



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

FIFTH SECTION

CASE OF ROZHKOVA v. RUSSIA

(Application no. 64140/00)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

12/11/2007

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 Rozhkov v. Russia,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mr J. BORREGO BORREGO,
Mr M. VILLIGER, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 64140/00) 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, Mr Yevgeniy Ivanovich Rozhkov (“the applicant”), on 30 October 2000.

2. The Russian Government (“the Government”) were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mrs V. Milinchuk.

3. The applicant alleged, in particular, that he had been denied adequate medical assistance in pre-trial detention centre IZ-26/1 and that his appeal of 25 April 2000 had been examined with a delay of more than one month. He relied on Articles 3 and 5 § 4 of the Convention respectively.

4. By a decision of 5 February 2007 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1), the Court having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in Belgorod.

A. Criminal proceedings against the applicant

7. The applicant is a former employee of the Belgorod Customs Office (*Белгородская таможня*), where he occupied the post of Deputy Head of the Investigations Department (*заместитель начальника отдела дознания*).

8. On 28 October 1999 the applicant was arrested and detained. Some time thereafter the investigating authority instituted criminal proceedings against him on suspicion of bribery, under the number 999161.

9. On 14 July 2000 the Belgorod Regional Court found the applicant guilty as charged and sentenced him to four years' imprisonment.

10. On 30 January 2001 the Supreme Court of Russia examined and dismissed the applicant's appeal against the judgment of 14 July 2000.

B. The applicant's detention on remand

11. The applicant was taken into custody on 28 October 1999.

1. *The applicant's detention pending investigation*

(a) **Detention order of 31 October 1999 and related proceedings**

12. On 31 October 1999 the Belgorod Transport Prosecutor (*Белгородский транспортный прокурор*) authorised the applicant's detention on remand.

13. The applicant contested the lawfulness of his detention on remand before the courts on 11 November 1999.

14. By decision of 23 November 1999 the Oktyabrskiy District Court of Belgorod (*Октябрьский районный суд г. Белгорода*) found the applicant's detention on remand to be lawful.

15. On 29 November 1999 the applicant lodged an appeal against this decision.

16. On 29 December 1999 the Belgorod Regional Court (*Белгородский областной суд*) dismissed the applicant's appeal.

(b) Detention order of 24 December 1999 and related proceedings

17. On 24 December 1999 the Belgorod Transport Prosecutor and the South-Eastern Transport Prosecutor authorised the extension of the investigation and of the applicant's detention on remand for one month until 28 January 2000.

18. On 30 December 1999 the applicant contested the lawfulness of the extension of his detention on remand before the courts.

19. On 20 January 2000 the Western District Court of Belgorod (*Федеральный суд Западного округа г. Белгорода*) upheld the extension of the applicant's detention on remand.

20. On 27 January 2000 the applicant and his defence counsel lodged an appeal against this decision, raising the same arguments.

21. On 1 March 2000 the Belgorod Regional Court dismissed the appeal of the applicant and his defence counsel as groundless and upheld the order of 24 December 1999 and the decision of 20 January 2000.

(c) Detention order of 24 January 2000 and related proceedings

22. By order of 24 January 2000 the Belgorod Transport Prosecutor and the South-Eastern Transport Prosecutor authorised the extension of the applicant's detention on remand for a further month until 28 February 2000.

23. On 8 February 2000 the applicant complained of the unlawfulness of the extension of his detention on remand before the courts.

24. On 18 February 2000 the Western District Court of Belgorod confirmed the extension of the applicant's detention on remand.

25. This decision was upheld on appeal by the Regional Court on 29 March 2000.

(d) Detention order of 28 February 2000 and related proceedings

26. On 28 February 2000 the Belgorod Transport Prosecutor and the South-Eastern Transport Prosecutor extended the applicant's detention until 28 March 2000.

27. The applicant contested the decision in court.

28. On 31 March 2000 the Western District Court of Belgorod rejected this appeal.

29. The applicant, with the assistance of his defence counsel, appealed against these decisions.

30. On 26 April 2000 the Belgorod Regional Court, ruling in final instance, dismissed the appeals of the applicant and his defence counsel and upheld the previous decisions.

(e) Detention order of 21 March 2000 and related proceedings

31. By order of 21 March 2000 the Belgorod Transport Prosecutor and the South-Eastern Transport Prosecutor authorised the extension of the applicant's detention on remand for a further month, until 28 April 2000.

32. On 31 March 2000 the applicant contested the lawfulness of the extension of his detention on remand before the courts.

33. On 10 April 2000, having heard the applicant and his counsel, the Western District Court of Belgorod rejected their arguments.

34. The order of 21 March and the decision of 10 April 2000 were upheld on appeal by the Regional Court on 10 May 2000.

(f) Detention order of 21 April 2000 and the applicant's related complaint

35. On 21 April 2000 a deputy Prosecutor General of the Russian Federation (*заместитель Генерального прокурора РФ*) authorised the extension of the investigation and of the applicant's detention on remand until 28 May 2000.

36. On 25 April 2000 the applicant contested the lawfulness of the extension of his detention on remand before the courts and requested his release.

37. This complaint reached the District Court on 26 April 2000.

38. On 25 May 2000 the South-Eastern Transport Prosecutor approved the bill of indictment, and the case was sent to the Belgorod Regional Court for trial.

2. Detention during the judicial proceedings

(a) Decision of 26 May 2000 and the applicant's related complaints

39. On 26 May 2000 the Western District Court of Belgorod rejected the applicant's application for release made on 25 April 2000. In doing so, the court stated that the applicant was charged with an offence for which he could be detained on the sole ground of the danger it represented.

40. The court also added that relevant reasons and motives had been set out in the investigating authority's order of 21 April 2000, which had been authorised by the prosecutor.

41. On 31 May 2000 the applicant lodged an appeal against this decision with the Regional Court.

42. This appeal reached the Regional Court on 2 June 2000. According to the Government, it was joined to the applicant's case file and examined by the Regional Court on 20 June 2000 (see below).

43. Throughout the period between 2000 and 2003 the applicant complained to various public authorities about the fact that no decision had been taken on his appeal lodged on 31 May 2000.

44. By letter of 7 July 2003 the President of the Belgorod Regional Court informed the applicant that:

“Your statement that the appeal lodged against the decision of the Oktyabrskiy District Court of Belgorod of 26 May 2000 was left without consideration is unconvincing. By the time the court received this appeal, on 2 June 2000, the criminal case against you had already been forwarded to the Regional Court and was no longer being processed by the investigating authority and the prosecutor whose decisions on detention you were contesting.

Taking this into account, your appeal was included in the case file ... as the arguments raised in it could be examined only when [the first] court hearing was being scheduled. Having decided to schedule a hearing and not to change the preventive measure imposed on you, the judge accordingly found your pre-trial detention to be lawful.”

(b) Decision of 20 June 2000 and the applicant's related complaints

45. On 30 May 2000, following transmission of the case to the court, the applicant lodged a motion with the Regional Court requesting that he be released because of his glaucoma.

46. On 20 June 2000 the Belgorod Regional Court dismissed the applicant's motion and scheduled a hearing for 26 June 2000. In refusing to release the applicant, the court examined the lawfulness of the applicant's ongoing detention on remand. In particular, it found that the preventive measure in the form of detention had been imposed in accordance with the type and degree of danger to society of the offences with which the applicant was charged and that no substantial violations of the requirements of domestic law had occurred. It then decided to reject his request for release as groundless.

47. On 21 June 2000 the applicant lodged an appeal against this decision, arguing for his release and raising a number of other arguments.

48. On 13 September 2000 the Supreme Court of Russia, presided by judge G., dismissed the applicant's appeal against the decision of 20 June 2000, finding this decision to be lawful and well-founded.

(c) The applicant's release from custody

49. On 6 September 2002 the applicant was released on parole.

C. Conditions of detention in pre-trial detention centre IZ-26/1

1. Background information on the applicant's state of health

50. Prior to the institution of criminal proceedings on 28 October 1999, the applicant had twice suffered concussion for which he had received inpatient treatment in 1994 and 1997.

51. On 23 June 1999 the applicant was diagnosed by an oculist with “incipient retinal angiopathy and essential hypertension of the right eye”. The oculist prescribed some eye drops and advised the applicant to undergo regular medical observation.

52. It appears that the applicant underwent observation by an ophthalmologist, in the course of which the above diagnosis was confirmed, including a suspicion of glaucoma. He was advised to use the appropriate eye drops twice a day on an ongoing basis and to undergo surgery to the right eye.

2. The applicant's arrest on 28 October 1999 and subsequent medical examinations

53. On 28 October 1999, at 10.10 p.m., the applicant was arrested in the entrance hall to his apartment building by officers of the Belgorod Regional Department for Combating Organised Crime (hereafter “the DFOC”, *Управление по борьбе с организованной преступностью при УВД Белгородской области*), when he was allegedly taking a bribe.

54. The policemen, faced with resistance from the applicant, applied physical force to lay him down on the floor and then tied his hands with handcuffs.

55. On 29 October 1999, at 4.05 p.m., the applicant was examined in the police station by a forensic medical expert from the Belgorod Regional Department of Forensic Medicine (*Областное бюро судмедэкспертизы г. Белгорода*) after he complained of dizziness and a slight feeling of nausea. The expert's report contained the following conclusions:

“There is hyperaemia of the skin, measuring 11 x 0.5 cm, on the rear of the right forearm in the area of the radiocarpal joint, between the interior and the exterior condyles. A similar one, measuring 3 x 0.4 cm, is evident in the area of the left radiocarpal joint next to the exterior condyle, and on the left side of the forehead (1 x 0.2 cm). There is a 2 x 1 cm abrasion on the front side of the left knee joint, covered by a dry red smooth surface at skin level. A similar abrasion of 0.3 x 0.3 cm is evident on the palmar surface of the lower part of the right forearm, surrounded by a 0.5 cm hyperaemia. A similar hyperaemia of soft tissue measuring 0.4 x 0.2 cm can be seen on the lateral surface of the proximal phalanx of the middle finger of the right hand. No other injuries have been detected.

... [the above injuries] may have been caused on 28 October 1999 by hard, blunt objects which had a surface liable to cause moderate trauma and did not cause damage to health.”

56. The report did not mention any sign of, or complaint concerning, concussion.

3. Alleged lack of adequate medical assistance

57. On 5 November 1999 the applicant was placed in pre-trial detention centre IZ-26/1.

58. On 11 November 1999 the applicant applied in writing to the head of the detention centre. He submitted that he had suffered concussion as a result of hitting his head against a concrete floor in the course of his arrest. He further submitted that he had been treated twice previously for concussion and was now experiencing the same symptoms: dizziness, lack of appetite, nausea, asthenia and a severe headache.

59. On 15 November 1999, at the request of his relatives, the applicant was examined by an outside neurologist. The doctor, having heard the applicant's description of his symptoms, diagnosed him with the "after-effects of closed craniocerebral injuries". He was prescribed injections of aminophylline, pyracetam and vitamin B6, and nootropil and vinpocetine in pill form. The applicant submitted that these drugs had been given to him by his wife, as they were not available in the detention centre.

60. On 23 November 1999 the applicant applied to the Belgorod Transport Prosecutor, requesting a meeting with his wife to receive a delivery of medicines. He said that no medical assistance was being provided to him by the detention centre and that the supply of medicines there was inadequate.

61. According to the information submitted by the Government, between 15 November and 13 December 1999 the applicant underwent inpatient treatment in the medical unit of IZ-26/1. The applicant was discharged in a satisfactory condition.

62. On 1 and 14 December 1999 the applicant applied to the head of the detention centre stating that, despite the medication delivered to him by his wife, his health had deteriorated significantly; he was suffering from severe asthenia, his memory had deteriorated and he could not think clearly. He requested that measures, which he apparently did not specify, be taken.

63. On 22 December 1999 the applicant was again examined by an outside neurologist whose report, prepared two days later, contained the following conclusions:

"[The applicant] has [previously] been examined by a neurologist and diagnosed with the after-effects of repeated closed craniocerebral injuries. He has received a full course of therapy. On 22 December 1999 [the applicant] was again examined by a neurologist and diagnosed with the after-effects of closed craniocerebral injuries coupled with asthenovegetative syndrome and disseminated neurological symptomatology. Treatment has been prescribed and a visit by an oculist recommended. Currently I find [the applicant's] general state of health to be satisfactory. He is receiving treatment and is under constant medical observation."

64. The extracts from the applicant's prison medical file submitted by the Government show that the entry in the file dated 22 December 1999 stated that the applicant's state of health had improved considerably following the course of medication. The doctor had prescribed a ten-day course of treatment.

65. On 2 February 2000 the applicant again applied to the head of the detention centre. He submitted that, despite the course of treatment prescribed by the neurologist for his concussion, he was not getting better and was still feeling very unwell. Moreover, he had started suffering from unbearable pain in his eyes. He requested that he be examined by a neurologist and an oculist.

66. On 15 March 2000 the applicant was examined in the pre-trial detention centre by an oculist invited at his wife's expense from a local clinic. The oculist's report contained the following conclusions:

“... [the applicant] has medium-degree myopia, retinal angiopathy and secondary glaucoma (essential hypertension).

Recommendations: (a) insertion of [eye drops], in a dose of 0.25%, into the right eye before going to bed and into the left eye twice a day; (b) an inpatient examination using special equipment; (c) surgical treatment in order to retain optic functions, as glaucoma causes atrophy of the optic nerves which leads to loss of eyesight to the point of blindness. The post-surgery period must include two to three weeks in a hospital, followed by medical observation for one to one and a half months. It is desirable to wait six months before operating on the second eye; (d) regular check-ups by an oculist not less than once every three months.”

67. According to the applicant, the oculist did not prescribe any specific treatment against the pain in his eyes as this could be relieved only by means of surgery; he also warned the applicant that a delay in undergoing surgery might lead to blindness. The applicant also submitted that, according to the measurements carried out by the doctor, his intraocular pressure was 27 and 34 mmHg respectively. The applicant argued that the manifestly high pressure of 34 mmHg in one of his eyes provided proof of his medical condition.

68. On 16 March 2000 the applicant complained to the head of the Department for the Execution of Sentences of the Ministry of Justice (*начальник Управления исполнения наказаний МЮ РФ по Белгородской области*) and the head of the detention centre that the authorities of the detention facility were not providing any surgical treatment for his glaucoma.

69. On 17 March 2000 the head of the medical unit of the detention facility, upon an enquiry by the applicant's counsel, provided a medical certificate which indicated that the applicant was undergoing regular check-ups in the medical unit in connection with his head trauma. It further repeated the recent findings of the oculist, stating that the applicant was suffering from first-degree retinal angiopathy and glaucoma of both eyes, and needed surgical treatment in order to retain his eyesight. It was noted that the applicant was currently undergoing conservative therapy.

70. On 15 and 17 March 2000 the applicant allegedly discussed his state of health with the head of the medical unit, who told him that medical assistance was provided only to those patients who were in extreme need;

the applicant did not fall into that category. He further said that he was not able to relieve the applicant's eye pain, call an oculist or perform surgery in the detention facility. He had the authority to transfer the applicant for surgery to the hospital for detainees in Voronezh, but only after the judgment against the applicant had become final. The applicant could not be transferred before then, as there was no instruction to that effect from the prosecutor or the court.

71. On 27 and 28 March 2000 the applicant repeated his complaints of 16 March 2000, indicating that, despite the diagnosis of glaucoma recently confirmed by the oculist, he had received no treatment for this illness. He further indicated that his complaints about the unbearable pain in his eyes, from which he had been suffering for the past months, were being ignored, and requested that surgery, to which he did not object, be performed. These complaints apparently led to another discussion with the head of the medical unit, who again refused to arrange for surgery.

72. On 28 March 2000 the applicant embarked on a hunger strike in protest against, *inter alia*, the lack of medical assistance. He was placed in solitary confinement where he stayed for 14 days, refusing to eat.

73. The applicant's prison medical file shows an entry dated 31 March 2000 according to which the applicant was examined by the doctor in connection with his hunger strike. The conclusion was that the applicant's general condition was satisfactory, he was fully conscious and his hemodynamic indices were within the normal limits.

74. On 12 April 2000 the applicant was taken, on the orders of the investigating authority, for a medical examination by a psychiatrist, a neurologist and an oculist in Polyclinic No. 1 in Belgorod. The applicant alleged that the oculist diagnosed him with "atrophy of the optic nerves of both eyes", which could progressively deteriorate and result in blindness. There is, however, no documentary proof of such a conclusion.

75. The applicant submitted that from April to 16 December 2000 (the date when he was transferred to another pre-trial detention centre), the head of the medical unit of detention centre IZ-26/1 had not been following the recommendation of the oculist made on 14 March 2000 to have the applicant examined at least once every three months, had not provided any treatment, had not taken any measures to relieve the applicant's eye pain and had not ordered surgery. The necessary medication was provided for the applicant by his wife.

76. An entry of 16 May 2001 in the applicant's medical file states that the applicant was examined by the doctor, who performed some tests and authorised his transportation.

77. Following his conviction, the applicant was transferred on 7 June 2001 to the transit area of penitentiary facility ZhKh-385/18 in the Republic of Mordoviya. It appears that after his transfer to a correctional facility the applicant was exempt from work on health grounds.

78. On that date the prison doctor examined him and concluded that the applicant was complaining of pain in his eyes. On completion of the tests, the doctor decided that the applicant's heart, lungs, urine and blood tests were all normal.

79. The applicant was subsequently transported to facility ZhKh-385/5, arriving there on 8 June 2001. During the examination upon arrival the doctor diagnosed the applicant with glaucoma of both eyes and recommended that he see an oculist and a neuropathologist.

80. On 10 August 2001 the applicant applied to the medical unit of facility IK-5 and complained about the pain in his eyes. He was diagnosed as having glaucoma of both eyes and was prescribed a course of treatment. The applicant was also relieved from work assignments between 10 and 14 August 2001.

81. On 18 September 2001 the applicant was transferred to prison hospital LPU-21 for inpatient treatment in the surgical department in connection with, among other things, the "secondary glaucoma". He remained there, apparently with interruptions, until at least 2 March 2002.

82. On 22 September 2001 the oculist diagnosed the applicant with "medium-degree myopia of both eyes ... [it is] recommended [among other things that steps be taken] to control [the patient's] intraocular pressure".

83. On 24 September 2001 the applicant was admitted for inpatient treatment in the surgical department of the prison hospital with the following diagnosis: "Medium-degree myopia. Suspicion of glaucoma".

84. It appears from the case file that the applicant requested the doctors not to administer any treatment until he had seen his family. Apparently, the applicant did not stay long in hospital.

85. On 9 October 2001 the applicant was again admitted for inpatient treatment in the prison hospital. Having thoroughly examined the applicant and performed various tests, the doctors diagnosed the applicant with "medium-degree myopia – progressing". The diagnosis did not mention any sign of glaucoma.

86. On 6 September 2002 the applicant was released.

87. Medical examinations dated 8 September 2003 and 27 July and 9 December 2004 established that the applicant was suffering, among other things, from glaucoma.

88. This diagnosis was confirmed by medical examinations of 24 December 2004 and 28 July, 10 and 28 November and 26 December 2006. The last examination recommended that the applicant undergo a special medico-social examination for recognition of disability status and determination of his disability group.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

89. Article 21 of the Constitution provides that no one may be subjected to torture, violence or any other cruel or degrading treatment or punishment.

B. 1995 Law on the conditions of detention of suspects and defendants (закон «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»)

90. Inmates are entitled to medical assistance (section 17). If the health of an inmate deteriorates, he must immediately undergo medical examination by the medical employee of the detention facility.

91. If an inmate is suffering from a serious illness, the authorities of the detention facility must immediately inform the prosecutor, who may carry out an inquiry into the matter (section 24).

C. Decree of the Ministry of Justice of 12 May 2000 on the internal regulations governing pre-trial detention centres (Приказ Минюста РФ от 12 мая 2000 г. N. 148 «Об утверждении Правил внутреннего распорядка следственных изоляторов уголовно-исполнительной системы Министерства юстиции Российской Федерации»)

92. Inmates should apply for medical assistance to a medical employee of the detention centre during his or her daily rounds and, in the case of a serious illness, to any employee of the detention centre.

93. The employee contacted by the inmate is obliged to take measures to provide medical assistance (paragraph 131). Outpatient care is provided to inmates in their cells and on the specialised premises of the medical unit of a detention centre. Medication is provided individually in the doses and quantities recommended by a doctor, in accordance with the relevant information in the patient's medical records (paragraph 132).

94. The medical unit of the detention centre should have an inpatient department. If inmates are in need of urgent or specialised medical assistance which cannot be provided in a detention centre, they should be transferred for inpatient treatment to a penitentiary institution or, if necessary, to a public health institution in accordance with the prescribed procedure (paragraph 133).

D. Criminal Procedure Code of 1961

1. Detention pending investigation

95. According to the Code in force at the relevant time, in making the decision on detention, the prosecutor had to consider whether there were “sufficient grounds to believe” that the accused would evade investigation or trial, obstruct the establishment of the truth or reoffend (section 89). The decision also had to take into account the seriousness of the charge, information on the personality of the accused, his profession, age, state of health, family status and other circumstances (section 91). A prosecutor's decision ordering detention on remand had to be reasoned and justified. The accused had to be informed of the detention decision and have explained to him the procedure for lodging an appeal against it (section 92). Persons charged with an offence contemplated by, *inter alia*, section 290 of the Criminal Code could be detained on remand on the sole ground of the dangerousness of the offence (section 96).

96. The maximum permitted period of detention pending investigation was two months, which could be extended up to three months and later up to six months if it was impossible to complete the investigation earlier and in the absence of grounds for release. In exceptional circumstances, the period of detention pending investigation could be extended beyond the six-month limit, but could not exceed eighteen months (section 97). A preventive measure had to be cancelled by a reasoned decision of the investigating authority or the prosecutor when it ceased to be necessary, or be replaced by a more stringent or milder preventive measure if the circumstances of the case so required (section 101).

2. Proceedings to examine the lawfulness of detention pending investigation

97. The detainee or his counsel or representative could challenge the decision imposing or extending a term of detention pending investigation before the courts (section 220.1). The judge was required to review the lawfulness and justification of the decision no later than three days from receipt of the relevant materials. The judge could either dismiss the challenge or revoke the detention order and order the detainee's release. Reasons had to be given for the judge's decision (section 220.2).

3. Detention during the judicial proceedings

98. After the investigation had been completed, the prosecutor had to approve the bill of indictment and forward the case to the court within five days. Thereafter, all complaints and requests were to be forwarded directly to the court (sections 214 and 217). In ordering, extending or revoking the

period of detention on remand during the judicial proceedings, the courts were also guided by the above-mentioned sections 89, 91, 92, 96 and 101. When setting the date of the first hearing, the judge had to decide whether or not the defendant could be released (section 222). The judge was further obliged to examine any application for release made by the defendant (section 223).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicant complained of the lack of adequate medical treatment in pre-trial detention centre IZ-26/1 for the after-effects of his concussion and his glaucoma. 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.”

A. The parties' observations

100. The Government referred to the data from the applicant's prison medical file and argued that both medical advice and all the necessary medication had been available to the applicant in pre-trial detention centre IZ-26/1 and after his transfer to a correctional institution.

101. The applicant disagreed and maintained his complaints. He argued that the available information confirmed that he had been suffering from a medical condition during his detention and that the prison authorities had failed to provide him with medical assistance in the form of surgical treatment.

B. The Court's assessment

102. The Court recalls that 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 (see *Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119).

103. The Court further recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of 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 v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

104. In exceptional cases, where the state of a detainee's health is absolutely incompatible with his or her detention, Article 3 may require the release of that person under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty.

105. The Court finally recalls that the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; see also *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI).

106. Turning to the present case, the Court notes at the outset that nothing in the case file suggests, and indeed it has not been alleged by the applicant, that his medical condition was in principle incompatible with his detention in IZ-26/1 (see, by contrast, the *Priebke* and *Papon* decisions, cited above). The question to be examined by the Court is thus whether in the circumstances of the present case the prison authorities of IZ-26/1 adequately secured the applicant's well-being and health by providing him with the requisite medical assistance.

107. The Court will first examine the evidence relating to the state of the applicant's health at the beginning of his detention in IZ-26/1. The Court notes in this connection that even prior to his arrest on 28 October 1999 the applicant had previously suffered from the effects of two episodes of concussion and from various problems with his eyes, including suspected glaucoma. It further notes that the medical report dated 29 October 1999 suggests that during his arrest on 28 October 1999 the applicant may have sustained some trauma to his head. This is also confirmed by the fact that the medical reports of 15 November and 22 December 1999 mentioned "after-effects of closed craniocerebral injuries". On the basis of the above materials, the Court concludes that on 5 November 1999, the date on which the applicant was detained in IZ-26/1, he was already suffering from eye problems, including suspected glaucoma, and from the after-effects of some trauma to his head.

108. Since the applicant did not allege or complain that during his detention in IZ-26/1 he had contracted any other illnesses in respect of which he had not received adequate medical assistance (see, by contrast, *Farbtuhs v. Latvia*, no. 4672/02, § 57, 2 December 2004), the next issue to be examined by the Court is whether the authorities of IZ-26/1 adequately secured the applicant's health by providing him with the requisite medical aid.

109. As regards the after-effects of the applicant's head trauma such as dizziness, lack of appetite, nausea, asthenia and severe headache, the Court notes that in response to the applicant's complaints on 15 November 1999 he was visited by an outside neurologist who diagnosed him with the "after-effects of closed craniocerebral injuries" and issued a prescription. For almost a month after this visit the applicant underwent inpatient treatment in the medical unit of IZ-26/1 and was then discharged in a satisfactory condition. The parties did not dispute that the applicant was able to receive the necessary medicine for his treatment from his family. On 22 December 1999 the applicant was again examined by an outside neurologist, who made the conclusions quoted in § 63 above.

110. The Court notes that after that visit the applicant did not repeat his initial complaints about dizziness, lack of appetite, nausea, asthenia and severe headache. Furthermore, the subsequent entry in the applicant's medical file of 31 March 2000 stated that the applicant's "general condition was satisfactory, he was fully conscious and his hemodynamic indices were within normal limits".

111. In these circumstances, the Court finds that the applicant's health concerns in this connection were adequately addressed by the prison authorities of IZ-26/1 and that it cannot be said that the applicant was denied medical assistance for the after-effects of his head trauma.

112. As to the suspicion of glaucoma, the Court notes that on 2 February 2000 the applicant announced that he had begun suffering from "unbearable pain in the eyes". On examination by an outside oculist on 15 March 2000, the applicant was diagnosed with "medium-degree myopia, retinal angiopathy and secondary glaucoma (essential hypertension)". This diagnosis was broadly confirmed by the head of the medical unit of IZ-26/1 on 16 March 2000, when the applicant was still being held in that facility, and after the applicant's transfer to a penitentiary facility and his release, in medical examinations of 8 June, 10 August, 18 and 22 September and 9 October 2001, 8 September 2003, 27 July and 9 and 24 December 2004 and 28 July, 10 and 28 November and 26 December 2006, all of which either diagnosed glaucoma or mentioned that it was suspected. The Court further notes, and it seems undisputed between the parties, that on several occasions during his detention in IZ-26/1 the applicant requested the prison authorities to arrange for surgery to his eyes. Since the prison authorities

declined the request the question arises as to whether the refusal could be regarded as ill-treatment falling within the ambit of Article 3.

113. The Court recalls its well-established case-law that alleged ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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. On the facts, the Court notes that surgical intervention on the applicant's eyes was one of the recommended treatments (see, for example, paragraph 63 above). However, nothing in the case file suggests that the condition of the applicant's eyes was so painful and serious that it required urgent surgical treatment or that surgery was absolutely indispensable. In fact, none of the applicant's medical reports or certificates ever mentioned the need for either painkillers or any kind of immediate intervention. This conclusion is further corroborated by the conduct of the applicant, who not only refused an offer of inpatient treatment in the surgical department of the prison hospital after 24 September 2001 but also failed to undergo any kind of treatment in this respect even after his release on 6 September 2002. Thus, from the medical certificates submitted by the applicant and dated 2003, 2004 and 2006 it is clear that his glaucoma diagnosis remained essentially unchanged.

114. In view of the above and since there is nothing in these certificates or any other materials in the case file to suggest that the condition of the applicant's eyes deteriorated in any way as a result of the lack of surgical intervention during his detention in IZ-26/1, the Court is unable to conclude that the refusal of the prison authorities of IZ-26/1 to arrange for surgery on his eyes constituted ill-treatment falling within the ambit of Article 3.

115. Accordingly, the Court's overall conclusion is that there has been no violation of Article 3 of the Convention.

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

116. The applicant was also dissatisfied with the authorities' failure to examine speedily his application for release dated 25 April 2000. The Court will examine this complaint under Article 5 § 4 of the Convention, which provides:

“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.”

A. The parties' submissions

117. The Government submitted that the applicant's application of 25 April 2000 had been received on 26 April, but since the case file had been under examination by the competent prosecutor's office until 25 May 2000, its examination had been delayed until 26 May 2000. In their view, the delay was not excessive. In addition, they argued that the District Court had not failed to comply with the requirements of the domestic legislation. Under section 220.2 of the Code of Criminal Procedure the judge had to review the lawfulness and justification of a decision to impose or extend a period of detention on remand no later than three days from receipt of the relevant materials. In the instant case the file was received by the District Court on 25 May 2000 and examined the next day.

118. The applicant disagreed with the Government and maintained his complaints.

B. The Court's assessment

119. The Court reiterates that Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II). The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see, *mutatis mutandis*, the *R.M.D. v. Switzerland* judgment of 26 September 1997, *Reports* 1997-VI, p. 2013, § 42).

120. In the present case, on 21 April 2000, a deputy Prosecutor General of the Russian Federation authorised the extension of the investigation and of the applicant's detention on remand until 28 May 2000. Four days later, on 25 April 2000, the applicant contested the lawfulness of the extension of his detention on remand before the courts and requested that he be released. The complaint reached the District Court on 26 April 2000 and was not examined until 26 May 2000, that is, one month later.

121. Having regard to the duration in question and the fact that the examination of the applicant's request did not involve consideration of particularly complex issues (see *Baranowski v. Poland*, no. 28358/95, § 72, ECHR 2000-III), and in view of the other relevant circumstances of the case and of its well-established case-law (see, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 82-88, ECHR 2000-XII), the Court considers that the applicant's request for release was not examined "speedily" as required by Article 5 § 4.

122. The Government's arguments that the applicant's case file had been under examination by the competent prosecutor's office until 25 May 2000 and that the District Court did not breach the requirements of domestic law do not alter this conclusion.

123. As regards the first argument, the Court finds that a mere reference to the fact that the case file was unavailable is clearly insufficient to justify such a long delay. If there existed special reasons or considerations which could have outweighed the need to respect the applicant's individual right to speedy review of his detention and required the domestic authorities to postpone examination of the applicant's complaint of 25 April 2000 for one month, this should have been indicated by the Government.

124. As to the second argument, the Court notes that compliance with the domestic law may be of relevance for the assessment of the compliance with the "speediness" requirement of Article 5 § 4 of the Convention. However, on the facts, the domestic legislation operated a formal three-day time-limit calculated from the date of "receipt of the materials". Since the Court uses the date of lodging of an appeal by a detainee and not the date of "receipt of the materials" for the purposes of assessing the speediness of the review, the fact that the domestic law was complied with is insufficient to justify the delay at issue.

125. There has consequently been a violation of Article 5 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant considered that the criminal proceedings against him as a whole had been unfair and that his detention in this connection had been unlawful. He claimed 2,217,336 euros (EUR) for pecuniary damage and EUR 700,000 for non-pecuniary damage.

128. The Government considered the claims to be unfounded, grossly excessive and unsubstantiated.

129. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court further observes that the applicant must have suffered a certain degree of stress and frustration as a result of the delayed examination of his request

for release. The actual amount claimed is, however, excessive. Making its assessment on an equitable basis, it awards the applicant the sum of EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

130. The applicant also claimed EUR 1,000 for postal expenses incurred before the Court.

131. The Government did not agree with the amount claimed, stating that the applicant had failed to substantiate the request.

132. According to the Court's case-law, an applicant is entitled to reimbursement of 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. Regard being had to the information in its possession and the above criteria, the Court finds it appropriate to award the applicant EUR 100 in respect of costs and expenses, plus any tax that may be chargeable on the above amount.

C. Default interest

133. 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;
2. *Holds* that there has been a violation of Article 5 § 4 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, EUR 500 (five hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Peer LORENZEN
President