



Andrey Sergeyeovich Pivovarov was born on 23 September 1981 in the city of Leningrad, is deputy editor-in-chief of OOO «Media-gruppa «Shum», a member of the FPS Bureau of the PARNAS party, is being charged with commission of the crimes prescribed by art. 272 para 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”*) and art. 291 para 3 (*“Giving a bribe to an official person for the commission of knowingly unlawful actions”*) of the RF Criminal Code. He was in detention since 27 July 2015; on 25 September 2015 the court adopted a decision to release him on bail set at 1 million rubles.

Description of the case

On the night of 28 July, criminal case No. 1268 was initiated by investigator for particularly important cases of the section for the investigation of particularly important cases of the Investigative Administration of the Investigative Committee of the RF for Kostroma Oblast colonel of justice P.E. Yevshov based on the features of the *corpus delicti* prescribed by art. 272 para 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 art. 286 para 1 (*“Exceeding official authority”*) of the RF Criminal Code. After confinement on the territory of the Department of the Ministry of Internal Affairs in the course of 5 hours from the moment of factual apprehension around 23:00 on 27 July, at 04:40 on 28 July chief of the pre-election headquarters of the RO of Kostroma Oblast of the «RPR-PARNAS» political party (note in the course of the pre-election campaign the party was renamed PARNAS by a decision of the Congress) Andrey Pivovarov was formally detained in the procedure of art. 91, art. 92 of the RF Code of Criminal Procedure, after which he was questioned as a suspect.

On 29 July judge of the Sverdlovsk District Court of the city of Kostroma D.E. Balayev issued a decision on selection in relation to Pivovarov of a measure of restraint in the form of detention until 28 September. At the same time, a decision was issued on selection of the same kind of measure of restraint as well in relation to crime detection operative plenipotentiary [*criminal investigator—Trans.*] of the Department of the Ministry of Internal Affairs of Russia for Kostroma Rayon police captain Alexey Vyacheslavovich Nikonorov born in the year 08.08.1982. In the judgment on selection of the measure of restraint for Pivovarov, imputed to them was that *“in the evening time of 27 July of the year 2015 an employee of the police in conjunction with an unknown person (note Andrey Pivovarov), acting as 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 Rayon, at the address: city of Kostroma, ul. Marshala Novikova, d. 7, having violated the protection regime, did implement wrongful access to computer information protected by law, intended exclusively for official use – the informational data base 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, unsanctioned transfer of confidential information to third parties”*.

On 31 July a search took place in the apartment of Pivovarov's elderly mother, a group II invalid; she herself was subjected to questioning. On this same day the second accused in the case, Alexey Nikonorov, declared at a face-to-face interrogation with Pivovarov that he had slandered him under pressure from operative [*sic*] workers. On 3 August it became known that deputy chief of the Administration of the Ministry of Internal Affairs of Russia for Kostroma Oblast Alexander Maximenko had submitted his resignation in connection with the scandal that had flared up around captain Nikonorov.

On 5 August investigator of the Investigative Administration of the Investigative Committee of the RF for Kostroma Oblast lieutenant-colonel of justice P.E. Yevshov had initiated a second criminal case in relation to Andrey Pivovarov based on features of the *corpus delicti* prescribed by art. 33 para 4, art. 286 para 1 of the RF Criminal Code ("*Incitement to exceed official authority*"). On 6 August 2015 a charge was laid against Pivovarov of having committed the crimes prescribed by art. 272 para 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*"), art. 33 para 4, and art. 286 para 1 ("*Incitement to exceed official authority*") of the RF Criminal Code. On this same day a working group of the Elections Commission of Kostroma Oblast recommended not registering the list of candidates of the PARNAS party, having rejected 352 of the 3009 presented signatures, *i.e.* more than the allowable 10% rejection rate. On 8 August the Elections Commission of Kostroma Oblast denied registration for the PARNAS party list.

On 12 September 2015, a day before the elections to the Kostroma Oblast Duma, the Investigative Administration of the Investigative Committee of the RF for Kostroma Oblast initiated a new criminal case based on features of the commission of the crimes prescribed by art. 290 para 3 ("*Receiving of a bribe by an official person for the commission of knowingly unlawful actions*") and art. 291 para 3 ("*Giving a bribe to an official person for the commission of knowingly unlawful actions*") of the RF Criminal Code. The given criminal case appeared after the confessional testimony of the person who had introduced Pivovarov and Nikonorov, in which he reported to the investigator about how he had supposedly been present at the moment the money had been handed over. At the first face-to-face interrogation the witness declared that he had not seen either the money, or the moment it had been handed over, or its re-counting. According to the witness' assertion, he had supposedly heard the word "*poltinnik*" [*"a halfer", i.e. fifty of something—Trans.*] in the course of Pivovarov's and Nikonorov's talk, from which he had drawn a conclusion about how the bribe that Pivovarov had supposedly handed over to Nikonorov was equal to 50 thousand rubles. That being said, the witness declared that he had drawn the given conclusion from the context of the conversation, although he does not remember other details of the conversation that had supposedly taken place.

On 18 September 2015 the investigation familiarized the party of the defense with the reports of 4 forensic computer expert examinations, conducted in the Criminalistics Expert Center of the Administration of the Ministry of Internal Affairs for Kostroma Oblast, which concluded that a classificational circumstance was lacking for classification under art. 272 of the RF Criminal Code, and specifically modernization and blocking of information. In such a manner, the experts factually corroborated the absence of the *corpus delicti* prescribed by the given article.

On 25 September 2015 the court adopted a decision on changing the measure of restraint and releasing Andrey Pivovarov on bail of 1 million rubles. On that same day, a charge in a new

version was laid against Pivovarov, in accordance with which he is being charged with the commission of the crimes prescribed by art. 272 para 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”*) and art. 291, para 3 (*“Giving a bribe to an official person for the commission of knowingly незаконных actions”*) of the RF Criminal Code.

Grounds for recognition as a political prisoner

The initiation of a criminal case against Andrey Pivovarov is part of a campaign aimed against the opposition «Democratic coalition» and the PARNAS party, which is a part of it. Regional elections commissions have denied registration of lists of candidates of the given political force (along with the lists of other non-parliamentary parties, ones like «Civic initiative» and «Rodina») at elections to the legislative assemblies of Novosibirsk and Magadan Oblasts, at municipal elections in the administrative centers to [sic] the Republic of Udmurtia and in Perm Kray, in other words everywhere where PARNAS had put up its candidates. In a series of instances (see the elections in Novosibirsk and Kaluga Oblasts), the election headquarters of PARNAS became victims of provocations with the mass implanting of gatherers gathering knowingly unauthentic signatures; the submission of such signatures to the elections commission is capable of leading not only to a denial of registration of the list, but also to the initiation in relation to the authorized persons of the electoral association of criminal cases under art. 142 of the RF Criminal Code (*“Falsification of elections documents, documents of a referendum”*).

Pivovarov’s desire to verify the signatures in this connection was likely predicated on him being the chief of the pre-election headquarters of the RO of Kostroma Oblast of the «RPR-PARNAS» political party (in the course of the elections the party changed its name to PARNAS) at the elections to the Kostroma Oblast Duma and the Duma of the city of Kostroma urban district of the VI convocation on 13 September 2015. Pivovarov himself declares about how he had come to the Department of the Ministry of Internal Affairs of Russia for Kostroma Rayon with the aim of getting precise clarification in the law-enforcement agencies on the correspondence of the given citizens, who had signed up for PARNAS, with actual informational data, at the invitation of police captain Nikonorov. Judging by the procedural documents 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 bases of the Federal Migration Service were not accessible to visitors on this service’s websites. In the point of view of a series of opposition politicians, this can be explained by direct sabotage, aimed at candidates and electoral associations gathering signatures with the aim of registration at elections not having the opportunity to check the data of the voters signing up for them with the data in these bases. After the conclusion of the period in the course of which the gathering of signatures was possible, the bases of the Federal Migration Service started working once again, the official persons who had in an obvious manner violated the rights of participants in the electoral process were not in the end held liable in any way.

Pivovarov’s actions do not possess the features of the *corpus delicti* prescribed by art. 272 para 3 of the RF Criminal Code. The methodological recommendations in effect with respect to the implementation of prosecutorial oversight of the execution of laws in the investigation of crimes in the sphere of computer information, confirmed by the General Prosecutor’s Office of Russia, 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 in the course of some time or continually 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, 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 (data bases) 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, data bases for their functioning on a user’s technical media; 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, 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 emerged or that Pivovarov was implementing some kind of actions with the aim of their emerging, attempting to reconcile the data of the residents of Kostroma Oblast who had signed up for PARNAS with the data on them contained in the data base. In so doing, in contradiction to the recommendations named above, which indicate that *“the specific nature of crimes in the sphere of computer information predicates the necessity of conducting in criminal cases of the given category of a series of special forensic expert examinations”*, the criminal case in relation to Pivovarov and Nikanorov was initiated without the conducting of any expert examinations whatsoever; selected for them was a measure of restraint in the form of detention, despite unproven guilt, absence of material damage, injured parties, as well as the fact that the crimes with the commission of which they are being charged are not grave.

The investigation did not submit any material evidence that there is a self-serving motive in the actions of the policeman Nikonorov or that Pivovarov was compelling Nikiforov to commit supposedly unlawful actions, as was declared in the order to bring charges, *“by way of persuasion or in another way”*. In connection with this both the initial charging of Pivovarov with supposed *“incitement”* per art. 33 para 4 and art. 286 para 1 of the RF Criminal Code, and the charge of *“giving a bribe to an official person”* appear to us to be absurd and wrongful.

In the judgment on selection of a measure of restraint the judge factually indicated the political activity of the suspect t as one of the arguments in favor of selection of such a measure as detention, 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 is ignoring norms and disregarding the rules of behavior established in society, for which he has been brought to administrative liability on numerous occasions”*. What was meant by brought to administrative liability were the data from a character reference/memorandum drawn up by senior precinct plenipotentiary of 16 section of the police of the Administration of the Ministry of Internal Affairs of Russia for Vasileostrovsky Rayon of the city of Saint Petersburg police major Marianna Kocherina on 28 July 2015 in relation to Pivovarov, read out in the

course of the court hearing on the selection of a measure of restraint. It was asserted in it that Pivovarov had been *“taken into custody by agencies of internal affairs on numerous occasions for conduction actions with respect to destabilization of the socio-political situation in Saint Petersburg, likewise 6 times was brought to administrative liability per para 1 art. 20.2, para 1 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”*; among other things, the PARNAS political party, registered by the Ministry of Justice, was groundlessly called a *“radical movement”* in the character reference/memorandum.

From the point of view of the [criteria](#) of the «Memorial» Human Rights Center, Andrey Pivovarov is a political prisoner in connection with the fact that deprivation of liberty in relation to him was applied with the aim of holding on to power by subjects of the powers of authority and involuntary cessation of his public activity as chief of an oblast headquarters of the PARNAS party. In so doing, deprivation of liberty was applied in violation of the right to a fair trial, other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms, and was based on falsification of the evidence of the imputed offense in the absence of its *corpus delicti*.

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

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