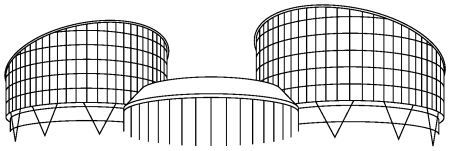

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BIRULEV AND SHISHKIN v. RUSSIA

(Applications nos. 35919/05 and 3346/06)

JUDGMENT

This version was rectified on 22 June 2016
under Rule 81 of the Rules of the Court

STRASBOURG

14 June 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Birulev and Shishkin v. Russia,

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

Luis López Guerra, *President,*
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 24 May 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 35919/05 and 3346/06) 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 two Russian nationals, Mr Aleksey Viktorovich Birulev ("the first applicant") and Mr Mikhail Mikhaylovich Shishkin ("the second applicant"), on 18 September 2005 and 5 November 2005 respectively.

2. The second applicant was represented by Mr F. Bagryanskiy, Mr A. Mikhaylov and Mr M. Ovchinnikov, lawyers practising in Vladimir. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants alleged, in particular, that their detention following their actual apprehension by police had been unlawful.

4. On 25 November 2010 and 17 June 2010 respectively the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 35919/05 lodged by Mr Aleksey Birulev

5. The first applicant was born in 1978 and lives in Tsentrelnye Koryaki in the Kamchatka Region.

6. On 20 June 2005 at approximately 3.30 a.m. he was arrested by traffic police while driving a vehicle which had been declared stolen earlier in the evening, and was taken to the local police station.

7. On the same day at 3.00 p.m. he gave a confession statement.

8. Later on at approximately 6.00 p.m. a record of his arrest was drawn up. This document indicated that he had been apprehended at 6.00 p.m. by an investigator, Mr S.

9. On 22 June 2005 the Yelizovskiy District Court ("the District Court") authorised the first applicant's detention. The court found that there were grounds to believe that he would abscond, because he was suspected of having committed an offence punishable by more than two years' imprisonment, was unemployed and without any source of income, and did not reside at his official address. It further referred to the risk that the first applicant might continue his criminal activities on the grounds that, having been released on parole on 17 June 2005, he had been apprehended three days later on suspicion of an offence similar to that for which he already had a conviction.

10. On 29 June 2005 the first applicant was charged with theft.

11. On 19 July 2005 the detention order of 22 June 2005 was upheld on appeal.

12. By a judgment of 1 March 2006, upheld on appeal on 2 May 2006, the District Court convicted the first applicant as charged and sentenced him to ten years' imprisonment.

B. Application no. 3346/06 lodged by Mr Mikhail Shishkin

13. The second applicant was born in 1976 and lives in Vladimir.

1. The second applicant's arrest on 11 April 2005

14. On 10 April 2005 Ms F. complained of having been raped by three unidentified individuals.

15. A criminal investigation into the rape was opened at 12 noon on 11 April 2005 and the second applicant was apprehended on the same day. He and the Government provided differing versions of how he was arrested.

16. According to the second applicant, at around 12 noon he was stopped in the street by police and escorted to the local police station. Between 12.25 p.m and 12.33 p.m. he took part in an identification parade, as a result of which he was identified by the victim as one of the individuals who had raped her. Between 3.10 p.m. and 4.20 p.m. he was questioned by an investigator. A record of his arrest was not drawn up until 11.35 p.m.

17. According to the Government, the second applicant was taken to the police station as a witness. They have provided no indications as to when he was taken there or why he was considered to be a witness for the purposes of the investigation. The Government further claimed that the second applicant was interviewed as a witness between 3.10 p.m. and 4.20 p.m., and that the identification parade during which he was identified by the victim took place between 10.25 p.m. and 10.33 p.m. At 11.25 p.m. he was arrested as a criminal suspect and ten minutes later an arrest record was drawn up.

18. During the above procedures, the second applicant waited in different offices of the police station. Had he tried to leave, he would have been stopped by the police officers who were standing guard at the doors of the offices. As soon as the record of arrest was compiled, he was incarcerated.

2. Detention order of 13 April 2005

19. At 6.25 p.m. on 13 April 2005 the Gus-Khrustalnyy Town Court of the Vladimir Region (hereinafter "the Town Court") remanded the second applicant in custody on the basis of Article 108 of the Russian Code of Criminal Procedure (hereinafter "the CCrP") (see paragraph 34 below). It found that he was suspected of having committed a serious criminal offence, had been identified by the victim, had escaped from the scene of the crime, did not work and had a recent criminal record, and that for those reasons he might abscond, reoffend, influence the victim and the other parties to the proceedings, destroy evidence, or otherwise obstruct the proper administration of justice. The Town Court did not address the second applicant's allegation that he had been unlawfully detained for more than forty-eight hours without judicial authorisation.

20. On 15 April 2005 the second applicant appealed. Among other things, he complained that his detention was unlawful, on the grounds that he had been brought before a judge more than forty-eight hours after his actual arrest and the Town Court had not established any "exceptional circumstances", as required by the CCrP in order to place a suspect in detention (see paragraph 33 below).

21. On 16 May 2005 the Vladimir Regional Court ("the Regional Court") upheld the order of 13 April 2005. It considered that the second applicant had been apprehended as indicated in the arrest record. It further found that the Town Court had based its decision on sufficient grounds.

Lastly, as regards his argument concerning the absence of "exceptional circumstances", the Regional Court held as follows:

> "The exceptional nature of remanding a criminal suspect in custody implies that he must be charged not later than ten days from the time of his arrest. Otherwise, he should be immediately released."

22. In the meantime, on 19 April 2005 the second applicant was charged with aggravated rape.

23. On 20 December 2005 the Town Court found him guilty as charged and gave him a custodial sentence.

24. On 3 March 2006 the Regional Court upheld the judgment on appeal.

3. Conditions of detention

25. Between 20 April 2005 and 22 March 2006 the second applicant was held in Vladimir Prison T-2 in connection with the criminal proceedings against him. He submitted that the facility had been severely overcrowded and in an appalling sanitary condition. The detainees did not have access to fresh air, sunlight or drinking water.

II. RELEVANT DOMESTIC LAW

A. The Russian Constitution

26. Article 22 of the Russian Constitution guarantees the right to liberty. Paragraph 2 provides that arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours.

B. Codes of Criminal Procedure

27. Article 90 of the Russian Soviet Federative Socialist Republic (RSFSR) Code of Criminal Procedure ("the old CCrP"), in force until 2002, provided:

> "In exceptional circumstances, a measure of restraint may be chosen in respect of a person suspected of having committed a criminal offence before charges are brought against him. In these circumstances, charges should be brought against him not later than ten days from the time of his placement in detention. Otherwise, the measure of restraint should be lifted."

28. Since 2002, matters of criminal justice have been regulated by the new Russian Code of Criminal Procedure ("the CCrP"). Below is a summary of its provisions which are relevant to the present case.

1. Rules governing arrest

29. The procedure for the arrest of a suspect is set out in Article 92 of the CCrP, which provides in particular that a record of arrest must be drawn up within three hours of the time a suspect is taken to the investigating authorities and must reflect the actual time of the arrest.

30. Under Articles 10 and 94, no one may be deprived of their liberty without legal grounds. If a judge does not order a suspect to be remanded in custody as a preventive measure within forty-eight hours of arrest, the suspect should be immediately released.

2. Rules governing remand in custody

31. Chapter 13 of the CCrP regulates the application of preventive measures, of which remand in custody is one. Article 97 provides that a preventive measure may be applied only if there are sufficient grounds to believe that a suspect or an accused might (i) abscond, (ii) reoffend or (iii) obstruct the proceedings.

32. Article 99 stipulates that other circumstances, such as the gravity of a charge, an accused's personality, his age, state of health, family status and occupation, must also be taken into account when deciding on the preventive measure.

33. The relevant part of Article 100 of the CCrP provides:

> "1. In exceptional circumstances, if the grounds listed in Article 97 of the present Code exist, taking into account the circumstances listed in Article 99 of the Code, a measure of restraint may be chosen in respect of a person suspected of having committed a criminal offence. In these circumstances, charges should be brought against him not later than ten days from the time the measure of restraint is applied ... If no charges are brought within that period, the measure of restraint should be lifted ..."

34. Article 108 regulates remand in custody as a specific type of preventive measure. It may be ordered by a court in respect of persons suspected or accused of having committed a criminal offence punishable by more than two years' imprisonment, provided that a less restrictive preventive measure, such as an undertaking not to leave one's place of residence, personal surety or bail, could not be applied. Persons suspected or accused of having committed a criminal offence punishable by a shorter term of imprisonment may still be remanded in custody in exceptional circumstances and if one of the following grounds exists: a person has no permanent place of residence; his or her identity has not been established; or he or she has breached a previously imposed preventive measure or absconded.

THE LAW

I. COMPLAINTS LODGED BY THE SECOND APPLICANT UNDER ARTICLE 3 AND ARTICLE 5 § 4 OF THE CONVENTION

35. By a letter submitted on 17 January 2014, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this part of the application lodged by the second applicant. They acknowledged a violation of Articles 3 and 5 § 4 of the Convention on account of the inhuman and degrading conditions of his detention in prison T-2 of the Vladimir Region between 20 April 2005 and 22 March 2006 and the excessively lengthy judicial review of the detention order of 13 April 2005, and stated their readiness to pay him 6,415 euros (EUR) as just satisfaction. They further requested the Court to strike the application out of the list of cases in accordance with Article 37 of the Convention. The remainder of the declaration read:

> "The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points."

36. By a letter of 14 April 2014 the second applicant rejected the Government's offer, considering the proposed sum to be too low and insisting on the examination of his other complaints.

37. The Court reiterates that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if:

> "... for any other reason established by the Court, it is no longer justified to continue the examination of the application."

38. In certain circumstances, the Court may strike out an application or a part thereof under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government, even if the applicant wishes the examination of the case to be continued.

39. To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

40. The Court is satisfied that the Government did not dispute these particular allegations made by the second applicant and explicitly acknowledged the breaches of Articles 3 and 5 § 4 of the Convention as claimed by him.

41. As to the redress which the Government intended to provide to the second applicant, they undertook to pay EUR 6,415 in respect of pecuniary and non-pecuniary damage, as well as costs and expenses. The Court finds that the proposed sum is approximately equivalent to what it would have awarded for the same violations of the Convention. The Government have committed themselves to effecting the payment of that sum within three months of the Court's decision, with default interest to be payable in the event of any delays in settlement.

42. The Court has repeatedly found violations of Articles 3 and 5 § 4 of the Convention on account of inadequate conditions of detention in Russian custodial facilities (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012) and excessively long judicial reviews of detention orders (see, among many other authorities, *Mamedova v. Russia*, no. 7064/05, §§ 94-97, 1 June 2006). It follows that the complaints raised in the present application are based on the clear and extensive case-law of the Court.

43. In accordance with Article 46 § 2 of the Convention, the Committee of Ministers remains competent to supervise the implementation of judgments concerning such issues. Therefore, the Court is satisfied that the respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine*) does not require it to continue the examination of this part of the application. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, this part of the application to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006). The Court therefore considers that it is no longer justified to continue the examination of this part of the case.

44. In view of the above considerations, it is appropriate to strike out of the list the part of the application concerning the inhuman and degrading conditions of the second applicant's detention in prison T-2 of the Vladimir Region between 20 April 2005 and 22 March 2006 and the excessively lengthy judicial review of the detention order of 13 April 2005.

II. JOINDER OF THE APPLICATIONS

45. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background (see *Kazakevich and 9 other "Army Pensioners" cases v. Russia*, nos. 14290/03 et al., § 15, 14 January 2010).

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

46. Both applicants complained that their arrests and initial placement in detention as suspects had been incompatible with Article 5 § 1 of the Convention, the relevant parts of which read:

> "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."

A. Admissibility

47. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The applicants' arrests and their subsequent detention at police stations

(a) Parties' submissions

48. The first applicant reiterated his complaints. The second applicant submitted that he had been deprived of his liberty at 12 noon on 11 April 2005 when he had been forcefully taken to the police station. He pointed out that the identification parade record had been changed deliberately in order to conceal the real time of his arrest. Although he had not been incarcerated immediately, the prospect of his leaving the guarded premises of the police station of his own will had been unrealistic. A formal arrest record had been drawn up more than eleven hours later, and the court order authorising the detention had been issued on the evening of 13 April 2005 – beyond the time-limit set out in domestic law.

49. As regards the first applicant, the Government did not dispute that he had been apprehended on 20 June 2005 at around 3.30 a.m., while indicating that they were not, however, in a position to provide any document regarding his whereabouts between that moment and 3.00 p.m. when he had given his confession statement. All attempts to locate the Yelizovskiy police station's register of people who had been apprehended in

June 2005 had failed. Despite the absence of the relevant documents relating to the first hours of his arrest, the Government insisted that the first applicant's detention had been lawful, and in any event had been formalised a few hours later.

50. As regards the second applicant, the Government maintained that on 11 April 2005 he had been taken to the police station and interviewed as a witness between 3.10 p.m. and 4.20 p.m. He had not been put in a cell and his freedom of movement had not been limited in any other way. Accordingly, his stay at the police station during that period had not amounted to a deprivation of liberty. He had not been formally arrested and incarcerated until 11.35 p.m. Given that the court hearing authorising his detention had been held at 6.25 p.m. on 13 April 2005, there had been compliance with the forty-eight-hour time-limit set by the CCrP. The court's decision to issue a detention order had been duly motivated by the provisions of the CCrP, and had been in accordance with those provisions and the requirements of Article 5 § 1 of the Convention.

(b) The Court's assessment

(i) The applicants' detention following their apprehension

51. As regards the first applicant, the Court observes at the outset that the time of his actual arrest was not disputed by the Government. It further notes that, although an arrest record was eventually drawn up, it indicated a completely different time of arrest (see paragraph 8 above). In these circumstances, the Court does not see any reason to believe that the register of people who were arrested, assuming that it ever existed and was properly filled in, could indicate a different hour to that indicated in the arrest record. It therefore finds it established that on 20 June 2005 between approximately 3.00 a.m. and 6.00 p.m. the first applicant remained under police control without this fact being duly formalised.

52. As regards the second applicant, the Court notes that it is not in dispute between the parties that he was taken to the police station against his will and that he was there from at least 3.10 p.m. on 11 April 2005 when the interview began. The Court does not consider it necessary to establish the exact time of his arrest, as his detention was not formalised until 11.35 p.m., which shows that he stayed at the station for at least eight hours without any record or formal recognition of his procedural status. However, the parties disagree as to whether that stay amounted to a "deprivation of liberty" within the meaning of Article 5 of the Convention.

53. In order to determine whether there has been a deprivation of liberty, the starting point for the Court's assessment is the concrete situation of the individual concerned, and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question. The distinction between

deprivation and restriction of liberty is merely one of degree or intensity, and not one of nature or substance (see *Nada v. Switzerland* [GC], no. 10593/08, § 225, ECHR 2012, with further references).

54. The Court observes that on 11 April 2005 the second applicant remained on the guarded premises of the police station from at least 3.10 p.m. until his incarceration at approximately 11.35 p.m., where he was interviewed and subjected to other procedural measures. Indeed, it would be unrealistic to presume that he was free to leave the station of his own will during that period (compare *Rakhimberdiyev v. Russia*, no. 47837/06, § 34, 18 September 2014).

55. The Court next observes that the Government's assertion that the second applicant stayed at the police station as a witness does not seem credible. The crime had been committed by unidentified individuals, yet the Government offered no explanation as to why the second applicant had been taken to the police station very shortly after the criminal case had been opened. Nor did they explain why he had been immediately subjected to a number of procedural measures, in particular, an identification parade. In the Court's view, it is clear that, from the time of his apprehension until the compilation of the arrest record at 11.35 p.m. on 11 April 2005, the second applicant was treated as a *de facto* suspect by the police. Therefore, the Court finds that his stay at the police station from 3.10 p.m. to 11.35 p.m. on 11 April 2005 amounted to a deprivation of liberty (compare *Osypenko v. Ukraine*, no. 4634/04, §§ 43-49, 9 November 2010).

56. The Court reiterates its established case-law that the absence of an arrest or detention record in respect of a period of deprivation of liberty must in itself be considered a serious failing. It has been the Court's consistent view that the unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention, and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and the very purpose of Article 5 of the Convention (see *Fedotov v. Russia*, no. 5140/02, § 78, 25 October 2005, and *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III).

57. The Court has already found violations in cases where the formalisation of an applicant's status as an arrested criminal suspect was delayed without a reasonable explanation (see, among many other authorities, *Rakhimberdiyev*, cited above, § 36; *Smolik v. Ukraine*, no. 11778/05, §§ 46-48, 19 January 2012; *Grinenko v. Ukraine*, no. 33627/06, §§ 75-78, 15 November 2012; *Ivan Kuzmin v. Russia*, no. 30271/03, §§ 81-84, 25 November 2010; and *Aleksandr Sokolov v. Russia*, no. 20364/05, 4 November 2010, §§ 70-73). It finds that the present case constitutes another example of this practice. Although in the

case of both applicants the records of arrest were eventually prepared, the dates and times of the applicants' arrests noted therein were at variance with the actual dates and times of their apprehensions. The applicants' detention at the police stations, from the time they were taken there until 6.00 p.m. on 20 June 2005 in the case of the first applicant, and until 11.35 p.m. on 11 April 2005 in the case of the second applicant, was not recorded or acknowledged in any procedural form. The fact that their arrests were not properly recorded is sufficient for the Court to hold that their detention on 20 June and 11 April 2005 respectively was contrary to the requirements implicit in Article 5 of the Convention for the proper recording of deprivations of liberty (see *Venskutė v. Lithuania*, no. 10645/08, § 80, 11 December 2012; *Aleksandr Sokolov*, cited above, § 72; and *Menesheva*, cited above, §§ 87-89).

(ii) the second applicant's detention beyond forty-eight hours

58. As regards the second applicant, the Court also observes that the provisions of both the Russian Constitution (Article 22) and the CCrP (Articles 10, 92, 94 and 108) require a judicial decision for any detention in excess of forty-eight hours from the time of a person's actual arrest, which must be accurately reflected in a record of arrest. In the present case, the detention order was issued by the Town Court at 6.25 p.m. on 13 April 2005, that is, within forty-eight hours of the creation of the arrest record at 11.35 p.m. on 11 April 2005.

59. However, as established by the Court above, the arrest record did not correctly reflect the time of the second applicant's actual apprehension, and by the time his detention had been properly formalised he had already been in police custody for more than three hours. The Town Court was made aware of that fact by the defence, but failed to address it in the detention order or take it into account in any other manner. It follows that the detention order did not respect the procedure laid down in the CCrP, and was therefore unlawful.

60. In view of the foregoing, the Court concludes that the failure to properly record the second applicant's deprivation of liberty on 11 April 2005, and consequently to respect the statutory time-limit for authorising such detention by a court decision, ran contrary to the "lawfulness" guarantee of Article 5 of the Convention. There has therefore been a violation of that Article.

2. Detention orders of 13 April 2005 and of 22 June 2005

(a) Submissions by the parties

61. The first applicant reiterated his complaint. The second applicant submitted that his remand in custody had not been effected in accordance with a "procedure prescribed by law". He claimed, in particular, that the

detention order of 13 April 2005 had breached Article 100 of the CCrP, as it had not mentioned any "exceptional circumstances" justifying his detention before the charges had been laid. Moreover, neither the above Article nor any other provision clearly defined the term "exceptional circumstances". Accordingly, that Article did not satisfy the "quality of law" requirement of Article 5 of the Convention. The second applicant alleged that in that respect his case was comparable to that of *Gusinskiy v. Russia* (no. 70276/01, §§ 62-69, ECHR 2004-IV), in which the Court had examined a similar provision contained in Article 90 of the former RSFSR Code of Criminal Procedure and had found a corresponding violation of the Convention. He claimed that, as in *Gusinskiy* case, the Government had not provided any examples of domestic practice defining the term "exceptional circumstances".

62. The Government submitted that the applicants' remand in custody had been lawful and compatible with Article 5 of the Convention. Both detention orders had been issued in accordance with the relevant provisions of the CCrP and had contained concrete grounds for remanding them in custody. The domestic courts had taken into account that both applicants had been suspected of having committed serious crimes punishable by more than two years' imprisonment, had been unemployed and had had criminal records. As regards the first applicant, the Yelizovskiy District Court had noted in particular that he had been apprehended while driving a stolen car only three days after his release on parole following a conviction for a similar offence. As regards the second applicant, the Gus-Khrustalnyy Town Court had paid particular attention to the fact that he had been identified by the victim. The Government further indicated that the charges against both applicants had been brought within ten days of the detention orders being granted. Therefore, they had been remanded in custody in accordance with Articles 97, 99, 100 and 108 of the CCrP and Article 5 of the Convention.

(b) The Court's assessment

63. The Court reiterates that the terms "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

64. However, the "lawfulness" of detention under domestic law is not always the decisive element. In addition, the Court must be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent individuals from being deprived of their liberty in an arbitrary fashion.

65. The Court must also ascertain whether the domestic law itself, including the general principles expressed or implied therein, is in conformity with the Convention. On this last point, the Court stresses that,

where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow people – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Jėčius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

66. The Court notes that, in the present case, the applicants were detained before being charged. It has already examined a similar situation in the *Gusinskiy* case, where the Government admitted that the relevant Article of the old CCrP of the RSFSR did not include a list of "exceptional circumstances" which were to be determined individually in each particular case. However, they failed to provide any instances – whether confirmed by court decisions or not – of cases which had been considered to disclose such "exceptional circumstances" (see *Gusinskiy*, cited above, § 58). In this context, a mere reference to "exceptional circumstances" as the sole grounds for pre-trial detention of a person suspected of, but not yet charged with, a criminal offence was considered by the Court to be vague and unpredictable, thus allowing unfettered discretion and arbitrariness (see *Gusinskiy*, cited above, §§ 63-64).

67. The Court notes that, in the instant case, the applicants' detention was governed by the CCrP, rather than the old CCrP which was relevant to *Gusinskiy*. Article 100 of the CCrP makes it clear that a person suspected of having committed a criminal offence may be placed in detention only if the grounds expressly set out in Article 97 exist, and taking into account the circumstances listed in Article 99 of the CCrP (in contrast with Article 90 of the old CCrP examined in the *Gusinskiy* case, which contained no references to other provisions – compare the wording of those Articles in paragraphs 27 and 33 above). Therefore, Article 100 of the CCrP is to be construed in the context of those provisions, as is Article 108 of the CCrP, which contains general provisions on remanding suspects and accused persons in custody.

68. The second applicant argued that, despite the changes introduced by the CCrP, he had been unable to foresee the consequences of the application of its Article 100, because it lacked any definition of the term "exceptional circumstances" and the domestic authorities had failed to adduce evidence of such circumstances in his case. The Court reiterates that it is not its task to assess the quality of domestic legislation *in abstracto*, nor it is called upon to give its own interpretation of national law. To assess whether the second applicant's detention was in conformity with the requirements of Article 5 § 1 (c) of the Convention as regards its lawfulness, the Court must

bear in mind the legal situation as it stood at the material time. In the absence of any pertinent case-law or unanimous opinion of legal scholars clarifying the meaning of "exceptional circumstances", the Court observes that the national courts examined a number of elements which they deemed relevant to the assessment of this issue

69. As regards the first applicant, the District Court based its assessment on the risk that the first applicant, who had previously been convicted of car thefts, would pursue his criminal activities, on the grounds that he had been arrested while driving a stolen car only three days after he had been released on parole (see paragraph 9 above). As regards the second applicant, the domestic courts referred mainly to the fact that he had been identified by the victim and that not all of the perpetrators had yet been found. In both cases, the domestic courts also took into consideration that the applicants were unemployed and already had criminal records (see paragraphs 19 and 21 above). The Court notes that, had the applicants' detention been based solely on the seriousness of the crimes they had allegedly committed, the legality of their detention would have been open to doubt (compare, with similar reasoning, *Winterwerp v. the Netherlands*, 24 October 1979, §§ 48-50, Series A no. 33, and *Włoch v. Poland*, no. 27785/95, §§ 114-16, ECHR 2000-XI).

70. As regards the second applicant's arguments that the detention order of 13 April 2005 had not expressly mentioned any "exceptional circumstances", the Court reiterates that the absence of explicit reference to certain provisions of domestic legislation or of use of certain terms does not in itself mean that a detention order is unlawful (compare with *Gaidjurgis v. Lithuania* (dec.), no. 49098/99, 16 January 2001, where the formal grounds for remanding an applicant in custody were found to be incorrect under domestic law and were amended on appeal, but where, in view of the weighty reasons adduced by the domestic courts, the relevant detention was considered to be lawful and in compliance with Article 5 of the Convention).

71. Moreover, the Court notes that the Regional Court specifically addressed the second applicant's argument that the term "exceptional circumstances" in Article 100 of the CCrP represented an additional criterion which had to be satisfied in relation to detaining suspects as opposed to accused persons. The court clarified that that expression was meant to emphasise the particularity of a detained suspect's situation as opposed to that of an accused person, in the sense that a measure of restraint was to be automatically lifted if a suspect was not charged within the statutory ten-day time-limit (see paragraph 21 above). The second applicant did not refer to any other case-law or example in which Article 100 of the CCrP had been applied differently. Reiterating that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Gudelj v. Croatia* (dec.),

no. 34722/11, § 40, 2 October 2012), the Court finds no reason to call into question the domestic courts' interpretation of the relevant provision, nor does the Court discern any elements demonstrating that they acted in bad faith or neglected to apply the relevant legislation correctly.

72. On the whole, the Court considers that there is nothing to show that the application of the relevant domestic law in the applicants' cases was arbitrary or unreasonable so as to render their detention unlawful.

73. There has therefore been no violation of Article 5 § 1 of the Convention in this respect.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. Lastly, relying on Articles 3, 5 § 3, 6 and 13 of the Convention, the first applicant complained of other violations of his rights in the criminal proceedings against him. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicants claimed 35,000 euros (EUR) and EUR 25,000 respectively in respect of non-pecuniary damage.

78. The Government considered those sums to be excessive.

79. The Court awards the first applicant EUR 5,000 in respect of non-pecuniary damage. As regards the second applicant, the Court takes into account that the Government have already accepted to pay EUR 6,415 in respect of non-pecuniary damage suffered by the applicant. It further considers that this amount constitutes sufficient redress for a violation of his Convention rights.

B. Costs and expenses

80. The second applicant also claimed EUR 7,000 for costs and expenses connected with his representation before the Court. He asked that the award be paid into his representatives' bank account.

81. The Government pointed out that the sum claimed did not relate to the amount of work actually performed by the second applicant's representatives. They expressed doubts as to whether the expenses incurred had been reasonable and necessary.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the second applicant provided the Court with a copy of a contract for legal representation stipulating that a fee of EUR 7,000 was to be paid to his three lawyers irrespective of the outcome of the proceedings before the Court. The Government did not argue that the contract was not enforceable, or that it did not impose a legally binding obligation on the second applicant to pay to his defence team the stipulated fee for legal services. It is clear from the length and detail of the pleadings submitted by the second applicant that a great deal of work was carried out on his behalf. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that those rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees, on account of the fact that no violation was found in respect of one of the second applicant's complaints, and some other violations were acknowledged by the Government in a unilateral declaration accepted by the Court (see *Vasiliy Vasilyev v. Russia*, no. 16264/05, § 107, 19 February 2013). In this connection, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the second applicant EUR 3,000, together with any tax that may be chargeable to him on that amount, to be paid, as requested, into his representatives' bank account as identified by the second applicant.

C. Default interest

83. The Court considers it appropriate that the default interest rate 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. *Decides*, having regard to the terms of the Government's declaration, and the modalities for ensuring compliance with the undertakings referred to therein, to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns complaints under Articles 3 and 5 § 4 of the Convention of inhuman and degrading conditions of the second applicant's detention in prison T-2 of the Vladimir Region between 20 April 2005 and 22 March 2006 and of the excessively lengthy judicial review of the detention order of 13 April 2005;

2. *Decides* to join the applications;

3. *Declares* admissible the applicants' complaints under Article 5 § 1 of the Convention and the remainder of the application no. 35919/06 inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicants' unrecorded detention at police stations on 20 June and 11 April 2005 respectively, and as a consequence of the belated judicial authorisation of the second applicant's detention on 13 April 2005;

5. *Holds* that there has been no violation of Article 5 § 1 of the Convention in connection with the detention orders of 22 June 2005 and of 13 April 2005;

6. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros)[1], plus any tax that may be chargeable, in respect of non-pecuniary damage, to the first applicant;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of costs and expenses, to be paid into the second applicant's representatives' bank account;

[1] Rectified on 22 June 2016: the text was " EUR 3,000 (three thousand euros)".

(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;

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President