



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

FIRST SECTION

CASE OF GUSEV v. RUSSIA

(Application no. 67542/01)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

15/08/2008

This judgment may be subject to editorial revision.

In the case of Gusev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 67542/01) 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 Pavel Vladimirovich Gusev (“the applicant”), on 29 December 2000.

2. The applicant, who had been granted legal aid, was represented by Ms O. Tseytlina, a lawyer practising in St Petersburg. 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 Mrs V. Milinchuk.

3. The applicant alleged, in particular, that the conditions of his detention had been inhuman and that his pre-trial detention had been unlawful and excessively long.

4. By a decision of 9 November 2006, the Court declared the application partly admissible.

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

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1981 and lives in St Petersburg.

A. Criminal proceedings against the applicant and his placement in custody

1. First criminal case (no. 1-1536\00)

7. In 1998 a criminal case was opened against the applicant on suspicion of theft, an offence under Article 158 § 1 of the Criminal Code. The applicant signed an undertaking to appear.

8. On 2 February 2000 the Primorskiy District Court of St Petersburg convicted the applicant of theft and sentenced him to probation of an unspecified duration. Counsel for the applicant appealed.

9. On 5 July 2000 the St Petersburg City Court upheld the conviction but relieved the applicant from punishment by virtue of the Amnesty Act of 26 May 2000 (cited in paragraph 45 below).

2. Second criminal case (no. 1-2415\00 or 968711)

10. In early 1999 a criminal case was opened against the applicant on suspicion of his having stolen, in January 1999, car parts valued at 200 Russian roubles (RUB, less than 8 euros). The prosecutor preferred the charge of theft aggravated by repetition and substantial damage, an offence under Article 158 § 2 of the Criminal Code.

11. On 19 April 2000 the Primorskiy District Court ordered the applicant's retrieval and arrest for the following reasons:

“On 2 February 2000 [the applicant] received a copy of the bill of indictment in this criminal case. He was summoned, by a phone call, to the court hearing at 10 a.m. on 18 April 2000, but he did not appear at that time.

Due to [the applicant's] absence the examination of the case was adjourned until midday on 19 April 2000 to find out whether there had been any valid reasons for his absence. At about 4 p.m. on 18 April 2000 [the applicant's] mother called the court on the phone and said that she and her son had been advised belatedly by her relatives – who had taken the phone call – about the court hearing on 18 April, and that was the reason why her son had not appeared at the court. [The applicant's] mother also told [the registry] that [the applicant] had no illness preventing him from appearing before the court and no medical certificate. During that conversation [the applicant's] mother was informed that the court hearing was scheduled for midday on 19 April 2000.

At the court hearing at midday on 19 April 2000 [the applicant] failed to appear once again. The case was rescheduled for 4 p.m. on 19 April 2000. At about 4 p.m. [the applicant's] mother again telephoned the court and said that, although she and her son had known about the scheduled court hearing, he would not appear before the court unless the summons was sent by mail. Under these circumstances the court has reasons to believe that [the applicant] is absconding from justice, that he refuses to appear before a court and interferes with timely examination of the case. In this connection the court considers it necessary to order retrieval of [the applicant] and vary the measure of restraint to that of placement in custody.”

12. On 23 April 2000 the applicant was taken into custody.

13. Counsel retained by the applicant's mother asked the Primorskiy District Court to commission an expert examination of the applicant's mental health and to release him pending trial.

14. On 10 May 2000 the District Court held as follows:

"According to the available case file materials, [the applicant] was repeatedly, on three occasions between 18 and 19 April 2000, summoned to a court hearing and failed to appear without a valid reason. [The applicant] is charged with an offence which is classified as a serious crime, and in such cases a custodial measure may be imposed for the sole reason of the dangerousness of the committed offence. [The applicant's] explanation that he did not appear in court because his mother had asked him not to is without substance because [the applicant] is an adult who should have been aware of the consequences of a violation of the undertaking given by him, as well as of the fact that liability for his failure to appear would be his and not his mother's."

15. The court remanded the applicant in custody *sine die* and ordered a psychiatric examination. It appears that the decision was not appealed against. The following hearing in the case was fixed for 25 September 2000.

16. On 25 September 2000 counsel for the applicant asked the District Court to vary the legal characterisation of the applicant's act, to prefer a lesser charge of non-aggravated theft and to discontinue proceedings on the basis of the Amnesty Act of 26 May 2000. The District Court granted the lawyer's request, finding as follows:

"The investigators had characterised Mr Gusev's acts as repetitive theft, having regard to the fact that he had already been charged [with theft] on 11 August 1998. However, on 2 February 2000 Mr Gusev was convicted of that offence... and, by the appeal decision of 5 July 2000... was relieved from punishment. Thus, the acts of Mr Gusev lack the constituent element of repetition.

It has not been shown that Mr Gusev caused substantial damage to the victim P. because he is charged with theft of a car jack and a pump valued at 200 roubles. It does not appear that the small amount of 200 roubles was important for the victim and there is no information about his income or dependants."

17. Having thus established that the aggravating circumstances had ceased to exist or had not been made out, the District Court characterised the applicant's act as non-aggravated theft under Article 158 § 1 of the Criminal Code and discontinued the second criminal case against him on the basis of the Amnesty Act of 26 May 2000. However, the District Court held that the applicant should remain in custody on the basis of the arrest warrant of 22 September 2000 (see below).

3. Third criminal case and continued pre-trial detention

18. In the meantime, on 17 May 2000 an investigator with the Primorskiy District Police Department of St Petersburg initiated a third criminal case against the applicant (case no. 160556) on suspicion of his

having stolen certain items from a car in December 1999 which were valued at RUB 4,600 (EUR 170). The investigator designated the act as repetitive theft, an offence under Article 158 § 2 of the Criminal Code.

19. On 22 September 2000 Ms M., an investigator with the investigations department of the Primorskiy District Police Department, ordered the applicant's placement in custody. On the same day the arrest warrant was approved by a deputy prosecutor of the Primorskiy District.

20. On 20 and 28 November 2000 counsel for the applicant lodged a complaint against the detention order of 22 September 2000. He submitted that the order had been unlawful and unjustified because it had referred to the "gravity" rather than the "dangerous nature" of the offence charged.

21. On 28 December 2000 counsel lodged a further complaint. He claimed, in particular, that Article 5 § 1 (c) of the Convention did not provide for such a ground for pre-trial detention as the "gravity of the offence" and that the prosecutor's statements about the applicant's intention to abscond or obstruct the establishment of the truth were not substantiated. He further pointed out that a copy of the order had not been served on the applicant and the procedure for lodging an appeal had not been explained to him. In any event, his authorised detention had expired on 22 November 2000 and no documents in the case file indicated that it had been extended. Finally, the applicant's lawyer pointed to the appalling conditions of the applicant's pre-trial detention.

22. On the same date the Primorskiy District Court dismissed the challenge. It found as follows:

"The decision to impose the chosen measure of restraint was read out to [the applicant] on 25 September 2000 at the Primorskiy District Court of St Petersburg following the pronouncement of the judgment. Likewise, the procedure for lodging an appeal against the detention order was explained to him. However, [the applicant] refused to sign that document, and [the investigator M.], lacking professional experience, omitted to make an appropriate note thereof. At present the periods of preliminary investigation and pre-trial detention of [the applicant] have been extended in accordance with the law.

[The applicant] is charged with a serious crime and its dangerousness alone may be, pursuant to Article 96 of the Code of Criminal Procedure, the ground for... holding him in custody. In these circumstances, dangerousness of the crime to which the law refers is in itself sufficient to anticipate undesirable conduct on the part of the accused, including continuation of criminal activities and absconding upon commission of a crime, in other words the reference in the law to the dangerous nature of a crime enables the investigative authorities to anticipate these very events to which the [European] Convention refers.

No information showing that [the applicant] cannot remain in the investigative ward was provided to the court."

23. On 3 and 30 January 2001 counsel appealed against the court decision of 28 December 2000. He indicated, in particular, that the

provision of the Code of Criminal Procedure relied upon by the first-instance court had been struck down as incompatible with the Constitution by the Constitutional Court in the part which provided for placement in custody on the sole ground of the dangerous nature of an offence.

24. On 6 February 2001 the St Petersburg City Court dismissed the appeal as unsubstantiated.

25. In the meantime, on 16 January 2001 the third criminal case against the applicant and his co-defendants was submitted for trial by the Primorskiy District Court. On 24 January 2001 the applicant's lawyer made a new request for the applicant's release pending trial.

26. On 1 February 2001 the Primorskiy District Court issued a decision to schedule the first trial hearing for 3 May 2001. In the same decision the court dismissed the lawyer's request for release, stating that the measure of restraint had been imposed "lawfully and reasonably, taking into account the gravity of the charge and the information on his character". It did not specify for how long the applicant should remain in custody. Counsel for the applicant appealed, relying on the same grounds as before. On 27 March 2001 the St Petersburg City Court upheld the decision of 1 February 2001.

27. It appears that the hearing scheduled for 3 May 2001 was adjourned.

28. On 6 July 2001 the Primorskiy District Court again adjourned the criminal proceedings until 25 September 2001, because counsel for the applicant's co-defendant failed to appear. It also extended the applicant's pre-trial detention until 16 October 2001 as, in the court's opinion, "[his] release would impede a thorough, complete and objective examination of the case".

29. The applicant appealed against the decision. He pointed, in particular, to the inhuman and degrading conditions of his detention in facility no. IZ-47/1. He also submitted that he had a permanent residence in St Petersburg and lived with his disabled mother, five younger brothers and four sisters and that there were no grounds to believe that he would abscond. A supplementary appeal on points of law was lodged by his lawyer.

30. On 4 September 2001 the St Petersburg City Court dismissed the appeals, finding the extension order had been lawful and justified because "the arguments set out in the appeals had been known to the trial court which [had] had due regard to them".

31. On an unspecified date the applicant's mother made another request for the applicant's release pending trial.

32. On 26 September 2001 the Primorskiy District Court examined the request and, upon finding that the maximum detention period of nine months would expire in October 2001, ordered the applicant's release against a written undertaking not to leave the city.

33. By a judgment of 10 July 2003, the Primorskiy District Court convicted the applicant of aggravated theft and sentenced him to four years' imprisonment conditional on two years' probation. The applicant was

relieved from the punishment by virtue of the Amnesty Act of 26 May 2000. The applicant did not appeal against the conviction.

B. The applicant's detention in remand centre IZ 47/1 "Kresty"

34. On 23 April 2000 the applicant was taken into custody and placed in remand centre IZ-47/1 of St Petersburg, commonly known as "Kresty".

35. The applicant was held in cell 430 until 1 May 2000, then in cell 106 until 9 August 2000 and in cell 79 after that date. In his submission, each cell measured six to eight sq. m and accommodated ten to thirteen persons simultaneously. Part of each cell was occupied by a table, toilet bowl and bed, so that the living space was 0.2 to 0.4 sq. m per inmate. The Government indicated the floor space of each cell as 8 sq. m and asserted that the number of detainees detained in each cell was impossible to establish as the relevant documents had been destroyed.

36. The applicant indicated that he had never had a separate bed. In cell 430 he had shared the bed on the third tier with two other inmates. In cell 106 he had not been allowed by the informal "chief" of the cell to sleep on a bed, he had slept on the floor or under the bed. In cell 79 he had shared the bed on the third tier with another inmate. No bedding had been provided by the facility, until 9 May 2000 he had slept on wooden planks and covered himself with his clothing. In their post-admissibility submissions the Government enclosed a certificate issued by the remand centre director on 21 December 2006, according to which the applicant had had a separate bed and personal bedding at all times.

37. In support of his contentions, the applicant submitted written statements by Mr P., who had been held in the same remand centre from October 1997 to March 2000 and by Mr B., who had stayed there from January 2001 to at least February 2005. Although they had not shared cells with the applicant, they attested, in particular, to the general overcrowding of the remand centre in 2001 and the lack of sleeping places and bedding.

38. The applicant further submitted that the windows in all cells had bars and iron shutters on them which blocked access to daylight and air. The shutters covered the entire window and it was forbidden to open them. The Government claimed that the cells had been "naturally ventilated" through the holes in the walls. The applicant denied that, indicating that ventilation holes in the walls had been patched with concrete. In their initial submissions on the admissibility and merits of the case, the Government indicated that on 11 June 2001 the temperature in the cell had been 20.5° C. In their submissions following the admissibility decision, the Government enclosed a certificate issued by the director of the remand centre on 21 December 2006. It said that the temperature in the cells had been taken and recorded on a quarterly basis and the average temperature had been 22° C in summer and 18° C in winter.

39. The Government stated that the cells had been equipped with sanitary installations separated from the living space by a folding screen. They enclosed a certificate issued by the director of the remand centre on 27 December 2006 which attested to that fact. The applicant submitted that there had been no folding screen and that it had been prohibited to separate the cell from the toilet bowl located about fifty centimetres from the table.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

40. 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 be afforded four square metres of personal space in the cell.

B. Criminal Code (as worded at the material time)

41. A repetition of criminal offences exists if the suspect has committed two or more offences characterised under the same provision of the Criminal Code (Article 16 § 1). Criminal offences are not considered repetitive if the proceedings in respect of the previously committed offence have been discontinued or if the criminal record of that offence has been extinguished or purged (Article 16 § 2).

42. Article 158 § 1 established that simple theft was punishable by up to three years' imprisonment. Article 158 § 2 (b) and (g) established that repetitive theft entailing substantial damage was punishable by up to six years' imprisonment. Article 158 § 3 established punishment for theft committed by a person who had been previously convicted of theft or extortion on two or more occasions.

C. Amnesty Act of 26 May 2000

43. On 26 May 2000 the State Duma of the Russian Federation adopted an act of amnesty in commemoration of the 55th anniversary of the victory in the Great Patriotic War of 1941-45 (Second World War).

44. The Amnesty Act provided that criminal proceedings in cases pending before investigative bodies or courts were to be discontinued if, in particular, the person was charged with a criminal offence committed before the entry into force of the Amnesty Act and punishable with no more than three years' imprisonment (section 8 (a)).

45. The Amnesty Act also provided that the convicts who had been sentenced to probation should be relieved from punishment (section 6).

46. The Amnesty Act was to be implemented by investigative bodies in respect of suspects whose cases were being investigated or by courts in respect of defendants whose cases had been submitted for trial (section 1 of the State Duma Resolution no. 399-III on the procedure for application of the Amnesty Act).

D. Placement in custody and detention pending trial

47. 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). A decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96 of the RSFSR Code of Criminal Procedure, the "CCrP").

48. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96 of the CCrP). The amendments of 14 March 2001 repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they have committed.

49. After the arrest the suspect was placed in custody "pending investigation" for an initial two-month period (Article 97 of the CCrP). Further extensions could be granted by prosecutors at ascending levels of jurisdiction.

50. Once the investigation had been completed and the defendant had received the charge sheet and finished reading the case file, the file was submitted to a trial court. From that day the defendant's detention was "before the court" (or "pending trial"). Until 14 March 2001 the Code of Criminal Procedure set no time-limit for detention "pending trial". On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention "during trial" could not normally exceed six months from the date the court received the file.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that the conditions of detention at the Kresty remand centre had been inhuman and degrading and amounted to a 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.”

52. The applicant maintained that the cells had been severely overcrowded, that he had not had a separate bed, that there had been no ventilation or privacy during the use of sanitary facilities. Referring to the Court’s case-law, he submitted that the cumulative effects of overcrowding, absence of ventilation, excessive temperatures and lack of privacy had manifestly exceeded the “minimum level of severity” required for the treatment to be in breach of Article 3 of the Convention.

53. The Government conceded that at the material time the remand centre had been overcrowded owing to “objective causes”, such as lack of financial resources and high level of crime. The cells in which the applicant had been held had had glass in the windows, natural ventilation through holes in the walls and running water. The Government maintained that the conditions of detention had been generally compatible with applicable sanitary norms.

54. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim’s behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

55. On the facts, the Court notes that the parties’ accounts of physical conditions of detention differ in many respects. However, there is no need for the Court to establish the truthfulness of each and every allegation,

because it can assess compliance with Article 3 on the basis of the facts that have not been disputed by the respondent Government.

56. The focal point for the Court's assessment is the living space afforded to the applicant in the Kresty remand centre. The parties agreed that the cells had measured approximately 8 sq. m. The applicant submitted that they had accommodated up to thirteen persons instead of six they had been designed for; the Government acknowledged that the centre had been overcrowded but claimed to be unable to indicate the exact number of inmates owing to a lack of documents. Written depositions by persons held in the same remand centre at the material time corroborated the applicant's allegation of severe overcrowding and a shortage of sleeping places.

57. It further appears from the applicant's submissions that, owing to the lack of sleeping places, he had to take turns with other inmates to rest and that, for several months he slept on the floor under the bed. The Government's reliance on the certificate asserting that the applicant had been provided with a separate bed and appropriate bedding does not convince the Court. At the pre-admissibility stage the Government were not able to determine the exact number of detainees in the cells where the applicant had been detained and did not comment on the issue of bedding at all. The Government's post-admissibility assertion to a regular change of bedding is of little evidential value since they were unable to indicate for how many detainees the bedding had been provided.

58. The Court therefore finds it established to the standard of proof required under Article 3 of the Convention that the cells in which the applicant was held were overcrowded beyond their design capacity and that the applicant had not had a sleeping place he could call his own. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

59. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (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; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it has recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same remand centre (IZ-47/1) and at the same time (see *Andrey Frolov v. Russia*, no. 205/02, §§ 43-51, 29 March 2007).

60. Having regard to its case-law on the subject and the material submitted by the parties, 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. The Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was in 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.

61. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Kresty remand centre no. IZ-47/1 which the Court considers to be inhuman and degrading.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

62. The applicant complained under Article 5 of the Convention that his detention had been unlawful and unreasonably long. The relevant parts of Article 5 read 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;

...

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...”

A. Lawfulness of the applicant's detention

63. The applicant argued that he should have been released by virtue of the Amnesty Act of 26 May 2000 immediately after it came into force. Instead, the Amnesty Act had only been applied to him on the day when the charge had been recharacterised as a lesser one. However, the factual basis of the charge had remained the same as it had been on the date of entry into force of the Amnesty Act. It followed that the authorities had already been aware of the minor character of the imputed offence on that date. Referring

to the Court's findings in the case of *Gusinskiy v. Russia* (no. 70276/01, § 68, ECHR 2004-IV), the applicant claimed that his detention after 26 May 2000 had been unlawful.

64. The Government claimed that the applicant's detention had been lawful. The Amnesty Act had not been applicable to him because the prosecution had initially charged him with a serious crime. After the District Court had preferred a lesser charge further to his representative's complaint, on 25 September 2000 the second criminal case had been discontinued. The applicant, however, had remained in custody pursuant to the arrest warrant of 22 September 2000 issued in the third criminal case. Again, the Amnesty Act had not been applicable to him because of the gravity of the charge.

65. The Court reiterates that where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and establishes the obligation to conform to the substantive and procedural rules of national law. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Gusinskiy*, cited above, §§ 62 and 66, with further references).

66. The Court notes that it found the applicant's detention incompatible with Article 5 of the Convention in the *Gusinskiy* case where the applicant was eligible for amnesty by virtue of the Amnesty Act. The Court considered that "it would be irrational to interpret the Amnesty Act as permitting detention of persons against whom all criminal proceedings must be stopped" (see *Gusinskiy*, cited above, § 68).

67. On the facts, the Court notes that the applicant was remanded in custody on 23 April 2000 in the framework of the second criminal case on the charge of repetitive theft causing substantial damage, an offence under Article 158 § 2 of the Criminal Code. The legal basis for his initial detention was the arrest warrant of 19 April 2000. On 10 May 2000 the District Court issued a further detention order which was valid for the entire duration of the trial, in accordance with the Russian legislation in force at that time (see paragraph 50 above).

68. The Court notes that the Amnesty Act of 26 May 2000 provided for discontinuation of criminal proceedings in cases involving minor offences punishable by up to three years' imprisonment. On that date of its coming into force the applicant was held in custody awaiting trial for an offence under Article 158 § 2 of the Criminal Code carrying up to six years' imprisonment. He was not therefore eligible for amnesty *ipso jure* and the lawfulness of his detention was not affected by the Amnesty Act.

69. On 5 July 2000 the City Court discontinued criminal proceedings in the first criminal case against the applicant on the basis of the Amnesty Act.

However, neither the Amnesty Act nor the resolution on its application required the domestic authorities to review the legal designation of the charges in all criminal cases against the same person following discontinuation of one or more sets of unrelated proceedings. It follows that the decision of 5 July 2000 had no bearing on the charge levelled against the applicant in the second criminal case. In any event, even assuming that the repetition of thefts could no longer be qualified as an aggravating circumstance, the criterion of substantial damage was sufficient in itself to support the initial legal characterisation under Article 158 § 2 of the Criminal Code. Thus, the applicant was still ineligible for amnesty after 5 July 2000 and the legal basis for his detention was unaltered.

70. On 25 September 2000 the District Court granted counsel's request for recharacterisation of the applicant's offence as non-aggravated theft, and granted the application for the Amnesty Act. Nevertheless, the applicant was not released because by that time the investigator had issued a new arrest warrant against him in the framework of the third criminal case. The arrest warrant of 22 September 2000 constituted a legal basis for the applicant's continued detention after 25 September 2000.

71. In the subsequent period until his release on 26 September 2001, the applicant's detention was covered by extension orders issued by the District Court which tried the case against the applicant. The trial court acted within its powers in making those orders and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for those decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3. Since the applicant was charged with aggravated theft punishable by up to six years' imprisonment, the Amnesty Act found no application in these proceedings and did not affect the lawfulness of his detention. Its application only became possible after the District Court sentenced the applicant to probation (see paragraph 45 above).

72. It follows that the entire period of the applicant's detention had a valid lawful basis. There has therefore been no violation of Article 5 § 1 of the Convention.

B. Length of the applicant's detention

73. The applicant submitted that his detention for eighteen months had been unreasonably long, having regard to the minor charges (petty theft) brought against him. He could not be held responsible for the delays occasioned by absence of counsel for his co-defendants or illness of the judge. The absence of his mother had not been a material factor because he had always been represented by a lawyer.

74. The Government emphasised that the domestic time-limits had been respected. The courts continued the custodial measure against the applicant

with regard to the gravity of the charges against him and the existence of a risk of absconding. Some delays were justified by reason of the absence of the applicant's representative (his mother), counsel for his co-defendants, or the illness of the judge.

75. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

76. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require him to be released provisionally once his continuing detention ceases to be reasonable (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, § 30, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 4).

77. The applicant was held in custody from 23 April 2000 to 26 September 2001. On the latter date he was released owing to the forthcoming expiry of the maximum detention period established in domestic law. The fact that the maximum time-limits permitted by the domestic law were not exceeded may not be a decisive element in the Court's assessment. As the Court has previously found in other Russian cases, the calculation of the domestic time-limits depended solely on the gravity of the charges, which was decided upon by the prosecution and was not subject to judicial review (see *Shcheglyuk v. Russia*, no. 7649/02, § 43, 14 December 2006, and *Khudoyorov v. Russia*, no. 6847/02, § 180, 8 November 2005).

78. The Court observes that Russian criminal procedure law, as it was worded before the legislative amendments of 14 March 2001, allowed the suspect to be held in detention on the sole ground of the dangerous nature of the crime he was charged with (see paragraph 48 above). Acting in accordance with these provisions, the domestic courts in this case explicitly held that the "dangerous nature" of the offence imputed to the applicant was, in itself, sufficient to hold him in custody (see the District Court's

decisions of 10 May and 28 December 2000). In the subsequent period the District Court also relied on other grounds, such as the applicant's "character" (see decision of 1 February 2001) or the risk of interference with justice (see decision of 6 July 2001). The decisions did not refer to any factual basis for these findings.

79. According to the Court's constant case-law, although the severity of the sentence faced by the applicant is a relevant element in the assessment of the risk of absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51). This is particularly relevant in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue of whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, loc. cit.). This systemic deficiency is particularly salient in the circumstances of the second criminal case against the applicant, where the prosecutor charged him with aggravated theft, a "serious" offence in the domestic classification, because the items stolen – about eight euros in value – amounted to "substantial damage". The District Court did not scrutinise whether the prosecutor's designation of the offence was reasonable and whether it was supported with appropriate evidence, although this was a crucial element in determining whether the imputed crime was indeed "serious" and consequently warranted the applicant's placement in custody. Only four months later, further to a complaint by counsel, the District Court acknowledged that there had been no evidence supporting the charge of "substantial damage", redesignated the offence as non-aggravated theft and discontinued the second criminal case against the applicant by virtue of the Amnesty Act.

80. As regards the grounds for detention other than the gravity of the charges, the Court observes that the domestic courts did not explain what the applicant's "character" actually was or why it was necessary for him to remain in custody. Nor did they mention any specific facts supporting their finding that there existed a risk of interference with justice. On the other hand, it is a matter of serious concern for the Court that the courts took no notice of the applicant's arguments that he had a permanent place of residence in St Petersburg and strong family ties with his siblings and disabled mother, and other relevant facts which mitigated the risk of his absconding. They insisted that it was incumbent on the applicant to show that he should no longer remain in custody (see District Court decision of 28 December 2000). As it happened, the applicant's release did not take place until the maximum permitted period of detention was about to expire.

81. The Court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, warrants a departure from the rule of respect for individual liberty. Any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is permissible only in exhaustively enumerated and strictly defined cases (see *Ilykov*, cited above, §§ 84-85, with further references).

82. The Court finds that by failing to address concrete relevant facts and by relying mainly on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". The authorities thus failed to justify the applicant's continued detention pending trial (see *Rokhlina*, cited above, § 69).

83. There has therefore been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 100,000 euros (EUR) in respect of compensation for non-pecuniary damage.

86. The Government considered that the claim was excessive and that a finding of a violation would constitute an adequate just satisfaction.

87. The Court observes that it has found a violation of the Convention requirements in that the applicant was held, for one year and a half, in inhuman and degrading conditions and was deprived of liberty without relevant and sufficient reasons. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the

Court awards the applicant EUR 5,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

88. The applicant claimed EUR 3,000 for thirty hours of work of his representative Ms Tseytlina at EUR 100 per hour, EUR 1,000 for twenty hours of work of Mr Koroteyev at EUR 50 per hour, and 400 pounds sterling (GBP) for advice by Mr Leach and Mr Bowring. He further claimed GBP 90 for administrative expenses, GBP 60 for postal and copying expenses, and GBP 1,790 for translation of case documents at the rate GBP 50 per 1,000 words. He submitted copies of translation receipts.

89. The Government pointed out that only Ms Tseytlina, but not Mr Koroteyev, Mr Leach or Mr Bowring, had been formally designated the applicant's representative before the Court. Furthermore, some translation receipts did not indicate that they were related to the present case. Finally, the Government emphasised that there was no evidence that the applicant had disbursed any amounts to Ms Tseytlina.

90. The Court notes that Mr Koroteyev and British lawyers Mr Leach and Mr Bowring were not formally designated as the applicant's representatives in the Convention proceedings. Accordingly, it rejects the claim for their costs and translation expenses. It further reiterates that some of the applicant's complaints were declared inadmissible and that the applicant had been granted EUR 750 in legal aid for his representation by Ms Tseytlina. Having regard to the materials in its possession, it awards the applicant EUR 1,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, and EUR 1,000 (one thousand euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President