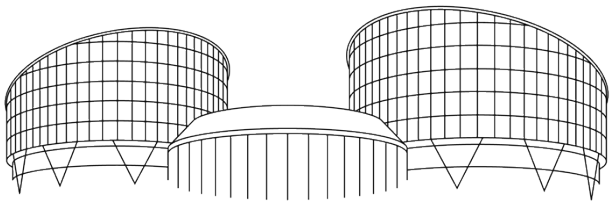

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHARIN v. RUSSIA

(Application no. 37345/03)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kharin v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37345/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Vladimirovich Kharin ("the applicant"), on 2 September 2003.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, former representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unlawfully and arbitrarily detained in a sobering-up centre.

4. On 5 April 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Arkhangelsk.

A. The applicant's detention in a sobering-up centre

7. According to the Government, in the evening of 11 October 2001 the Oktyabrskiy District police station received an emergency call from a local shop. Police officers were sent to the shop to investigate. On their arrival a shop security guard, Mr G., informed the police officers that a drunken man, who was subsequently identified as the applicant, was using offensive language and shouting in the shop, not responding to reprimands and disturbing the work of the shop. The Government provided written statements made by Mr G. and Ms V., a shop assistant, on 14 May 2005. The statements, in so far as relevant, read as follows:

Statement by Mr G.:

> "In the autumn of 2001 (October) I was on duty in the shop... At approximately 9 p.m. a man, who was drunk, entered the shop and went to the department of the shop selling beverages. Subsequently he had an argument with a shop assistant, Ms V. I do not know the reason behind the argument. Ms V. asked me to calm the man down. When [the man] entered the sales area, he, being drunk, shouted loudly, using offensive language.
>
> Handwritten by me."

Statement by Ms V.:

> "In the autumn of 2001 (I do not remember the date), in the evening...., an unknown man entered the shop and, despite the fact that he was already drunk, began demanding that I sell him alcoholic beverages, and, his request being refused, he began using offensive language, offending shop assistants [and] disturbing the functioning of the shop; I applied to the guard in the shop [Mr G.] for assistance. [Mr G.] escorted the man from the shop; however, several minutes later the man returned and began harassing the shop guard [Mr G.], using offensive language, shouting that he would fire the shop staff; subsequently [Mr G.] pressed an emergency button and police officers arrived; [they] escorted the man from the shop and arrested him."

8. The applicant was taken to a sobering-up centre of the Arkhangelsk Town Police Department. An officer on duty at the sobering-up centre drew up medical report no. 22. The report, provided to the Court by the Government, consisted of a one-page printed template, in which the dates,

the officer's and applicant's names, the applicant's personal data and circumstances surrounding his arrest were filled in by hand. The relevant part read as follows (the pre-printed part in roman script and the part written by hand in italics):

> "The arrestee was discovered in an intoxicated state... by a police patrol *at 9.20 p.m.* in the street ... *near the house*.
>
> The drunken [person] exhibited the following [behaviour] at the place of his arrest strong *smell of alcohol, shaky walk, scrambled speech, disorientation in time.*
>
> A medical assistant, *Ms S.,* performed a medical examination, during which a *moderate* state of intoxication was identified. Symptoms (which must be underlined): smell of alcohol on the breath, excited behaviour, aggressive language, blurred vision, blood pressure *was not measured,* pulse *was not measured,* shaky gait, weak legs, impaired movement coordination....
>
> Also established during the medical examination: *Conscious when admitted [to the sobering-up centre]. Mydriatic pupils.* [the remaining handwritten text is illegible]"

The report was signed by the officer on duty, the two police officers who had escorted the applicant to the sobering-up centre, Mr Sa. and Mr Ve., and the medical assistant, Ms S. In addition, the two escorting police officers made a note in the report alleging that the applicant was aggressive and that he had tried to initiate a fight. The applicant refused to sign the report.

9. At the centre the applicant's hands were tied to a bed with "soft ties" because he "had behaved aggressively and gestured actively". He remained tied up for about an hour.

10. On 12 October 2001, at about 9.40 a.m., the applicant was released from the centre and brought to the Oktyabrskiy District Police Department where a report on an administrative offence was drawn up. The report indicated that the applicant had committed an offence under Article 158 of the RSFSR Code on Administrative Offences. It stated that the applicant had been arrested by the police on 11 October 2001 because he had been drunk, used foul language in a public place, thereby disturbing public order.

11. The applicant was ordered to pay 150 Russian roubles (RUB, approximately six euros) "for medical assistance provided in the sobering-up centre".

12. On 19 October 2001 the police officers, Mr Sa. and Mr Ve., wrote similar reports to the head of the sobering-up centre, describing the circumstances of the applicant's arrest and placement in the centre. According to the police officers, in response to their request to board a police car, the applicant, who had been in a moderate state of alcohol intoxication, had started waving his hands about, using offensive language and throwing his bag around. After he had been placed in the police car, he had attempted to break metal bars and had banged on the door. He had also behaved aggressively in the sobering-up centre, waving his hands about and

attempting to start a fight. Soft ties had been applied to him for a short period of time. According to the report, on admission to the centre the applicant did not have any money.

13. On the same day a deputy head of the sobering-up centre drew up a report, stating that on 11 October 2001, in the street near a house, a police patrol car had found the applicant, who was in a moderate state of alcohol intoxication. The deputy head provided the following description of the subsequent events. The applicant had been brought to the sobering-up centre where a medical assistant, Ms S., confirmed that he was moderately drunk. After the applicant had been asked to go into a room he had resisted, trying to initiate a fight with an officer, had acted aggressively and had used offensive language. The applicant had been tied to a bed with soft tissues for no longer than an hour and had calmed down.

14. Two days later the medical assistant, Ms S., wrote an explanatory statement addressed to the head of the sobering-up centre. The statement read as follows:

> "On 11 October 2001, at 10.30 p.m., [the applicant], who was in a state of alcohol intoxication, was brought to the duty unit of the sobering-up centre. [The state of intoxication was determined] on the following grounds: strong smell of alcohol on the breath, barely able to stand, unsteady walk. Coordination was impaired. Speech was blurred. The face and whites of the eyes were bloodshot, [the applicant] could not do coordination exercises and was unsteady in the Romberg position (standing upright with eyes closed). [The applicant] was asked to undress for a further medical examination. [He] acted aggressively, waved his hands about, attempted to start a fight, and began swinging his bag around. [He] refused to undress voluntarily and was forced to undress; [he] refused to go to a room to rest. Soft ties were applied to him from 10.30 to 11.30 p.m. to prevent damage to him and other individuals. During that [hour] the ties loosened up. On a number of occasions while he was in the sobering-up room he knocked and asked to be released and said that he was being detained unlawfully. On his release he did not make any complaints, [he] refused to sign [the report] insisting that on his admission [to the sobering-up centre] he had had money with him. He was given back personal belongings in compliance with the list which had been drawn up on his admission."

B. Request for institution of criminal proceedings and judicial complaints

15. The applicant asked the Arkhangelsk Town Prosecutor's office to institute criminal proceedings against officials of the sobering-up centre, claiming that they had unlawfully seized more than RUB 8,000 from him.

16. On 26 October 2001 a senior assistant to the Arkhangelsk Town Prosecutor dismissed the applicant's complaint, finding that there was no case to answer. The senior assistant concluded that there was no evidence in support of the applicant's allegation that he had had money on him before his admission to the sobering-up centre.

17. The applicant lodged a complaint with the Oktyabrskiy District Court seeking annulment of the decision of 26 October 2001. In addition, he brought a complaint with the Lomonosovskiy District Court of Arkhangelsk against the sobering-up centre of the Arkhangelsk Town Police Department. While not disputing that on 11 October 2001 he had been under the influence of alcohol, the applicant claimed that he had been arbitrarily detained in the sobering-up centre on the basis of an internal regulation adopted by an order of the Ministry of Interior. He further argued that he had been ill-treated at the centre as the police officers had forced him to stay in a very painful position known as "the swallow" [*ласточка*]. In addition, the applicant alleged that he had been forced to pay for medical assistance although such assistance was never provided.

18. On 29 October 2002 the Lomonosovskiy District Court dismissed the applicant's complaint against the sobering-up centre. It grounded its findings on medical report no. 22 drawn up in the centre on 11 October 2001 and statements by the medical assistant, Ms S., the police officer, Mr V., who had escorted the applicant to the centre, and the head of the centre. The District Court found as follows:

> "By virtue of paragraph 18 of [the Regulations on Medical Sobering-up Centres at Town (District) Police Stations], approved by Order no. 106 of the USSR Ministry of Interior on 30 May 1985, individuals in a state of alcohol intoxication (moderate or severe) who are in streets, public gardens, parks, stations, airports and other public places, are taken to medical sobering-up centres if their appearance offends human dignity and public morals.
>
> Due to the fact that [the applicant] was in a moderate state of alcohol intoxication, and his appearance – his walk was unsteady, he had a hard time keeping himself upright, he talked incoherently, he reeked of alcohol - offended human dignity and public morals, officials of the sobering-up centre had the right to take him to the sobering-up centre and keep him there until he sobered up.
>
> ...
>
> By virtue of paragraph 9 of [the Instruction on Provision of Medical Assistance to Persons Brought to Medical Sobering-up Centres] a medical assistant ... should determine the period necessary for an individual to sober up; however it should not exceed twenty-four hours.
>
> As follows from the case file materials [the applicant] was detained in the medical sobering-up centre from 10.30 p.m. on 11 October to 9.40 a.m. on 12 October 2001, which is no longer than twenty-four hours. "

The District Court also held that the payment for medical assistance had been lawful and that the applicant had paid the sum of RUB 150 voluntarily. It did not address the alleged disappearance of cash.

19. The applicant appealed against the judgment of 29 October 2002. In his statement of appeal he complained that he had been unlawfully detained against his will, that the District Court had grounded its judgment solely on

statements by the officials of the sobering-up centre and that his unsteady walk and incoherent speech before his detention in the sobering-up centre had not posed a threat to anyone, including himself.

20. On 3 March 2003 the Arkhangelsk Regional Court upheld the judgment of 29 October 2002, endorsing the reasons given by the Lomonosovskiy District Court.

21. On 5 December 2003 the Oktyabrskiy District Court quashed the assistant prosecutor's decision of 26 October 2001 and sent the case for an additional inquiry, noting that the assistant prosecutor had failed to question the applicant in relation to his complaint about the money allegedly seized in the sobering-up centre.

22. Two weeks later a deputy Oktyabrskiy District Prosecutor closed the additional inquiry, noting that it was impossible to question the applicant. According to the deputy prosecutor, the applicant had not responded to summons sent by the prosecutor's office on a number of occasions. Moreover, police officers who had been sent to his place of residence could not find him. The applicant was served with a copy of the decision. No appeal followed.

II. RELEVANT DOMESTIC LAW

A. The RSFSR Code on Administrative Offences of 20 June 1984 (in force at the material time)

Article 158. Minor disorderly acts

"Minor disorderly acts, that is utterance of obscenities in public places, abusive solicitation and other similar acts that breach the public order and peace, - shall be punishable with a fine of 10 to 15 minimum wages or with correctional works for one to two months compounded with withholding of 20% of wages, or – if, under the circumstances of the case and having regard to the personality of the offender, these measures are deemed not to be adequate – with administrative detention for up to 15 days."

B. The Regulations on Medical Sobering-up Centres at Town (District) Police Stations, adopted on 30 May 1985 by Order no. 106 of the USSR Ministry of the Interior (in force at the material time)

23. The relevant provisions of the Regulations on Medical Sobering-up Centres read as follows:

"18. Persons in a state of alcohol intoxication who are in streets, public gardens, parks, stations, airports and other public places, are taken to medical sobering-up

centres if their appearance offends human dignity and public morals or if they have lost the ability to walk unaided or could cause damage to others or to themselves ...

...

44. Once the person placed in a medical sobering-up centre has sobered up completely, a doctor shall examine him for the second time and give an opinion on the possibility of his release. The period for holding a person in a sobering-up centre shall, in any event, be no shorter than three hours, but no longer than twenty-four hours ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

24. The applicant complained that his detention in the sobering-up centre of the Arkhangelsk Town Police Department had been in breach of Article 5 § 1 (e) of the Convention, the relevant parts of which provide:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

A. Submissions by the parties

25. The Government submitted that on 11 October 2001 the police officers had lawfully taken the applicant to a sobering-up centre of the Arkhangelsk Town Police Department. They further explained that prior to his placement in the centre the applicant had committed a minor disorderly act, which is an administrative offence under Article 158 of the RSFSR Code on Administrative Offences. According to the Government, by virtue of paragraph 1 of Article 241 of the RSFSR Code on Administrative Offences the police officers could have placed the applicant under administrative arrest for no more than three hours. However, by virtue of Article 242 of the same Code the administrative arrest could only have been enforced after the applicant had sobered up.

26. At the same time the Government continued that the "lawfulness and necessity" of the applicant's admission to the sobering-up centre had been grounded on the fact that his appearance in a public place in a state of

moderate alcohol intoxication had offended human dignity and public morals. His speech was incoherent, his clothes were in disorder, there was a strong smell of alcohol on his breath, he was disoriented and he was walking unsteadily. The Government stressed that the domestic courts, while ruling on the lawfulness of the applicant's detention in the sobering-up centre, had not examined whether, prior to his commitment to the centre, the applicant posed a danger to himself or other individuals.

27. The applicant maintained his complaints, noting that the domestic courts had never examined his behaviour in the shop. In particular, they had not studied whether it could have warranted his placement to the sobering-up centre. The applicant pointed out that the domestic courts had neither heard the shop assistant, Ms V., nor the shop security guard, Mr G. Those witnesses made their statements for the first time on 14 May 2005, that is after the Court had communicated the applicant's complaint to the Government. Furthermore, the domestic courts had not called any witnesses who could have observed the applicant's behaviour prior to his admission to the centre. Moreover, his behaviour in the centre also had never been the subject of examination by the domestic courts. The applicant, relying on the list of witnesses heard by the Lomonosovskiy District Court and the District Court's findings, stressed that the mere reason for his admission to the centre had been the fact that he had allegedly been drunk and that his appearance was “in disorder”.

28. The applicant further stressed that there had been no objective scientific data confirming his state of alcohol intoxication as no specimen of his breath, blood or urine had been taken for analysis on 11 October 2001. The applicant pointed out that the observations of his appearance (speech, walk, and so on) by the police officers and the medical assistant in the centre could not suffice for the conclusion that he was under the influence of alcohol and that he was in a moderate state of intoxication.

B. The Court's assessment

1. Admissibility

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Scope of the case

30. The Court observes from the outset that, as was not disputed by the parties, the applicant's arrest and subsequent detention in the sobering-up

centre of the Arkhangelsk Town Police Department from approximately 10.30 p.m. on 11 October 2001 to 9.40 a.m. on 12 October 2001 amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

31. The Court further observes that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds of deprivation of liberty and that only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, *inter alia, Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV, and *Vasileva v. Denmark*, no. 52792/99, § 34, 25 September 2003). At the same time the Court notes that the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified under more than one sub-paragraph (see *Eriksen v. Norway*, 27 May 1997, § 76, *Reports of Judgments and Decisions* 1997-III, and *Enhorn v. Sweden*, no. 56529/00, § 34, ECHR 2005-I).

32. Both parties agreed that the applicant's detention was imposed pursuant to paragraph 18 of the Regulations on Medical Sobering-up Centres ("the Regulations", see paragraph 23 above). The Government maintained that the applicant's detention should be examined under Article 5 § 1 (e) in that the applicant had been in a state of alcohol intoxication in a public place and his appearance offended human dignity and public morals. It is therefore common ground that the deprivation of liberty in issue was not covered by sub-paragraphs (a), (b), (c), (d) or (f). The Court sees no reason to hold otherwise. It must accordingly ascertain whether or not the applicant's confinement was justified under sub-paragraph (e), that is whether it can be regarded as a form of "lawful detention of ... alcoholics" within the meaning of that provision.

(b) General principles

33. Before embarking on an analysis of the justification for the applicant's detention under sub-paragraph (e) of Article 5 § 1 of the Convention, the Court considers it necessary to reiterate the principles which govern the authorities' obligations under that Convention provision.

34. The Court reiterates that Article 5 § 1 (e) of the Convention should not be interpreted as only allowing the detention of "alcoholics" in the limited sense of persons in a clinical state of "alcoholism". There is nothing in the text of Article 5 to suggest that this provision prevents that measure from being applied by the State to an individual abusing alcohol, in order to limit the harm caused by alcohol to himself and the public, or to prevent dangerous behaviour after drinking. On this point, the Court observes that there can be no doubt that the harmful use of alcohol poses a danger to society and that a person who is in a state of intoxication may pose a danger to himself and others, regardless of whether or not he is addicted to alcohol.

Therefore, under Article 5 § 1 (e) of the Convention, persons who are not medically diagnosed as "alcoholics", but whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, can be taken into custody for the protection of the public or their own interests, such as their health or personal safety. At the same time, it means that Article 5 § 1 (e) of the Convention does not permit detention of an individual merely because of his alcohol intake (see *Witold Litwa v. Poland*, no. 26629/95, §§ 61-64, ECHR 2000-III, and *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 42, 8 June 2004).

35. The Court further reiterates that under Article 5 of the Convention any deprivation of liberty must be "lawful", which includes a requirement that it must be effected "in accordance with a procedure prescribed by law". On this point, the Convention essentially refers back to national law and states an obligation to comply with its substantive and procedural provisions. It also requires that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *K.-F. v. Germany*, 27 November 1997, § 63, *Reports of Judgments and Decisions* 1997-VII). The detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it must also be necessary in the circumstances (see *Witold Litwa*, cited above, § 78, and *Enhorn*, cited above, § 42).

(c) Application of the general principles to the facts of the present case

36. Turning to the facts of the present case, the Court once again reiterates that there is no dispute between the parties as to the fact that the police, when arresting the applicant and placing him in the sobering-up centre, followed the procedure provided for by paragraph 18 of the Regulations (see paragraph 23 above). The Court therefore considers that the applicant's detention had a legal basis in Russian law.

37. The Court further notes that the essential statutory conditions for the application of the measures laid down in paragraph 18 of the Regulations are, first, that the person concerned is in a public place in a state of alcohol intoxication and, second, that either his appearance offends human dignity and public morals, or his condition is such that he is unable to walk unaided, or his behaviour endangers his own or public safety. In this connection, the Court reiterates, and the Government insisted on that point, that the domestic courts, while finding that the applicant's detention had been lawful, relied on the two grounds: the applicant's state of alcohol intoxication and his appearance in a public place in a condition which, in their view, was offensive to public morals and human dignity (see

paragraphs 18 and 26 above). The Court, moreover, has the task of establishing whether the applicant's detention was "the lawful detention" of an "alcoholic", within the autonomous meaning of the Convention as the Court has explained in paragraphs 34 and 35 above.

(i) Whether the applicant was under the influence of alcohol

38. The Court firstly reiterates the Government's argument that on 11 October 2001 the applicant was in a moderate state of alcohol intoxication. The Government supported their assertion with a copy of medical report no. 22 drawn up on the applicant's admission to the sobering-up centre. The applicant, without disputing the fact of his alcohol input, argued that there was no objective medical evidence, such as results of a breathalyser or blood test, to support the authorities' conclusion that he had been moderately drunk.

39. The Court is mindful of the ambiguity of the terms used by the applicant. Furthermore, it does not lose sight of the fact that the applicant raised the present argument for the first time in his observations lodged with the Court in July 2005. He did not dispute the fact of the alcohol intoxication before any domestic court (see paragraph 17 above). Furthermore, the applicant did not dispute the medical qualification or impartiality of the medical assistant, Ms S., whose observations had been recorded in medical report no. 22 and who had made the finding pertaining to his state of intoxication. Therefore, the Court, seeing no reason to reach a contrary conclusion, finds it established that on 11 October 2001, on admission to the sobering-up centre, the applicant was under the influence of alcohol. In other words, the matter was covered by the notion of "alcoholic" in sub-paragraph (e) of Article 5 § 1 of the Convention (see, for similar reasoning, *Hilda Hafsteinsdóttir*, cited above, § 42).

(ii) Whether the applicant's detention was free from arbitrariness

40. Taking the principles laid down in paragraphs 34 and 35 above into account, the Court further observes that the essential criteria, when assessing the "lawfulness" of the detention of an "alcoholic" under Article 5 § 1 (e) of the Convention, are whether the person concerned behaved, under the influence of alcohol, in such a way that he posed a threat to the public or endangered his own health, well-being or personal safety, and whether detention of the intoxicated person was the last resort to safeguard the individual or the public interest, because less severe measures have been considered and found to be insufficient. When one of these criteria is not fulfilled, the basis for the deprivation of liberty does not exist (see *Enhorn*, cited above, § 44 and *Witold Litwa*, cited above, § 78).

41. In this connection, the Court reiterates that, as the relevant domestic courts' decisions indicate, the applicant was arrested at 9.20 p.m. on 11 October 2001 and placed in the sobering-up centre because his

appearance, in particular his unsteady walk, his incoherent speech, the strong smell of alcohol on his breath and difficulty in staying upright, offended human dignity and public morals (see paragraph 18 above).

42. The Court does not lose sight of the Government's argument that the applicant's allegedly aggressive behaviour in the shop prior to his arrest on 11 October 2001 was an additional reason warranting his confinement in the sobering-up centre. The applicant disputed the Government's version of events, noting that it was based on written statements by a shop assistant, Ms V., and a shop security guard, Mr G., which they had made almost four years after the events under consideration. Bearing in mind the primary role played by national authorities, notably courts, in interpreting and applying national law, the Court finds it particularly regrettable that it has to resolve the difference of opinion between the applicant and the Government in a situation when, and this was the argument on which the Government strongly relied in their submissions, at no point in the proceedings did the domestic courts review the applicant's behaviour prior to his admission to the sobering-up centre, and determined whether it had presented a danger to the applicant's own or public safety, thus necessitating his detention in the sobering-up centre. Before embarking on the analysis of other matters which could have warranted the authorities' conclusion that it was necessary to detain the applicant, the Court considers it important to stress that there can be no question of the authority of a State in the exercise of its police power to regulate the management and use of alcohol with a view to preventing or limiting harm which an intoxicated person is capable of causing to himself or to public order. The right to exercise this power is so manifest in the interest of public health and welfare that it is unnecessary to enter into a discussion of it beyond saying that it is too firmly established to be successfully called into question. The Court further observes that State regulation could take a number of valid forms. A State might establish a programme of compulsory treatment for those addicted to alcohol, or introduce a measure of requiring short periods of involuntary confinement for intoxicated persons. In both cases the limitation imposed on the individual's right to liberty would only be justified by the interests of the protection of the well-being of the individual or others around him.

43. The Court reiterates that while declaring the applicant's detention in the sobering-up centre to be lawful the domestic courts justified the detention by the applicant's physical appearance, which, according to them, being under the influence of alcohol was offensive to human dignity and public morals. Although not disputing the State's interest in protecting public morality, the Court, having regard to the prominent place which the right to liberty holds in a democratic society, considers that detention of an individual for the mere reason that his physical appearance, under the influence of alcohol, presents an insult to public morals, is incompatible with the purpose of sub-paragraph (e) of Article 5 § 1 of the Convention

(see *Witold Litwa*, cited above, § 62). An offensive physical appearance, standing alone, is not a sufficient ground upon which to justify detention; this rationale would be only a step away from introducing a system of compulsory confinement for any abnormal appearance which might be perceived by some as offensive or insulting to human dignity and public morality. Mere public intolerance or animosity cannot justify the deprivation of a person's liberty, particularly so because the loss of liberty produced by the detention is more than a loss of freedom from confinement, since it can engender adverse social consequences for the individual.

44. However, while finding the reasoning employed by the Russian courts to justify the applicant's detention in the sobering-up to be inexplicably inadequate, the Court cannot overlook other evidence in the case which supports the Government's argument that the applicant's aggressive and offensive behaviour in the shop and, accordingly, his causing a disturbance in a public place and posing a danger to others was the main and sufficient reason for the applicant's detention. In particular, on the basis of the written statement by the shop assistant, Ms V., and shop guard, Mr G., as well as the official reports filed by the police officers in the aftermath of the events on 11 October 2001, the Court finds it established that in the evening of 11 October 2001 the applicant had a heated argument in the shop with assistant V. Following the applicant's refusal, accompanied by the use of offensive language and threats, to leave the shop, the police were called and escorted the applicant from the shop. In the street the applicant continued his unruly conduct attempting to start a fight with the police officers, waving his hands about, using offensive language and throwing his bag around. Similar behaviour continued in the police car and later in the sobering-up centre. In these circumstances the Court is able to conclude that the applicant's arrest and subsequent detention in the sobering-up centre were effected on account of his conduct in a state of serious intoxication, causing a disturbance in a public place and presenting a danger to other individuals or himself, as described in paragraph 18 of the Regulations (see paragraph 23 above). The Court is of the opinion that the police had sufficient reasons to detain the applicant in the centre until he had sobered up, having given serious regard to his right to liberty and having balanced it against the public interests of maintaining order and guaranteeing security of other individuals. The Court further considers that the police had no other means at their disposal but to detain the applicant, that is to say the applicant's detention was the last resort in the circumstances of the case.

45. To sum up, although the domestic courts' reasoning puzzlingly made no express reference to the applicant's bizarre, offensive and aggressive behaviour as the main justification for his detention, the Court is satisfied on the evidence before it that the detention in question conformed to the national substantive and procedural rules and that it was called for by the

need to restore order and protect others from the applicant and the applicant from himself. It also appears that the police contemplated less serious measures, found them insufficient to safeguard the public interest and reasonably considered that it was necessary to detain the applicant (see, for similar reasoning, *Hilda Hafsteinsdóttir*, cited above, § 52). Moreover, the Court considers that by releasing the applicant immediately after he had sobered up and gone through the administrative formalities the authorities struck a fair balance between the need to safeguard public order and interest of other individuals and the applicant's right to liberty (see, by contrast, *Enhorn*, cited above, § 55).

46. In these circumstances, the Court finds that the applicant's detention in the present case can be considered "lawful" under Article 5 § 1 (e) of the Convention.

47. In conclusion, the Court finds that there has been no violation of Article 5 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant, relying on a number of Convention provisions, complained that the police officers had applied a torture method, known as "the swallow" to him, that the domestic courts had misinterpreted his claims, had incorrectly applied the procedural law, had erred in assessing the evidence before them and had made incorrect findings, and that the police had not followed the procedure during his arrest, by failing to draw up a record of his arrest and to provide him with legal assistance, performing a body search on him and seizing his personal belongings and cash.

49. Having regard to all the material in its possession, the Court finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the detention in the sobering-up centre of the Arkhangelsk Town Police Department admissible and the remainder of the application inadmissible;

2. *Holds* by four votes to three that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Rozakis, Spielmann and Jebens is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES ROZAKIS, SPIELMANN AND JEBENS

1. We are unable to agree that there has been no violation of Article 5 § 1 of the Convention. As a matter of principle, our opinion differs from that of the majority as this judgment opens the door to a relaxed approach in so far as justification for detention is concerned and reverses the spirit of subsidiarity, as solemnly reaffirmed at the Interlaken Conference in 2010.

Personal liberty is the principle and detention should be the exception

2. Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty. Detention is compatible with the Convention only in very specific circumstances. Only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, *inter alia, Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV, and *Vasileva v. Denmark*, no. 52792/99, § 34, 25 September 2003).

3. The present case concerns the overnight detention of the applicant in a sobering-up centre. The domestic authorities reasoned that the applicant's detention had been warranted by his physical appearance, which according to them, had been offensive to human dignity and public morals, under the influence of alcohol.

4. However, (a) the domestic courts never determined whether the applicant had posed a danger to himself or to public safety, and (b) there was no evidence that the applicant's detention was called for as a measure of last resort, as the domestic authorities had failed to consider other measures that might have been sufficient for the protection of the public interest.

5. Very few cases have arisen before the Court under Article 5 § 1 (e) concerning the detention of "alcoholics".[1] In the case of *Witold Litwa v. Poland* (no. 26629/95, ECHR 2000-III) the Court developed an approach which allows the lawfulness of the detention of an "alcoholic" to be assessed within the meaning of that provision. Adopting a relaxed approach, it stressed that Article 5 § 1 (e) applied not only to cases of detention of "alcoholics" in the limited clinical meaning of the term, but also to cases of detention of persons under the influence of alcohol.[2] However, the Court

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[1] *Witold Litwa v. Poland*, no. 26629/95, ECHR 2000-III; *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, 8 June 2004.

[2] In his concurring opinion, Judge Vanni Bonello rightly criticised the reasoning of the majority in the following terms:
"...

insisted that, for the detention of such person to be considered "lawful", two additional criteria had to be present: the person must have posed a danger to himself or to public safety, and the detention must have been a measure of last resort, after the domestic authorities had considered other measures but had found them to be insufficient for the protection of the public interest.

Neither of these two criteria was complied with by the domestic authorities in the present case.

6. Resolving the factual circumstances of the case, the Court concludes in paragraph 44 that the applicant's arrest and subsequent detention in the sobering-up centre were effected on account of his conduct while in a state of serious intoxication, causing a disturbance in a public place and presenting a danger to other individuals or to himself. This finding is based on a disputed version presented by the Government, relying on written statements by a shop assistant and a shop security guard made almost four years after the events under consideration (paragraph 42). The factual findings of the Court go far beyond the findings of the domestic courts. This

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The majority has agreed, firstly, that the term "alcoholics" should be understood in its ordinary meaning (persons suffering from a clinical addiction to alcohol); secondly, that it is impermissible to add to the exhaustive list of exceptions set out in Article 5; and, finally, that only a restrictive interpretation should be given to the term "alcoholics". It then, surprisingly in my view, proceeds to distort substantially the ordinary meaning of "alcoholics" to make it coextensive with, and inclusive of, persons who are well outside the category of "alcoholics" and belong to an extrinsic group – those temporarily under the influence of alcohol. Both are lumped together uncomfortably in the same basket.

This approach is, in my view, as anomalous as it is dangerous. The Court has, for the first time ever, and with a vengeance, departed from a healthy tradition, so far nurtured with religious fervour, of not adding to the list of exceptions which justify deprivations of liberty. The present judgment is a quantum leap backwards I cannot bring myself to take. And this novel approach is alarming in so far as once the process of augmenting the list of reasons justifying a deprivation of liberty has been set in motion, there is no guessing where it will stop. Before, only alcoholics could lawfully be deprived of their liberty. Now it is alcoholics *and* intoxicated persons. Tomorrow?

This is a far cry from "interpreting the Convention as a living instrument". I am all for expanding the horizons of the Convention, so long as this dilation pursues the purposes of strengthening the Convention's aims: that of promoting and reinforcing the rule of human rights law. In the present instance, the result achieved was manifestly the opposite. It appears to me as judicial activism to *restrict* the compass of the enjoyment of human rights. The majority has now vested additional powers in governments to deny persons their freedom. It has substantially abridged the protection of the individual. This hardly squares, in my view, with "interpreting the Convention as a living instrument".

I am aware that even persons who are not alcoholics, but in a transient state of intoxication, can pose a danger to themselves and to others. I favour measures restraining their ability to inflict injury. Enactments aimed at controlling their harmful potential would receive all my support. These would include their being escorted to their place of abode, or to hospital as the case may be, depriving them of the use of their vehicles and prosecuting them for nuisance and disorderly conduct should that be the case. Where I – and I believe the Convention – draw the line is at norms which allow persons who are not alcoholics to be arrested and detained when they have not committed any criminally relevant act."

raises a methodological issue, which will be dealt with separately in the second part of the present dissenting opinion. It suffices to mention here that the sole justification for the applicant's detention in the sobering-up centre was his physical appearance, which, according to the domestic authorities, had been offensive to human dignity and public morals as a result of his inebriation.

7. In paragraph 43 of the judgment, the Court rightly states as follows:

> "Although not disputing the State's interest in protecting public morality, the Court, having regard to the prominent place which the right to liberty holds in a democratic society, considers that detention of an individual for the mere reason that his physical appearance, under the influence of alcohol, presents an insult to public morals, is incompatible with the purpose of sub-paragraph (e) of Article 5 § 1 of the Convention (see *Witold Litwa*, cited above, § 62). An offensive physical appearance, standing alone, is not a sufficient ground upon which to justify detention; this rationale would be only a step away from introducing a system of compulsory confinement for any abnormal appearance which might be perceived by some as offensive or insulting to human dignity and public morality. Mere public intolerance or animosity cannot justify the deprivation of a person's liberty, particularly so because the loss of liberty produced by the detention is more than a loss of freedom from confinement, since it can engender adverse social consequences for the individual."

Precisely for these reasons, and in contrast with the majority view, we are of the opinion that the applicant's detention in the present case cannot be considered "lawful" under Article 5 § 1 (e) of the Convention.

8. We would like to add that neither the domestic authorities nor the Government provided any examples of less severe measures which could have been considered for the applicant. In fact, it appears that the domestic law does not envisage such measures, providing no alternative to deprivation of liberty in circumstances similar to those in which the applicant found himself.[1]

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[1] Of course we do not underestimate the serious problem which is plaguing Russian society. Russia's rate of alcohol consumption has been among the highest in the world. According to the Bureau of European Affairs, some 15 million is the conservative estimate of the number of chronic alcoholics in Russia. The number of heavy drinkers is three or four times higher. Many heavy drinkers, who would be classified as alcohol-dependent in other countries, go undiagnosed and untreated in Russia. One study suggests that between 1987 and 1992 the annual per capita consumption of alcohol rose from about 11 litres of pure alcohol to 14 litres. Consumption in the late 1990s was estimated to be 15 litres of pure alcohol per Russian. The World Health Organisation suggests that 8 litres of pure alcohol per person per year is likely to cause major medical problems. Among the adverse consequences: between 25,000 and 40,000 deaths in Russia annually from alcohol poisoning, and shortened life expectancy. Alcoholism, particularly among men, is the third leading cause of death after cardiovascular diseases and cancer. For various reasons, Russian men born in 1999 have a life expectancy of only 59.8 years, four years less than those born in 1990. It seems that the sobering-up centres are considered to perform an

Reversing the spirit of Interlaken

9. The present case raises an important issue of principle. It is, to the best of our knowledge, the first time that the Court has embarked on a factual investigation running counter to the spirit of Interlaken, where the principle of subsidiarity was solemnly reaffirmed.

10. In paragraph 42 of the judgment, the majority utters only timid regrets that in the present case the task entrusted to domestic courts needs to be done by the Strasbourg Court itself:

> "... Bearing in mind the primary role played by national authorities, notably courts, in interpreting and applying national law, the Court finds it particularly regrettable that it has to resolve the difference of opinion between the applicant and the Government in a situation when, and this was the argument on which the Government strongly relied in their submissions, at no point in the proceedings did the domestic courts review the applicant's behaviour prior to his admission to the sobering-up centre, and determined whether it had presented a danger to the applicant's own or public safety, thus necessitating his detention in the sobering-up centre."

11. Notwithstanding the fact that it finds the reasoning of the domestic courts "inexplicably inadequate" (paragraph 44) "puzzlingly [making] no express reference to the applicant's [allegedly] bizarre, offensive and aggressive behaviour as the main justification for his detention" (paragraph 45) the majority conclude on the basis of highly disputable and disputed facts, supported by uncertain testimonial evidence (see above in paragraph 6 of our opinion), that the applicant's arrest and subsequent detention in the sobering-up centre were effected on account of his conduct in a state of serious intoxication, causing a disturbance in a public place and presenting a danger to other individuals or himself.

12. At no point in the proceedings did the domestic courts review the applicant's behaviour prior to his admission to the sobering-up centre, or determine whether it had presented a danger to the applicant's own or public safety, thus necessitating his detention in the sobering-up centre. It follows that even though, as the Government submitted, other facts that could have warranted the authorities' conclusion about the need to admit the applicant to the sobering-up centre may have existed, they were not mentioned in the domestic courts' decisions and it is not the Court's task to establish such facts or to take the place of the national authorities who ruled on the issue of detention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006, and *Aleksandr Makarov v. Russia*, no. 15217/07, § 128, 12 March 2009).

13. This judgment is a dangerous precedent, undermining as it does the spirit of Interlaken.

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important social function: they take off the streets drunken individuals who endanger or are liable to endanger themselves or the public. Accordingly, the attitude of Russian society to the sobering-up centres is also twofold.