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

FIRST SECTION

CASE OF SHCHEBET v. RUSSIA

(Application no. 16074/07)

JUDGMENT

STRASBOURG

12 June 2008

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 Shchebet v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 16074/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belarus national, Ms Sviatlana Shchebet ("the applicant"), on 14 March 2007.

2. The applicant was represented by Mrs L. Zaytseva, Mr A. Belyakov and Mr D. Khorst, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that she had been detained unlawfully and that the conditions of her detention had been inhuman and degrading.

4. On 3 September 2007 the Court decided to give priority to the application (Rule 41 of the Rules of Court) and communicated it to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. After examining it, the Court dismissed that objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978. She lived in Vienna, Austria.

A. Proceedings for the applicant's extradition

7. On 20 February 2007 the applicant was arrested upon arrival at Domodedovo airport in Moscow. She was told that on 24 September 2006 the Belarus authorities had placed her name on the list of fugitives from justice, suspecting her of involvement in human trafficking.

8. The applicant was taken to the Domodedovo transport police department. No arrest record was compiled.

9. On 21 February 2007 counsel for the applicant complained to the transport prosecutor's office about the absence of an arrest record and failure to provide the applicant with food, drink and access to a toilet. It is unclear whether any response was received.

10. On 27 February 2007 the first deputy head of the central police station of Minsk faxed a letter to the head of the Domodedovo transport police department, asking him to keep the applicant in custody. He enclosed a warrant for the applicant's arrest sanctioned by the Minsk town prosecutor on 30 August 2006.

11. On the same day the acting Moscow Regional Prosecutor sent the following letter to the head of the Domodedovo transport police department:

> "Owing to the fact that the Moscow Police Department for Air and Water Transport has no temporary detention ward, I request you to hold [the applicant] in the Domodedovo transport police department until such time as a judicial decision on application of a custodial measure has been issued."

12. Also on the same day, counsel for the applicant complained to a court that the applicant had already spent six days in detention without a judicial order and asked for her release.

13. On 2 March 2007 the Domodedovo Town Court of the Moscow Region refused to deal with the complaint on the ground that no criminal proceedings against the applicant were pending in Russia. On 3 April 2007 the Moscow Regional Court upheld that decision on appeal.

14. On 5 March 2007 the Golovinskiy District Court of Moscow dismissed the same complaint. It found that the letter from the Minsk police officer constituted a lawful basis for the applicant's detention within the meaning of the Minsk Convention until such time as the formal extradition request had been received by the Prosecutor General's Office. The District Court further determined that it was not competent to examine the

application for release because it lacked territorial jurisdiction. On 28 March 2007 the Moscow Regional Court upheld that judgment on appeal.

15. On 7 March 2007 the Prosecutor General's Office received a request for the applicant's extradition from the Belarus authorities.

16. Counsel for the applicant complained to a court about unlawful actions of the Moscow transport prosecutor, who had permitted the applicant's detention in excess of forty-eight hours without a judicial decision, on the basis of a non-procedural communication from the Belarus authorities of 27 February 2007.

17. On 22 March 2007 the Golovinskiy District Court of Moscow dismissed the complaint against the transport prosecutor. It found that the Belarus authorities' letter of 27 February 2007 constituted a request for the applicant's arrest pending an official request for extradition within the meaning of the Minsk Convention. The decision on the applicant's extradition and the application of a custodial measure was to be taken by the Prosecutor General's Office rather than by the Moscow transport prosecutor. In these circumstances, the transport prosecutor had acted lawfully and within his competence. On 18 April 2007 the Moscow Regional Court upheld that judgment on appeal.

18. On 23 March 2007 the Prosecutor General's Office forwarded a copy of the extradition request to the Moscow prosecutor responsible for supervising compliance with laws in air and water transport. The prosecutor applied to a court for an arrest warrant in respect of the applicant.

19. On 26 March 2007 the Domodedovo Town Court granted the prosecutor's application and remanded the applicant in custody. The Town Court founded its decision on the facts that the applicant was charged with a criminal offence carrying a prison term of more than one year and that the extradition request was pending. Noting the applicant's "character" and state of health, the Town Court held that no grounds for applying a more lenient preventive measure had been shown to exist.

20. The applicant and her counsel lodged appeals. They pointed out that the applicant had a permanent place of residence and employment in Moscow and that her health had deteriorated as a consequence of being detained in the police cell.

21. On 19 April 2007 the Moscow Regional Court upheld the detention order on appeal. It rejected the applicant's arguments about her residence in Moscow on the basis of a certificate from the Federal Migration Service which showed that her residence in the Moscow Region had not been formally registered.

22. Replying to a complaint by the applicant's lawyer, on 11 April 2007 the senior assistant to the Moscow transport prosecutor admitted that no arrest record had been compiled in respect of the applicant at the Domodedovo transport police department because it had not been required by law in cases of extradition.

23. On 25 April 2007 the Constitutional Court confirmed to the applicant that it had been its constant case-law to require a judicial decision for any deprivation of liberty in excess of forty-eight hours and also to require effective judicial supervision of detention matters. These requirements were likewise applicable to foreign nationals whose extradition was sought.

24. On 25 April 2007 the Russian Ombudsman replied to the applicant that her complaint about unlawful detention had been forwarded for examination to the Prosecutor General's Office. On 28 May 2007 the Prosecutor General's Office wrote to the applicant's lawyer that her detention had been lawful and justified.

25. On 5 October 2007 the Tverskoy District Court of Moscow disallowed the applicant's complaint about the Prosecutor General's failure to put an end to her unlawful detention. The District Court held that the applicant was not a party to any criminal proceedings in Russia and that she could not therefore lodge a complaint under Article 125 of the Code of Criminal Procedure.

26. On 11 October 2007 a deputy Prosecutor General of the Russian Federation granted the request for the applicant's extradition to Belarus.

27. On 22 November 2007 the Moscow City Court upheld the extradition decision on appeal and maintained the custodial measure in respect of the applicant. On 25 January 2008 the Supreme Court of the Russian Federation dismissed the applicant's appeal against that decision.

B. Conditions of the applicant's detention at Domodedovo airport

28. Upon her arrest on 20 February 2007 the applicant was placed in the cell for detention of administrative offenders ("KAZ", *комната для административно-задержанных*) on the premises of the duty station of the Domodedovo transport police department (*дежурная часть ЛУВД аэропорта «Домодедово»*).

29. On 9 March 2007 the applicant complained to the Prosecutor General, the Ombudsman, the Human Rights Commissioner and the President about unlawful detention in the Domodedovo transport police station in appalling conditions. She complained that she did not receive food or hygiene articles on a regular basis, that medical assistance was inadequate, and that she had had no access to fresh air for more than seventeen days. It is unclear whether she received any replies.

30. On 26 March 2007, following the Town Court's decision on the application of a custodial measure, the applicant was transferred to remand centre no. IZ-77/6 in Moscow.

31. The parties' description of the physical conditions of the applicant's detention at Domodedovo airport differ in certain aspects. Their submissions are summarised below.

32. The Government submitted multiple written depositions by police officers from the Domodedovo transport police department. According to them, the applicant received food from the canteen and from her relatives. At night-time she was given a mattress, blanket and bedding from the airport hotel. She could take walks under the escort of a police officer and occasionally have a shower. A nurse came to visit her and take her blood pressure.

33. The Government also submitted a certificate from the medical unit of the airport. It indicated that the applicant had been examined on ten occasions in connection with complaints about headaches, weakness or indisposition.

34. The Government produced a layout plan of the Domodedovo transport police department, showing that the applicant's cell measured four square metres. It had no windows. A bunk bed, 220 cm long and 65 cm wide, occupied the space along one wall.

35. The Government submitted a report on a conversation with the head cook of the airport canteen. The cook had stated orally – but refused to confirm the same in writing – that from 23 February to 26 March 2007 three meals a day had been sent to the applicant.

36. The applicant acknowledged that the cell measured approximately four square metres. However, it was not a normal room but rather a metal cage, its front panel being made of iron rods. The cell had been locked at all times. The only piece of furniture had been a metal bench fixed to the wall. There had been no chair, table, mattress or bedding. During the night she had not been able to undress because she had been in full view of male police officers. She had covered herself with a jacket.

37. On occasion the applicant had had to share the cell with other detainees, such as petty offenders or vagrants. Female detainees had been placed together with her. If a male detainee had been brought in, the police had taken her out of the cell – sometimes during her sleep – and made her sit on a chair in the nearby office. She had remained seated there for several hours.

38. The police officers had not brought her any food or drink. All the food had been provided by her boyfriend and sister. The applicant submitted written depositions from them attesting to this fact. She pointed out that no money had been allocated for purchasing food from the canteen.

39. The applicant had never been taken outside for a walk. The only time she had been outdoors was on 21 February 2007 when she had been taken to the prosecutor's office.

II. RELEVANT DOMESTIC LAW AND CONVENTIONS

A. The Russian Constitution

40. The Constitution guarantees the right to liberty (Article 22):

"1. Everyone has the right to liberty and personal integrity.

2. Arrest, placement in custody and detention are only permitted 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. The Minsk Convention

41. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 and amended on 28 March 1997, "the Minsk Convention"), to which both Russia and Belarus are parties, provides as follows:

Article 8. Procedure for execution of requests for legal assistance

"1. When executing a request for legal assistance, the requested authority applies the laws of its own State..."

Article 61. Arrest or detention before the receipt of a request for extradition

"1. The person whose extradition is sought may also be arrested before receipt of a request for extradition, if there is a related petition (*ходатайство*). The petition shall contain a reference to a detention order or a final conviction and shall indicate that a request for extradition will follow..."

Article 62. Release of the person arrested or detained

"1. A person arrested pursuant to Article 61 § 1 ... shall be released ... if no request for extradition is received by the requested Contracting Party within 40 days of the arrest..."

C. European Convention on Extradition

42. The European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

Article 16 – Provisional arrest

"1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

D. Code of Criminal Procedure

43. Article 10 ("Personal inviolability") provides that no one may be detained for more than forty-eight hours without a judicial decision.

44. Chapter 12 ("Arrest of a suspect") regulates the procedure for arresting a suspect. Article 92 § 1 provides that an arrest record must be compiled within three hours following arrival at the police station or prosecutor's office.

45. Chapter 13 ("Measures of restraint") governs application of measures of restraint, or preventive measures (*меры пресечения*), which include, in particular, placement in custody. A custodial measure may only be ordered by judicial decision in respect of a person who is suspected of, or charged with, a criminal offence punishable by more than two years' imprisonment (Article 108 "Placement in custody"). The time-limit for detention pending investigation is fixed at two months (Article 109 "Time-limits for detention"). A judge may extend that period up to six months (Article 109 § 2). Further extensions may only be granted by a judge if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

46. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. Article 466 is the only provision in the chapter that governs application of measures of restraint with a view to extradition. Paragraph 1 deals with the situation where a request for extradition is not accompanied by an arrest warrant issued by a foreign court. In that case a prosecutor must decide whether it is necessary to impose a measure of restraint "in accordance with the procedure provided for in the present Code". Paragraph 2 establishes that, if a foreign judicial decision on placement in custody is available, a prosecutor may place the person in detention or under house arrest. In that eventuality

no confirmation of the foreign judicial decision by a Russian court is required.

47. Chapter 15 ("Petitions") provides that suspects, defendants, victims, experts, civil claimants, civil defendants, and their representatives may petition officials for taking procedural decisions that would secure rights and protect legitimate interests of the petitioner (Article 119 § 1). Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of damaging the constitutional rights or freedoms of the parties to criminal proceedings (Article 125 § 1). The competent court is that which has jurisdiction for the place of the preliminary investigation (ibid.).

E. Case-law of the Constitutional Court

1. Decision of 4 April 2006 in the case of Mr Nasrulloyev (no. 101-O)

48. On 4 April 2006 the Constitutional Court examined an application by Mr Nasrulloyev, who had submitted that the lack of any limitation in time on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. The Constitutional Court reiterated its constant case-law that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

49. In the Constitutional Court's view, the absence of a specific regulation of detention matters in Article 466 § 1 of the Code of Criminal Procedure did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, that is, the procedure laid down in the Russian Code of Criminal Procedure. Such procedure comprised, in particular, Article 466 § 1 of the Code and the norms in its Chapter 13 ("Measures of restraint") which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for examination of extradition requests.

50. The Constitutional Court emphasised that the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the Code of Criminal Procedure did not allow the authorities to apply a custodial measure without respecting the procedure established in the Code of Criminal Procedure or in excess of time-limits fixed in the Code.

2. Decision of 1 March 2007 in the case of Mr Seidenfeld (no. 333-O)

51. Mr Seidenfeld, a US citizen, was arrested in Russia on 9 December 2005 because his extradition was sought by Kazakhstan. Upon receipt of the formal extradition request, on 30 December 2005 a Russian court ordered his detention pending extradition *sine die*. Mr Seidenfeld complained to the Constitutional Court that the provisions of the Code of Criminal Procedure which permitted his detention without a judicial decision were incompatible with the Constitution.

52. The Constitutional Court reiterated its constant case-law that the scope of the constitutional right to liberty and personal inviolability was identical for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against an excessively long detention beyond forty-eight hours, and also against arbitrary detention as such, in that it required a court to examine whether the arrest was lawful and justified.

53. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition, without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

III. RELEVANT INTERNATIONAL DOCUMENTS

54. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ...However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

55. The part of the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001 (CPT/Inf (2003) 30) read, in so far as it concerned the conditions of detention in administrative-detention cells located within police stations, as follows:

> "25. Similar to the situation observed during previous visits, none of the district commands (RUVD) and local divisions of Internal Affairs visited were equipped with facilities suitable for overnight stays; despite that, the delegation found evidence that persons were occasionally held overnight at such establishments... The cells seen by the delegation were totally unacceptable for extended periods of custody: dark, poorly ventilated, dirty and usually devoid of any equipment except a bench. Persons held overnight were not provided with mattresses or blankets. Further, there was no provision for supplying detainees with food and drinking water, and access to a toilet was problematic.
>
> The CPT reiterates the recommendation made in its report on the 1999 visit (cf. paragraph 27 of document CPT (2000) 7) that material conditions in, and the use of, cells for administrative detention at district commands and local divisions of Internal Affairs be brought into conformity with Ministry of Internal Affairs Order 170/1993 on the general conditions and regulations of detention in administrative detention cells. Cells which do not correspond to the requirements of that Order should be withdrawn from service.
>
> Further, the Committee reiterates the recommendation made in previous visit reports that administrative detention cells not be used for accommodating detainees for longer than 3 hours."

THE LAW

I. ORDER OF EXAMINATION OF THE COMPLAINTS

56. The Court considers it appropriate to examine first the applicant's complaints concerning deficiencies in the legal basis for her deprivation of liberty and then turn to the material conditions of her detention.

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

57. The applicant complained of a violation of Article 5 of the Convention, in that she had been detained without a judicial warrant in excess of the forty-eight-hour period established by the Constitution. The relevant parts of Article 5 § 1 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of ... a person against whom action is being taken with a view to ... extradition."

A. Admissibility

58. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

59. The Government submitted that the applicant's detention had been lawful and compatible with Article 5 § 1 (f) of the Convention. On the day of her arrest the Russian authorities had had in their possession a confirmation from the Belarus authorities that a request for extradition would be sent shortly, an arrest warrant approved by the Minsk prosecutor and a decision on her inclusion on the list of fugitives from justice. The domestic courts had reviewed and confirmed the lawfulness of the custodial measure.

60. The applicant pointed out that the domestic courts had never analysed whether the constitutional prohibition on detention in excess of forty-eight hours without a judicial decision had been complied with. Her detention had therefore been unlawful.

2. The Court's assessment

61. It is common ground between the parties that the applicant was detained with a view to her extradition from Russia to Belarus. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom

action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112).

62. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, § 50).

63. The Court observes at the outset that no record of the applicant's arrest was drawn up upon her apprehension on 20 February 2007 (see paragraph 8 above). The police officers believed that an arrest record was not required in the framework of extradition proceedings (see paragraph 22 above). Irrespective of whether their interpretation of the domestic law was correct or not, the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's constant 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 with 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-...).

64. The applicant's arrest was effected on the basis of an arrest warrant issued by a Belarus prosecutor. It was not confirmed or accompanied by a decision of a Belarus court. In these circumstances, it was the first paragraph of Article 466 of the Russian Code of Criminal Procedure that applied. It required that a measure of restraint be imposed in accordance with the procedure established in the Code (see paragraph 46 above).

65. The Russian Constitution and the Code of Criminal Procedure set at forty-eight hours the maximum period during which an individual may be

detained without a judicial decision. The Russian Constitutional Court has constantly laid emphasis in its case-law on the universal applicability of that guarantee against arbitrary detention to all types of deprivation of liberty, including arrest in extradition proceedings, and to any person under the jurisdiction of the Russian Federation, irrespective of his or her nationality (see paragraphs 51 to 53 above).

66. As noted above, the procedure laid down in the Russian Code of Criminal Procedure requires a judicial decision for any detention in excess of forty-eight hours (Articles 10 and 108). In the applicant's case the detention order was issued by a court only on 26 March 2007, that is thirty-four days after her placement in custody. A faxed letter from the Minsk police station of 27 February 2007 was a non-procedural communication and could obviously not serve as a substitute for a judicial decision. It follows that the applicant's detention after the first forty-eight hours of custody and until 26 March 2007 was incompatible with the procedure laid down in the Code of Criminal Procedure.

67. The Court further notes that, contrary to the assertions of the domestic authorities, the Minsk Convention could not be construed as supplying a legal basis for the applicant's detention. As pointed out by the Russian Constitutional Court, Article 8 of the Minsk Convention explicitly provided for application by the requested Contracting Party of its own law for execution of requests for legal assistance, such as a request for extradition. A similar provision can be found in Article 16 of the European Convention on Extradition, which establishes that provisional arrest of the person whose extradition is sought shall be decided upon by the requested Party in accordance with its law. Thus, the international instrument required in the first place compliance with the domestic procedure which, as the Court has found above, had been breached.

68. Furthermore, it also appears that the domestic authorities construed Article 62 of the Minsk Convention as justifying the detention for an initial forty-day period. The Court considers that such an interpretation was at variance with the ordinary meaning of that provision. Similar to paragraph 4 of Article 16 of the European Convention on Extradition, Article 62 of the Minsk Convention establishes an additional guarantee against an excessive duration of provisional arrest pending receipt of a request for extradition. It does not indicate that a person *may be detained* for forty days but rather requires that the person *should be released* upon expiry of the fortieth day if the request has not been received in the meantime. In other words, even though under domestic law detention could be ordered for a period exceeding forty days (for instance, Article 108 of the Russian Code of Criminal Procedure provides for an initial two-month period of detention), Article 62 of the Minsk Convention requires the domestic authorities to release anyone who has been detained for more than forty days in the

absence of a request for extradition. Thus, the Minsk Convention could not have been a legal basis for the applicant's detention either.

69. In sum, the Court finds that the applicant's unrecorded detention during the entire period preceding the judicial decision remanding her in custody was incompatible with the constitutional guarantee against arbitrary detention and in breach of the procedure laid down in the Russian Code of Criminal Procedure. It cannot be considered "lawful" for the purposes of Article 5 of the Convention.

70. There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

71. The applicant submitted that a complaint to a court about the unlawfulness of her detention would have been ineffective because the Prosecutor General's Office had a two-fold duty of making a case for holding her in custody and ensuring respect for her rights. She further complained that she had not been taken to the hearing before the Golovinskiy District Court. The applicant invoked Article 6 of the Convention in connection with these grievances. The Court considers, however, that they fall to be examined under Article 5 § 4 of the Convention which is a *lex specialis* in such a situation. 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."

A. Admissibility

72. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

73. The Government claimed that the applicant could have obtained judicial review of the lawfulness of her detention through the procedure set out in Articles 125 and 108 of the Code of Criminal Procedure. Counsel for the applicant had complained to various district courts in Moscow but their complaints had been rejected.

74. The applicant pointed out that the Russian courts had considered that the procedure set out in Article 125 and 108 of the Code of Criminal Procedure had not been applicable to her. She had not had the possibility of obtaining judicial review of her detention.

2. The Court's assessment

75. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII).

76. The Government alleged that the applicant could initiate proceedings for examination of the lawfulness of her detention under Article 108 or Article 125 of the Code of Criminal Procedure. The Court will examine whether either of these provisions entitled the applicant to institute such proceedings.

77. As regards Article 108, the Court observes that it governed the application of a custodial measure upon initial placement in custody. As the Court has already found in a similar Russian case, although the detainee had the right to take part in these proceedings, make submissions to the court or plead for his or her release, there was nothing in the wording of Article 108 to indicate that these proceedings could be taken on the initiative of the detainee, the prosecutor's application for the custodial measure being the required element for institution of such proceedings (see *Nasrulloyev v. Russia*, no. 656/06, § 88, 11 October 2007). In the instant case it transpires that the proceedings under Article 108 were instituted more than a month after the applicant's arrest and followed an application by a prosecutor. In these circumstances, the Court cannot find that Article 108 secured the applicant's right to take proceedings by which the lawfulness of her detention would be examined by a court.

78. The Court further notes that the Code of Criminal Procedure provided, in principle, for judicial examination of complaints about alleged infringements of rights and freedoms which would presumably include the constitutional right to liberty. However, these provisions conferred standing to bring such a complaint solely on "parties to criminal proceedings" (Article 125). As in the above-mentioned *Nasrulloyev* case, in the present

case the Russian authorities consistently refused to recognise the applicant's position as a party to criminal proceedings (see the decisions cited in paragraphs 13 and 25 above). That approach obviously negated her ability to seek judicial review of the lawfulness of her detention.

79. It follows that the applicant did not have at her disposal any procedure through which she could initiate judicial review of the lawfulness of her detention. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

80. The applicant complained that on the Domodedovo transport police premises she had been detained in inhuman and degrading conditions, in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

81. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

82. The Government affirmed that, although the applicant's detention was not governed by the rules applicable to suspects and defendants, the police officers had done their best to improve the conditions of her detention. They had supplied her with food and taken her for walks and to the shower. She had received medical assistance from the medical unit of the airport. She had never complained about the conditions of her detention.

83. The applicant submitted that she had spent a long time in the relevant conditions owing to a lack of judicial authorisation of the custodial measure. Had the prosecution or police applied for a detention order within the first forty-eight hours, she would have been transferred to a remand prison where the material conditions of her detention would have been governed by the legal framework. She would have received bedding and cutlery, meals on a regular basis and could have enjoyed outdoor exercise and regular showers. All these basic elements had been lacking during her detention on the premises of the Domodedovo police station.

2. The Court's assessment

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

85. The Court recalls that it has found a violation of Article 3 in a case where an applicant had been kept for twenty-two hours in an administrative-detention police cell without food or drink or unrestricted access to a toilet. It also noted that the unsatisfactory conditions of his detention had exacerbated the mental anguish caused by the unlawful nature of his detention (see *Fedotov v. Russia*, no. 5140/02, § 67, 25 October 2005). Furthermore, in a recent case the Court considered that the mere fact of holding an applicant in custody for three months in a detention centre designed only for short-term detention disclosed a violation of Article 3 (see *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006).

86. The Court takes note of the findings of the Committee for the Prevention of Torture (CPT), which inspected administrative-detention cells located within several police stations in Moscow. The CPT found, in particular, that such cells had been unacceptable for periods of custody exceeding three hours, and that they had been dark, poorly ventilated, dirty and devoid of any equipment except a bench (see paragraph 55 above).

87. On the facts, the Court observes that the parties' accounts of the conditions in which the applicant had been detained differed in some aspects. However, there is no need for the Court to establish the truthfulness of each and every allegation by the applicant because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the Government for the following reasons.

88. The Court emphasises at the outset that, as it has found above, the applicant's detention at Domodedovo airport lacked a lawful basis. In the absence of a judicial decision on the application of a custodial measure she could not be lawfully transferred to a remand prison. This resulted in her

detention in the premises which were inappropriate for long-term custody from the legal and practical standpoint.

89. The cell in which the applicant was held for thirty-four days had been designed for short-term administrative detention not exceeding three hours. Accordingly, not only was it tiny in surface area – approximately four square metres – but also, by its design, it lacked the amenities indispensable for prolonged detention. The cell did not have a window and offered no access to natural light or air. It had no toilet or sink. Its equipment was limited to a bench, there being no chair or table or any other furniture. It also appears that the cell had no proper door but rather a sparse metal grille which left the applicant in plain view at all times.

90. The applicant was held in these cramped conditions for more than a month. On occasion she had to share the tiny cell with female administrative offenders who were brought in by the airport police. Their presence further reduced the available living area which already fell short of the seven-square-metre standard set by the CPT as an approximate, desirable guideline for a single-occupancy police cell used for short-term detention (see paragraph 54 above).

91. Although the applicant apparently could take accompanied strolls inside the airport building, for more than a month she did not have any opportunity to go outside. The Court considers that the fact that the applicant had been confined to a cell for practically twenty-four hours a day for more than a month without exposure to natural light or air and without any possibility for physical and other out-of-cell activities must have caused her considerable suffering (compare *Malechkov v. Bulgaria*, no. 57830/00, § 141, 28 June 2007, and *Kadiķis v. Latvia (no. 2)*, no. 62393/00, §§ 53 and 56, 4 May 2006).

92. The Court further observes that the applicant did not have a moment of privacy because of the see-through design of the frontal part of the cell. The lack of privacy must have taken a particularly heavy toll on her because of the constant presence, in the adjoining area, of male police officers.

93. Furthermore, the Court considers it unacceptable for a person to be detained in conditions in which no provision has been made for meeting his or her basic needs (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 106, 24 January 2008). The impossibility of establishing with certainty whether or not the applicant was provided with bedding from the airport hotel and food from the airport canteen is clearly attributable to the fact that she was detained outside any legal framework and that the authorities were not legally required – and were probably legally unable – to make any formal arrangements for catering and accommodation. Even if it is to be accepted that police officers did bring her food – this being denied by the applicant – their benevolence and goodwill could obviously not be a substitute for the glaring absence of precise regulations governing her situation.

94. Indeed, there is no evidence in the present case of any positive intention to humiliate or debase the applicant. Nevertheless, the Court reiterates that the absence of any such intention cannot exclude a finding of a violation of Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005, and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). Even if there had been no fault on the part of the police officers, it should be emphasised that the Governments are answerable under the Convention for the acts of any State agency, since what is in issue in all cases before the Court is the international responsibility of the State (see *Novoselov*, cited above, and *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, § 40).

95. The Court considers that the conditions of detention which the applicant had to endure for thirty-four days must have caused her intense distress and hardship and aroused in her feelings of fear, anguish and inferiority capable of humiliating and debasing her. These feelings of inferiority and frustration must have been exacerbated by the fact that, as the Court has emphasised above, her deprivation of liberty in that period lacked any lawful basis (compare *Fedotov*, cited above, § 67).

96. There has accordingly been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention on the premises of the Domodedovo transport police station.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. The applicant also complained under Article 14 of the Convention about discrimination against her on account of her foreign nationality. The Court reiterates that Article 14 has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other provisions of the Convention and its Protocols (see *Inze v. Austria*, judgment of 28 October 1987, Series A no. 126, § 36). It follows that this 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.

98. The applicant finally complained under Article 1 of Protocol No. 7 that she had not been allowed to exercise the procedural safeguards against her extradition. The Court notes that, according to Explanatory Report on Protocol No. 7, this provision uses the concept of expulsion “in a generic sense as meaning any measure compelling the departure of an alien from the territory but does not include extradition” (ETS no. 117, § 10). Since in the present case the applicant was subject to extradition proceedings, Article 1 of Protocol No. 7 finds no application. It follows that this 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government considered her claim excessive and ill-founded.

102. The Court observes that it has found a violation of the Convention requirements in that the applicant was deprived of her liberty in breach of the procedure established by law and was held, for more than a month, in inhuman and degrading conditions. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

103. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts and before the Court. Consequently, the Court does not make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention, the lawfulness of her detention and a lack of a procedure to

have its lawfulness reviewed by a court, admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the lack of a legal basis for the applicant's detention from 20 February to 26 March 2007;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President