CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 63332/00
by Vladimir Ivanovich RYTSAREV
against Russia

The European Court of Human Rights (Third Section), sitting on 16 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 12 August 2000,

Having regard to the partial decision of 3 July 2003,

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, Vladimir Ivanovich Rytsarev, is a Russian national, who was born in 1956 and lives in the village of Zhdimir in the Oryol Region. He was represented before the Court by Mr V.V. Suchkov, a lawyer practising in Oryol. The respondent Government were represented by

Mr P. A. Laptev, the representative of the Russian Federation at the European Court of Human Rights.

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

1. Detention and its judicial review

On 8 July 2000 the applicant was arrested and detained on suspicion of having committed theft of aluminium wire. He was placed in a cell at the Znamenskiy district police office designed for the detention of administrative offenders.

On 9 July 2000 the applicant lodged with an investigator a complaint challenging the lawfulness of his arrest and detention before the Znamenskiy District Court of the Oryol Region and requesting his release. The complaint never reached the court.

On 11 July 2000 the applicant was charged with the theft. On the same day an order for his detention on remand was issued and confirmed by the prosecutor of the Znamenskiy District of the Oryol Region.

On 13 July 2000 the applicant was transferred to detention facility № 1 (Investigatory Isolation Ward № 1) in the city of Oryol.

On 27 July and 9 August 2000 the applicant again complained about the unlawfulness of his arrest and detention, this time before the Sovetskiy District Court of Oryol ("the Sovetskiy District Court"). The complaints reached the court on 7 and 16 August 2000, respectively.

On 12 August 2000 the applicant lodged the present application with the Court.

On 17 August 2000 the Sovetskiy District Court demanded the case file for examination and scheduled a hearing for 23 August 2000. The hearing was not held as the case file had not been obtained and the applicant had not been brought to court.

On 22 August 2000 the applicant's counsel wrote to the prosecutor of the Znamenskiy District of the Oryol Region, complaining about the failure of the investigator to transfer the applicant's complaint of 9 July 2000 concerning the unlawful detention to a court. The prosecutor did not react.

On 5 September 2000 the Sovetskiy District Court held a hearing. The court found that the applicant's arrest and detention were unlawful and ordered the applicant's release. The applicant was released following this court decision.

2. Conditions of detention

The applicant was kept in a cell at the Znamenskiy district police office in the village of Znamenskoye, designed for the detention of administrative offenders, from 8 to 13 July 2000. The parties provided different descriptions of the conditions of the detention during the said period.

(a) The applicant's account

The applicant was not given water and food. His relatives were only allowed to pass him water and tea in two 1,5 l bottles on 9 July.

The only public catering unit in the village which supplied food for detainees confirmed that during the period in question a total of six meals had been delivered to the police office. It appears that all six were served on 11 July. There is the applicant's statement in records of his interrogation on 9 July that he had not eaten anything since yesterday and had not been given water. Similarly, in records of his interrogation on 12 July the applicant stated that he had not been given anything to eat and drink, that he had been brought water by his brothers and that the investigator offered to give him food in exchange for his pleading guilty.

The applicant was not taken out for exercise, nor permitted to go to a lavatory, which was located outside the building, as often as he needed.

The applicant's complaint of 22 August 2000 about the conditions of his detention was dismissed as ill-founded by the Znamenskiy District Office of the Prosecutor on 23 August 2000. The prosecutor mentioned that due to repair works there had been no courtyard suitable for detainees' exercise.

(b) The Government's account

The Government submitted that daily set meals had been served to detainees for lunch by the only catering unit in the village. Only tea was served for breakfast and dinner. Food from relatives was accepted without any restrictions.

The Government further submitted that according to police officers of the Znamenskiy district police office, the applicant had refused meals provided by the police. However he received daily, without any restrictions, food from his relatives.

The applicant was not limited in drinking water. He did not complain about the shortage of water or food. Thus, when being questioned by the district prosecutor on 11 July 2000 he made no complaints about the conditions of his detention. He only asked to call a doctor as he felt unwell and that request was met.

The applicant was regularly taken out to a lavatory. No torture or degrading acts were applied to the applicant.

COMPLAINTS

1. The applicant complained under Article 5 § 4 of the Convention that it had taken the investigator forty five days to communicate the applicant's request for release to the court and that it had happened only after he had

filed his application to Strasbourg. Thus, the proceedings by which the lawfulness of his detention was decided lasted too long.

2. The applicant complained under Article 3 of the Convention that during the first five days of his detention he had not been given water and food, taken out for walks and had been restricted in using a lavatory.

THE LAW

1. The applicant complained under Article 5 § 4 of the Convention that the determination of his application for release lasted too long. Article 5 § 4 reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Government acknowledged that the applicant's initial court application for release, challenging the lawfulness of his arrest and detention, which had been handed over to the investigator on 9 July 2000, was never transferred to court. However, his subsequent application was dealt with by the court speedily.

The applicant disagreed, fully maintaining his initial complaint.

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 complained that the conditions of his detention between 8 and 13 July 2000 had been incompatible with 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 contended that the conditions of the applicant's detention, including the provision of food, did not contravene the requirements of Article 3 and that no facts which would point to the applicant's inhuman treatment had been established.

The applicant disagreed, asserting that the Government's arguments, in particular, those concerning the delivery of meals from the catering unit and the applicant's receipt of food parcels from his relatives, were not supported by evidence.

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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Vincent BERGER
Registrar

Georg RESS
President