



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

THIRD SECTION

CASE OF ROMANOV v. RUSSIA

(Application no. 63993/00)

JUDGMENT

STRASBOURG

20 October 2005

FINAL

20/01/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Romanov v. Russia,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 April 2004 and 29 September 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 63993/00) 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, Ilya Eduardovich Romanov (“the applicant”), on 16 October 2000.

2. The applicant, who had been granted legal aid, was represented by Mr A.A. Rekant, a member of *Комитет за Гражданские Права*, a Human Rights NGO based in Moscow. The Russian Government (“the Government”) were represented by Mr P.A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the conditions in the psychiatric ward of the detention facility “Butyrskiy”, in which he was confined for over a year and three months, were incompatible with Article 3 of the Convention. He alleged that the length of his detention on remand had been excessive and in breach of Article 5 § 3 of the Convention. He alleged a violation of Article 6 of the Convention in that he had been denied the right to appear before a trial court.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 1 April 2004, the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1967. He appears to be currently detained in Ukraine.

A. The applicant's detention

9. At 8 p.m. on 12 October 1998 the applicant, who was allegedly in a state of intoxication, was arrested in the street by a police patrol and taken to a police station. He was then searched and a certain amount of marijuana was allegedly found on him.

10. At 12:15 a.m. on 13 October 1998 the applicant was detained, by a decision of an investigator of the Akademicheskii District Police Department of Moscow, on suspicion of illegal acquisition and possession of drugs. The investigator referred to the suppression of crime and prevention of the risk of the applicant's absconding as the reasons for the decision.

11. On the same day the applicant was charged with the illegal acquisition of drugs for personal consumption and possession.

12. On 15 October 1998 the investigator issued an order to detain the applicant on remand, which was approved by a public prosecutor on the same day. The order referred to the applicant's personality, the danger posed to the public by the crime with which he had been charged and the risk of his absconding.

13. On 16 October 1998 the applicant was confined in the detention facility IZ-48/2 "Butyrskiy" in Moscow.

14. By a decision of the investigating authority the applicant was subjected to a psychiatric examination.

15. On 19 November 1998 he was examined by experts from the Alekseev Psychiatric Hospital of Moscow. As the experts had difficulties in reaching conclusions the applicant was placed in the Serbskiy Forensic Psychiatry Institute in Moscow, which examined him from 10 December 1998 to 6 January 1999. It was noted that he had never previously been

found to be suffering from a mental illness. The commission of experts diagnosed the applicant as suffering from profound dissociative personality disorder (innate psychopathy) and found that he could not be held responsible for the offence with which he had been charged. The experts recommended that the applicant undergo psychiatric treatment on an out-patient basis at his place of residence.

16. The period of the investigation and the applicant's detention in custody were extended twice by the public prosecutor's office, first until 12 January 1999 and later until 12 February 1999.

17. On 10 February 1999 the investigation was completed and the applicant's criminal case was submitted to the Gagarinskiy District Court of Moscow.

B. Court proceedings

18. On 28 June 1999 the Gagarinskiy District Court of Moscow dismissed the applicant's request for release and ordered, while giving no reasons and no chance for the defence to object, an additional psychiatric examination. On 23 July 1999 the decision was upheld by the Moscow City Court on appeal.

19. The applicant's examination by the commission of experts of the Serbskiy Forensic Psychiatry Institute on 25 August 1999 revealed no significant changes in the applicant's memory, attention and mental faculties. As the commission was uncertain as to the state of the applicant's mental health, it recommended he undergo a second psychiatric examination as an in-patient.

20. The latter was ordered by the District Court on 20 September 1999 and carried out by the Serbskiy Forensic Psychiatry Institute from 24 November 1999 to 24 December 1999. The commission of experts found that the applicant suffered from a psychological disorder in the form of profound dissociative psychopathy, that he had committed the offence in a deranged state of mind and that at present he had, *inter alia*, a perverted perception of the circumstances relevant to the criminal case against him and could not give adequate evidence about them. It was concluded this time that the applicant was in need of placement in a mental hospital for compulsory treatment.

21. The hearing of the case was adjourned on a number of occasions because of the failure of duly notified witnesses to appear. By decisions of 22 February 2000 and 3 March 2000 the District Court ordered the district police to bring the witnesses to the court.

22. On 10 March 2000 the District Court again dismissed the defence's request for the applicant's release, stating as follows:

“Having considered the application [for release], in view of the nature of the crime committed, the court considers that it cannot be granted.”

23. On the same day the District Court rejected the applicant's request to appear before the court on the ground that ill detainees were not transported to court from the detention facility IZ-48/2.

24. On 3 April 2000 the District Court again dismissed a request by the applicant's lawyers for the applicant to appear personally at the hearing in order to give evidence in person and to be taken to the court for that purpose. The court explained its decision by reasoning that the statement of a person who had been legally established as mentally disturbed could not be accepted as evidence. The District Court also rejected a request by the applicant's lawyers to carry out an inquiry at the detention facility IZ-48/2 to clarify why they had refused to transport the applicant to the court.

25. On 4 April 2000 the District Court examined the case at a public hearing in the presence of the prosecutor and the applicant's lawyer. At the hearing the court examined a member of the commission of experts which had carried out the second in-patient psychiatric examination of the applicant recommending his placement in a mental hospital. The applicant's lawyers' request to examine an expert representing the initial opinion, which had found the applicant's out-patient treatment at his place of his residence to be sufficient, was rejected by the court.

26. The court found that at 5 p.m. on 12 October 1998 the applicant had acquired marijuana for personal consumption and kept it in his possession until being detained by the police three hours later. Such actions were punishable under Article 228 § 1 of the Criminal Code of the Russian Federation. The court noted that, according to the expert opinion, the applicant had committed the offence with which he had been charged in a deranged state of mind and that he was in need of compulsory treatment in a mental hospital. The court held that the applicant had committed the offence in a state of diminished responsibility, that he should therefore not be deemed responsible and that he should be placed in a mental hospital for compulsory treatment.

27. The applicant's lawyers appealed against the decision on the grounds of, *inter alia*, the applicant's absence at the trial and the resulting failure of the court to examine his personality; the court's refusal to examine the first expert in order to settle the inconsistency between the two expert opinions in the case; and the court's failure to explain why preference was given to the second opinion. The defence referred to certificates issued by the detention facility IZ-48/2 showing a positive assessment of the applicant's behaviour and the satisfactory state of his physical and mental health. They also pointed out that the applicant was a good family man and that there was no indication that he had ever inflicted harm on others.

28. On 25 April 2000 the Moscow City Court dismissed the applicant's appeal. It stated that it did not find any inconsistency between the two expert opinions or any reasons for not giving credence to the second one.

The City Court's decision contains no comments in relation to the applicant's absence at the trial.

29. On 23 May 2000 the applicant was transferred from the detention facility IZ-48/2 to the Moscow Psychiatric Hospital no. 7. It appears that he was later transferred to a psychiatric hospital in Nizhniy Novgorod from which he was discharged on 22 February 2001.

30. On 11 February 2003 the Court communicated the present case to the Government.

31. On 24 April 2003 the Moscow Public Prosecutor's Office brought an application for supervisory review of the case before the Presidium of the Moscow City Court. The prosecutor claimed that the trial court should have given reasons for ignoring the first expert opinion and basing its decision to place the applicant in a mental hospital on the second expert opinion. It was noted that the applicant's state of health had been essentially the same at the time of the two psychiatric examinations and that the expert, who was examined by the court, had failed to explain why the recommended type of treatment had been changed, that question never being resolved at the trial.

32. On 5 June 2003 the Presidium of the Moscow City Court agreed with the arguments advanced by the prosecutor, quashed the decisions of 4 and 25 April 2000 and remitted the case for a fresh examination by another composition of judges of the Gagarinskiy District Court of Moscow.

33. On 9 July 2003 the District Court held a hearing in the presence of the prosecutor and the applicant's lawyer. The court held that the applicant had unlawfully acquired and possessed drugs but that he should not be held criminally responsible since he had been in a deranged state of mind. The court further held that no compulsory medical measures should be imposed on the applicant, who had already undergone treatment following the court's decision of 4 April 2000.

34. The applicant's lawyer appealed, referring, *inter alia*, to the applicant's absence at the first-instance hearing.

35. On 4 September 2003 the Moscow City Court quashed the decision of 9 July 2003 and discontinued the criminal proceedings against the applicant pursuant to an Amnesty Act of 26 May 2000.

C. Conditions of detention in the psychiatric ward of IZ-48/2

36. The applicant was kept in the detention facility IZ-48/2 "Butyrskiy", also referred to as SIZO-2, in Moscow from 16 October 1998 until 23 May 2000.

37. The applicant was first held in a cell under the general regime. In January 1999, after he had undergone a psychiatric examination at the Serbskiy Forensic Psychiatry Institute, he was placed in the psychiatric ward of the detention facility SIZO-2.

1. The applicant's account

(a) Cell no. 404

38. The applicant submitted that he had been held in cell no. 404 for the following approximate periods (give or take two or three days): from 6 January 1999 until 28 April 1999 and from 24 December 1999 until 25 May 2000.

39. It measured 32 sq. m. It was three metres high with two windows of 1.7 by 1.7 metres equipped with shutters, which were made of metal plates five or six centimetres wide welded at an angle of forty-five degrees so that inmates could not see out of them and very little light could come in.

40. The cell was dimly lit with one bulb of 40 to 60 watts. The temperature in winter was about 15 to 16 degrees centigrade.

41. There was, however, a hot water supply, and the inmates received soap from preachers who regularly visited the cell.

42. A 15- or 20-minute shower was allowed only once a week.

43. Outdoor walks in exercise areas on the roof of the prison building did not exceed 30 to 40 minutes per day.

44. The cell contained 24 bunk beds and held up to 26 inmates.

45. The applicant and other inmates did not often have individual bedding. Thus, on his arrival the applicant was given neither individual bedding nor eating utensils. He went on a hunger strike and lodged a complaint with the Ministry of Justice. Only four days later mattresses, bed linen and eating utensils were given to him and his cell mates.

(b) Cell no. 415

46. On 28 April 1999 the applicant was put in cell no. 415 where he stayed until September 1999.

47. The cell, measuring 11.25 sq. m, was three metres high and had one window measuring 2.9 sq. m equipped with metal shutters of the same type as in cell no. 404. The cell contained six bunk beds and held between three and five inmates.

48. The summer of 1999 in Moscow was extremely hot. While the temperature outside was 40 degrees centigrade, in the cell it probably reached 50 degrees centigrade. The metal shutters heated up and glowed. To let air in the prison authorities kept a small opening in the cell door, designed to pass food to prisoners, open for an hour in the evenings, but it did not help.

49. During the period of the applicant's detention in the cell it was disinfected only once.

(c) Cell no. 408

50. At the beginning of September 1999 the applicant was transferred to cell no. 408 which was similar to cell no. 404 except that the windows were equipped, in addition to the metal shutters, with a metal construction resembling a cage which prevented inmates from approaching the window.

51. On 24 November 1999 the applicant was sent to the Serbskiy Forensic Psychiatry Institute for a second psychiatric examination and then, a month later, transferred back to cell no. 404.

(d) General observations

52. Detainees received extremely poor medical care. For the whole period of the applicant's confinement in the psychiatric ward of the Butyrskiy detention facility he was never examined by a psychiatrist. In May-June 1999 the applicant fell ill with cold. His repeated requests for medical assistance were left unanswered for almost a month. Medical help was provided only after he had threatened to go on hunger strike. The applicant was twice infected with pediculosis. According to the report of the Serbskiy Forensic Psychiatry Institute of 25 August 1999, at the time of his detention the applicant was diagnosed as having scabies. The applicant alleged that his health had deteriorated as a result of the conditions of his detention.

53. The applicant repeatedly observed the beating of mentally ill detainees by their cell mates or the prison guards.

54. The cells were never inspected by the health authority. There was no proper ventilation. Food was of poor quality and not sufficient.

55. Approximately once a month prison guards conducted a search for prohibited objects, as a result of which many belongings of the detainees were stolen.

56. The choice of books was very poor.

2. *The Government's account*

57. According to the Government's observations of 21 June 2004, based on information provided by the head of the detention facility SIZO-2 and the health authority, the applicant was kept in three different cells described as follows: cell no. 415, from 25 April 1999 to 9 September 1999 (14.8 sq. m, 3.5 m. high, 1 window, 4 bunk beds, a lavatory, a wash stand, central cold-water supply, natural ventilation through a window); cell no. 408, from 9 September 1999 to 19 January 2000 (34.9 sq. m, 3.5 m. high, 2 windows, 9 bunk beds, a lavatory, a wash stand, central cold-water supply, natural ventilation through windows); cell no. 404, from 19 January 2000 to 23 May 2000 (35.6 sq. m, 3.5 m. high, 2 windows, 10 bunk beds, a lavatory, a wash stand, central cold-water supply, natural ventilation through windows).

58. According to the Government's letter of 24 December 2004, from 10 January 1999 until 23 May 2000 the applicant was detained in cell no. 408 and cell no. 415.

59. The Government acknowledged that the cells were overcrowded. During the period of the applicant's detention cell no. 408 contained 22 bunk beds and held up to 35 inmates (according to the letter of 24 December 2004 mentioned above).

60. Windows in the cells, measuring 1.1 m. by 1.15 m., were equipped with metal bars and window panes with wooden frames. The Government submitted that no metal shutters were installed on them. A reference was made to a report on the examination of the cells by the health authority on 11 May 2004 and the following statement by the head of SIZO-2 dated 11 May 2004:

“... None of the windows in the above-mentioned cells [cells 404, 408 and 415] has shutters on them.”

61. The authorities ran daily inspections of the technical conditions of the cells in order to ensure, in particular, that the windows had panes in them and bulbs were changed. Any damage was repaired in the shortest time possible. The cells were regularly inspected by the health authority, which checked that the heating, ventilation and lighting of the cells complied with the established requirements. The relevant records did not contain any indications of a violation of the above requirements.

62. The applicant had had outdoor walks for at least an hour per day. The inmates of each cell had walks in turn. There were several exercise areas on the roof of the building of the detention facility. Their size varied from 10.4 sq. m to 52.8 sq. m depending on the number of detainees kept in a cell.

63. Three hot meals were served daily. The applicant had also been able to buy food in the prison shop and receive food parcels from relatives.

64. As regards preventive measures against infectious diseases, on admission to the facility detainees underwent a medical examination and hygiene treatment. At least once a week they took a shower lasting not less than 15 minutes and had their bedding changed.

65. The applicant and other detainees had received proper medical care, including specialist treatment. Those infected with scabies were isolated. During the period of the applicant's detention, no mass infectious diseases had been recorded and the health authority had not been notified of any emergency cases of scabies or pediculosis. The medical personnel of the detention facility had to undertake daily rounds of the cells. Medical assistance could be provided in the in-patient unit of the facility or, where necessary, in other medical institutions of the penitentiary system or public hospitals.

66. Medical records of detainees concerning the period of the applicant's detention were destroyed on the expiry of a maximum period for keeping them. The records containing information on the number of detainees kept in the cells at the same time as the applicant had been destroyed as well, as the statutory one-year period for keeping them had expired.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure of 1960 (in force at the material time)

1. Detention on remand

Article 11 (1). Personal inviolability

“No one may be arrested otherwise than on the basis of a judicial decision or a prosecutor's order.”

Article 89 (1). Application of preventive measures

“When there are sufficient grounds for believing that an accused person may evade an inquiry, preliminary investigation or trial or will obstruct the establishment of the truth in a criminal case or will engage in criminal activity, as well as in order to secure the execution of a sentence, the person conducting the inquiry, the investigator, the prosecutor and the court may apply one of the following preventive measures in respect of the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or placement in custody.”

Article 92. Order and decision on the application of a preventive measure

“On the application of a preventive measure a person conducting an inquiry, an investigator and a prosecutor shall make a reasoned order, and a court shall give a reasoned decision specifying the criminal offence which the individual concerned is suspected of having committed, as well as the grounds for choosing the preventive measure applied. The order or decision shall be notified to the person concerned, to whom at the same time the procedure for appealing against the application of the preventive measure shall be explained.

A copy of the order or decision on the application of the preventive measure shall be immediately handed to the person concerned.”

Article 96. Placement in custody

“Placement in custody as a preventive measure shall be done in accordance with the requirements of Article 11 of this Code concerning criminal offences for which the law prescribes a penalty in the form of deprivation of freedom for a period of more than one year. In exceptional cases, this preventive measure may be applied in

criminal matters for which a penalty in the form of deprivation of freedom for a period of less than one year is prescribed by law.”

Article 97. Time-limits for pre-trial detention

“A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension of up to six months from the day of placement in custody may be effected only in cases of special complexity by a prosecutor of a constituent part of the Russian Federation ...

An extension of the time-limit for such detention beyond six months shall be permissible in exceptional cases and solely in respect of persons accused of committing serious or very serious criminal offences. Such an extension shall be effected by a deputy of the Prosecutor General of the Russian Federation (up to one year) and by the Prosecutor General of the Russian Federation (up to 18 months).

No further extension of the time-limit shall be permissible, and the accused held in custody shall be releasable immediately.

The documents of a completed investigation in a criminal case shall be produced for consultation by the accused and his defence counsel not later than one month before the expiry of the maximum time-limit for remand in custody, as prescribed in the second paragraph of the present Article. In the event of the accused being unable to consult the case documents before the expiry of the maximum time-limit for remand in custody, the Prosecutor General of the Russian Federation, [or] a prosecutor of a constituent part of the Russian Federation ... may, not later than five days before the expiry of the maximum time-limit for remand in custody, apply to the judge of the “oblast”, “krai” or comparable court for an extension of this time-limit.

Not later than five days from the day of receipt of the application, the judge must take one of the following decisions:

1. to extend the time-limit for remand in custody until the accused and his counsel have consulted the case documents and the case has been referred to the trial court by the prosecutor but, anyway, for not more than six months;
2. to reject the prosecutor's application and to release the person concerned from custody.

Under the same procedure, the time-limit for remand in custody may be extended, if necessary, to accede to a request by the accused or his counsel to pursue the preliminary investigation further.

If a court remits a case for further investigation when the time-limit for the accused's remand in custody has expired, but the circumstances of the case preclude any modification of the custody measure, the time-limit for the remand in custody shall be extended by the prosecutor supervising the investigation for up to one month from the date on which the case reaches him. Any further extension of the time-limit shall take account of the time spent by the accused in custody before the referral of the case to

court, and shall be effected in the manner and within the limits prescribed in the first and second paragraphs of this Article.

An extension of the time-limit for remand in custody in accordance with the present Article is subject to appeal to a court and to judicial review of its legality and justification under the procedure provided for in Articles 220¹ and 220² of the present Code.”

Article 101. Cancellation or modification of a preventive measure

“A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the circumstances of the case so require. The cancellation or modification of a preventive measure shall be effected by a reasoned order of the person carrying out the inquiry, the investigator or the prosecutor, or by a reasoned court decision after the case has been transferred to a court.

The cancellation or modification, by the person conducting the inquiry or by the investigator, of a preventive measure chosen on the prosecutor's instructions shall be permissible only with the prosecutor's approval.”

Article 223-1. Setting a date for a court hearing

“If the accused is kept in custody, the question of setting a date for a court hearing must be decided no later than 14 days from the seizure of the court.”

Article 239. Time-limits for examination of the case

“The examination of a case before the court must start no later than 14 days from the fixing of a hearing date.”

2. Proceedings concerning the commission of offences by persons of unsound mind

Article 407. Preparatory actions for court hearing

“... A trial court may summon to a hearing a person whose case is being examined unless that person's illness prevents him from appearing before the court. ...”

Article 409. Determination of case by court

“A trial court determines a case by its decision ... When rendering the decision the court shall determine the following questions:

1. whether an act posing a danger to the public and punishable under the criminal law has occurred;
2. whether the act has been committed by the person whose criminal case is being examined;

3. whether the person has committed the act in a deranged state of mind;
4. whether the person, after committing the offence, has developed a mental illness which makes it impossible for him to be conscious of or control his actions and whether such illness represents a temporary mental disorder merely requiring an adjournment of the proceedings;
5. whether a compulsory medical measure should be applied and which specific measure should be applied.”

Article 410. Court decision

“Having found it established that an act posing a danger to the public and punishable under the criminal law has been committed by a person in a deranged state of mind, ... the court shall render a decision ... by which the person is deemed not to be criminally responsible ... and is ordered to undergo a specific compulsory medical measure, or [the court shall render a decision by which] the proceedings are terminated and the person is not ordered to undergo any compulsory medical measure where that person does not pose any danger to the public on account of the offence he has committed or his state of health, which does not call for compulsory treatment. ...”

B. Criminal Code of 1996

Article 99. Compulsory medical measures

- “1. The court may impose the following compulsory medical measures:
- a) out-patient compulsory psychiatric observation and treatment;
 - b) compulsory psychiatric treatment in a mental hospital of a common type;
 - c) compulsory psychiatric treatment in a mental hospital of a special type;
 - d) compulsory psychiatric treatment in a mental hospital of a special type under close supervision. ...”

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

The relevant extracts from the General Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of

overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of

detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. The applicant complained about his conditions of detention in the psychiatric ward of the detention facility IZ-48/2 "Butyrskiy". He relied on Article 3 of the Convention, which provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

68. The Government acknowledged that the detention facility had been overcrowded. They submitted that a series of legislative, financial and other measures had been carried out in order to bring conditions of detention into compliance with domestic and international standards. As a result, at present the number of persons detained in the detention facility IZ-48/2 was half the number in 1998. As of 11 May 2004 there had been 308 detainees in the psychiatric ward of the detention facility in issue, which had a limit of 275 persons.

69. The Government pointed out that the authorities had had no intention of subjecting the applicant to inhuman or degrading treatment or of harming his health.

70. The applicant maintained his initial complaint.

A. Principles established by the Court's case-law

71. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (*Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119). However, to fall under Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (*Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

72. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Under the Convention provision in question the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (*Valašinas*, cited above, § 102; *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of their cumulative effects as well as the applicant's specific allegations (*Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

B. Application of the above principles to the present case

73. In the present case the applicant was held in the psychiatric ward of the detention facility IZ-48/2 “Butyrskiy” in Moscow, also referred to as SIZO-2. The Court assumes from the parties' submissions that the period of the applicant's detention in the above facility lasted from 10 January 1999 until 23 May 2000, excluding one month from 24 November to 24 December 1999 when he was at the Serbskiy Forensic Psychiatry Institute, that is, a total of a year, three months and thirteen days (see paragraphs 20, 38, 46, 50, 51, 57 and 58 above).

74. As regards the time spent in different cells, the applicant's submissions indicate that he spent about eleven and a half months in cells nos. 404 and 408, which both measured over 30 sq. m, and about four months in cell no. 415 measuring less than 15 sq. m. The Government first asserted that the applicant had been held in a smaller cell, no. 415, for four and a half months and in two bigger cells, nos. 408 and 404, for the rest of the time. However, no information was given in relation to the period between January and April 1999 (see paragraph 57 above). Later, the Government claimed that for the whole period of his confinement in the psychiatric ward the applicant had been held in cells 408 and 415. No information on how long he was held in each was provided (see paragraph 58 above).

75. Having regard to the above information of the parties, the Court will proceed on the assumption that the applicant was held in a smaller cell for about four and a half months and in a larger cell for eleven months.

76. The Court will first examine the conditions of detention in the bigger cell. The cell was 3 to 3.5 metres high and measured 32 sq. m, according to the applicant and 34.9 or 35.6 sq. m, according to the Government. Given the number of bunk beds, it was designed for 24 persons according to the applicant and 22 persons according to the Government (see paragraphs 44 and 59 above). It actually held up to 26 inmates according to the applicant and up to 35 inmates according to the Government (see paragraphs 44 and 59 above). The above numbers suggest that at any given time there was between 1 and 1.6 sq. m of space per inmate in the applicant's cell and that he did not always have a separate bed. Save for 30 to 40 minutes, according to the applicant, or one hour, according to the Government, of daily outdoor walks in exercise areas on the roof of the prison building, the applicant was confined to his cell for all the time.

77. The applicant's situation is comparable with that in the *Kalashnikov* case, in which the applicant had been confined to a space measuring 0.9-1.9 sq. m. In that case the Court held that such a severe overcrowding raised in itself an issue under Article 3 of the Convention (*Kalashnikov v. Russia*, no. 47095/99, §§ 96-97, ECHR 2002-VI). In the *Peers* case even a much bigger cell – namely that of 7 sq. m for two inmates – was noted as a relevant aspect for finding a violation of Article 3, albeit in that case the space factor was coupled with the established lack of ventilation and lighting (*Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). By contrast, in some other cases no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated by the freedom of movement enjoyed by the detainees during the day-time (*Valašinas*, cited above, §§ 103 and 107; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

78. Hence, as in those cases, the Court considers the extreme lack of space to be the focal point for its analysis of compatibility of the conditions of the applicant's detention with Article 3.

79. The Court observes further that as regards the applicant's medical care and other conditions of his detention, including heating, artificial lighting and ventilation, for the most part neither party submitted evidence which could satisfy the Court "beyond reasonable doubt" in whether they were acceptable from the point of view of Article 3. What can be taken into account, however, is that the applicant appears to have been allowed to take a shower once a week (see paragraphs 42 and 64 above) and that he became infected with scabies (see paragraph 52 above). The Court also notes the applicant's assertion that, in addition to the usual bars, there were metal shutters on the windows, which were constructed so that inmates could not see out of them and very little light could come in (see paragraphs 39 and 50 above). The Government did not initially contest this allegation. After the admissibility decision in the case they submitted that no metal shutters had been installed on the windows. A reference was made to a report on the inspection of the cells by the health authority on 11 May 2004 and the following statement by the head of SIZO-2 dated 11 May 2004:

"... None of the windows in the above-mentioned cells [cells 404, 408 and 415] has shutters on them."

The applicant submitted that these metal shutters had been removed throughout the "Butyrskiy" detention facility at the end of 2002 and that the Government's information reflected the situation as of 2004. The Government did not object in reply.

80. The Court accepts that in the present case there is no indication that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of violation of Article 3 (see *Peers*, cited above).

81. The Court considers that the conditions of detention, which the applicant had to endure for at least eleven months, must have undermined the applicant's human dignity and aroused in him feelings of humiliation and debasement. Whilst the Court notes with satisfaction that at present the number of persons detained in the "Butyrskiy" detention facility is half that in 1998 as a result of various measures aimed at bringing the conditions of detention into compliance with domestic and international standards, this does not detract from the wholly unacceptable conditions which the applicant had clearly had to endure at the material time.

82. The Court does not find it necessary to examine further the conditions of the applicant's detention in cell no. 415 as the above

considerations are sufficient to find a violation of Article 3 of the Convention.

83. In the light of the above, the Court finds that the applicant's conditions of detention, in particular the severe overcrowding and its detrimental effect on the applicant's well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment.

84. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

85. The applicant complained that his detention on remand had been excessive. He alleged a violation of Article 5 § 3 of the Convention, the relevant part of which provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

86. The Government denied this violation.

A. Period to be taken into consideration

87. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody under Article 5 § 1 (c) and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23, § 9, and *Labita*, cited above, § 147).

88. The Court consequently finds that the period to be taken into consideration in the present case began on 13 October 1998, when the applicant was detained on suspicion of having committed the offence, and ended on 4 April 2000, when the Gagarinskiy District Court of Moscow determined the charge against him. The period in issue therefore amounted to a year, five months and twenty-three days.

B. Reasonableness of the length of detention

1. Principles established by the Court's case-law

89. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be examined in each

case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudla*, cited above, § 110).

90. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and any well-documented facts stated by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita*, cited above, § 152). Arguments for and against release must not be “general and abstract” (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, p. 16, § 44).

91. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-00, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

2. Application of the above principles to the present case

(a) Grounds for detention

92. The Court observes that in the instant case the reasons for the applicant's detention on 13 October 1998 referred to by the authorities were the suppression of a crime of which the applicant was suspected and the risk of his absconding (see paragraph 10 above). The latter factor, together with the applicant's personality and the danger posed to the public by the crime with which he had been charged, underpinned the decision to place the applicant in detention on remand on 15 October 1998 (see paragraph 12 above). Subsequently the Gagarinskiy District Court of Moscow, in refusing to release the applicant, relied on “the nature of the crime committed” by

him (see paragraph 22 above) by which it appears the District Court meant the seriousness of the charge against the applicant.

93. The Court reiterates first that the danger of absconding cannot be gauged solely on the basis of the severity of the sentence risked; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 37, § 98). In the present case the investigating authority failed to mention any factual circumstances capable of showing the existence of the danger of the applicant's absconding. Nor did it explain in its decision what peculiarities of the applicant's personality warranted, in its view, his detention on remand.

94. As regards the danger posed to the public by the crime with which the applicant had been charged, namely the acquisition of drugs for personal consumption and possession, even assuming that there was a risk of prejudice to public order at the beginning, which does not appear in itself a persuasive consideration in the circumstances of the present case, it must have disappeared after a certain time (see *Tomasi*, cited above, p. 36, § 91). This reason undoubtedly did not suffice to justify the applicant's detention for more than a year.

95. The Court considers further that the reference by the District Court to the seriousness of the alleged offence as the only ground for the applicant's continued detention after he had spent a year and almost five months in custody could not justify such a long period of pre-trial detention (see, for example, *Scott*, cited above, p. 2401, § 78).

96. The Court accordingly concludes that the reasons relied on by the investigating authority and the court in their decisions were not sufficient to justify the applicant's being held in detention for the period in question.

(b) Conduct of the proceedings

97. According to the applicant, the case was not at all complex, involving only one charge against him. Thus, the investigation in the case had been completed as early as 10 February 1999. The two in-patient psychiatric examinations had lasted not more than two months. The adjournment of hearings in the case had not been attributable to the applicant's representatives as they had not been informed of the hearings concerned. As regards the hearings adjourned on account of the failure of witnesses to appear, no proper steps had been taken to execute the court's decisions that they be brought to the court.

98. The Government acknowledged that, when ordering the applicant's second psychiatric examination on 28 June 1999, the court had failed to give reasons for its decision. The Government further asserted that the length of the applicant's detention had been partially due to the applicant's

psychiatric examinations. The Government also submitted that the hearings in the case had been repeatedly adjourned because of the failure of the applicant's representatives and witnesses to appear.

99. The Court observes that it took the police four months to investigate the case. During that time the applicant underwent a psychiatric examination which found that he had committed the crime imputed to him in a deranged state of mind and that he did not need to be placed in a mental asylum, the out-patient psychiatric treatment being sufficient for his diagnosis. The Court observes further that on 28 June 1999, after four months had elapsed since the case was transferred to it, the Gagarinskiy District Court of Moscow, without seeing the applicant and without giving the defence a chance to object, decided to order a further psychiatric examination of the applicant. No reasons were advanced for such a decision. The second in-patient psychiatric examination was carried out four months after the above decision had taken effect and took a month. Three more months elapsed before the court examined the case. The Court notes that no evidence was submitted by the Government on which to contest the applicant's statements that his representatives had not been informed of the hearings which were adjourned on the ground of their failure to appear and that no steps had been taken to bring before the court the witnesses who had repeatedly failed to appear, thus protracting the proceedings.

100. The Court concludes that the length of the proceedings is attributable neither to the complexity of the case nor to the conduct of the applicant but to the lack of diligence and expedition on the part of the Gagarinskiy District Court of Moscow.

(c) Conclusion

101. In view of the above considerations the Court finds that there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

102. The applicant complained that, despite his numerous requests, he had never appeared before the Gagarinskiy District Court of Moscow. He alleged a violation of Article 6 § 1 of the Convention.

103. The Court considers that this complaint falls to be examined under Article 6 §§ 1 and 3 (c) of the Convention, which, insofar as relevant, provides:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

A. The parties' submissions

104. The applicant submitted that the trial court's reference to the refusal of the detention facility IZ-48/2 to bring him to court had not been based on true facts. Another reason advanced by the court for rejecting his request to appear at the hearing had been his criminal incapacity, which had allegedly made it impossible to accept his testimony as evidence. The applicant argued that such reasoning ran counter to the domestic law and that it had never been established before the decision of the Gagarinskiy District Court of Moscow of 4 April 2000 that he had been mentally disturbed or that he could not be held criminally responsible on account of his mental illness. He contended that it had been for the District Court to decide, *inter alia*, on his mental condition on the basis of all the evidence in the case and not merely the expert opinion. The applicant further pointed out that the certificates issued by the detention facility IZ-48/2 had given a positive assessment of his behaviour and stated that his physical and mental health was satisfactory.

105. The Government submitted that the decision of the Gagarinskiy District Court of Moscow not to summon the applicant had been based on the expert opinion according to which the applicant had not been conscious of, and could not control, his actions or perceive the circumstances relevant to the case and give evidence on them. The Government stated that the above decision of the District Court had been in compliance with Article 407 of the Code of Criminal Procedure, which left the question of the appearance of a mentally ill offender before the court to the latter's discretion. Such a person enjoyed lesser procedural rights than an ordinary accused. The Government further argued that the applicant's absence from the court hearings had not adversely affected his rights, since his lawyers had been present.

B. The Court's assessment

106. The Court reiterates that it flows from the notion of a fair trial that a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the first-instance hearing (see *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89, pp. 14-15, §§ 27 and 29). In the present case this requirement was not satisfied since the District Court decided the applicant's case in his absence. It should be noted that he was not present at the appeal hearing either. The Court will next consider whether the instant case involved any

circumstances which were capable of justifying a complete and irreparable loss of the entitlement to take part in the hearing.

107. The Court notes that it is not here concerned with an accused who expressly waived his right to appear at the hearing. On the contrary, the applicant, who was in custody, and his lawyers filed requests with the District Court for him to appear at the hearings in person. The requests were rejected because the detention facility, in which the applicant was held, did not allegedly transport ill detainees to court and, on another occasion, because the testimony of a mentally disturbed person could not be accepted as evidence (see paragraphs 23 and 24 above).

108. The Court recalls that the State is under an obligation to secure the attendance of an accused who is in custody (see, with necessary changes made, *Goddi v. Italy*, judgment of 9 April 1984, Series A no. 76, p. 11, § 29). The Court reiterates further that the trial court may exceptionally continue hearings where the accused is absent on account of illness, provided that his or her interests are sufficiently protected (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, p. 351, ECHR 1999-V). However, where proceedings involve an assessment of personality and character of the accused and his state of mind at the time of the offence and where their outcome could be of major detriment to him, it is essential to the fairness of the proceedings that he be present at the hearing and afforded the opportunity to participate in it together with his counsel (see *Kremzow v. Austria*, judgment of 21 September 1993, Series A no. 268-B, p. 45, § 67; *Pobornikoff v. Austria*, no. 28501/95, § 31, 3 October 2000, and *Zana v. Turkey*, judgment of 25 November 1997, *Reports* 1997-VII, p. 2551, §§ 71-73).

109. In the present case the authorities failed to take any steps to secure the applicant's attendance at the hearings. There is no indication that the applicant displayed any disturbed behaviour or that his physical and mental condition otherwise precluded him from appearing before the court. The District Court's argument that the applicant's presence at the hearing was not required in that the testimony of the applicant as a mentally disturbed person could not be accepted as evidence is striking given that it was for the District Court to determine for the first time whether the applicant had committed the offence in a deranged state of mind and assess whether his mental condition required any compulsory medical care.

110. As regards the scope of the trial court's powers in this case, the Court further observes that the District Court determined the criminal charge against the applicant, found that he could not be held responsible because he was suffering from a mental illness and ordered his placement in a mental hospital.

111. As regards the latter, the Court notes that the District Court had before it two psychiatric opinions drawn up by the same forensic institution. Although concurring in essence on the applicant's diagnosis, they differed

on the measures it necessitated. The first opinion asserted that there was no need to place the applicant in a mental asylum and that psychiatric treatment as an out-patient would suffice, while the second opinion claimed that the applicant's confinement in a mental asylum was necessary. The Court considers that such an inconsistency, which had an impact on the outcome of the proceedings and, ultimately, in the present case, on the applicant's liberty, made the question of the applicant's participation in the hearing particularly important.

112. In view of what was at stake for the applicant the District Court could not, if the trial was to be fair, determine his case without a direct assessment of the applicant's evidence, and the presence of the applicant's lawyer could not compensate for his absence.

113. In view of the above considerations the Court finds a breach of Article 6 §§ 1 and 3 (c) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Non-pecuniary damage

115. The applicant claimed 100,000 euros (“EUR”) in respect of non-pecuniary damage. He underlined the point that he had spent a long time in the inhuman conditions of the detention facility SIZO-2 and then, as a result of unfair court proceedings, had been confined in a mental hospital while not being in need of such medical treatment. During that time his health had deteriorated, he had been unable to work and maintain his family and his relatives had incurred substantial expenses in providing him with food and other living essentials for several years. He had suffered emotional distress as a consequence of extensive violations of the domestic and international law in the course of the proceedings against him.

116. The Government submitted first that the finding of a violation would constitute sufficient satisfaction. They further argued that in any event the claim was excessive, unreasonable and lacking in substantiation, in which case a symbolic amount would be equitable.

117. The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 44, § 96).

This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered injury requiring financial compensation. In the present case the Court considers that the applicant's prolonged detention on remand in conditions amounting to degrading treatment and disregard for his right to appear before the trial court in criminal proceedings brought against him must have caused him distress, frustration and uncertainty which cannot be compensated solely by the finding of a violation.

118. Deciding on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

119. The applicant claimed 14,775 US dollars ("USD") in respect of his representation by Mr A.A. Rekant, a member of Human Rights NGO *Комитет за Гражданские Права*, in the domestic proceedings and the proceedings before this Court and in respect of translation costs. The applicant further claimed USD 644, 2,694.6 Russian roubles ("RUR") and 791.34 Ukrainian hryvnas ("UAH") for travel expenses relating to Mr A.A. Rekant's visits to Odessa, where the applicant was detained, for a meeting with him. Lastly, he claimed RUR 3,561.86 for postage and telephone expenses.

120. The Government argued that the expenses were not properly substantiated: for instance postal receipts did not bear the payer's name.

121. The Court reiterates that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

122. Having regard to the material submitted and deciding on an equitable basis, the Court awards the applicant EUR 1,500 for legal costs, less EUR 872 received by way of legal aid from the Council of Europe, plus any tax that may be chargeable on that amount. As regards the remaining costs and expenses claimed, it finds that RUR 4,519.99 and UAH 620.36 were shown to have been actually and necessarily incurred, which amounts it awards the applicant, plus any tax that may be chargeable on those amounts.

C. Default interest

123. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 628 (six hundred twenty-eight euros) in respect of legal costs, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iii) RUR 4,519.99 (four thousand five hundred nineteen Russian roubles ninety nine kopecks) and UAH 620.36 (six hundred twenty Ukrainian hryvnas thirty six kopiykas) in respect of other expenses, the latter amount to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (iv) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President