CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 70276/01
by Vladimir Aleksandrovich GUSINSKIY
against Russia

The European Court of Human Rights (First Section), sitting on 22 May 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 9 January 2001 and registered on 12 June 2001,

Having regard to the partial decision of 7 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimir Aleksandrovich Gusinskiy, is a Russian and Israeli national, who was born in 1952. He is represented before the Court by CMS Cameron McKenna, lawyers practising in the United Kingdom. The respondent Government are represented by Mr Pavel Laptev, Representative of the Russian Federation in the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Media Most and Gazprom

The applicant is the former Chairman of the Board and majority shareholder of ZAO Media Most, a Russian private media holding company, comprising NTV, a popular television channel. In 2000 Media Most had an intense controversy with OAO Gazprom, a natural gas monopoly controlled by the State, over Media Most's debts to Gazprom.

After Gazprom had discontinued the negotiations on the debts, on 11 May 2000 Media Most's offices in Moscow were raided by special force units of the General Prosecutor's Office (*Генеральная прокуратура*, "GPO") and the Federal Security Service. A number of documents and other material were seized as evidence for an investigation into infringements of privacy allegedly carried out by the security staff of the Media Most Group.

Following the raids, the applicant was subjected to criminal prosecution by the GPO.

2. Russian Video – the broadcasting license investigation. Criminal cases 18/191012-98 and 18/221012-98

The applicant was interviewed by the senior special cases investigator of the GPO, Mr Nikolayev on 2 November 1999. It appeared from the transcript of this interview that the interview was in connection with an investigation into a State-owned enterprise known as FGP RGK "Russian Video" ("Russian Video") in respect of the transfer of a broadcasting licence to a limited liability company, OOO "Russian Video – 11th Channel" ("OOO Russian Video") in violation of various provisions of the Civil Code.

A witness record form was completed and signed by both the applicant and Mr Nikolayev following the interview. The applicant was allowed to review the notes made of the interview and to add his own comments. It was noted on the form that the applicant had been awarded the Friendship of the Peoples Order.

Following the interview criminal case 18/191012-98 in respect of allegations of fraud was initiated against the applicant, pursuant to an order made by Mr Nikolayev and dated 15 March 2000. This case was consolidated with and arose from criminal case 18/221012-98, pursuant to the same order. Case 221012 concerned allegations of embezzlement against R., an executive of Russian Video. The allegations in both cases related to the business relations between Russian Video and OOO Russian Video and in particular to the inclusion of Media Most in OOO Russian

Video and the increase in the statutory capital which resulted in redistribution of shareholders' interests.

3. Applicant's imprisonment on 13 June 2000

On 11 June 2000, the applicant was summoned as a witness to attend the offices of the GPO at 5.00 p.m. on 13 June 2000 to be questioned as a witness in relation to another criminal case. At the time when the summons was issued by the GPO the applicant was out of the country but nevertheless made arrangements to return to Russia. Upon his arrival at the GPO's offices on 13 June 2000, the applicant was arrested and imprisoned in the Butyrka prison pursuant to an order made on 13 June 2000 by Mr Nikolayev. The applicant was not allowed to make a telephone call or to have his lawyers present. Instead, the investigator telephoned the applicant's secretary to inform her of the arrest. As it was late in the day, there was nothing the applicant's secretary or lawyers could do that day to challenge the imprisonment.

Even though, according to the order made on that day, the applicant was to be sent to the investigative prison of the Federal Security Service, he was instead placed in the Butyrka prison, which the applicant describes as being notorious for its exceptionally poor conditions, including extreme overcrowding, being rife with serious infectious diseases, and much worse in terms of conditions than the prison to which he was due to be sent.

The order stated that, pursuant to Articles 90-92 and 96 of the Code of Criminal Procedure ("CCrP"), Mr Nikolayev considered that the crime of fraud, of which the applicant was suspected, constituted a grave public threat and was punishable by imprisonment only, and that the applicant might interfere in establishing the truth in relation to the case and attempt to evade investigation and trial. Therefore, the arrest order was made, and authorised by Mr Kolmogorov, the Deputy General Prosecutor.

The imprisonment lasted until 16 June, during which time the applicant was subject to two further interrogations on 14 and 16 June.

The interrogation of 14 June took place in the presence of the applicant's lawyers. Prior to the commencement of the interview it was explained to the applicant that he was suspected of committing a large scale fraud contrary to Article 159 § 3 (b) of the Criminal Code. Following a request by the applicant and his lawyers, a more detailed explanation of the charges was given: it was said that in 1996-97, by means of the establishment of various commercial entities (including Media Most), broadcasting functions were fraudulently transferred from Russian Video, a State-owned company, to OOO Russian Video, a private company, thereby stripping Russian Video of the 11th TV Channel, with a value of USD 10 million. It was alleged that in 1997, the applicant, in concert with R., began using the 11th TV Channel for his own purposes, without payment to the State.

The applicant declined to comment in detail on the investigation, other than to state that he found the case against him to demonstrate an ignorance of Russian law and a "political contract" against him.

On 15 June 2000, the applicant's lawyers lodged a petition with Mr Nikolayev (copied to the General Prosecutor, Mr Ustinov) complaining of the unlawful arrest of the applicant on the basis that (a) the arrest did not comply with Article 90 of the CCrP; (b) the applicant was subject to an amnesty against imprisonment as a result of the award of the Friendship of Peoples Order and the Amnesty Act passed on 26 May 2000; and (c) the suspicions against the applicant were inconsistent, absurd and false.

In addition, the applicant's lawyers lodged a complaint with the Tverskoy Intermunicipal Court of Moscow under Article 220 § 1 of the CCrP in respect of the unlawful imprisonment, requesting immediate release. The grounds for the complaint set out therein were that (a) the arrest order was issued in violation of Articles 90, 92 and 96 of the CCrP on the basis that there were no exceptional circumstances for the arrest warrant without presentation of charges against the applicant, no grounds for imprisonment on the basis of the charges and no grounds for imprisonment against the applicant; (b) the arrest order was issued with apparent political motivation; (c) imprisonment constituted an excessive restraint and was unnecessary; (d) there were no grounds to suspect that the applicant intended to hide from the investigation; (e) no grounds were specified on which the investigators could base a belief that the applicant would interfere with the investigation; and (f) the applicant was subject to an amnesty from punishment and preliminary imprisonment due to having been awarded the Friendship of the Peoples Order.

On 16 June 2000, the applicant was charged with fraud under Article 159 § 3 (b), pursuant to an order on prosecution and charges (*постановление о привлечении в качестве обвиняемого*), made by Mr Nikolayev. On the same day, the applicant was subject to a further interrogation (for which another interrogation record form was completed) at which he was presented with the prosecution order. The applicant's lawyers were present at the interrogation. The applicant refused to sign the record on the basis that he did not understand the charges presented. The applicant did make a note on the record to explain that he considered the charges to be legally absurd and that he did not admit any guilt in relation thereto. The applicant again declared that the investigation was being used by the authorities to discredit him and demanded his immediate release from imprisonment.

On the same day, 16 June, a further order was made by Mr Nikolayev, releasing the applicant from imprisonment and replacing the restraint with an order not to leave the country. The applicant was released at 10 p.m. on 16 June 2000. Mr Nikolayev also wrote to the applicant's lawyers to inform them that the order was made following their petition of 15 June.

Following the applicant's release from imprisonment, further summons were issued by Mr Nikolayev, for the applicant to appear for further questioning on 22 June and 3, 11 and 19 July 2000. The applicant attended for questioning but refused to answer the questions that were put to him.

The applicant's lawyers also filed a number of unsuccessful petitions with Mr Nikolayev in an attempt to ascertain more information in respect of the charges which had been brought against the applicant.

The applicant also made a number of requests to Mr Nikolayev for permission to leave the country for personal and business reasons. These were all refused by Mr Nikolayev, who did not, however, provide any detailed reasons therefor. The applicant's numerous complaints to the GPO in respect of the investigations and charges against him were left without answer.

4. The July agreement and termination of prosecution

During the applicant's imprisonment between 13 and 16 June 2000, the Acting Minister for Press and Mass Communications, Mr Lesin, offered to drop the criminal charges against the applicant arising out of the Russian Video matter if the applicant sold Media Most to Gazprom at a price to be determined by Gazprom.

Whilst the applicant was in prison Gazprom asked him to sign an agreement in return for which the applicant was told that all criminal charges against him would be dropped. The agreement between ZAO Gazprom-Media and the applicant was signed on 20 July 2000 (the "July Agreement") and included in Annex 6 a provision calling, among other things, for the cessation of the criminal prosecution against the applicant in relation to Russian Video and for a guarantee of his security:

> "The Parties realise that a successful implementation of the Agreement is only possible when individuals and legal entities acquire and exercise their civil rights by their own will and in their own interests, without any compulsion by other parties to make any such acts. The above currently requires meeting certain interrelated conditions, namely:
>
> - termination of the criminal prosecution against Mr Vladimir Aleksandrovich Gusinskiy under the criminal case initiated against him on 13 June 2000, his re-classification as a witness in the said case, suspension of the restraint in the form of an order not to leave. In case this condition is not ensured, the Parties are relieved of performance of their obligations hereunder;
>
> - provision to Mr Vladimir Aleksandrovich Gusinskiy and other shareholders (stockholders) and executives of the [Media-Most subsidiaries] of guarantees of their security and protection of their rights and freedoms, including the right freely to travel, to choose the place of stay and residence, freely to leave the Russian Federation and to return to the Russian Federation without any obstacles;
>
> - refusal from any steps, including public statements, information proliferation by the Organisations, their shareholders and executives, causing damage to the

> fundamentals of the constitutional regime and violation of the integrity of the Russian Federation, undermining the security of the State, incitement of social, racial, national and religious discord, leading to discrediting institutions of the Russian Federation State power."

Annex 6 was signed by the parties to the Agreement and endorsed by the signature of Mr Lesin.

Following the signing of the July Agreement, the criminal prosecution against the applicant in connection with Russian Video was stopped by the prosecution abatement and restraint cancellation order (*постановление о прекращении уголовного дела и отмене меры пресечения*) made by Mr Nikolayev on 26 July 2000. The investigator said:

> "The analysis of the evidence confirms the illegal nature of [the applicant's] doings. However, the actions of the head of ZAO Media Most V.A. Gusinskiy along with criminal legal norms contain the elements of substantive law. In view of the specific nature of this action it is impossible to attribute it to separate legal spheres.
>
> In the course of the investigation V.A. Gusinskiy understood the unlawfulness of the acquisition of the right to another's property and in this connection he provided a reimbursement for the damage he caused, having assigned his share in the statutory capital of OOO "Russian Video – 11th Channel" to the State. Apart from that, he significantly made up for the harm caused to the interests of the State by voluntarily transferring ZAO Media Most shares to a legal entity controlled by the State.
>
> The steps taken by the accused can be viewed as extenuating circumstances and they evidence his sincere repentance which in conjunction with other positive characterising details and the lack of past criminal record allows to take a decision to release V.A. Gusinskiy from criminal prosecution."

Simultaneously, the restraint by way of the applicant's order not to leave the country was lifted. On that day, the applicant left Russia, and on 21 August 2000 went to his house in Sotogrande, Spain.

Following the applicant's departure from the country, Media Most refused to honour the July agreement, given that it had been entered into under duress.

5. Judicial review of the applicant's arrest

After the applicant's release from imprisonment on 16 June 2000, his lawyers lodged a further document with the Tverskoy Intermunicipal Court in respect of the complaint they had lodged on 15 June, but in relation to which the court had not made any order, explaining that, although he had been released, the applicant wanted to pursue his complaint.

The document relied on a decision of the Constitutional Court of 3 May 1995 that Article 220 §§ 1 and 2 of the CCrP did not comply with the Constitution to the extent that they provided for judicial control of lawfulness and validity of arrest orders only by a person who is actually detained. The applicant's lawyers referred to various elements of the decision of the Constitutional Court, namely that it is the lawfulness and

validity of the imprisonment rather than the imprisonment itself which is the subject of the application to the court and that the right to defend oneself in court was a guarantee in respect of all constitutional rights and freedoms, with regard to the protection of personal dignity by the State and to freedom and personal safety.

In view of the fact that the GPO had not recognised the unlawfulness of the imprisonment, the applicant found it necessary to pursue his complaint to the Tverskoy Intermunicipal Court.

The complaint was dismissed by the Tverskoy Intermunicipal Court on 20 June 2000 on the grounds that the decision of the Constitutional Court did not apply to cases where the order of imprisonment had been altered or cancelled and that the right to appeal against an arrest applied only to a person who was actually detained.

The applicant's lawyers lodged an appeal with the Moscow City Court, repeating the grounds set out in the documents provided to the Tverskoy Intermunicipal Court. This appeal was disallowed on 11 July 2000.

6. The Media Most loan investigation. Criminal case 18/191736-00

On 27 September 2000, Mr Nikolayev initiated a further criminal investigation against the applicant in connection with the fraudulent obtaining of loans by Media Most under Article 159 § 3 (b) of the Criminal Code. The applicant was not provided with a copy of the order on initiation (*постановление о возбуждении уголовного дела*). However, according to the information gathered by the applicant's lawyers, the criminal investigation was instituted following an application by Gazprom-Media received by the GPO on 19 September 2000. The application contained a request for an investigation to be made into loan funds obtained by ZAO Media Most and, in particular, how the loan funds were spent, whether the funds complied with the activity permitted by the charter of ZAO Media Most, whether the funds were used for their intended purpose and whether the management of ZAO Media Most had violated any law in relation to the loans. Gazprom, a State-owned company, was involved as a guarantor of the loans.

On 1 November 2000 a further summons was issued by Mr Nikolayev for the applicant to attend the GPO on 13 November, to be presented with charges and for interrogation. The applicant did not attend.

As a result of the applicant's failure to attend the GPO on 13 November 2000, on the same day Mr Nikolayev amended the order for prosecution against the applicant. The order again instigated charges against the applicant for fraud under Article 159 § 3 of the Criminal Code, but in connection with another episode, and imposed a restraint of imprisonment. The order was passed to the Russian National Interpol Bureau. The charges alleged that the applicant had fraudulently obtained loans. The applicant's

lawyers were not provided with a copy of the charges, but were able to inspect them later at court hearing on 26 December 2000.

The applicant was arrested in Spain pursuant to the international arrest warrant on 11 December 2000 and imprisoned in Spain on 12 December 2000. On 22 December 2000 the applicant was released from prison in Spain on bail of USD 5,5 million and confined to house arrest in his villa in Sotogrande. Following proceedings in the Spanish courts, a judgment was given on 4 April 2001 in the applicant's favour (by a majority of two to one) rejecting the request by the Russian authorities for the applicant's extradition from Spain. Declining the extradition request the National Court (*Audiencia Nacional*) said:

> "...it is possible to observe in the documents furnished by [the applicant]... certain noteworthy and peculiar circumstances – which are unusual in the sphere of judicial claims for fraud – which, although they do not themselves lead to the conclusion that we are dealing with an irregular claim filed for a political purpose, [illegible] that the Court cannot but consider [the applicant's] argument as not completely without foundation as far as the facts and interferences are considered and as not inconceivable and not discountable on the basis of logical criteria and experience."

The applicant's liberty is no longer restricted.

7. Challenging the Media Most loan investigation

On 14 November 2000, the day after the order of prosecution was made, the applicant lodged an application with the General Prosecutor. The application was to request that a criminal prosecution be undertaken against Mr Nikolayev and the Deputy General Prosecutor Mr Kolmogorov under Articles 299 § 2 and 301 § 2 of the Criminal Code which make it a criminal offence to prosecute a person known to be innocent and to make an arrest known to be unlawful. The GPO refused this application on the basis that, as the applicant was not in the country, it was not possible to accept the statement made in support of the application or to say that the applicant's signature on the application was authentic. It was necessary for the applicant to appear in person before the matter could be taken any further.

The applicant's lawyers also made an application to the Tverskoy Intermunicipal Court for a ruling that the initiation of the case was unlawful and invalid as there were no grounds on which it could properly have been initiated. The Tverskoy Intermunicipal Court ruled in favour of the applicant on 26 December 2000 and held that (a) contrary to Article 108 § 1 of the CCrP, there were no grounds on which the case could lawfully be initiated; (b) contrary to Article 108 § 2 of the CCrP there were no data pointing to the elements of an offence, i.e. the material put forward by the prosecution to justify the case did not contain any data proving elements of fraud; (c) the information put forward by the prosecution was a matter of civil law since it concerned a dispute between ZAO Media Most and Gazprom in respect of loans obtained by ZAO Media Most; (d) the

prosecution had failed to show on the available information that the subjective element of the offence was present; and (e) as a result of the above, the case was unlawfully initiated in violation of the CCrP and was therefore invalid.

The GPO lodged an appeal against this decision with the Moscow City Court.

On 5 January 2001 the Moscow City Court overturned the ruling of the Tverskoy Intermunicipal Court on the basis that the Tverskoy Intermunicipal Court did not have jurisdiction to consider the initiation of criminal proceedings because, according to a decision of the Constitutional Court of 29 April 1998, the initiation did not violate a person's legal rights, and as such did not constitute an administrative decision that could be appealed.

8. Further developments. Application for release examined

On 19 June 2002 Judge Merkushov, a Deputy President of the Supreme Court, lodged an application for supervisory review of the decisions of the Tverskoy District Court of 20 June 2000 and the Moscow City Court of 11 July 2000. The judge maintained that it was the lawfulness of detention rather than detention itself which should have been the subject of the judicial review. He requested the Presidium of the Moscow City Court to remit the case for a fresh examination by the Tverskoy District Court.

On 18 July 2002 the Presidium of the Moscow City Court granted the application.

On 26 September 2002 the Tverskoy District Court examined the substance of the complaint about the detention. At the hearing, the representative of the defendant – the GPO – argued that at the time of his arrest the applicant could have interfered with the course of justice because he had been the head of Media Most and therefore had unlimited possibilities to influence witnesses and had had an access to written evidence. Furthermore, as the applicant had had dual citizenship and a travel passport, he could escape abroad. With regard to the applicant's allegation that he had been entitled to an amnesty, the prosecutor noted that documentary proof that the applicant had indeed held the award had only been submitted on 15 June 2000, i.e. after the arrest, and the next day the applicant had been released. The Tverskoy District Court sided with the GPO. It found that, in the light of the explanations of the representative of the GPO, the wording of the detention order of 13 June 2000 could not have been seen as strained and hypothetical. As to the award, the court found that the criminal procedure law had contained no restriction on application of a restraint to a person subjected to an act of amnesty.

On 2 October 2002 the applicant's lawyer filed an appeal against this decision of the Tverskoy District Court. The lawyer maintained that the court had not explained what exceptional circumstances, as required by

Article 90 of the CCrP, had necessitated the applicant's arrest prior to the presentation of the charges. The lawyer also claimed that the act of amnesty had exempted the applicant from punishment which in accordance with Article 5 the CCrP entailed termination of the criminal case against him.

B. Relevant domestic law

1. The Code of Criminal Procedure of 1960, as in force at the relevant time

Article 5. Circumstances entailing termination of prosecution

"A criminal prosecution cannot be started, or, if already started, shall be stopped if...

4) there has been passed an act of amnesty which relieves [the person concerned] from punishment..."

Article 89. Measures of restraint

"If there are sufficient reasons to believe that the accused will flee from the investigation or court, or will interfere with the establishment of the truth in the case, or will engage in criminal activities...one of the following measures of restraint may be applied: an order not to leave the place of residence, personal guarantee or guarantee of a non-governmental organisation, taking into custody..."

Article 90. Imposing measure of restraint on suspect

"In exceptional instances, a measure of restraint may be imposed on a suspect who has not been charged. In such a case, charges must be brought against the suspect within ten days after a measure of restraint is imposed. If no charges are brought within the period specified, the measure of restraint shall be revoked."

Article 91. Circumstances to be considered in imposing measure of restraint

"When the need for imposing a measure of restraint is considered and the measure of restraint is imposed... the circumstances to be taken into account shall include... the gravity of the charges brought and the suspect's or defendant's personality, occupation, age, health, family status and other circumstances."

Article 92. Ruling or finding to impose measure of restraint

"A measure of restraint shall be imposed under a ruling rendered by an inquiry officer, investigator, procurator, or a reasoned finding rendered by a court, which shall specify the offence of which the person is suspected or accused and the grounds for imposing the measure of restraint. The person concerned shall be informed of the ruling or finding and at the same time the person shall be provided with explanations

concerning the procedure for bringing complaint against the decision to impose restraint.

A copy of the ruling or finding shall be immediately provided to the person on whom a measure of restraint has been imposed."

Article 96. Taking into custody

"Taking into custody shall be imposed as a measure of restraint ... for offences punishable by imprisonment of more than one year. In exceptional circumstances, this measure of restraint may also be applied to offences punishable with imprisonment of less than one year..."

Under Article 220 § 1, complaints about a decision to take the suspect into custody as a measure of restraint shall be lodged by the detainee or his representative to a court. By Article 220 § 2, judicial control of the lawfulness and validity of an arrest shall be conducted by a judge *in camera* at the place of the detention within three days of receipt of the material justifying the arrest.

2. Fraud

Article 159 § 3 (b) of the Criminal Code of 1996 provides, insofar as relevant:

"Fraud, i.e. theft or acquisition of another's property by misrepresentation or abuse of trust, ... [committed on] a large scale ... shall be punishable by five to ten years' imprisonment with or without expropriation."

3. Amnesty

Section 8 (b) of the Amnesty Act of 26 May 2000 provides that persons awarded medals and orders of the USSR or Russian Federation shall be entitled to amnesty in respect of alleged offences committed before the Act came into force.

COMPLAINTS

1. The applicant complains under Article 5 of the Convention that his detention was arbitrary, effected in the absence of a reasonable suspicion, did not comply with the domestic procedure and was ordered without regard to the provisions of the Amnesty Act.

2. The applicant also complains under Article 13 of the Convention that he was denied any effective remedy before a national authority in respect of the violation of Article 5 resulting from his unlawful imprisonment between 13 and 16 June 2000.

THE LAW

1. The applicant alleged with reference to Article 5 of the Convention that his detention was unlawful and arbitrary as there had been no "reasonable suspicion" that he had committed the offences imputed to him. Article 5, in so far as relevant, reads:

> "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;..."

The Government submitted that according to the order on prosecution and charges of 13 June 2000 the applicant had been suspected of a serious crime – large-scale concerted fraud. The crime constituted a grave public threat and was punishable by imprisonment only. Therefore, the investigative authorities had decided to take the applicant into custody. Article 96 of the CCrP, as in force at the material time, had permitted detention on the ground of seriousness of the offence alone. Besides, the investigator had suspected that the applicant might abscond. The suspicion had been caused by the applicant's being aware that on charges of a similar offence in a different criminal case a Mr R.D. had been arrested due to his engagement in criminal activities in respect of Russian Video. The applicant had also been aware of the seriousness of the crime he had been suspected of and of a possibility of his preventive arrest. The fears that the applicant might go into hiding had later turned out to be justified.

The applicant claimed that Government's position was misconceived for two reasons. First, the analysis of the law and rules relating to arrest on suspicion under the CCrP had been incorrect; and, second, the evidence at the time had not supported the actions of the GPO.

The applicant submitted that the arrest was in breach of the CCrP in that there had been no exceptional circumstances (and none had been stated in the arrest order) as required by Article 90; and there had been no evidence to show that the applicant would flee the investigation or interfere with the establishment of truth under Article 89.

In the applicant's view the suspicion that he could flee from the investigation had been unfounded because the charge brought against him had had nothing in common with the charges brought against R.[1] who had been taken into custody almost two years before the applicant's arrest on charges of tax evasion. And it had been absurd to suspect that the applicant could flee from the investigation because of the arrest of R.

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[1] The applicant identified "Mr R.D." mentioned in the Government's memorial as R.

Until the very moment of the arrest the activities of the GPO had neither directly nor indirectly indicated that the applicant had been suspected of a grave offence and therefore might be taken into custody. On 2 November 1999 the applicant had been questioned as a witness in the criminal case against R., and the questions he had been asked provided no grounds to presume that he had been suspected of committing offences and so might be arrested. Furthermore, the interview had shown that the applicant had been fully prepared and willing to help in supplying any information that the investigator might require. The applicant's overall behaviour prior to his arrest could not have been the basis for a suspicion that he might flee from the investigation and the court. Even though the applicant could have stayed abroad, he had always immediately returned to Moscow if it had been required. The record of the questioning showed that the investigator, Mr Nikolayev, had noted that the applicant had held the Friendship of the Peoples Order. And since in May 2000 the parliament had announced a general amnesty for holders of Government awards, at the time of the applicant's arrest on 13 June 2000 Mr Nikolayev would have been aware that the award had entitled the applicant to an amnesty.

The termination of the proceedings on 26 July 2000 had fully restored the applicant's standing thus suggesting that the GPO had had insufficient evidence at the time of the arrest.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant further complained that he did not have any remedy against his arbitrary detention. He invoked Article 13, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government informed the Court that the Supreme Court had found this complaint valid. Therefore, on 19 June 2002 a Deputy President of the Supreme Court had lodged an application for supervisory review of the decisions of 20 June and 11 July 2000. The application had contained arguments put forward by the applicant. Since the case had been re-opened at the domestic level, the applicant could not have been said to have exhausted all domestic remedies available to him.

The applicant condemned the application for supervisory review as an attempt by the State to deprive the applicant of any remedy before the Court. He claimed that the application had not analysed the legal issues in

the case, had not been asked for, and had been made two years after the original rulings and a matter of days before the time-limit set by the Court for the Government's observations. Furthermore, the case had not been re-heard by the Tverskoy District Court and there had been no certainty that any re-hearing would enable the applicant to argue his case fully before the Court. The lodging of the application and any re-hearing appeared to be a sham.

The Court recalls its previous finding that supervisory review proceedings are not an effective remedy for the purpose of Article 35 § 1 of the Convention (see *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999, unpublished). Also it remains to be decided whether the application for supervisory review is compatible with the principle of legal certainty and the right to a court under Article 6 § 1 of the Convention.

Nevertheless, the Court does not find it necessary to determine whether the supervisory review proceedings would in the present case raise issues under the Convention because under Article 34 of the Convention, "the Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto..." It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether or not the applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *E. v. Austria*, no. 10668/83, Commission decision of 13 May 1987, Decisions and Reports (DR) 52, p. 177).

A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1995, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; and *Dalban v. Romania*, judgment of 28 September 1999, *Reports* 1999-VI, § 44).

Turning to the facts of the present case, the Court notes that the application for supervisory review lodged by Judge Merkushov acknowledged in substance that the applicant had been deprived of his right to seek a judicial review of the lawfulness of his detention once released. The application was granted, which resulted in a re-hearing before the Tverskoy District Court on 26 September 2002. In these proceedings the applicant had a full opportunity to plead his case in substance.

It can therefore be said that the authorities acknowledged the breach of the applicant's rights under Article 13 of the Convention and then afforded redress for it.

Accordingly, the Court finds that the applicant can no longer claim to be a victim of a violation of Article 13 of the Convention and it follows that this complaint must be rejected under Article 35 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint concerning the lawfulness of his detention;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President