Supreme Court of Russia and of 30 May 2007 by the Kirov Regional Court he was declared "convict (*осужденный*)" and "guilty offender (*виновный*) in breach of his presumption of innocence.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's detention in remand prison IZ-43/1 of Kirov compatible with Article 3 of the Convention? Were the conditions of the applicant's confinement in the Pervomayskiy District Court of Kirov compatible with the same Article? Was the applicant provided with appropriate dental care while in detention, as required by Article 3 of the Convention? Did the applicant have at his disposal an effective domestic remedy for the complaints under Article 3, as required by Article 13 of the Convention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 100-119, 10 January 2012; *Koryak v. Russia*, no. 24677/10, §§ 74-95, 13 November 2012)?

The Government are requested to comment on all aspects of the conditions of detention which the applicant complained of. The Government are requested to produce documentary evidence, including population registers, floor plans, day planning, information as to the dates when the applicant was taken to the courthouse, the number of detainees kept in the "assembly cell" of the remand prison, its size, the time periods spent by the applicant in that cell, etc., as well as reports from supervising prosecutors, medical documents and other primary documents relevant to the subject-matter of the applicant's complaints.

2. Was the applicant's detention between 31 January and 19 February 2007 compatible with the principles of legal certainty and the protection from arbitrariness enshrined in Article 5 § 1 of the Convention, given that it was based on the relevant detention order of 31 January 2007, neither giving any reasons for nor setting any time-limit of the detention (see *Strelets v. Russia*, no. 28018/05, § 72, 6 November 2012, with further references)?

3. Was the length of the applicant's 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 his continuing detention and were the proceedings conducted with "special diligence" (see *Dirdizov v. Russia*, no. 41461/10, §§ 108-111, 27 November 2012, with further references)? The parties are requested to submit the detention order issued by the Pervomayskiy District Court of Kirov on 20 April 2007.

4. Were the appeal proceedings against the detention order of 19 March 2007 and the decision of 26 September 2006 refusing the applicant's request for release in conformity with Article 5 § 4 of the Convention? In particular, were the applicants' appeals examined "speedily" (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009)? When was the applicant provided with a copy of the decision of 26 September 2006?

5. Was the procedure by which the applicant sought to challenge the lawfulness of his pre-trial detention in conformity with Article 5 § 4 of the Convention? In particular, were the applicant or his counsel afforded an opportunity to be present at the appeal hearings held by the Kirov Regional Court on 29 May 2007 and 7 June 2007 (see *Pyatkov v. Russia*, no. 61767/08, § 128-23, 13 November 2012; *Koroleva v. Russia*, no. 1600/09, § 111-15, 13 November 2012)? Was the refusal of the Kirov Regional Court to examine the applicant's appeal on the merits in its decision of 7 June 2007 to discontinue the proceedings compatible with Article 5 § 4 of the Convention?

6. Having regard to the statements of the Supreme Court of Russia in its decision of 14 May 2007 that the applicant was "convict (*осужденный*)" and of the Kirov Regional Court in its decision of 30 May 2007 that he was "guilty offender (*виновный*)", was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case (see *Fedorenko v. Russia*, no. 39602/05, § 84-93, 20 September 2011)?