



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

Communicated on 17 February 2014

FIRST SECTION

Applications nos. 20722/07 and 37894/07
Andrey Mikhaylovich KIRILLOV against Russia
and Vladimir Andreyevich KASHPRUK against Russia
lodged on 05 April 2007 and 07 August 2007 respectively

STATEMENT OF FACTS

1. The applicants are Russian nationals. Their names, dates of birth, and places of residence before their arrests are tabulated below.
2. The facts of the cases, as submitted by the applicants, may be summarised as follows.

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3. The applicant, a policeman, was accused of two counts of abuse of power.
4. On 2 August 2006 the Presnenskiy District Court of Moscow (District Court) ordered his pre-trial detention. The relevant part of the order read as follows:

“Kirillov A.M. is accused of crimes, which are punishable under criminal law by imprisonment of more than two years.

The crime has not been fully investigated, the money [which was the object of the crime] in the amount of 1,300,000 roubles [32,500 euros] has not been found, and there are reasons to consider that the accused might attempt to destroy or conceal evidence.

Having regard to the official status of Kirillov A.M. [a policeman], the court considers that he might threaten the witnesses and the victim... or otherwise obstruct proceedings in the case.

In view of the gravity of the charges against Kirillov A.M. the court cannot exclude a possibility of him absconding...”

5. The applicant appealed against the detention order.
6. One month and eighteen days later on 20 September 2006 the order was upheld by the Moscow City Court (City Court).
7. On 30 September 2006 the District Court extended the period of the applicant’s detention until 31 October 2006 referring to validity of previously advanced reasons for detention and the need for certain final investigative actions. The applicant did not participate in the hearing,

because his transfer was refused by the pre-trial detention center where the day of the hearing was a non-working day. The applicant's defense counsel appealed against the order. Twenty five days later on 25 October 2006 the City Court annulled the lower court's order; however it ordered further detention of the applicant referring to validity of previously advanced reasons.

8. On 30 October 2006 the District Court held a hearing with the applicant present and once again extended the period of detention until 31 October 2006 relying on the same reasons as before (see paragraph 4 above). The applicant and his defense counsel appealed. One month and twenty days later on 20 December 2006 the City Court upheld the lower court's detention order.

9. The applicant's detention was further extended several times by the District Court.

10. On 26 April 2007 the criminal prosecution was terminated by an investigator of the Prosecutor's Office for Presnenskiy District of Moscow due to absence of criminally culpable actions on the side of the applicant.

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11. The applicant was accused of three counts of aggravated sexual assault and one count of being an accessory to traffic safety violation causing death of two or more persons. During the pre-trial investigation against him he was released on his own recognizance.

12. On 4 June 2007 the applicant did not appear for the preliminary hearing scheduled by the Yuzhno-Sakhalinskiy Town Court and the Town Court ordered the applicant to be detained. The relevant part of the order read as follows:

"The preliminary hearing was scheduled by the court for 29 May 2007...

The accused Kashpruk V.A. duly notified of the hearing did not appear and submitted to the court a copy of a medical record certifying that he undergoes treatment in the MUZ 4 [a hospital].

In order to verify this information the hearing was adjourned until 31 May 2007. The accused was duly notified of it.

However, once again he did not appear for the hearing and on 1 June 2007 informed the court that between 29 May and 7 June 2007 he is undergoing medical treatment and ... cannot participate in the hearings.

The preliminary hearing was adjourned until 4 June 2007 and the accused was duly notified of it, however he did not appear without presenting any reasons for his absence.

According to the certificate provided by the chief physician of the MUZ 4 the accused is indeed undergoing treatment for upper respiratory tract infection [but] his health condition does not prevent his participation in the court hearings.

This information is coherent with the written statement of the a judge of the [Town Court], which indicates that Kashpruk took part in a hearing on 29 May 2007, where he acted as a defense counsel for Mr R., ... and the testimony of the justice of the peace... that on 31 May 2007 Kashpruk consulted the administrative case file against Mr L., Mr B., and Mr K.

In view of these circumstances the prosecutor submitted a motion for [detention of the applicant].

The defense counsel Mr M., appointed by the court, disagreed...

As it had been established in the court hearing Kashpruk is accused of grave offences. [He had been] previously convicted. [His] character references are mostly negative, he is characterized as inclined to violate lawful requirements imposed on him.

The impossibility to take part in the hearing is disproven by the actions of the accused, who actively takes part in court hearings representing other persons.

[The applicant was informed multiple times about an obligation to take part in court hearings and about consequences of the failure to do so]

Under these circumstances the failure of the applicant to appear for the scheduled hearings is considered by the court as willful obstruction to proceedings in the criminal case...”

13. On 6 June 2007 the applicant appealed against the order.

14. One month and eleven days later on 18 July 2007 the Sakhalin Regional Court annulled the detention order on appeal and released the applicant.

COMPLAINTS

The applicants complain under Article 5 §§ 1 and 4 that the proceedings for judicial review of their detention were excessively long.

QUESTIONS TO THE PARTIES

1. Were the applicants deprived of their liberty in breach of Article 5 § 1 of the Convention? In particular, did their deprivation of liberty fall within paragraph (c) of this provision?

2. Did the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their detention, as required by Article 5 § 4 of the Convention?

Was the procedure by which the applicants sought to challenge lawfulness of their pre-trial detention in conformity with Article 5 § 4 of the Convention?

Specifically, did the length of the proceedings in the present case, by which the applicants sought to challenge the lawfulness of their pre-trial detention, comply with the “speed” requirement of Article 5 § 4 of the Convention?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence before arrest	Represented by
1.	20722/07	05/04/2007	Andrey Mikhaylovich KIRILLOV 04/02/1971 Moscow	Aleksandr Ivanovich KADELCHUK
2.	37894/07	07/08/2007	Vladimir Andreyevich KASHPRUK 16/10/1958 Yuzhno-Sakhalinsk	