CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 63993/00
by Ilya Eduardovich ROMANOV
against Russia

The European Court of Human Rights (Third Section), sitting on 1 April 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr A. KOVLER,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 16 October 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ilya Eduardovich Romanov, is a Russian national, who was born in 1967 and lives in Moscow. He is represented before the Court by Mr A. A. Rekant.

The respondent Government are represented by Mr P. A. Laptev, the representative of the Russian Federation at 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. Applicant's arrest and detention

On 12 October 1998 the applicant, who was intoxicated, was arrested in the street by a police patrol and taken to a police station. He was then searched, and a certain amount of marijuana was allegedly found on him. Several hours later, the applicant was detained on suspicion of illegal acquisition and possession of drugs.

On 13 October 1998 the applicant was charged with the offence.

On 15 October 1998 an investigating officer issued an order to remand the applicant in custody which was approved by a public prosecutor on the same day.

On 16 October 1998 the applicant was placed in the psychiatric ward of IZ-48/2 of Moscow (the Butyrka prison).

A psychiatric examination of the applicant was carried out from 10 December 1998 to 6 January 1999. The expert opinion found that the applicant was mentally disturbed and that he had not been conscious of his actions when he was buying the drugs. The experts found that there was no need to confine the applicant in a mental asylum and that he should attend for compulsory out-patient psychiatric treatment.

The term of the investigation and the applicant's remand in custody were twice extended by the prosecutor's office, first until 12 January 1999 and later until 12 February 1999. The applicant did not challenge these decisions before a court.

The investigation ended on 10 February 1999 and the indictment was submitted to the Gagarinskiy District Court of Moscow for a decision on the application of compulsory medical measures.

2. Court proceedings

On 28 June 1999 the Gagarinskiy District Court of Moscow (presided over by Judge Afonina) dismissed the applicant's request for release. The court also ordered a second psychiatric examination of the applicant, without giving any reasons for this decision and without giving the defence the possibility to object or comment on it. On 23 July 1999 the decision was upheld on appeal by the Moscow City Court. According to the applicant, these court decisions had been taken under pressure from officers of the state security agency who were investigating criminal charges against his wife. They had allegedly been seen talking to the judges. The applicant complained about it to the Chairman of the Supreme Court and the prosecutor's office.

The second psychiatric examination lasted from 24 November 1999 to 24 December 1999. The expert opinion, although concurring in essence with the conclusions drawn by the initial experts, recommended that the applicant should be confined in a mental asylum and undergo psychiatric treatment.

On 10 March 2000 the court again dismissed the defence's request for the applicant's release, stating, *inter alia*:

> "[The court] examined in a public hearing the case accusing [Mr] Romanov ... of having committed a crime ... Having considered the motion [for release], in view of the crime committed, the court decides that the motion submitted be dismissed."

In the course of the proceedings, the applicant and his lawyers filed numerous requests to the court asking for his personal appearance at the court hearings. On 10 March 2000 the court rejected the request on the ground that "it was not the remand prison's practice to bring ill detainees to courts". The court did not react to the defence's request for clarifications of what the reasons for such practice were. On 3 April 2000 the court again refused to summon the applicant for the reason that the testimony of a person who had been found mentally incapable could not be accepted as evidence.

On 10 March 2000 and 4 April 2000 the applicant's defence unsuccessfully challenged Judge Afonina, alleging that she was not impartial.

According to the Government, in the course of the proceedings the court had to adjourn hearings several times because the applicant's representatives and witnesses did not attend.

According to the applicant, his representatives had not been informed of these hearings. As to the witnesses, on 22 February 2000 and 3 March 2000 they were ordered to be brought before court by force. No attempt was made to execute these decisions.

On 4 April 2000 the Gagarinskiy District Court established that the applicant had acquired drugs, but since these actions had been committed in a deranged state of mind, released him from criminal responsibility. In particular, the court stated:

> "[The court considers] that [Mr] Romanov has committed the crime in a deranged state of mind."

The court ordered the applicant's detention in a mental asylum and his psychiatric treatment.

At the hearing, the defence requested the court to hear a person who could allegedly testify about the circumstances of the offence imputed to the applicant. The court refused this request as according to the investigative authorities this person had not, in fact, been an eyewitness to the offence. The applicant's wife and lawyers allegedly asked the court to dispense with the assistance of two members of a human rights organisation who had

defended the applicant during the earlier stages of the proceedings. The court granted this request. Later, the representatives in question were not summoned by the appeal court and their additional appeal was not considered.

The applicant disagreed with the court's decision, and especially with the type of treatment ordered. In his appeal, he maintained that he should receive the treatment as an out-patient, and not in a closed hospital. He referred to the first expert opinion and claimed that the court should have preferred it over the second expert opinion or at least reasoned its choice. The applicant also complained about the refusal of the trial court to allow his personal presence at the hearings.

On 25 April 2000 the Moscow City Court dismissed the applicant's appeal.

The applicant did not appear in person before the courts.

After communication of the application to the Government in February 2003, the Moscow Public Prosecutor's Office brought an application for supervisory review of the case. The prosecutor considered that the court should have given reasons for subjecting the applicant to compulsory in-patient psychiatric treatment in view of the fact that the first expert opinion had recommended out-patient treatment. On 5 June 2003 the Presidium of the Moscow City Court granted the prosecutor's application, quashed the decisions and remitted the case for re-examination. On 9 July 2003 the Gagarinskiy District Court of Moscow found that the applicant had committed unlawful acts – namely, the illegal acquisition and storage of drugs - but since these acts had been committed in a deranged state of mind, criminal proceedings against the applicant were to be discontinued and the applicant was to be released from criminal responsibility without being subjected to any compulsory medical measures as he had already undergone the treatment. On 4 September 2003, on appeal, the Moscow City Court quashed this decision and ordered discontinuance of the criminal proceedings pursuant to an amnesty act of 26 May 2000.

3. Prison conditions

The applicant was held in the psychiatric ward of IZ-48/2 (IZ-77/2) of Moscow (the Butyrka prison) from 16 October 1998 to 22 May 2000. The parties provided different descriptions of the conditions in the prison.

(a) The applicant's account

The applicant's cell was overcrowded three times over its capacity. Detainees received poor medical care, since the doctor was often unavailable and as there was an acute lack of medicines. When a patient had a fit and started to “brawl” he or she was “tranquillised” by batonning. Windows in many cells had no glass on them, and there was no proper ventilation, which resulted in heat in summer and unbearable cold in winter.

In addition to the usual bars, the windows were covered with metal blinds which let almost no daylight in. The cells were poorly lit. Food was of poor quality and not adequate. Daily walks lasted from thirty to sixty minutes which was less than the two hours provided for by relevant rules. Detainees were taken for a walk to small concrete yards on the roof of the prison from which one could only see barbed wire and the sky through wire netting.

Detainees' personal hygiene was limited to a twenty-minute shower once a week which promoted the spreading of lice and scabies. Approximately once a month prison guards conducted a search for prohibited objects as the result of which many belongings of the detainees were stolen. The detainees were not provided with books in sufficient quantity.

The applicant's health deteriorated as a result of the time spent in the prison.

(b) The Government's account

The psychiatric ward cells where the applicant was held were overpopulated, but their sanitary condition was satisfactory. The applicant received proper medical care. Once a week he had a wash for fifteen minutes and his bed linen changed. He could have a daily one-hour walk. He had an individual sleeping place. Three hot meals were served every day. The applicant could also buy food in the prison shop and obtain food from relatives. The cells were lighted and ventilated according to relevant norms, and the sanitary facilities were in a proper condition.

B. Relevant domestic law

Under Article 13 of the 1992 Law on Psychiatric Treatment and Associated Civil Right Guarantees compulsory medical measures are applied to mentally disturbed persons, who have committed socially dangerous acts, as provided for by the Code of Criminal Procedure.

1. Proceedings concerning commission of acts punishable under criminal law by persons in a deranged state of mind

Pursuant to Article 409 of the Code of Criminal Procedure of 1960 in force at the material time ("CCrP"), a trial court deals with cases involving socially dangerous acts committed by mentally disturbed persons by way of rendering a decision in which the following questions should be resolved:

1) whether an act punishable under criminal law actually occurred;
2) whether the act has been committed by the person whose criminal case was being tried;
3) whether the person committed the act in a state of insanity;
4) whether the person, after committing the offence, developed a mental disorder that made it impossible for him to be conscious of or to control

his actions and whether such illness represented a temporary mental disorder requiring an adjournment of the proceedings;

5) whether a compulsory medical measure should be applied and what type of measure should be applied.

Pursuant to Article 410 of CCrP, having found it established that an act prohibited by criminal law has been committed by the person in question in a state of insanity, the court is to relieve the person of criminal liability and subject him to medical treatment. The court discontinues the case without applying such measures if the person does not represent a social threat and no longer requires treatment.

Under Article 407 of CCrP, the court when listing a case for hearing informs of it a prosecutor and a counsel of a person who has committed a socially dangerous act, summons victims, witnesses and experts where necessary. The court may summon to the hearing the person whose case is herein examined, unless the nature of that person's disease prevents him from appearing before the court.

2. Terms of detention on remand

Pursuant to Article 97 of CCrP, during the investigation of criminal cases, the term of detention on remand shall not exceed two months. This term may be extended by a district or a town public prosecutor for up to three months where the investigation cannot be concluded and there are no grounds for changing a preventive measure. A further extension of this term can be approved by a regional prosecutor only in view of the particular complexity of the case.

3. Reservation of the Russian Federation

The instrument of ratification of the Convention deposited by the Russian Federation on 5 May 1998 contains the following reservation:

> "In accordance with Article 64 of the Convention, the Russian Federation declares that the provisions of Article 5 paragraphs 3 and 4 shall not prevent ... the temporary application, sanctioned by the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation, of the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence, established by Article 11 paragraph 1, Article 89 paragraph 1, Articles 90, 92, 96, 96-1, 96-2, 97, 101 and 122 of the RSFSR Code of Criminal Procedure of 27 October 1960, with subsequent amendments and additions..."

COMPLAINTS

1. The applicant complained that the conditions of his pre-trial detention in the psychiatric ward of the Butyrka prison of Moscow (IZ-48/2, IZ-77/2) breached Article 3 of the Convention.

2. Invoking Article 5 §§ 1 (e) and 3 of the Convention, the applicant complained that after his arrest he was not brought before an authority which would examine the lawfulness of his detention and that his detention on remand was unreasonably long.

3. The applicant complained under Article 6 § 1 of the Convention that despite numerous requests he was not summoned to any of the court hearings.

4. The applicant complained under Article 6 § 2 of the Convention that there had been a pre-determined decision to deliver a finding of guilt.

5. The applicant alleged, referring to Article 6 § 1 of the Convention, that Judge Afonina had not been impartial, insofar as she had been unduly influenced by the state security agency investigating activities of his wife. He also complained that the appeal instance had not summoned to its hearing members of a human rights organisation who had represented him along with his lawyers.

6. Under Article 6 § 3 (d) of the Convention the applicant complained that the court had not examined a witness on his behalf.

THE LAW

1. The applicant complained that the conditions of his pre-trial detention in the psychiatric ward of the Butyrka prison breached Article 3 of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government acknowledged that the prison cells had been overcrowded, but contended that their sanitary condition had been satisfactory and that the applicant had received proper medical care. The Government pointed out that the authorities had had no intention to subject the applicant to inhuman or degrading treatment or to harm his health.

The applicant disagreed. He asserted that overcrowded remand prisons were a common practice in Russia until the entry into force in July 2002 of the new Code of Criminal Procedure providing for obligatory judicial authorisation of detention on remand. He further argued that the sanitary conditions of the overcrowded cells could not, by definition, be considered satisfactory.

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, referring to Article 5 §§ 1 (e) and 3 of the Convention, about the lack of judicial review and the unreasonable length of his detention on remand.

The Court will examine the complaints under Article 5 § 3 which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

(a) Insofar as the applicant complained that after his arrest he was not brought before a judge, the Court notes Russia's reservation in respect of Article 5 § 3. The Court observes that the reservation refers, amongst other things, to the provisions of the Code of Criminal Procedure of 1960, under which a person could be detained on a decision of investigative authorities without there being any requirement for judicial supervision of the detention. The reservation has been found to comply with the requirements of Article 57 of the Convention (see *Labzov v. Russia* (dec.), no. 62208/00, 28 February 2002) and covers the provision which regulated the applicant's case. Therefore this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) With regard to the complaint concerning the length of the applicant's detention on remand, the Government submitted that hearings in the case had been repeatedly postponed as the applicant's representatives and witnesses failed to appear.

The Government further asserted that the length of the applicant's detention had also been caused by the applicant's psychiatric examinations. The Government acknowledged that, when ordering the applicant's second psychiatric examination on 28 June 1999, the court had not given reasons for this decision. Nor had it given the defence a chance to object or comment on it.

The Government also submitted that the applicant had failed to challenge before a court the decisions of the prosecutor's office extending his detention on remand until 12 January 1999 and later until 12 February 1999.

The applicant argued, first, that his representatives had not been informed about the adjourned hearings and that there had not been any attempt to execute the court rulings which ordered the witnesses to be brought forcibly before court.

Second, the two psychiatric examinations, referred to by the Government, had lasted less than two months out of a year and a half during which he had been held in custody.

Third, his case had not been complex, involving only one episode imputed to him.

Lastly, the applicant submitted that his failure to appeal against these decisions could not justify his unreasonably long detention.

As to the question of exhaustion of domestic remedies, the Court notes that the applicant did not appeal against the decisions which extended his detention to 12 January 1999 and 12 February 1999. However, an appeal against these decisions could only have related to a small part of the overall detention (two months out of a total of a year and a half's custody), and was at a relatively early stage of the detention. It is thus not clear how the two appeals could have affected the overall length of the detention.

Accordingly, the Court is of the view that the complaint cannot be rejected for failure to exhaust domestic remedies.

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 the second part of 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.

3. The applicant complained that despite his numerous requests he had never appeared before the Gagarinskiy District Court of Moscow in breach of Article 6 § 1 of the Convention, which insofar as relevant reads as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ..."

The Government asserted that the decision of the Gagarinskiy District Court of Moscow not to summon the applicant had been based on the expert opinion according to which the applicant had not been conscious of, and could not control, his actions and perceive circumstances relevant for the case and give evidence on them. The Government stated that Article 407 of the Code of Criminal Procedure did not oblige a court to summon a person in respect of whom a court had to take a decision on the application of compulsory medical measures. Such a person enjoyed lesser procedural rights than an ordinary accused. The Government further argued that the applicant's absence from the court hearings had not adversely affected his rights, since his lawyers had been present.

The applicant submitted in reply that the first reason advanced by the court for not summoning him was the alleged refusal of the prison administration to bring him to court. However this allegation was untrue. The applicant further asserted that he had not disclosed any disturbed

behaviour and his physical and mental condition had not otherwise precluded him from appearing before the court.

The applicant pointed out that the second reason advanced by the court for not summoning him was his mental incapacity allegedly making it impossible to accept his testimony as evidence. The applicant contended that it had never been established before the decision of the court of 4 April 2000 that he had been irresponsible. He stated that it had been for the court to take a decision on his mental condition based on all the evidence in the case and not simply to confirm the expert opinion.

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 the second part of 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.

4. The applicant complained that there had been a pre-determined decision to deliver a finding of guilt contrary to Article 6 § 2 of the Convention, which provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Government acknowledged that the Gagarinskiy District Court of Moscow had had no power to find the applicant guilty of committing the crime. Reference was made to relevant provisions of domestic law, in particular, to Article 409 of the Code of Criminal Procedure of 1960, according to which, having established that an act punishable under criminal law had been committed by a person in a deranged state of mind, a court could only relieve that person of criminal liability and subject him to compulsory medical measures where necessary. However, the applicant had failed to raise this issue before the domestic courts, thus failing to exhaust domestic remedies.

The applicant submitted that in the course of the proceedings he had lodged numerous appeals to courts up to the Supreme Court and to the prosecutor's office up to its federal level. These appeals concerned other violations allegedly committed by the authorities and were aimed at the restoration of the rule of law. They were to no avail. The defence had, therefore, considered it useless to complain to the authorities also about the violation in question. The applicant pointed out that it had been only after the communication of the present case to the Government that the prosecutor's office had requested the court to quash the decisions taken in the case, invoking the reason which they had previously ignored in the applicant's numerous complaints.

In examining this complaint, the Court has had regard to the fact that in the ruling of 10 March 2000, which rejected an application for the

applicant's release before trial, and the decision of 4 April 2000, which discharged the applicant from criminal liability in view of his mental disorder, the Gagarinskiy District Court of Moscow referred to the applicant's "having committed a crime". A similar situation was examined by the Court in *Adolf v. Austria* (see judgment of 26 March 1982, Series A no. 49, pp. 18-19, §§ 39-41), where the decision which discontinued proceedings against the applicant contained the phrase "well capable of being understood as meaning that Mr Adolf was guilty of a criminal offence ...". Although that case did not end with a finding of a violation, this was only because this phrase had been corrected in an appeal judgment.

However, the Court considers that the instant complaint is inadmissible for the following reason. The Court recalls that the primary responsibility for remedying violations of the Convention lies with the contracting states. In order to exhaust domestic remedies an applicant must raise the substance of the complaint that is made under the Convention first in the domestic proceedings (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 65).

The Court notes that it was open to the applicant to raise the complaint in question before the appeal court which could have quashed the decision.

This complaint must therefore be rejected for non-exhaustion of domestic remedies and declared inadmissible pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

5. The applicant alleged that the trial judge had been biased and that the appeal court had failed to summon some of his representatives. He relied on Article 6 § 1 of the Convention which, insofar as relevant, reads as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

He also complained about the trial court's failure to examine a witness on his behalf in breach of Article 6 § 3 (d) of the Convention which reads as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> ... to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

The Court has examined the applicant's complaints as submitted by him. However, having regard to all material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints about the prison conditions, the length of his detention on remand and the complaint concerning his right to be present at the hearing;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President