



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

FOURTH SECTION

CASE OF FEDOTOV v. RUSSIA

(Application no. 5140/02)

JUDGMENT

STRASBOURG

25 October 2005

FINAL

25/01/2006

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 Fedotov v. Russia,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr A. KOVLER,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 5140/02) 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 Igor Leonidovich Fedotov, on 18 December 2001.

2. The applicant, who had been granted legal aid, was represented before the Court by Ms L. Stakhieva, a lawyer practising in Lipetsk. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had twice been detained without a legal basis and in inhuman conditions and that the domestic courts had not considered his claim for compensation for unlawful detention.

4. The application was allocated to the First 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. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 23 November 2004, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1957 and lives in the town of Borovichi in the Novgorod Region.

A. Criminal charge against the applicant

9. On 7 May 1999 the prosecutor's office of the Borovichi District began an investigation into the applicant's dealings, as it suspected him of using his position as the president of a non-governmental organisation for personal gain. It was alleged, in particular, that he had used a grant of 5,000 US dollars (USD) to purchase computer equipment which he had kept at his home or, in the alternative, unlawfully given to a local law office.

10. On 13 October 1999 the prosecutor charged the applicant and issued an arrest warrant when he failed to attend the prosecutor's office to countersign the charge sheet.

11. On 1 February 2000 a supervising prosecutor of the Novgorod Region quashed the decision to charge the applicant and cancelled the warrant. She found that the investigation was incomplete because pertinent facts had not been sufficiently examined.

12. On 9 February 2000 the Borovichi Criminal Police put the applicant's name on the federal list of wanted persons.

13. On 20 March 2000 the applicant was charged again.

14. On 10 April 2000 a senior investigator from the Investigations Division of the Novgorod Regional Police dropped the charges against the applicant because there was no evidence that a criminal offence had been committed. On 4 May 2000 that decision was notified to the applicant's lawyer.

B. The applicant's detention in Moscow

1. Arrest on 14-15 June 2000

15. At 9.50 p.m. on 14 June 2000 the applicant was detained in the Izmaylovo Hotel in Moscow on the basis of the arrest warrant issued on 13 October 1999 because his name was still on the federal list of wanted persons.

16. The applicant remained at the police station for twelve hours, until 10 a.m. on 15 June 2000. He was interrogated, searched and allegedly verbally abused by police officers. He was released only after the Novgorod

Regional Police had confirmed, by a faxed letter, that the arrest warrant had been cancelled.

17. The officer in command at the police station refused to issue the applicant with a document confirming that he had been detained for twelve hours.

2. Arrest on 6-7 July 2000

18. At 8.30 p.m. on 6 July 2000 the applicant was detained in Moscow on the basis of the same arrest warrant. He was handcuffed and escorted to the “Rostokino” Police Station of the North-Western Administrative District of Moscow.

19. According to the applicant, he was verbally abused by three police officers, one of whom also hit him in the chest. His requests for permission to make a phone call and to meet the officer in charge were ignored.

20. The applicant was not released until 6.15 p.m. on 7 July 2000, after confirmation had been received that the warrant had been cancelled. According to the applicant, during the entire period he spent in detention he received no water or food and was given no access to toilet facilities.

C. Disciplinary proceedings against the investigators

21. On 18 June 2000 the applicant complained to the Head of the Moscow Police and the Izmaylovskiy District Prosecutor’s Office. On 5 July 2000 the applicant complained to the Moscow City Prosecutor that he had been unlawfully detained and that the district prosecutor had failed to respond to his complaints. On 15 August 2000 he complained to the Prosecutor General about his unlawful detention in July 2000.

22. On 17 August 2000 a deputy director of the Operative Investigations Division of the Moscow Police informed the applicant that his detention on 14 June 2000 was considered lawful as he had been on the federal list of wanted persons. Since the applicant had not had any documents on him to show that the charges had been dropped, the police officers “had taken all appropriate measures to confirm or refute [his] statement about the unlawfulness of [his] detention”.

23. On 18 September 2000 a deputy director of the Public Security Division of the Moscow Police confirmed to the applicant that he had been detained because his name was on the federal list of wanted persons. He maintained that the Moscow police officers had acted lawfully and that on both occasions responsibility for his detention lay with the Novgorod Regional Police as they had failed to update the database of wanted persons in time.

24. On 4 September 2000 the director of the Operative Investigations Division of the Moscow Police advised the applicant that the Borovichi

Police Department was responsible for placing people's names on, and removing them from, the wanted persons' list.

25. On 25 September 2000 a deputy prosecutor of the Izmaylovskiy District of Moscow wrote to the applicant to say that the blame for his detention lay with the Novgorod Regional police officers who had failed to remove his name from the wanted persons' list. He added that the Moscow Police had acted lawfully on the basis of the information available.

26. On 31 October 2000 a deputy prosecutor of the Novgorod Region informed the applicant that his name had been deleted from the wanted persons' list on 5 May 2000 and that notice thereof had been sent to the central database of the Ministry of the Interior on 16 May 2000. However, an investigator, Ms Romanova, had failed to notify the Borovichi Police Department that the arrest warrant had been cancelled on 1 February 2000, and it was that which had led to the applicant's detention in Moscow and Lipetsk and the violations of his constitutional rights. The deputy prosecutor said that he had requested the director of the Investigations Department of the Novgorod Regional Police to examine the matter and to discipline those responsible for the violations of the applicant's rights.

27. On 20 October 2000 a deputy director of the Internal Investigations Department of the Novgorod Regional Police wrote to inform the applicant that disciplinary proceedings were pending against the investigator who had failed to notify those concerned in time that the arrest warrant had been cancelled.

28. On 7 December 2000 an acting prosecutor of the Novgorod Region informed the applicant that Ms Romanova had been reprimanded for unspecified violations of the rules of criminal procedure.

29. After the application had been communicated to the respondent Government, the Ostankinskiy Interdistrict Prosecutor's Office carried out an inquiry into the applicant's complaints of 2000. On 29 March 2004 it issued a decision not to initiate criminal proceedings in connection with his allegations of ill-treatment because there was no evidence of criminal conduct by any of the police officers. On 20 April 2004 the Moscow City Prosecutor quashed that decision and ordered a further inquiry.

30. According to the Government, further to a recommendation (*представление*) issued on 20 August 2004 by the Ostankinskiy Interdistrict Prosecutor's Office, the Information Centre of the Ministry of the Interior reinforced the procedures for ensuring that the federal list of wanted persons was regularly updated.

D. Civil action for damages

31. In early 2001 the applicant sued the Ministry of Finance, the Prosecutor General's Office and the Ministry of the Interior. He claimed

compensation for pecuniary and non-pecuniary damage in connection with the unlawful criminal proceedings and arrest.

32. On 29 August 2001 the Basmanniy District Court of Moscow requested the “Rostokino” police station to provide the papers relating to the applicant’s detention on 6-7 July 2000, including the records of his arrest and body search and an extract from the custody record. It does not appear that the requested documents were provided.

33. On 18 September 2001 the Basmanniy District Court delivered judgment. It found that the criminal proceedings against the applicant had been unlawful because they were ultimately discontinued for lack of evidence of a criminal offence. Having regard to the fact that “[the applicant] had given an undertaking not to leave the town and had not actually been taken into custody”, the District Court awarded him 3,000 Russian roubles (RUR, 110 euros (EUR)) in compensation for non-pecuniary damage. It further awarded him RUR 14,976 for legal costs incurred in the criminal proceedings and RUR 462.14 for costs in the civil proceedings. The total amount came to RUR 18,438.14 (approximately EUR 675). The remainder of the applicant’s claims were dismissed.

34. The applicant appealed against the judgment. He complained, in particular, that the District Court had deliberately given an incomplete account of the circumstances of the case and that his claims for compensation for unlawful detention in June and July 2000 had not been considered in the judgment.

35. On 16 January 2002 the Moscow City Court upheld the judgment of 18 September 2001. It held that the applicant had not advanced any new arguments other than those that had been already examined by the District Court.

E. Enforcement of the judgment of 18 September 2001

36. On 20 January 2002 the applicant applied to the Basmanniy District Court for a writ of execution. Having received no reply, he wrote to the president of the court and to the Moscow City Prosecutor on 7 March, 15 May and 19 June 2002 to complain about the delay.

37. On 27 May 2002 the President of the Basmanniy District Court replied to the applicant, advising him that the writ had been sent to the court bailiffs on 18 March 2002 for enforcement.

38. On 19 June 2002 the applicant received a writ of execution for RUR 17,976. On 26 and 27 June 2002 he complained to the Presidents of the Basmanniy District Court and the Moscow City Court that the amount in the writ was less than the award in the judgment.

39. On 26 June 2002 the applicant requested the President of the Basmanniy District Court to rectify the error in the writ. He repeated his

request on 29 July 2002, but to no avail, and so on 2 September 2002 sent a complaint to the Moscow City Court.

40. On 16 July 2002 the applicant sent the writ of execution for RUR 17,976 to the court bailiffs.

41. By a letter of 24 September 2002, the President of the Basmanniy District Court confirmed that the writ had been sent to the court bailiffs on 18 March 2002.

42. On 22 November 2002 the bailiffs' service of Interdistrict Office no. 2 of Moscow returned the writ for RUR 17,976 to the applicant, advising him to submit it directly to the Ministry of Finance.

43. Having received no response to his requests for rectification of the amount stated in the writ, the applicant renewed his request to the Basmanniy District Court to that effect on 19 September 2003 and returned the writ containing the error.

44. On 9, 10 and 15 February and 3 and 20 March 2004 the applicant wrote to the President of the Supreme Court, the Moscow City Prosecutor and the Basmanniy District Prosecutor to complain about the Basmanniy District Court's persistent refusal to rectify the writ.

45. On 10 April 2004 the applicant received by post a writ of execution for RUR 18,446.54 dated 30 March 2004. On 16 April 2004 he submitted it to the Ministry of Finance for execution.

46. In a letter of 14 April 2004, the Supreme Court claimed that on 15 October 2003 a corrected writ of execution had been sent to the court bailiffs' service.

47. By a letter of 6 May 2004, the Moscow Main Directorate of the Ministry of Justice informed the applicant that the bailiffs' service had searched its records since 1 January 2002 and had no trace of receiving a writ of execution for RUR 18,446.54.

48. On 15 March 2004 the applicant requested the Basmanniy District Court to adjust the award in the judgment of 18 September 2001 in line with inflation. On 24 November 2004 the court granted his claim in part, awarding him RUR 6,269 on account of inflation and RUR 6,000 in legal costs.

49. On 25 November 2004 the Ministry of Finance returned the writ to the applicant, saying that it was defective.

50. On 16 December 2004 the Basmanniy District Court issued a new writ and submitted it directly to the Ministry of Finance. In his letter to the applicant, the court president acknowledged that the previously issued writs had not conformed to the law on enforcement proceedings.

51. At the date of the last communication from the applicant of 27 February 2005, the judgment of 18 September 2001, as supplemented by the judgment of 24 November 2004, had not yet been enforced.

II. RELEVANT DOMESTIC LAW

52. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

Under the RSFSR Code of Criminal Procedure (in force until 1 July 2002), a decision ordering placement in custody could be taken by a prosecutor or a court (Articles 11, 89 and 96).

53. The Russian Civil Code provides for strict liability (*ответственность независимо от вины*) of the State treasury for damage incurred through being unlawfully held in custody (Article 1070 § 1).

III. RELEVANT INTERNATIONAL DOCUMENTS

54. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

“42. Custody by the police is in principle of relatively short duration ...However, certain elementary material requirements should be met.

All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.”

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

55. The part of the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001 (CPT/Inf (2003) 30) read, in so far as it concerned the conditions of detention in administrative-detention cells located within police stations, as follows:

“25. Similar to the situation observed during previous visits, none of the district commands (RUVd) and local divisions of Internal Affairs visited were equipped with facilities suitable for overnight stays; despite that, the delegation found evidence that persons were occasionally held overnight at such establishments... The cells seen by the delegation were totally unacceptable for extended periods of custody: dark, poorly ventilated, dirty and usually devoid of any equipment except a bench. Persons held overnight were not provided with mattresses or blankets. Further, there was no provision for supplying detainees with food and drinking water, and access to a toilet was problematic.

The CPT reiterates the recommendation made in its report on the 1999 visit (cf. paragraph 27 of document CPT (2000) 7) that material conditions in, and the use of, cells for administrative detention at district commands and local divisions of Internal Affairs be brought into conformity with Ministry of Internal Affairs Order 170/1993 on the general conditions and regulations of detention in administrative detention cells. Cells which do not correspond to the requirements of that Order should be withdrawn from service.

Further, the Committee reiterates the recommendation made in previous visit reports that administrative detention cells not be used for accommodating detainees for longer than 3 hours.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that the conditions of his detention on 14-15 June and 6-7 July 2000 were not compatible with Article 3 of the Convention, which reads as follows:

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

1. The parties' submissions

57. In their observations on the admissibility and merits of the case of 29 April 2004, the Government declined to comment on this complaint, claiming that the Prosecutor General's Office had launched an additional inquiry into the circumstances of the applicant's detention and that its results would be communicated to the Court. In their observations on the merits of 31 January 2005, the Government made no further submissions.

58. The applicant interpreted the Government's stance as an admission that, four years after the events in question, they were not in possession of any factual information on his detention, even though between 18 June and 23 November 2000 he had lodged no fewer than nine complaints to various

authorities, including the Moscow City Prosecutor, the Minister of the Interior, the Prosecutor General and the Head of the Moscow Department of the Interior. However, these complaints had not prompted any effective investigation or the punishment of those responsible. No criminal proceedings had been instituted or inquiry carried out. Moreover, in the subsequent civil proceedings for compensation, the domestic courts had refused his requests for information concerning his detention and permission to interview witnesses. The applicant considered that an investigation that had been started only after the communication of his application by the Court, by which time a significant period had elapsed, could not be effective or produce any tangible results.

2. *The Court's assessment*

(a) Establishment of the facts

59. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

60. The Court notes that the only account of the conditions of the applicant's detention at the police stations is that furnished by him. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

61. In the present case even the applicant's request for an official custody record was refused. He cannot therefore be criticised for not furnishing substantial evidence of the material conditions of his detention. The Government, on the contrary, have had ample opportunity to investigate the conditions at the police stations, notably by conducting an on-site inspection and questioning the police officers or other witnesses concerned. However, their submissions were silent on this point. Nor did the Government offer any convincing explanation for their failure to submit relevant information.

In these circumstances the Court will examine the merits of the complaint on the basis of the applicant's submissions.

(b) Principles established in the Court's case-law

62. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this level 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 (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

63. The Court further reiterates that, where an individual raises an arguable claim that he has been ill-treated in breach of Article 3, that provision requires by implication that there should be an effective official investigation capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (*Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 102).

(c) Application of the above principles to the present case

i. The applicant's detention on 14-15 June 2000

64. The Court observes that the applicant provided very few details about the material conditions of his detention at the police station in the Izmaylovo Hotel. Although his arrest without a lawful basis must have caused him considerable stress and strain, it has to be noted that he only remained in custody for twelve hours. He did not allege that his physical or mental integrity was imperilled during that period.

65. Accordingly, the Court does not consider that the treatment to which the applicant was subjected on 14-15 June 2000 attained the minimum level of severity required for the application of Article 3 of the Convention. There has therefore been no violation of that provision.

ii. The applicant's detention on 6-7 July 2000

66. The Court observes that in July 2000 the applicant was detained at the Rostokino Police Station for a much longer period of twenty-two hours. During that time he received no food or drink and could not use the toilet. The police officers assaulted him verbally and physically.

67. The applicant's description coincides with the findings of the CPT, which inspected administrative-detention cells located within several police stations in Moscow the following year. The CPT found, in particular, that there had been no provision for supplying detainees with food and drinking water and that access to a toilet had been problematic. It stated that such cells were totally unacceptable for extended periods of custody (see paragraph 55 above).

68. The Court notes that the applicant was kept overnight in a cell unfit for an overnight stay, without food or drink or unrestricted access to a toilet. These unsatisfactory conditions exacerbated the mental anguish caused by the unlawful nature of his detention. In these circumstances, the Court considers that the applicant was subjected to inhuman treatment, incompatible with Article 3 of the Convention.

69. Furthermore, the Court notes that the domestic authorities failed to investigate the applicant's complaints concerning the conditions of his detention. The inquiry that began in 2004, after the application had been communicated to the respondent Government, did not lead to the identification of those responsible for the inhuman conditions of detention.

70. The Court finds, accordingly, that there has been a violation of the substantive and procedural aspects of Article 3 of the Convention on account of the applicant's detention on 6 and 7 July 2000.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1-4 OF THE CONVENTION

71. The applicant complained that his detention on 14-15 June and 6-7 July 2000 was incompatible with Articles 5 §§ 1 (c), 2, 3 and 4, which provide as follows:

“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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other

officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

1. The parties' submissions

72. The applicant submitted that there had been no legal basis for his detention because the arrest warrant had been cancelled on 1 February 2000 so that his placement on the federal list of wanted persons had been unlawful from the outset. He pointed out that the Government had not explained why it had taken the Novgorod Police 36 days (from 10 April 2000, when the criminal proceedings ended, until 16 May 2000) to notify the Federal Police that the proceedings had been discontinued, the Federal Police two weeks to update the list of wanted persons and, finally, the Federal Police 39 days (29 May 2000 to 7 July 2000) to ensure the procedure was finally completed. What is more, despite his complaint on 18 June 2000 to a prosecutor's office about his unlawful detention in June 2000, no measures were taken and his name was not removed from the wanted persons' list with the result that he was unlawfully detained a second time in July 2000.

73. The Government insisted that the police officers who had detained the applicant in June and July 2000 in Moscow, had acted lawfully because at that time the applicant's name had been on the wanted persons' list. The investigator Ms Romanova had been disciplined for her failure to inform the Borovichi Police Department promptly that the criminal proceedings against the applicant had been discontinued.

2. The Court's assessment

74. The Court will first consider the complaint from the standpoint of Article 5 § 1. It reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

75. The parties agree that the sole ground for the applicant's arrests was the fact that his name was on the federal list of wanted persons. In the Government's view, the Moscow Police could not be blamed for having acted in reliance on that information. In this connection, the Court notes that

it may happen that a Contracting State's agents conduct themselves unlawfully in good faith. However, even if there has been no fault on the part of the officials, it should be stressed that the Governments are answerable under the Convention for the acts of any State agency since what is in issue in all cases before the Court is the international responsibility of the State (*Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, § 40).

76. It is not disputed that after 1 February 2000, when the warrant for the applicant's arrest was cancelled, there was no further decision – either by a court or a prosecutor – authorising his arrest or detention.

The police might genuinely have believed that there was a reasonable suspicion of the applicant's involvement in a criminal offence because his name was on the list of wanted persons. However, the question for the Court is not what the police thought but whether the applicant's detention was effected for one of the purposes listed in Article 5 § 1 of the Convention. It has not been claimed that it did.

It follows that the applicant's arrest in June and July 2000 was not "lawful", under either domestic law or the Convention.

77. The Court notes with concern that the only reason for his arrest was the lack of co-operation between the competent State authorities. The initial failure of the Borovichi Police to verify the existence of a valid arrest warrant prior to placing the applicant's name on the federal list of wanted persons was further aggravated by the Novgorod Police's omission to report the fact that the criminal proceedings had been discontinued promptly. It is surprising that the federal departments of the Ministry of the Interior should have been so slow to update the police database and failed to act for several months. A cause for further concern is the fact that the Moscow Police and the Prosecutor's Office failed to react with the special diligence called for in such situations to the applicant's complaint about his unlawful arrest in June 2000 and thus permitted the rearrest of a person who was known to be innocent.

78. Finally, the Court observes that no records of the applicant's arrests in June and July 2000 appear to have been drawn up and that the officer in charge of the police station expressly refused his request for a record. That fact in itself must be considered a most serious failing, as it has been the Court's traditional view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (*Angelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV;

Kurt v. Turkey, judgment of 25 May 1998, *Reports of Judgments and Decisions* 1998-III, § 125).

79. Having regard to the above, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's unlawful arrests in June and July 2000. In the light of this finding the Court considers that no separate issues arise under paragraphs 2, 3 and 4 of that Convention provision.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

80. The applicant complained under Articles 5 § 5 of the Convention that the domestic courts had failed to examine his claim for compensation for unlawful detention. Article 5 § 5 reads as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

1. The parties' submissions

81. The applicant submitted that he had expressly referred to the periods he had spent in custody in June and July 2000 in his statement of claim. He and his representatives had also made oral submissions on the subject to the District Court and unsuccessfully sought its assistance to obtain the detention records. In his grounds of appeal, the applicant had complained about the District Court's failure to examine his claim for compensation for unlawful detention and the issue had also been raised by his representative in oral submissions to the appeal court. The applicant submitted that he had used all available remedies and that the domestic courts had deliberately refrained from examining the issues relating to his unlawful detention.

82. In their observations on the admissibility and merits of the case of 29 April 2004, the Government asserted that the applicant's statement of claim did not contain a claim for compensation for his detention in June and July 2000. They considered therefore that he had not exhausted domestic remedies. After the Court rejected that objection in its decision of 23 November 2004 on the admissibility of the application, they made no further submissions on this issue.

2. The Court's assessment

83. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (*N.C. v. Italy* [GC], no. 24952/94,

§ 49, ECHR 2002-X; *Pantea v. Romania*, no. 33343/96, judgment of 3 June 2003, § 262).

84. In the present case the Court has found a violation of paragraph 1 of Article 5 in that there was no “lawful” basis for the applicant’s arrest. It must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5.

85. In the light of the information before it the Court notes that the applicant could have been awarded compensation for the damage he sustained under the general law of tort if his arrest was found to be unlawful under domestic law (see paragraph 53 above).

86. As the Court established in its decision of 23 November 2004 on the admissibility of the application, the applicant had validly introduced a claim for the damage he incurred as a result of his unlawful detention. However, the domestic courts disregarded it, notwithstanding the oral and written submissions of the applicant and his counsel. What is more, the Basmani District Court made arbitrary findings of fact, stating in its judgment that the applicant “had not actually been taken into custody”, despite abundant evidence to the contrary.

87. In these circumstances, the Court finds that the applicant was denied an enforceable right to compensation for unlawful arrest and that there has been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

88. The Court decided, of its own motion, to examine the prolonged failure to enforce the judgment of the Basmani District Court of 18 September 2001 under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

1. The parties' submissions

89. The applicant submitted that the delays in enforcement were entirely attributable to the Russian authorities. The Basmanniy District Court did not issue a writ of execution for the correct amount until 10 April 2004. Moreover, it consistently gave misleading information about the status of the enforcement proceedings, claiming that the writ of execution had been sent to the bailiffs. As the letter of 6 May 2004 from the bailiffs' service revealed, that information was false and the bailiffs had not in fact received a writ from the District Court. Indeed, the judgment had still not been complied with, although the relevant documents had been submitted to the Ministry of Finance.

90. In their observations of 29 April 2004 on the admissibility and merits of the case, the Government submitted that Russian law did not provide for writs of execution to be sent by mail, as the applicant had requested. When the applicant attended the District Court in person on 19 June 2002, the writ was immediately handed over to him. On 30 September 2003 he was given a rectified writ. In their additional submissions of 31 January 2005, the Government claimed that a duplicate of the writ had only reached the Ministry of Finance on 24 April 2004. Before that date the Ministry of Finance had not been in possession of the enforcement documents and the Russian authorities could not, therefore, be held liable for the failure to enforce the judgment during that period.

2. The Court's assessment

91. The Court observes that on 18 September 2001 the applicant obtained a judgment in his favour against the federal treasury. Following the appeal decision of 16 January 2002, the judgment became final and enforceable. However, it has not been enforced to date, despite the fact that a supplementary judgment was delivered on 24 November 2004 adjusting the amount of the initial award in order to take inflation into account.

92. The Court considers that all the delays in the enforcement proceedings were attributable to failings on the part of the domestic authorities.

93. It notes, firstly, that for at least two years the Basmanniy District Court refused to issue the applicant with a writ of execution, so preventing him from serving it on the Ministry of Finance. At the same time the domestic courts gave misleading information – in the District Court's letters of 27 May and 24 September 2002 and the Supreme Court's letter of 14 April 2004 – that the writ had been sent for enforcement. However, the Ministry of Justice's letter of 6 May 2004 revealed the true position. Furthermore, on 19 June 2002 and 30 March 2004 the Basmanniy District Court issued writs of execution which failed to satisfy the requirements of the domestic law.

94. Further delays were due to the conduct of the Ministry of Finance. After receipt of the writ on 21 April 2004, it made no attempt to comply with it. Having – for reasons that remain unclear – held on to the writ for some seven months, it returned it to the applicant so that certain purported defects could be rectified. Although the writ was resubmitted in December 2004, by February 2005 the judgment had still not been enforced.

95. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see *Wasserman v. Russia*, no. 15021/02, § 35 et seq., 18 November 2004; *Zhovner v. Ukraine*, no. 56848/00, § 37 et seq., 29 June 2004; *Burdov v. Russia*, no. 59498/00, § 34 et seq., ECHR 2002-III).

96. Having examined the material submitted before it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgment in the applicant's favour the domestic authorities prevented him from receiving the money to which he was entitled.

97. There has accordingly been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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. Damage

1. *Pecuniary damage*

99. The applicant claimed 30,715.88 Russian roubles (“RUR”) in respect of pecuniary damage being the amounts unpaid under the judgments of 18 September 2001 and 24 November 2004.

100. The Government did not comment.

101. The Court notes that the State's outstanding obligation to enforce the judgments of 18 September 2001 and 24 November 2004 is undisputed. Accordingly, the applicant remains entitled to recover the judgment debts in the domestic proceedings. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the

applicant is put as far as possible in the position in which he would have been had the requirements of Article 6 not been disregarded. It finds that this principle applies in the present case too, having regard to the violation found. It therefore considers that the Government should secure, by appropriate means, the enforcement of the award made by the domestic courts (see *Poznakhirina v. Russia*, no. 25964/02, § 33; *Makarova and Others v. Russia*, no. 7023/03, § 37, judgments of 24 February 2005).

2. Non-pecuniary damage

102. The applicant claimed EUR 50,000 in respect of the non-pecuniary damage caused by unlawful detention, the lack of compensation therefor and the failure to enforce the judgments in his favour.

103. The Government contested the claim arguing that the police had acted lawfully, the applicant had refused to enter into a friendly settlement and the term of detention had not been long in absolute terms.

104. As regards the applicant's unlawful and unacknowledged detention in inhuman conditions and the refusal to examine the claim for compensation, the Court considers that these events must have caused the applicant an acute feeling of injustice and anxiety which cannot be compensated for by a mere finding of a violation. It therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage under this head.

105. Furthermore, the Court accepts that the applicant suffered distress and frustration because of the State authorities' failure to enforce the judgment in his favour. It further observes that, in contrast to the aforementioned *Burdov* case, the judgment in question has not yet been enforced and no effective measures appear to have been taken in order to comply with it. Making its assessment on an equitable basis, it awards the applicant EUR 2,400 in respect of non-pecuniary damage under this head.

B. Costs and expenses

106. The applicant claimed RUR 108,000 for his representation by Ms Stakhieva before the Court, RUR 39,476 for her services in the domestic proceedings and RUR 7,055.30 for transport and postal expenses.

107. The Government submitted that the applicant's claims for legal expenses had been examined and granted in part in the judgments of 18 September 2001 and 24 November 2004. Moreover, it appeared from the applicant's declaration of means that his monthly income rarely exceeded RUR 3,000, whilst in his claims he alleged that he had paid Ms Stakhieva nearly RUR 100,000 in only one month (January 2005).

108. As regards the Strasbourg proceedings, the Court notes that the applicant was granted EUR 701 in legal aid. As he has not shown that the expenses exceeding that amount were necessarily incurred, it makes no award under this head.

109. As regards the costs and expenses in the domestic proceedings, the Court observes that the judgments of 18 December 2001 and 24 November 2004 awarded the applicant a portion of the legal costs incurred in those proceedings. They did not make, however, an allowance for the transport expenses. On the basis of the materials in its possession, the Court assesses the applicant's expenses in the domestic proceedings in the sum of EUR 800, which amount it awards the applicant, plus any tax that may be chargeable.

C. Default interest

110. 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 no violation of Article 3 of the Convention on account of the applicant's detention on 14 and 15 June 2000;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's detention on 6 and 7 July 2000;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that no separate examination of the complaints relating to the applicant's arrest under Article 5 §§ 2-4 of the Convention is required;
5. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
7. *Holds*
 - (a) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, is to secure, by appropriate means, the enforcement of the domestic courts' judgments of 18 December 2001 and 24 November 2004, and to pay the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 7,400 (seven thousand four hundred euros) in respect of non-pecuniary damage;

- (ii) EUR 800 (eight hundred euros) in respect of costs and expenses;
- (iii) 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President