

ANDREI PIVOVAROV

Description of the case by Memorial Human Rights Center

Andrei Sergeyevich Pivovarov, born September 23, 1981, in the city of Leningrad, is a member of the Bureau of the Federal Political Council of the PARNAS Party. He is being charged with commission of the crimes outlined in Article 272, Paragraph 3 (“Wrongful access to computer information protected by law, if this act entailed modification or copying of computer information, committed by a group of persons by prior collusion”); Article 33, Paragraph 4; and Article 291, Paragraph 3 (“Giving a bribe to an official in return for knowingly committing an illegal act”) of the Russian Federation’s Criminal Code. He was in detention from July 27, 2015, until September 28, 2015, when he was released on bail of 1 million rubles.

On the night of July 28, criminal case No. 1268 was initiated against Pivovarov by P. E. Yevshov of the Investigative Administration of the Investigative Committee of the Russian Federation for Kostroma Region based on the features of the *corpus delicti* identified in Article 272, Paragraph 3 (“Wrongful access to computer information protected by law, if this act entailed the destruction, blocking, modification or copying of computer information, committed by a group of persons by prior collusion or by a person with the use of his official position”), and Article 286, Paragraph 1 (“Exceeding official authority”) of the Russian Federation Criminal Code¹. Pivovarov was apprehended around 11 p.m. on July 27 and confined at the Interior Ministry Department for five hours. He was then formally detained under the procedure outlined by Articles 91 and 92 of the Code of Criminal Procedure, after which he was questioned as a suspect.

On July 29, Judge D. E. Balayev of the Sverdlovsk District Court of the city of Kostroma issued a decision ordering that Pivovarov be detained until September 28. Simultaneously, the same decision was handed down against Alexei Vyacheslavovich Nikonorov, the police captain for the Russian Interior Ministry Department for Kostroma. The judgment argued that “in the evening time of 27 July of the year 2015 an employee of the police in conjunction with an unknown person (Andrei Pivovarov), acting as a group of persons by prior collusion, being found in Work Office No. 7 of the building of the Department of the Ministry of Internal Affairs of Russia for Kostroma district, at the address city of Kostroma, ul. Marshala Novikova, d. 7, having violated the protection regime, did wrongfully access computer information protected by law, intended exclusively for official use—the informational database of the Administration of the Ministry of Internal Affairs of Russia for Kostroma Oblast—and did use it, which entailed the blocking of access to the given information for a lawful user, modification of computer information, material the [*sic*] violation of the rights and interests of citizens protected by law to secrecy of their personal data, [and] unsanctioned transfer of confidential information to third parties.”

On July 31, a search was conducted of the apartment of Pivovarov’s elderly mother, a disabled person; she herself was subjected to questioning. On the same day, the second

¹ This charge was dropped on September 25, 2015

individual accused in the case, Alexei Nikonorov, declared in an interrogation that he had slandered Pivovarov under pressure from operatives. On August 3, it became known that Alexander Maximenko, deputy chief of the Interior Ministry Administration for Kostroma region, had submitted his resignation in connection with the scandal that had flared up around captain Nikonorov.

On August 5, Yevshov initiated a second criminal case against Pivovarov based on features of the *corpus delicti* identified in Article 33, Paragraph 4, and Article 286, Paragraph 1 (“Incitement to exceed official authority”) of the Criminal Code. On August 6, Pivovarov was charged with wrongful access to computer information protected by law and incitement to exceed official authority. On the same day, a working group of the Elections Commission of Kostroma region recommended that the list of candidates of the PARNAS Party not be registered, having rejected 352 of the 3,009 presented signatures—more than the allowable 10% rejection rate. On August 8, the commission denied registration of the PARNAS party list.²

Grounds for recognition as a political prisoner

The initiation of a criminal case against Pivovarov is part of a campaign aimed against the opposition Democratic Coalition and PARNAS, which is a part of it. Regional elections commissions have denied registration of candidate lists put forth by this coalition (along with the lists of other non-parliamentary parties like Civic Initiative and Rodina) for elections to the legislative assemblies of Novosibirsk and Magadan regions, and municipal elections in the administrative centers of the republic of Udmurtia and in Perm region—in other words, everywhere where PARNAS had put forward candidates. In a series of instances (such as the elections in Novosibirsk and Kaluga regions), the election headquarters of PARNAS were targeted, with individuals deployed to knowingly gather inauthentic signatures; the submission of such signatures to the elections commission can lead not only to a denial of registration, but also the initiation of a criminal case under Article 142 of the Criminal Code (“Falsification of elections documents, documents of a referendum”).

Seeking to verify the signatures, Pivovarov went to the Interior Ministry Department for Kostroma district at the invitation of police captain Nikonorov, with the aim of getting precise clarification on the correspondence of citizens who had signed up for PARNAS. Judging by the procedural documents we had at our disposal, the investigation is adhering to this theory as well.

It is important to note that for unknown reasons, in the summer of 2015, the databases of the Federal Migration Service were not accessible to visitors. Opposition politicians believe that this can be seen as direct sabotage aimed at preventing candidates and electoral associations from checking the data of the voters who had signed up for them. After the conclusion of the signature-gathering period, the databases began functioning once again. The officials who had so obviously violated the rights of participants in the electoral process were not held liable in any way.

² The electoral commission later registered the PARNAS party list.

Pivovarov's actions do not possess the features of the *corpus delicti* prescribed by Article 272, Paragraph 3, of the Criminal Code. The methodological recommendations for prosecutorial oversight in the investigation of computer information crimes indicate that "the *corpus* of the given *delicti* bears a material character and assumes the compulsory emergence of one of the consequences:

- a. destruction of information—this is bringing information or a part thereof into a condition unsuitable for use independent of the possibility of its restoration. Destruction of information is not the renaming of the file where it is contained, as well as in and of itself the automatic "supplanting" of old versions of files with the most recent in time;
- b. blocking of information—the result of influence on computer information or hardware, the consequence of which is the impossibility ... to implement required operations with the computer information completely or in the required regime; that is, the commission of actions leading to a restriction or closure of access to computer equipment and the resources found on it, [or] targeted complication of access by lawful users to computer information, not connected with its destruction;
- c. modification of information—introduction of changes into computer information (or its parameters). Cases of legitimate modification of programs (databases) by persons rightfully possessing this information are established by the law, and namely: modification in the form of correction of obvious errors; modification in the form of introduction of changes in programs or databases for their functioning on a user's technical media; [and] modification in the form of partial decompiling of a program for achieving an ability to interact with other programs;
- d. copying of information—the creation of copies of existing information on another medium, that is, the transfer of information onto a standalone medium while keeping the initial information unchanged, or reproduction of information in any material form—by hand, through photographing of text from the screen of a display, as well as reading off information by way of any interception of the information and the like."

There is no evidence that the given consequences have occurred, or that Pivovarov, in attempting to reconcile the data on the residents of Kostroma region who had signed up for PARNAS with the data contained in the ministry's database, was taking actions with the aim of producing such consequences. As a result, in contradiction of the recommendations mentioned earlier, which indicate that computer information crimes necessitate the use of "special forensic expert examinations," the criminal cases against Pivovarov and Nikanorov were initiated without any expert examinations whatsoever. Instead, they were detained despite unproven guilt and an absence of material damage or injured parties, for crimes not considered grave.

The investigation did not submit any evidence that there was a self-serving motive in Nikonorov's actions or that Pivovarov had compelled Nikonorov to commit supposedly unlawful actions, as had been declared in the order to bring charges. In connection with this,

the charging of Pivovarov with supposed “incitement” likewise appears manifestly absurd and wrong.³

In his ruling, the judge indicated Pivovarov’s political activity as one of the arguments in favor of detaining him, having noted that “also bearing witness to the possibility of impeding in the case is the very character of the behavior of Pivovarov, who over the span of a lengthy time has ignored norms and disregarded the rules of behavior established in society, for which he has been brought to administrative charges on numerous occasions.” This comment referred to a memorandum drawn up by Marianna Kocherina, police major of the Interior Ministry Administration for Vasileostrovsky district of the city of St. Petersburg, on July 28, 2015, that asserted that Pivovarov had been “taken into custody by agencies of internal affairs on numerous occasions for conducting actions with respect to destabilization of the sociopolitical situation in St. Petersburg, likewise six times was brought to administrative liability per para 1 art. 20.2, para 1 [Article] 19.3 of the RF Code of Administrative Offenses... destructive views he did not abandon[;] he maintains connections with radical political groups through the present time.” The “radical group” mentioned was PARNAS.

From the point of view of the [criteria](#) established by the Memorial Human Rights Center, Pivovarov is a political prisoner because the authorities deprived him of his liberty with the aim of holding onto power, forcing the involuntary cessation of his public activity as chief of a regional headquarters of the PARNAS party. In so doing, he was also deprived of the right to a fair trial and other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the charges against him were based on falsification of evidence in the absence of *corpus delicti*.

Recognition of a person as a political prisoner does not signify either the agreement of the Memorial Human Rights Center with the views and pronouncements of the persons recognized as political prisoners, or approval of their pronouncements or actions.

Lawyer: G.A. Aliyev

³ A bribery charge was later added alleging that Pivovarov had given Nikonorov about 50,000 rubles in return for granting him access to the voter information.