



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

FIFTH SECTION

Application no. 42526/07
Nikolay Aleksandrovich GROMUT
against Russia

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Nikolay Aleksandrovich Gromut, is a Russian national who was born in 1955 and lives in Odesskoye village, in the Omsk region. He is represented before the Court by Mr F.V. Bagryanskiy and Mr A.V. Ovchinnikov, lawyers practising in Vladimir.

1. Background of the case lodged on 1 October 2007

Since 2003 the applicant has the status of a permanently disabled person of the second degree.

In 2004 the applicant underwent surgery in connection with a cancer of his rectum.

In 2005 he underwent an additional surgery, in result of which a part of his sigmoid colon was cut.

2. The applicant's arrest and detention

On 1 November 2006 the applicant was arrested by an investigator of the Internal Affairs Department of the Omsk region on suspicion of having committed swindling (*мошенничество*) by an organized group or on an especially large scale under Article 154 § 4 of the Criminal Code of the Russian Federation.

On 3 November 2006 he was placed in the State Federal Institution IZ 55/1 of the Federal Penitentiary Service of the Russian Federation in the Omsk region (the "SIZO").

The resolution on his placement in custody ("*постановление об избрании меры пресечения в виде заключения под стражу*") of the Kuibishevskiy District Court in Omsk stated that the applicant's detention was necessary because of the severity of the accusation, the risk that he

would obstruct the investigation and make pressure on the witnesses. It also noted that there was no information according to which the applicant could not be kept in detention.

On 27 December 2006 the District Court extended the applicant's detention for two months and thirteen days, in total up to four months and thirteen days, until 14 March 2007. The court reiterated the reasons for the applicant's detention indicated in its resolution of 3 November 2006. As to the applicant's lawyer's argument that his client needed specialised medical treatment, the court noted that the applicant's disease did not prevent him from being kept in detention. It relied in this respect on a certificate delivered by a doctor of the SIZO. The court added that after 2003, the applicant had not sought medical assistance.

On 6 January 2007 the applicant was placed in the medical unit of the SIZO but as no adequate medical assistance was provided to him, his state of health deteriorated.

On 12 January 2007 the applicant was examined by Mr N., the chief of the proctologic department of the Regional clinical hospital who concluded that the applicant needed an urgent placement in specialised medical institution, his treatment in detention being impossible. There was a risk of an aggravation which could lead to his death. The administration of the SIZO did not, however, follow his recommendations.

On 25 January 2007 the chief of the medical unit of the SIZO, the mayor K., and the therapist, Mrs B., wrote to the applicant's lawyer that his client's state of health was satisfactory, that there was no need of any urgent hospitalisation and that he was able to attend court hearings.

On 2 February 2007 the applicant was examined by another proctologist of the Regional clinical hospital, Mr Z., who concluded that his state of health had aggravated since 12 January 2007. He further stated that the applicant needed a treatment in the proctologic department, no treatment being feasible in the SIZO. He underlined the risk of an aggravation possibly resulting in the applicant's death.

The administration of the SIZO did not, once again, follow Mr Z.'s recommendations.

On 9 March 2007 the District Court extended the applicant's detention for three months, in total for seven months and thirteen days, until 14 June 2007. It reiterated the reasons indicated in its two previous resolutions. As regards the applicant's health condition, it noted that the documents provided by the SIZO confirmed his ability to be kept in detention.

On 22 March 2007 the applicant was hospitalised in hospital No. 11 of the Federal Penitentiary Service of the Russian Federation in the Omsk region (*“Лечебно-профилактическое учреждение “Областная больница № 11” Управления Федеральной службы исполнения наказаний России по Омской области”*) (“hospital No. 11”).

On 2 April 2007 he was examined by Mr N. who concluded that his state of health was grave (*“тяжелое”*). He reiterated that the applicant needed a treatment in the proctologic department as no treatment was possible in detention and that there was the risk of further aggravation which could lead to the applicant's death if no specialised medical aid was provided.

In April 2007 the applicant was examined by three other specialists who found that he had various other diseases.

On 31 May 2007 he was again examined by Mr N. who concluded that his state of health had worsened since the last examination. He repeated his previous conclusions and recommendations.

On 7 June 2007 the applicant was transferred back to the SIZO.

On 9 June 2007 the District Court extended his detention for three months, in total for ten months and thirteen days, until 14 September 2007. The court reiterated its previous findings. Investigator P. explained to the court that the question of the applicant's hospitalisation would be decided after consultations with the Ministry of Health of the Omsk region and the doctors of the Omsk regional clinical hospital.

On 14 June 2007 the applicant was again hospitalised in hospital No. 11.

On 20 and 27 June 2007 he underwent an ultrasound examination by the specialist of the Regional clinical hospital, Mrs G., who found that his liver might have metastasis. She wrote to the applicant's lawyer that further diagnosis would be possible only in a specialised hospital.

On 9 August 2007 the applicant was transferred back to the SIZO.

On 24 August 2007 he was examined by Mr N. who concluded that his state of health had again aggravated since 31 May 2007, in particular due to the development worsening other diseases. Mr N. stated that the applicant needed an urgent operative intervention and that his detention was impossible.

The doctors of the SIZO did not follow his recommendations and the applicant stayed in the SIZO.

On 31 August 2007 the District Court extended the applicant's detention for one month and seventeen days, in total for twelve months, until 1 November 2007.

On 7 September 2007 the applicant was hospitalised in hospital No. 11.

On 29 October 2007 the Omsk Regional Court extended his detention for one month, in total for thirteen months, until 1 December 2007. The court noted that the applicant was not currently detained in the SIZO but in hospital No. 11 and that he was provided with qualified medical aid.

According to the applicant, prior to his arrest, his state of health was stable. After his placement in detention, his state of health deteriorated, in particular due to the absence of any special diet and medicines. He was no longer able to take showers every day but only once a week. He had uncontrolled defecation acts, up to 12 times per day, after which he had no possibility to clean himself and to perform special toilet of the sigmoid colon. He had pain and bleeding. He also suffered from other diseases.

Moreover, he had difficulties to move and was obliged to spend most of the time laid down. He constantly needed pampers which were not provided by the administration of the SIZO but sent by his relatives. Due to his inability to control defecation, his relationship with cellmates was tense. He was constantly feeling humiliation.

On 23 November 2007 the Court, applying Rule 39 of the Rules of Court, indicated to the Government of the Russian Federation that the applicant was to be operated in a specialised clinic and that a CT scan and a transcutaneous puncture to be performed on his liver.

On 30 November 2007 the Russko-Polyanskiy District Court ordered the opening of the trial in the applicant's case maintaining him in detention. It noted, *inter alia*, that there were no new circumstances in respect of the

reasons for the applicant's detention. It pointed out that detainees are entitled to medical aid according to the legislation.

On 24 December 2007 the applicant was hospitalised in the Omsk Regional Clinical Hospital, the coloproctological unit. On 29 December 2007 he was operated. He was diagnosed with liver metastasises.

On 25 January 2008 he was transferred to hospital No. 11.

On 8 February 2008 the District Court suspended the criminal proceedings against the applicant until his recovery. His detention was replaced by the undertaking not to abscond ("*подписка о невыезде и надлежащем поведении*"). On 11 February 2008 the applicant was released. On 6 March 2008 the Regional Court upheld the above decision.

On 20 June 2008 the Russian authorities informed the Court that the applicant had been provided with the adequate medical treatment. The application of Rule 39 was accordingly lifted on 14 October 2008. The applicant confirmed the information by the Government in his letter of 12 November 2008.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the lack of medical assistance at the remand prison IZ 55/1. He also complains about the humiliation suffered in connection with the particular nature of his disease.

2. He further complains under Article 5 of the Convention about the excessive length of his pre-trial detention. He claims that his detention was not necessary with regard to the circumstances of his case and his personal situation, that the reasoning of the courts repeatedly extending his detention was formalistic and groundless. His lawyers appealed against all the resolutions relating to his detention and its prolongation but to no avail.

He finally complains that the courts did not consider the possibility to apply an alternative coercive measure.

QUESTIONS TO THE PARTIES

1. Did the applicant have adequate medical assistance at the remand prison IZ 55/1 in Omsk?

Was the medical assistance available to the applicant compatible with the requirements of Article 3 of the Convention?

2. Given the specific nature of the applicant's disease, in particular the fact that he could not control his defecation, was his detention compatible with Article 3 of the Convention in order not to expose him to inhuman or degrading treatment?

3. Was the length of the applicant's detention compatible with Article 5 § 3 of the Convention?