



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

FIRST SECTION

CASE OF KANTYREV v. RUSSIA

(Application no. 37213/02)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

30/01/2008

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 Kantyrev v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 37213/02) 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 Vyacheslav Mikhaylovich Kantyrev (“the applicant”), on 1 September 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in the town of Severodvinsk in the Arkhangelsk Region.

A. Criminal proceedings on charges of aggravated robbery and manslaughter

1. Pre-trial investigation

6. On 23 August 2001 police officers forced entry to the applicant's flat. They arrested the applicant on suspicion of manslaughter, handcuffed and allegedly boxed and kicked him. The applicant and his wife were taken to the Severodvinsk Town Police Department where the police officers allegedly coerced the wife and compelled her to incriminate the applicant as having committed murder. However, she refused to testify and was released on the same day.

7. A prosecutor authorised the applicant's placement in custody. Between 23 August and 1 September 2001 an investigator interrogated the applicant a number of times. Each interrogation was allegedly accompanied by beatings.

8. The applicant informed the investigator that his daughter could confirm his alibi and motioned to have her questioned. The motion was dismissed. The investigator notified the applicant that he had to pay for the services of a legal aid lawyer. Afraid of being unable to afford the costs, the applicant refused legal aid. As it appears from the file, he subsequently retained counsel.

9. The applicant was transferred to detention facility no. 29/4 in Arkhangelsk. On 16, 17 and 18 January 2002 the investigator ordered the applicant's transfer to the Severodvinsk Town temporary detention ward for participation in certain investigative actions. According to the applicant, warders refused to provide him with food on those days.

10. The applicant asked to institute criminal proceedings against the policemen who had assaulted him after the arrest. On 29 October 2001 a senior investigator of the Severodvinsk Town Prosecutor's office dismissed the request on the ground that the allegations of ill-treatment were in fact false. The senior investigator noted that a prison doctor had examined the applicant after the arrest and had found no injuries.

2. Judicial proceedings and remittal for further investigation

11. According to the applicant, he was not afforded sufficient time to study the case file before the case was set down for trial.

12. On 19 March 2002 the Arkhangelsk Regional Court found the applicant guilty of aggravated robbery and manslaughter and sentenced him to seventeen years' imprisonment.

13. The applicant and his lawyer appealed. They argued that the Regional Court had unlawfully admitted certain items in evidence and incorrectly assessed evidence, including expert opinions, statements by the

applicant's daughter and wife given in open court and testimony by certain witnesses.

14. On 17 October 2002 the Supreme Court of the Russian Federation upheld the applicant's conviction of aggravated robbery, sentenced him to four years' imprisonment, quashed the remainder of the conviction and remitted the matter for fresh examination.

15. After receiving the file from the Supreme Court, the Arkhangelsk Regional Court ordered that the case be returned to the Arkhangelsk Regional Prosecutor for an additional investigation. That decision was upheld on appeal by the Supreme Court. On 16 May 2003 the Prosecutor discontinued criminal proceedings against the applicant on the manslaughter charge.

B. Criminal proceedings on a charge of criminal slander

16. In 2001 criminal proceedings were instituted against the applicant on suspicion of criminal slander. On 17 December 2002 the Severodvinsk Town Court found the applicant guilty as charged and sentenced him to two years' imprisonment.

17. On 2 January 2003 a local newspaper published an article in which a journalist described the criminal proceedings and reported on the conviction.

18. On 14 February 2003 the Arkhangelsk Regional Court quashed the judgment of 17 December 2002 and ordered a re-examination.

19. The Severodvinsk Town Court listed a hearing for 26 March 2003. On that day the applicant was brought to the courthouse, but the hearing was adjourned. The applicant remained handcuffed in the courthouse for two hours. The warders allegedly intimidated and threatened him.

20. On 28 August 2003 the Severodvinsk Town Court found the applicant guilty as charged and sentenced him to two years' imprisonment. That judgment became final on 14 October 2003 when it was upheld by the Arkhangelsk Regional Court.

21. On 3 November 2004 the Solombalskiy District Court of Arkhangelsk ordered the applicant's release on parole.

C. Conditions of the applicant's detention from 1 to 20 March 2002

22. From 1 to 20 March 2002 the applicant was detained in the Severodvinsk Town temporary detention ward.

1. Number of inmates per cell

23. According to the Government, the applicant was kept in cells nos. 6, 7 and 9 during the reference period. Cell no. 6 measured 12 square metres

and had a plank bed fit to accommodate 3 persons. Cells nos. 7 and 9 each measured 18.7 square metres and had a plank bed for 4 persons. The Government did not provide information on the number of inmates in the cells. However, they noted that the sanitary norm of personal space had been complied with and that the applicant had had his own “sleeping place”.

24. The applicant did not dispute the cell measurements. However, he alleged that he had usually shared the cells with 12 detainees. Given the lack of beds, inmates slept in shifts.

2. Sanitary conditions and installations, water supply, food and outdoor exercise

25. The Government, relying on the information provided by the Ministry of Interior Affairs of the Russian Federation, submitted that all cells were equipped with a lavatory pan, a tap, a canister for drinking water, a waste bucket and a shelf for toiletries. The cells were lit and ventilated naturally through the windows, which measured 40 centimetres in width and 60 centimetres in height. Each cell also had a ventilation shaft and was equipped with a lamp. The Government asserted that the applicant was provided with food “in compliance with requirements set by the Russian Federation legislation”.

26. The applicant disagreed with the Government's description and submitted that the sanitary conditions had been unsatisfactory. Inmates had to sleep together on a plank bed, simply long concrete flooring covered with planks. The lavatory pan was not separated from the rest of the cell and was opposite the plank bed. The cells were dimly lit. Windows were covered with thick metal bars that blocked access to natural light and fresh air. The food was of poor quality and in short supply. It was provided once a day.

27. The parties submitted that the applicant had not been provided with bedding because a disinfection device was broken and the temporary detention facility could not afford to repair it. The applicant was not able to shower during the entire period of his detention because a shower room was under construction. He did not have daily outdoor walks.

3. Complaints about the conditions of the detention

28. According to the applicant, he complained to various domestic authorities about the inadequate conditions of his detention in the Severodvinsk Town temporary detention ward.

29. The Government submitted a copy of a report of the acting prosecutor of the Arkhangelsk Region issued on 18 February 2003 and addressed to the head of the Department of Interior Affairs of the Arkhangelsk Region. The report was issued upon the complaint of another detainee, Mr N., and in its relevant part read as follows:

“When the conditions of detention of suspected and accused persons in the Severodvinsk Town temporary detention ward were examined, it was established that the requirements of the Federal Law 'On detention of suspected and accused persons...' of 15 July 1995,... were not entirely satisfied.

Thus, by virtue of section 16 of that Federal Law... the procedure for outdoor daily walks of accused persons is established, and by virtue of section 17 of the same Law accused persons are entitled to at least a one-hour walk daily. The administration of the Severodvinsk Town temporary detention ward, in violation of the above-mentioned Federal Law, did not provide persons detained in the Severodvinsk Town temporary detention ward with daily outdoor walks.

Section 23 of that Federal Law... provides that persons suspected and accused of criminal offences should be detained in conditions which satisfy sanitary and hygienic requirements. However, there were no water taps, sinks or wall outlets in certain cells.

Bedding and linen are not provided... in the ward (section 23 of the Federal Law and paragraph 3.1 of the Order of the Ministry of Interior Affairs of 26 January 1996).

Cells in the Severodvinsk Town temporary detention ward do not have certain equipment, i.e. benches and tables.

By virtue of section 22 of the Federal Law... persons suspected and accused of criminal offences are to be provided with food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. In the Severodvinsk Town temporary detention ward detainees are provided with food once a day, which is not sufficient for maintaining them in good health.

Taking into account the foregoing, and in accordance with sections 24 and 33 of the Federal Law... [I] hereby require:

1. That immediate measures be taken for the elimination of the identified violations of the Law, their causes and the conditions which contribute to them.

2. That an immediate solution be found to the problem of promoting satisfactory conditions of detention... in the Severodvinsk Town temporary detention ward, in accordance with the Federal Law ...”

30. The applicant claimed that he was not aware of that report as it was never served on him. However, on 25 September 2003 he received a letter from the Severodvinsk Town Prosecutor. The prosecutor dismissed the applicant's complaints as follows:

“From 1 to 20 March 2002 you were detained in the detention ward of the police department of Severodvinsk... Bathing was not arranged because shower cabins in the ward were under construction during that period. Outdoor walks for inmates were not organised in the ward owing to the absence of financial means to equip special premises...”

II. RELEVANT DOMESTIC LAW

31. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than 4 square metres of personal space in his or her cell.

III. RELEVANT INTERNATIONAL DOCUMENT

32. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in remand establishments and the complaints procedure reads as follows:

“45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book

which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private 'because they know that all complaints usually pass through the colony's administration'.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF DETENTION

33. The applicant complained that the conditions of his detention from 1 to 20 March 2002 in the Severodvinsk Town temporary detention ward were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

34. The Government provided arguments along two general lines. Firstly, they submitted that on 18 February 2003 the Arkhangelsk Regional Prosecutor had found that detainees' rights were violated during their detention in the Severodvinsk Town temporary detention ward. The finding also applied to the applicant, who had subsequently been able to lodge an action with a court seeking compensation for damage caused during his detention in that facility. The applicant had had an effective remedy at his disposal but had never made use of it. Therefore, his complaint should be dismissed for failure to exhaust available domestic remedies.

35. If, however, the Court were to decide otherwise, the Government put forth the following argument for consideration. They submitted that, taking into account the circumstances of the case and accepting that the applicant's rights under Article 3 of the Convention had been violated, they had attempted to reach a friendly settlement which the applicant had refused. Referring to the Court's decision in the case of *Aleksentseva and Others v. Russia* (nos. 75025/01 et seq., 4 September 2003), the Government

invited the Court to strike the application out of its list of cases, in accordance with Article 37 of the Convention.

36. The applicant averred that he had not been notified of the decision of 18 February 2003 and thus had not been able to lodge an action for compensation. Moreover, the only reply he had received was that of 25 September 2003 from the Severodvinsk Town Prosecutor who had dismissed his complaints, providing an explanation for the lack of outdoor walks and showers. As to the Government's request to strike out the application, the applicant submitted that the Government had not offered sufficient compensation. The sum offered had not covered the pecuniary and non-pecuniary damage he had sustained as a result of his detention in appalling conditions.

A. The Court's assessment

1. Admissibility

(a) Request to have the application struck out

37. The Court observes that it has already, on a number of occasions, examined the same argument by the Russian Government and rejected it (see, among other authorities, *Silchenko v. Russia*, no. 32786/03, §§ 33-37, 28 September 2006, and *Kazartsev v. Russia*, no. 26410/02, §§ 11-15, 2 November 2006). The Court does not find any reason to depart from that finding in the present case and dismisses the Government's request to strike out the application under Article 37 of the Convention.

(b) Non-exhaustion issue

38. The Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52; *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of*

Judgments and Decisions 1996-IV, p. 1210, §§ 65-67; and, most recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

39. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited above, p. 1211, § 68, or *Cennet Ayhan and Mehmet Salih Ayhan*, cited above, § 65).

40. Furthermore, the application of the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

41. The Court observes at the outset that the applicant complained about the poor conditions of his detention to various officials, including the prosecution authorities. The only response he received was that of 25 September 2003 from the Severodvinsk Town Prosecutor, who dismissed the complaint despite the fact that the applicant's allegations had been found to be true. The Government, however, pointed to the report drawn up by the Arkhangelsk Regional Prosecutor on 18 February 2003 in which he had established violations of detainees' rights in the Severodvinsk Town temporary detention ward. They further submitted that following that report it was open to the applicant to lodge an action in tort but he did not do so.

42. The Court notes the Government's argument that the applicant could have lodged an action before a court claiming compensation for damage. It has strong doubts, however, as to whether this remedy would have been effective in the circumstances of the present case. The Court observes that the Government cited the decision of 18 February 2003 as the pre-condition for the applicant's action before a court. However, the applicant was not notified of the decision of 18 February 2003 and a copy of that decision was

not served on him. This fact was not disputed by the Government. Furthermore, the Court does not lose sight of the fact that the decision of 18 February 2003 was issued upon a complaint from another detainee, Mr N., and not from the applicant. At the same time the applicant's complaints about the poor conditions of his detention produced a negative response from the Severodvinsk Town Prosecutor.

43. In the Court's view, against this background the applicant could hardly have been expected to go any further and apply to a court. Indeed, it is highly questionable whether, in a situation where the applicant was unaware of the decision of 18 February 2003 and did not have a copy, and where his own complaints to the prosecutor had proved to be futile, he would have been able to argue his case before a court or even state the cause of action to pass the admissibility stage. In other words, in the circumstances of the present case, the applicant would have had no realistic opportunity to apply effectively to a court.

44. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government had a reasonable prospect of success. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

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

2. Merits

46. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in the Severodvinsk Town temporary detention ward. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government have failed to refute.

47. The main characteristic of the detention conditions, upon which the parties disagreed, is the number of inmates in the cells. According to the applicant, there were usually three or four times more inmates in his cell than the number it was fit to accommodate. However, the Government disputed that assertion. They did not indicate the exact number of inmates in the cells, merely arguing that each inmate had at least 4 square metres of personal space, which represented the sanitary norm (see paragraphs 23 and 31 above).

48. In this connection, the Court observes that Convention proceedings, as with 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 disproving such allegations. 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).

49. Turning to the facts of the present case, it was open to the Government to provide the Court with copies of registration logs showing names of inmates detained with the applicant. The Government could have also provided the Court with certificates issued by the administration of the Severodvinsk Town temporary detention facility indicating the exact number of detainees. Furthermore, taking into account the Arkhangelsk Regional Prosecutor's inquiry resulting in the report of 18 December 2003, the Government could have submitted relevant information from the prosecutor's case file. However, no such data was submitted. Having regard to the principles indicated in paragraph 48 above and the fact that the Government did not offer any convincing explanation for their failure to submit relevant information, the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

50. The applicant argued that he was detained in the cells with 12 inmates. It follows that in the smaller cell of 12 square metres inmates were afforded 1 square metre of personal space. In two bigger cells of 18.7 square metres detainees had less than 1.6 square metres of personal space.

51. In this connection the Court notes that it has frequently found a violation of Article 3 of the Convention in a number of cases against Russia on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI).

52. The Court notes that the applicant was confined to his cell for 24 hours a day as there were no daily outdoor walks. His situation was further exacerbated by the fact that he was not provided with bedding and had to sleep on concrete flooring covered with planks and share the bed with other detainees. Inmates were not able to shower during the entire period of the detention. Furthermore, food was only provided once a day. The Court observes that the applicant's description coincides with the finding of the Arkhangelsk Regional Prosecutor, who confirmed that the provision of food was insufficient to maintain detainees in good health (see paragraph 29 above).

53. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that

the fact that the applicant was detained in these unsatisfactory conditions was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him. Furthermore, the Court does not lose sight of the fact that the Government admitted that the conditions of the applicant's detention were in breach of Article 3 of the Convention (see paragraph 35 above).

54. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to degrading treatment on account of the conditions of his detention in the Severodvinsk Town temporary detention ward from 1 to 20 March 2002.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT OF THE APPLICANT

55. Invoking Article 3 of the Convention, the applicant complained that police officers had assaulted him during the arrest and interrogations, that he had not been provided with food for three days in January 2002, that he had been kept handcuffed in the courthouse for two hours and that the warders had intimidated him during the trial hearings.

56. As regards the applicant's complaints about the alleged assaults, the Court is not required to decide whether or not they disclose an appearance of a violation of the Convention. The Court once again reiterates that the rule on non-exhaustion contained in Article 35 § 1 of the Convention affords the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Thus the complaint to be submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits.

57. The Court observes that the applicant's allegations of ill-treatment were considered by a senior investigator of the Severodvinsk Town Prosecutor's office, who did not find a *prima facie* case of ill-treatment and refused institution of criminal proceedings by a decision of 29 October 2001. The Court has already held a number of times that in the Russian legal system, the power of a court to reverse a decision refusing institution of criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). The applicant did not make use of such judicial appeal and thus denied the domestic authorities an opportunity to consider whether he had been subjected to treatment contrary to the requirements of Article 3 of the Convention and whether the prosecutor's decision was compatible with the applicant's rights as guaranteed by Article 3. It follows that this complaint must be rejected pursuant to

Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

58. As to the remaining complaints, the Court notes that there is no indication in the file that the applicant raised those issues before any competent domestic authorities. The applicant did not dispute that it was open for him to submit a request for institution of criminal proceedings against the officials responsible for the alleged ill-treatment and/or lodge a complaint before the competent court challenging the unlawful actions of the warders and the investigating authorities. However, the applicant did not make use of these avenues.

59. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

60. The applicant further complained that his detention on remand had been unlawfully authorised and then extended on several occasions. He relied on Article 5 §§ 2 and 3 and Article 13 of the Convention.

61. The Court observes that there is no indication in the case file that the applicant appealed against any decision authorising or extending his detention on remand. Moreover, he did not dispute that under Russian law, as it stood at the relevant time, it was also open for him to submit a request for release to the court conducting the criminal proceedings. He could have also done that at a hearing on the merits of the case. However, the applicant did not make use of these avenues.

62. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. The applicant further complained under Articles 3, 5, 6 and 13 of the Convention that the police officers had arrested and threatened his wife on 23 August 2001, that the investigator had refused to question his daughter to confirm his alibi, that he had not had sufficient access to the case file, that the investigator had tricked him into refusing legal aid, that the courts in both sets of the criminal proceedings had incorrectly assessed evidence and applied the law and had refused to call certain unspecified witnesses on his behalf, that the second set of the criminal proceedings had been excessively long, that the trial records had been forged, that he had been pronounced guilty in the article published on 2 January 2003 and that certain documents had disappeared from the case file.

64. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione personae*, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 15,000 euros (EUR) in respect of pecuniary damage, representing capital losses during the period when he was detained. He submitted that he had been dismissed from his employment during the criminal proceedings and his relatives had been forced to pay for his food during his detention in a correctional colony. He further claimed EUR 1,000,000 in respect of non-pecuniary damage.

67. The Government contested the existence of a causal link between the alleged violation and the pecuniary loss alleged by the applicant, as the decision to prefer criminal charges against the applicant was not the subject of the Court's review in the present case. They further argued that the applicant's claims in respect of non-pecuniary damage were excessive.

68. The Court notes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. It shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). Consequently the Court finds no reason to award the applicant any sum under this head.

69. As to non-pecuniary damage, the Court accepts that the applicant suffered humiliation and distress because of the degrading conditions of his detention. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

70. The applicant also claimed EUR 1,000 for the costs and expenses incurred in the proceedings before the domestic courts and this Court.

71. The Government argued that the applicant had not submitted any receipts or vouchers or other documents on the basis of which the amount claimed could be established.

72. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant did not submit any documents in support of his claim. The Court notes, however, that the applicant was not represented in the Strasbourg proceedings but that he must have incurred expenses in providing his written pleadings (see *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 75). Deciding on an equitable basis, the Court considers it reasonable to award the sum of EUR 500, plus any tax that may be chargeable on that amount.

C. Default interest

73. 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. *Declares* the complaint concerning the conditions of the applicant's detention in the Severodvinsk Town temporary detention ward from 1 to 20 March 2002 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *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, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five 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;

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

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President