



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

Communicated on 7 May 2014

FIRST SECTION

Application no. 41174/11
Konstantin Gennadyevich GRIB
against Russia
lodged on 27 May 2011

STATEMENT OF FACTS

The applicant, Mr Konstantin Gennadyevich Grib, is a Russian national, who was born in 1988 and lived before his arrest in Vladivostok.

The circumstances of the case

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

A. Criminal proceedings against the applicant

On 29 May 2008 the police conducted a search in the applicant's apartment and found 261.5 g cannabis oil and six bullets. The applicant was arrested on the same day.

On 30 May 2008 he was formally charged with an attempted distribution of cannabis oil at a large scale (0.8 g) committed by a group of persons in preliminary conspiracy.

On 31 May 2008 the Pervorechenskiy District Court of Vladivostok (the District Court) remanded him in custody. The court referred to the gravity of the charge and the risks of the applicant's re-offending, absconding, putting pressure on witnesses, interfering with the course of justice. The court also noted that the applicant, being a student, did not have a stable income. Subsequently, the applicant's detention was extended by court order at regular intervals. The detention orders were based on the same grounds as the first one.

On 17 September 2008 the applicant was charged with 13 counts of trafficking with cannabis oil and illegal acquisition and storage of the bullets.

On 24 October 2008 the applicant, along with three other defendants, was committed to stand trial.

On 10 September 2009 the District Court convicted the applicant as charged and sentenced him to 10 years' imprisonment.

On 10 December 2009 the Primorskiy Regional Court (the Regional Court), having reduced the applicant's sentence for 2 months, upheld the judgment on appeal.

On 2 July 2010 the Presidium of the Regional Court, following the applicant's supervisory review complaint, quashed the appeal judgment of 10 December 2010 and ordered a new appeal hearing. The Presidium also extended the applicant's detention pending the appeal proceedings until 2 October 2010.

On 28 September 2010 the Regional Court extended his detention until 2 December 2010. The court noted that the applicant had been convicted of very serious crimes, that the appeal proceedings were pending, and referred to the need to exclude the risks of his reoffending, absconding and interfering with the course of justice. In view of the above, the court held that there were no reasons to change the preventive measure.

On 14 October 2010 the Regional Court quashed the judgment of 10 September 2009 and remitted the case to the District Court for a retrial. The court also upheld its detention order of 28 September 2010 without giving any reasons.

On an unspecified date the District Court received the applicant's criminal case for examination and started trial.

On 30 November 2010 the District Court extended the applicant's detention for six months until 2 June 2011, giving the following reasoning:

"The court takes into account the fact that [the applicant] is charged with very serious crimes punishable with a long term of imprisonment, [that he] committed the crimes in a group of persons, having, according to the material of the case, a leading position, [that] prosecution witnesses and the material of the case have not been examined, [that he] does not have any permanent job or stable income, and considers that being at large, he can continue his criminal activities.

Moreover, in the case of the [applicant's] conviction, the preventive measure chosen will ensure the execution of the judgement in the future.

Another preventive measure such as undertaking not to leave the town or bail would not be sufficient, given the charges against [the applicant]."

On 2 December 2010 the applicant appealed against the detention order. He argued, *inter alia*, that he had had a permanent job and a stable income before his arrest.

On 18 January 2011 the Regional Court upheld the detention order in a summary fashion. It accepted the applicant's argument in respect of his employment before arrest, but found that it did not justify an alternative preventive measure.

On 2 June 2011 the District Court extended the applicant's detention until 2 September 2011. The court, having acknowledged his employment before the arrest, used similar reasoning as in its previous detention order of 30 November 2010. On 13 June 2011 the applicant lodged an appeal.

On 2 September 2011 the District Court, having given the same reasons, extended the applicant's detention until 2 December 2011. The applicant appealed against it on 5 September 2011

On 8 September 2011 the Regional Court examined and upheld the detention order of 2 June 2011.

On 1 December 2011 the District Court convicted the applicant as charged and sentenced him to 10 years' imprisonment. The applicant appealed.

On 20 December 2011 the Regional Court upheld the detention order of 2 September 2011.

On 26 April 2012 the Regional Court upheld the judgment of 1 December 2011 on appeal.

B. Conditions of detention and transportation

Between 5 September 2010 and at least until 24 January 2012 the applicant was held in remand prison IZ-25/1 of Vladivostok. He provided a description of conditions of his detention and transportation, and submitted in support six affidavits written by his cellmates and a number of photos taken in cell no. 279 of the remand prison.

(a) Conditions of detention

The applicant was detained in cells no. 332, 281, 274, 279 and 267. During his detention he did not have an individual sleeping place and disposed of two to three square metres (sq. m) of floor space in each cell. Cellmates had to take turns to sleep. The cells were constantly lit with strong electric light impeding normal sleep. The overcrowding caused many conflicts between the inmates.

The cells were dump; there was mould on the walls and the ceiling. The cells were overrun with cockroaches, blood-sucking insects and mice. The air was stale and musty. As most of the cellmates smoked in the cell, the applicant, a non-smoker, was exposed to passive smoking. There was no air ventilation.

The cells were equipped with toilets which were located close to the sleeping places and were not isolated from the living area. The toilets produced intensive smell. No hot running water was available in the cells. All cellmates were allowed to take a shower only once a week and not longer than 15 minutes. The applicant lost 26 kg during his detention.

(b) Conditions of transportation to/from the courthouse

During the applicant's retrial from October 2010 to November 2011 he was transported to the court house on 31 occasions. Before transportation the detainees were taken to an assembly cell measuring 20 sq. m with one small window measuring 20 cm. There was up to 50 detainees in the cell. They had to wait for three to four hours before being taken to the prison van.

The prison van was always overcrowded. Detainees were transported in iron compartments measuring 2 sq. m. Each compartment was occupied by up to 8 persons. The van lacked seat belts or handles. They were hit against the metal wall of the compartment when the van was suddenly stopping. The detainees were transported handcuffed. The air temperature in the

prison van in the summer was up to 40 degrees Celsius. There was no air-conditioning. As there was no heating, it was very cold in the winter.

C. Compensation proceedings under Federal Law no. 68-FZ

On 30 April 2010 the Russian Parliament adopted Federal Law no. 68-FZ “On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time” (“the Compensation Act”) which entered into force on 4 May 2010.

On an unspecified date the applicant brought proceedings under the Compensation Act seeking compensation for unreasonable length of the appeal proceedings against the detention order of 2 June 2011 which had lasted three months and six days.

On 15 December 2011 the Regional Court refused to accept for examination the applicant’s claim. The court found that the Compensation Act was not applicable to those proceedings. The applicant appealed.

On 13 January 2012 the Supreme Court issued a similar ruling.

COMPLAINTS

1. Under Article 3 the applicant makes the following complaints:

(a) Conditions of detention in the remand prison were inhuman and degrading;

(b) Conditions of transportation between the remand prison and the court house were inhuman and degrading;

2. He also complains that he did not have at his disposal any effective domestic remedy for his complaints under Article 3;

3. He complains under Article 5 § 3 that his detention on remand was unreasonably long and was not based on sufficient reasons;

4. He complains under Article 5 § 4 that it took the appeal court too long to examine his appeals against the detention orders of 30 November 2010, 2 June and 2 September 2011;

5. Lastly, he complains that he did not have any effective domestic remedy against the length of the detention review proceedings at his disposal.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicants' detention in remand prison IZ-25/1 of Vladivostok compatible with Article 3 of the Convention?

2. Were the conditions of the applicants' transport between the remand prison and the court house compatible with Article 3 of the Convention (see *Khudoyorov v. Russia*, no. 6847/02, § 112-120, ECHR 2005-X (extracts))?

3. Did the applicant have at his disposal an effective domestic remedy for his 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)?

4. Was the length of the applicants' detention on remand in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? In particular, were there "relevant and sufficient" reasons for the applicants' continued detention (see *Yevgeniy Gusev v. Russia*, no. 28020/05, § 84, 5 December 2013)?

5. Were the applicant's appeals against the detention orders of 30 November 2010, 2 June and 2 September 2011 examined "speedily", as required by Article 5 § 4 of the Convention (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009)?

6. Did the applicant have an effective and enforceable right to compensation for the alleged violations of his right to speedy judicial review of his detention under Article 5 § 4, as required by Article 5 § 5 of the Convention (see *Alekhin v. Russia*, no. 10638/08, § 153, 30 July 2009)?