



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

Communicated on 7 July 2014

FIRST SECTION

Application no. 75734/12
Leonid Mikhaylovich RAZVOZZHAYEV
against Russia
lodged on 28 November 2012

STATEMENT OF FACTS

The applicant, Mr Leonid Mikhaylovich Razvozzhayev, is a Russian national, who was born in 1973 and lives in Moscow. He is represented before the Court by Ms A. Stavitskaya and Mr. D. Agranovskiy, lawyers practising in Moscow.

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

The applicant is a political activist and a member of an opposition movement “Levy Front”. In 2012 he took an active part in organising a political rally held on 6 May 2012 at Bolotnaya Square in Moscow. He is currently on trial on charges of having conspired to organise the mass disorders that allegedly took place during this rally.

A. Background facts

On 23 April 2012 five individuals submitted a notice of a public demonstration to the mayor of Moscow stating the date, time and route of the intended march. It was to begin at 4 p.m. on 6 May 2012, with an estimated number of about 5,000 participants, who would march from Kaluzhskaya Square down Bolshaya Yakimanka Street and Bolshaya Polyanka Street, followed by a meeting at Bolotnaya Square. The meeting was to end at 7.30 p.m. The notice stated that the proposed demonstration was intended “to express protest against abuses and falsifications in the course of the elections to the State Duma and of the President of the Russian Federation, and to express a demand for fair elections, respect for human rights, the rule law and the international obligations of the Russian Federation”.

On 4 May 2012 the deputy mayor of Moscow charged the Tsentralnyy district prefect with assisting the organisers of the demonstration in maintaining public order and security during the event.

On 5 May 2012 a plan of the intended demonstration was officially published, which included a map of the area designated for the march and the meeting. The centre of Bolotnaya Square was indicated on it as the place of the meeting.

On 6 May 2012 all of Bolotnaya Square, except a narrow strip along its embankment, was barred with metal barriers and cordoned off by the riot police. The strip was left to serve as a corridor leading to the entrance to the meeting venue, and it was equipped with 15 metal detectors.

The march began as planned at 4 p.m. The turnout exceeded the expectations, but there is no consensus as to the exact numbers. The organisers of the demonstration considered that about 25,000 people took part in the event. The police stated the number of participants was 8,000, and the estimates given in different media varied between 45,000 and 120,000 people.

The march down Yakimanka Street and Bolshaya Polyanka Street went peacefully without any disruption. However, when the marchers arrived at the corridor, which was substantially narrower than the streets by which they had arrived, a stampede and panic occurred. Apparently some protestors attempted to break through the police cordon, but they were forced back to the restricted area and clashes between them and the police began. The police allegedly used truncheons, electric shock and teargas against the protestors.

According to the official sources 436 protestors were arrested at the site of the demonstration, but the organisers considered their number underestimated and claimed that there had been about 650 persons taken into custody.

On the same day the Investigative Committee of the Russian Federation opened criminal proceedings to investigate the suspected mass disorders and violent acts against the police (Articles 212 § 2 and 318 § 1 of the Criminal Code).

On 28 May 2012 the investigation was also launched into the criminal offence of organising mass disorders (Article 212 § 1 of the Criminal Code). The two criminal cases were joined on the same day.

On 22 June 2012 the Investigative Committee set up an investigation group of 27 investigators and put them in charge of the criminal file concerning the events of 6 May 2012.

On unidentified date two human rights activists filed a request with the Investigative Committee to open criminal investigation into the conduct of the police in the above events, in particular their alleged suppression of the lawful public demonstration. There is no information about the follow-up to this request.

Another petition was filed, also on unidentified date, by 44 human rights activists and members of NGOs, calling for curbing repression against the protestors arrested and prosecuted in relation to the events of 6 May 2012 and denying that mass riots had taken place during the demonstration.

B. The applicant's alleged abduction

On 14 October 2012 the applicant left Moscow for Kiev, Ukraine.

On 16 October 2012 the Investigative Committee of the Russian Federation opened criminal investigation against the applicant, his two fellow activists and some other unidentified individuals on suspicion of having conspired to organise mass disorders. They were suspected, in particular, of having planned riots in Moscow, Kaliningrad, Vladivostok and other regions of Russia, as well as in penitentiary institutions; of having planned other actions such as blocking railway lines and counteracting the police securing public order. It was indicated that the riots in question had been planned for autumn 2012. The applicant and his accomplices have allegedly discussed the ways of raising funds for these offences, in particular from abroad, and had allegedly planned on recruiting activists from across the country to be trained in special training camps.

On 19 October 2012 the applicant arrived at the at the Kiev office of the United Nations High Commissioner for Refugees (UNHCR) to apply for asylum. He filled in the application forms and left the UNHCR office to go for lunch while his belongings remained at the office. Outside the office he was abducted by unidentified persons who forced him into a minibus and drove him to Russia. The officer of HIAS, the UNHCR partner organisation, who had received the applicant and witnessed his abduction had described these circumstances in a written statement which has been submitted to the Court. Another witness, the officer of the UNHCR who had received the applicant's file on that day, has also provided a written statement corroborating the circumstance of the applicant's disappearance.

On the same day the UNHCR officer reported the applicant's abduction to the police in Kiev. She requested the Solomeskiy Department of the Interior in Kiev to investigate the incident in the criminal proceedings.

According to the applicant, he was first taken to an unidentified location, possibly in the Bryansk Region of Russia, where he was kept for about 20 hours in a cellar. He claims that unidentified people wearing masks tortured him and forced him to sign a confession that he and other persons had been plotting political unrest and violence. He ended up writing the confession as told.

C. The applicant's detention on remand

On 21 October 2012 the applicant's abductors brought him to the Investigative Committee of the Russian Federation. On the same day the Basmannyy District Court of Moscow examined the request to detain the applicant pending the criminal investigation. It noted that the applicant had been arrested earlier on the same day and that he had been interrogated as a suspect in a criminal case in the presence of his defence counsel, although the applicant had pointed out that he had been deprived of his liberty since 19 October 2012.

The applicant was represented at these proceedings by a court-appointed lawyer because he was not given access to his legal counsels. He requested the court not to detain him pending trial and to choose another measure of restraint. He contended that he had not absconded the investigation, that he

had a fixed place of residence and his family in Moscow. He contested the charges and denied having conducted any criminal activity. The court ordered the applicant's detention on remand until 16 December 2012. It found that there had been sufficient reasons to believe that the applicant was likely to abscond and to obstruct the course of justice by destroying evidence and influencing witnesses. In deciding so the court took into account that the applicant had strong connections with NGOs and human rights organisations in Russia and abroad, that he had connections within the state authorities in Russia, that he had been regularly travelling abroad, that he had a travel passport, that he had no fixed place of work, that he had not been living at his registered address in Irkutsk. The court also considered that the applicant was likely to continue his criminal activity because he had been intercepted at the stage of preparing the crime.

On 23 October 2012 the applicant's counsel wrote a complaint to the Prosecutor General of Ukraine requesting to investigate the applicant's abduction in Kiev and his torture. He also enquired whether the applicant's removal from Ukraine had been agreed upon by the Ukrainian authorities.

On 24 October 2012 five members of a public commission for the monitoring of detention facilities visited the detention facility to meet the applicant and to check the conditions of his detention. The commission's report stated that the administration of the detention facility had hindered their access to the applicant for several hours but eventually let them meet him. The applicant had given them a detailed account of his abduction, torture and the ensuing proceedings; he also complained of his difficulties in contacting his lawyer in order to file complaints. The commission noted the applicant's exhausted and subdued state and his fear of torture and prison violence.

On 29 October 2012 the office of the Prosecutor General of Ukraine informed the applicant's counsel, in reply to his enquiry, that the Ukrainian authorities had received no extradition request from a foreign state concerning the applicant.

On 1 November 2012 the investigating authorities reviewed another, unrelated, criminal file against the applicant. In that case, dating back to 1997, the investigation of robbery by an unidentified perpetrator had been suspended in 1998, terminated in 2008 as time-barred and the file had been destroyed in June 2012. They decided that the case had been closed wrongfully and resumed its investigation.

On 7 November 2012 the Moscow City Court upheld the detention order of 21 October 2012.

On unidentified date the applicant filed a complaint with the Investigative Committee of Russia concerning his abduction, forceful removal from Ukraine and torture. On 8 November 2012 he submitted additional documents which he requested to join to the file. On 12 November 2012 this request was refused.

On 21 November 2012 the Investigative Committee refused to open criminal investigation following the applicant's complaint of abduction, forceful removal and torture. It considered the applicant's allegations unsubstantiated and stated that the applicant had left Kiev voluntarily, by taxi, and then he returned to Moscow; he then came to the Investigative Committee on 21 October 2012 to file his confession of criminal offences,

which he did voluntarily, out of patriotic sentiments. The applicant challenged this refusal before the Basmanny District Court of Moscow, which dismissed his complaint on 1 April 2013. The appeal instance upheld the refusal on 20 May 2013.

On the same date the applicant was charged as a suspect in the 1997 robbery case that had been reopened on 1 November 2012.

On 22 November 2012 the Solomenskiy District Prosecutor's Office of Kiev registered the applicant's complaint of his abduction and referred it for inquiry.

On 28 November 2012 the Investigative Committee decided to join the 1997 robbery case to the applicant's case concerning the mass disorders.

On 3 December 2012 the applicant was charged of illegal crossing of the Russian-Ukrainian border.

On 4 December 2012 the limitation period in the robbery case expired.

On 12 December 2012 the Basmanny District Court examined the request to extend the term of the applicant's detention. The request indicated, in particular, that the extension was necessary to investigate the robbery case, for which the applicant would have to be transferred to Irkutsk. The applicant objected and requested the court to select another measure of restraint, having offered a personal guarantee of a State Duma deputy, a bail or a house arrest. The court extended the applicant's detention until 1 April 2013.

On 18 December 2012 the applicant was transferred to Irkutsk on the grounds that he had to be interrogated as a suspect in a 1997 criminal case. The applicant had previously been informed that the limitation period in that case had expired. The transfer to Irkutsk included a 22-day stopover in a detention facility in Chelyabinsk. On 9 January 2013 he arrived in Irkutsk where he was detained until 12 March 2013. During this time he was being interrogated on criminal charges and was allegedly intimidated and ill-treated by the cell-mates and pressured into signing self-incriminating statements.

In the meantime, on 21 December 2012 the Moscow City Court upheld the extension order of 12 December 2012.

On 17 January 2013 the applicant was charged with false denunciation, a criminal offence under Article 306 of the Criminal Code, apparently in relation to the complaints he had filed against the investigators. These charges were updated on 21 March 2013.

On 21 January 2013 the charges in the robbery case had been lifted for the expiry of the limitation period.

On 29 March 2013 the Basmanny District Court of Russia granted a further extension of the term of the applicant's detention, until 6 August 2013. This decision was the first detention order to refer to the charges of organising the mass disorders during the demonstration on Bolotnaya Square on 6 May 2012 which had been joined with the applicant's criminal file on an unidentified date.

On 5 April 2013 the Solomenskiy District Court of Kiev rejected the applicant's action against the refusal to investigate his abduction in criminal proceedings. This decision was upheld on appeal on 22 April 2013. It appears that the inquiry into his allegations has been later resumed, but he has not been able to receive any update from the Ukrainian authorities.

On 10 April 2013 the investigator refused the applicant's request for a full medical assessment of his health.

On 24 April 2013 the Moscow City Court upheld the extension order of 29 March 2013.

On 30 July 2013 the investigator refused the applicant's request for release on health grounds.

On 2 August 2013 the Basmannyy District Court of Russia granted a further extension of the term of the applicant's detention, until 6 October 2013.

On 4 September 2013 the Moscow City Court upheld the extension order of 2 August 2013.

On 30 September 2013 the Basmannyy District Court of Russia granted a further extension of the term of the applicant's detention, until 21 October 2013.

On 7 October 2013 the Moscow City Court granted a further extension of the term of the applicant's detention, until 6 February 2014.

On 30 October 2013 the Moscow City Court upheld the extension order of 30 September 2013, and on 7 November 2013 it upheld the extension order of 7 October 2013.

On unidentified date the applicant was given access to the criminal case file for the first time. The charges included an attempt to organise mass disorders (Article 212 § 1 of the Criminal Code) and unlawful crossing of the state border (Article 322 § 1 of the Criminal Code). On 15 November 2013 the case file was withdrawn from the applicant and was remitted to the Moscow City Court for judicial examination.

On 20 December 2013 the Moscow City Court fixed the preliminary hearing on 26 December 2013.

On 26 December 2013 the Moscow City Court remitted the case to the Prosecutor General with indication of the case-processing flaws to be rectified. The order for the pre-trial detention was maintained.

On 16 January 2014 the case was remitted to the Moscow City Court and the preliminary hearing resumed.

On 4 February 2014 the Moscow City Court examined the request to extend further the term of the applicant's detention. The applicant reiterated the request for an alternative measure of restraint, including a fresh personal guarantee of a State Duma deputy, and referred to the family and health grounds among reasons for his request for release. The court extended the term of the applicant's detention until 10 June 2014.

On 6 February 2014 the Moscow City Court concluded the preliminary hearing and fixed the main hearing on 18 February 2014.

On 28 February 2014 the same court upheld the extension order of 4 February 2014.

On 3 March 2014 the applicant filed an application for release and an alternative measure of restraint pending trial. He complained in particular of inhuman and degrading conditions of detention, of deterioration of his health and of his resulting incapacity to effectively defend himself in the hearings. On 4 March 2014 the Moscow City Court rejected this application.

D. Medical assistance

According to the applicant, prior to his detention he had been suffering from a number of diseases that aggravated due to his detention and trial. The applicant complains of hypertension, retinal angiopathy of both eyes (a blood vessels disease associated with hypertension), of osteoporosis and osteomyelitis. He claims that the conditions in the courtroom, in particular the lengthy periods he has to sit on a bench without a backrest, are hard to endure because of the back pains. He had allegedly suffered heart seizures during the court hearings. His requests for a shorter or less frequent court hearings allowing for sufficient rest had been refused or ignored.

The applicant raised the state of his health as one of the reasons for release from detention, but the domestic courts have found that there was no evidence that the applicant's health was in such a state that it has made it incompatible with further detention.

COMPLAINTS

The applicant complains of his loss of liberty on 19 October 2012 alleging that on that day he was abducted in Kiev by unidentified individuals acting for the Russian authorities. He further alleges that following his abduction, on 19-21 October, these unidentified individuals tortured him to make him confess in having conspired to organise mass riots in Russia. These complaints, directed against both Russia and Ukraine, fall to be examined under Article 5 and 3 of the Convention respectively.

The applicant also complains that neither Russian nor Ukrainian authorities have conducted an effective investigation following his complaints of abduction and torture, also in violation of Article 5 and 3 of the Convention.

The applicant further complains, as a separate ground for a violation of Article 5 § 1, that his loss of liberty in the period between 19 and 21 October 2012 and him being handed over to the Investigative Committee on the latter date have not been acknowledged by the Russian authorities.

He further complains under Article 5 § 1 of the Convention that his pre-trial detention was not based on a "reasonable suspicion" that he had committed a criminal offence.

He also complains that his detention on remand was not justified by "relevant and sufficient reasons", as required by Article 5 § 3 of the Convention.

Finally, he alleges that he has not received adequate medical assistance while in detention and that the conditions of the court hearings have been incompatible with his state of health, in violation of Article 3 of the Convention.

QUESTIONS TO THE PARTIES

A. Questions to the Russian Government

1. Was the applicant deprived of liberty on 19 October 2012 as he alleges? If so, your Government are required to provide the following information:

(a) was the applicant apprehended by the authorities of Russia or Ukraine, or by private individuals?

(b) what was the reason for his deprivation of liberty?

(c) was it based on a decision, formal or informal, of a state authority of Russia and/or Ukraine?

(d) when and where did the applicant cross the border between Russia and Ukraine, between 19 and 21 October 2012?

2. Was the applicant subjected to inhuman or degrading treatment on 19-21 October 2012, by the authorities or other private individuals, in breach of Article 3 of the Convention?

3. What measures have been taken by the Russian authorities to investigate the applicant's allegations that he had been abducted on the territory of Ukraine by the Russian state agents on 19 October 2012 and ill-treated by them on 19-21 October 2012? Having regard to the procedural protection from inhuman or degrading treatment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), and having regard to the positive obligations in order to ensure the applicant's right to liberty and security, enshrined in Article 5 § 1 of the Convention (see *Ilașcu and Others v. Moldova and Russia*, [GC], no. 48787/99, §§ 352 and 464, ECHR 2004-VII; *Riera Blume and Others v. Spain*, no. 37680/97, §§ 29-35, ECHR 1999-VII; *Medova v. Russia*, no. 25385/04, §§ 123-125, 15 January 2009; *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 319-321, ECHR 2010 (extracts), and *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 85, 20 May 2010), was the investigation in the present case by the Russian domestic authorities in breach of Articles 3 and 5 of the Convention?

4. As regards the applicant's allegation that on 21 October 2012 his abductors handed him over to the Investigative Committee of the Russian Federation, did the Russian authorities arrest him at this stage, and if so, was the arrest in compliance with Article 5 § 1 of the Convention?

5. The Government are invited to provide an update on the progress of the criminal case against the applicant and on the preventive measures currently applied to him (pre-trial detention or other). If the applicant's detention was extended after the date indicated in the statement of facts, the Government are invited to indicate the overall length of the detention and the reasons for the extension, and to produce copies of the relevant detention orders and judicial decisions.

6. In the proceedings in which detention was imposed or extended (remand proceedings), did the courts satisfy themselves that there existed a “reasonable suspicion” against the applicant, as required by Article 5 § 1 (c) of the Convention? In particular, in the remand proceedings did the courts assess evidence showing the existence of such “reasonable suspicion” (see *Khudoyorov v. Russia*, no. 6847/02, § 180, 8 November 2005, and *Shcheglyuk v. Russia*, no. 7649/02, § 43, 14 December 2006)?

7. Having regard to the reasons expressly relied on by the domestic courts in the detention orders (see, for example, *Bykov v. Russia* [GC], no. 4378/02, § 66, 10 March 2009, and *Savenkova v. Russia*, no. 30930/02, §§ 85 and 87, 4 March 2010), was the applicant’s detention on remand justified by “relevant and sufficient reasons”, as required by Article 5 § 3 of the Convention in conjunction with Article 5 § 1 (c) thereof? In particular:

- Did the courts respect the “presumption in favour of release” (in particular, insofar as the distribution of the burden of proof was concerned (see *Vlasov v. Russia*, no. 78146/01, § 108, 12 June 2008, and *Moiseyev v. Russia*, no. 62936/00, § 154, 9 October 2008)?
- Did the courts assess specific factual circumstances demonstrating the existence of the risks allegedly posed by the applicants (see, for example, *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005; *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006; *Mishketkul and Others v. Russia*, no. 36911/02, §§ 57-59, 24 May 2007; *Gusev v. Russia*, no. 67542/01, §§ 80-82, 15 May 2008; *Sizov v. Russia*, no. 33123/08, § 53, 15 March 2011; and *Romanova v. Russia*, no. 23215/02, §§ 127-133, 11 October 2011)?
- Did the courts examine relevant evidence in order to establish the existence of those facts (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 125–27, 12 March 2009, and *Chumakov v. Russia*, no. 41794/04, § 162, 24 April 2012)?
- Did the courts consider the possibility of applying less intrusive preventive measures to the applicant, such as bail, house arrest, electronic surveillance, personal sureties and so on (see, for example, *Pshevecherskiy v. Russia*, no. 28957/02, §§ 69-71, 24 May 2007; *Tsarkov v. Russia*, no. 16854/03, § 70, 16 July 2009; *Miminoshvili v. Russia*, no. 20197/03, § 92, 28 June 2011; and *Fedorenko v. Russia*, no. 39602/05, § 71, 20 September 2011; see also the ruling of 22 October 2009 by the Supreme Court of the Russian Federation)?
- Did the courts have due regard to the changing situation of the defendant and the evolving needs of the proper conduct of the proceedings when extending the detention (see, for example, *Aleksanyan v. Russia*, no. 46468/06, § 191, 22 December 2008; *Sizov v. Russia*, cited above; and *Sokurenko v. Russia*, no. 33619/04, § 87, 10 January 2012)?

8. Did the authorities display “special diligence” in the conduct of the proceedings against the applicant, as required by Article 5 § 3 of the

Convention? In particular, did the courts assess specific procedural actions which needed to be taken during the investigation and the trial, and the reasons why those actions had not been taken earlier or could not have been taken more promptly (see *Valeriy Samoylov v. Russia*, no. 57541/09, § 123, 24 January 2012, and *Syngayevskiy v. Russia*, no. 17628/03, §§ 82-86, 27 March 2012)? In particular, was the applicant's transfer to Irkutsk necessary and reasonable?

9. Have the Government met their obligation to ensure that that the applicant's health and well-being are being adequately secured by, among other things, providing him with the requisite medical assistance (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V), as well as adequate conditions at the court hearing, as required by Article 3 of the Convention?

B. Questions to the Ukrainian Government

1. Was the applicant deprived of liberty on 19 October 2012 as he alleges? If so, your Government are required to provide the following information:

(a) was the applicant apprehended by the authorities of Russia and/or Ukraine, or by private individuals?

(b) what was the reason for his deprivation of liberty?

(c) was it based on a decision, formal or informal, of a state authority of Russia and/or Ukraine?

(d) when, where and under which circumstances did the applicant cross the border between Russia and Ukraine, between 19 and 21 October 2012?

2. Has there been an extradition request by the Russian authorities in respect of the applicant? If so, has there been failure to comply with the extradition procedure? Did the Ukrainian authorities ensure the applicant's right to liberty and security, as provided for by Article 5 § 1 of the Convention, to prevent his unlawful arrest by the authorities of a foreign State?

3. Was the applicant subjected to inhuman or degrading treatment on 19-21 October 2012, by the authorities or private individuals, in breach of Article 3 of the Convention?

4. What measures have been taken by the Ukrainian authorities to investigate the applicant's allegations that he had been abducted on the territory of Ukraine by the Russian state agents on 19 October 2012 and ill-treated by them on 19-21 October 2012? Having regard to the procedural protection from inhuman or degrading treatment (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), and having regard to the positive obligations in order to ensure the applicant's right to liberty and security, enshrined in Article 5 § 1 of the Convention (see *Ilaşcu and Others v. Moldova and Russia*, [GC], no. 48787/99, §§ 352 and 464, ECHR 2004-VII; *Riera Blume and Others v. Spain*, no. 37680/97, §§ 29-35, ECHR 1999-VII; *Medova v. Russia*, no. 25385/04, §§ 123-125, 15 January 2009;

Rantsev v. Cyprus and Russia, no. 25965/04, §§ 319-321, ECHR 2010 (extracts), and *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 85, 20 May 2010), was the investigation in the present case by the Ukrainian domestic authorities in breach of Articles 3 and 5 of the Convention?

5. The Government are requested to provide copies of documents relating to the extradition procedure, if any, and the copies of documents relating to the investigation into the applicant's allegation of abduction and ill-treatment.