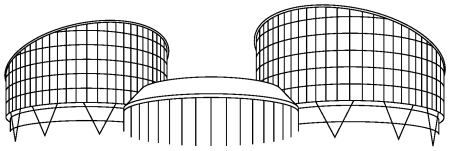

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF KARACHENTSEV v. RUSSIA

*(Application no. 23229/11)*

JUDGMENT

STRASBOURG

17 April 2018

*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 Karachentsev v. Russia,**

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 27 March 2018,

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

# PROCEDURE

1. The case originated in an application (no. 23229/11) 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 Russian national, Mr Sergey Vladimirovich Karachentsev ("the applicant"), on 31 March 2011.

2. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant complained in particular regarding the conditions of his detention in remand prison, his confinement in a metal cage in remand prison during his participation by means of a video link in the proceedings concerning his detention, the excessive length of his pre-trial detention in the absence of relevant and sufficient reasons, the lack of a prompt judicial review of his detention, and procedural flaws in the detention proceedings.

4. On 25 June 2013 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in St Petersburg.

## A. The applicant's arrest, detention and trial

6. On 4 June 2010 the applicant was arrested on suspicion of robbery committed in an organised group.

7. On 5 June 2010 the Vyborgskiy District Court of St Petersburg ("the District Court") remanded the applicant in custody. The District Court relied on the particularly serious nature of the crime with which the applicant had been charged and his position on the merits of the arrest and the charges brought against him. The court also relied on the risk that he might flee from the investigating authorities and the court, exert pressure on victims, witnesses and other participants in the criminal proceedings, or otherwise hamper the administration of justice in the case.

8. On 4 August 2010 the District Court extended the applicant's detention until 24 August 2010[1].

9. On 20 August and 23 August 2010, at the request of the applicant's lawyer, the District Court adjourned the review of the applicant's detention until 23 August and 24 August 2010, respectively.

10. On 24 August 2010 the applicant retained another lawyer to defend him. The newly appointed lawyer joined the proceedings at 4 p.m. on the same day.

11. On 24 August 2010 the applicant's lawyer asked the District Court to adjourn the hearing until 25 August 2010 so as to enable her to review the prosecution material and discuss her position with the applicant. The judge refused to adjourn the hearing until 25 August 2010, but granted a two-hour adjournment until 6 p.m.

12. On 24 August 2010 the District Court extended the applicant's detention until 24 November 2010, having found no grounds for altering or lifting the custodial measure and having taken note of the particular complexity of the case. The applicant's argument to the effect that no investigative measures were being carried out with his participation was rejected with reference to the investigator's discretion to lead the investigation.

13. The applicant appealed against the above decision, claiming, *inter alia*, that the two-hour adjournment of the hearing on 24 August 2010 had not permitted him to consult his lawyer in private; nor had it allowed his lawyer to have sufficient time to review the prosecution material.

14. On 11 October 2010 the St Petersburg City Court ("the City Court") found that there were no reasons to vary the preventive measure, and it upheld the decision of 24 August 2010 on appeal. The City Court held that the two-hour adjournment granted by the District Court had been sufficient for studying the prosecution file consisting of 153 pages. Most of the file consisted of procedural documents concerning issues relating to the

1. The case file contains no copy of the above decision.

institution of the criminal proceedings, the extension of the time-limit for the investigation, the joinder of criminal cases, and documents which had been previously handed to the applicant. Besides, all these documents had been examined in the hearing on 24 August 2010. As regards the applicant's complaint as to his inability to have a confidential exchange with his lawyer before the hearing of 24 August 2010, the City Court held that the applicant and his lawyer had been given the opportunity to communicate in the courtroom. However, they had refused to communicate in such conditions. This did not amount to a breach of the applicant's right to defence, because the applicant's lawyer could have had a confidential meeting with the applicant in the remand prison without any restrictions, and they could have developed their defence position beforehand. In any event, the hearing could not have been adjourned until 25 August 2010, since the time-limit for the applicant's detention had been due to expire on 24 August 2010, and therefore the decision on the preventive measure had had to be taken before then. Both the applicant and his lawyer participated in the appeal hearing.

15. On the same date, 11 October 2010, charges in respect of two counts of large-scale robbery committed in an organised group under Article 161 § 3 (a) and (b) of the Russian Criminal Code were brought against the applicant.

16. On 15 October 2010 the applicant and his lawyer were informed that the pre-trial investigation had been terminated, and on 16 November 2010 they were given access to the case file.

17. On an unspecified date in November 2010 the District Court extended the applicant's detention until 24 February 2011[2].

18. On 21 February 2011 the applicant's lawyer was informed that a review of the preventive measure was to take place on the following day.

19. On 22 February 2011 the applicant's lawyer did not appear for the hearing. The applicant asked the court to adjourn the hearing owing to the lawyer's illness. However, the adjournment was refused. Legal aid counsel was appointed for the applicant.

20. On 22 February 2011, reiterating the reasons which had prompted the application of the custodial measure in the applicant's case, the District Court extended the applicant's detention until 24 May 2011 pending examination of the case file.

21. The applicant appealed, complaining, *inter alia*, about the refusal to adjourn the hearing so as to enable his lawyer to defend him.

22. On 6 April 2011 the City Court found that there were no reasons to vary the preventive measure, and it upheld the decision of 22 February 2011 on appeal. As regards the applicant's complaint regarding the alleged violation of his right to defence by the refusal to adjourn the hearing of 22 February 2011, the City Court held that the applicant's lawyer had failed

2. No copy of the relevant court decision is contained in the case file.

to prove her sickness by providing a medical certificate. This made the examination of the issue of the applicant's detention in her absence lawful under domestic law, as legal aid counsel had been appointed for the applicant. Both the applicant and his lawyer participated in the appeal hearing, the applicant by means of a video link from the remand prison.

23. On 30 May 2011 the District Court further extended the applicant's detention until 24 August 2011 pending examination of the case file. The court noted that the grounds which had prompted the application of the custodial measure in the applicant's case had not changed, and referred to the considerable size of the case file, a case file which neither the applicant, nor his co-defendants or their lawyers had been able to examine in full.

24. On 28 June 2011 the City Court upheld the above decision on appeal.

25. On 11 January 2013 the City Court acquitted the applicant of all charges in a jury trial. The judgment became final on 23 July 2013.

### B. Conditions of the applicant's detention in remand prison

26. Between 5 June 2010 and 29 July 2011 the applicant was held in remand prison IZ-47/4 in St Petersburg. The prison was overcrowded. Thus, cell 76, measuring 18 sq. m, was equipped with eight sleeping places and accommodated up to ten inmates, and cell 145, measuring 18 sq. m, was designed for eight people and housed up to ten individuals. Cell 164, measuring 15 sq. m, offered six places, and up to six detainees occupied those places.

### C. The applicant's confinement in a metal cage

27. As mentioned above, on 6 April and 28 June 2011 respectively the City Court examined the applicant's appeals against the decisions of the District Court of 22 February and 30 May 2011 extending his detention. He participated in the appeals by means of a video link from the remand prison, where he was confined in a metal cage.

## II. RELEVANT DOMESTIC LAW

28. For a summary of the relevant domestic law and practice regarding the use of metal cages in courtrooms, and the relevant international material and practice, see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, §§ 53-76, ECHR 2014 (extracts).

# THE LAW

## I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION IN THE REMAND PRISON, ARTICLE 5 § 3 OF THE CONVENTION, AND ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A PROMPT JUDICIAL REVIEW OF THE DETENTION ORDER OF 24 AUGUST 2010

29. By a letter submitted on 22 November 2013, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised: under Article 3 of the Convention on account of the conditions of the applicant's detention in the remand prison; under Article 5 § 3 of the Convention; and under Article 5 § 4 of the Convention on account of the lack of a prompt judicial review of the detention order of 24 August 2010. The text of the declaration reads as follows:

> "I ..., the Representative of the Russian Federation at the European Court of Human Rights, hereby declare that the Russian authorities acknowledge that Sergey Vladimirovich Karachentsev, between 5 June 2010 and 29 July 2011, was detained in the conditions which did not comply with the requirements of Article 3 of the Convention; that his detention between 5 June 2010 and 24 August 2011 was in breach of Article 5 § 3 of the Convention; that the examination of his appeal complaint against the detention order of 24 August 2010 did not comply with the requirement of "speediness" provided for by Article 5 § 4 of the Convention.
>
> The authorities are ready to pay the applicant a sum of EUR 8,800 as just satisfaction.
>
> The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration be accepted by the Court as "any other reason" justifying the striking the case out of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> 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 of the date of notification of the decision taken by the Court, pursuant to Article 37 § 1 of the European Convention on Human Rights. 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.
>
> This payment will constitute the final resolution of the case in the relevant part."

30. By a letter of 21 January 2014, the applicant rejected the Government's offer.

31. The Court observes 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."

32. Thus, it may strike out an application 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 (see the principles emerging from the Court's case-law, and in particular the *Tahsin Acar v. Turkey* judgment (preliminary objections) ([GC], no. 26307/95, §§ 75-77, ECHR 2003-VI)).

33. The Court has established clear and extensive case-law concerning complaints relating to: the conditions of detention in Russian remand prisons (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012); the pre-trial detention of applicants in the absence of relevant and sufficient reasons (see *Dirdizov v. Russia*, no. 41461/10, §§ 108-11, 27 November 2012); and the excessive length of appeal proceedings in detention matters (see *Idalov v. Russia* [GC], no. 5826/03, § 157, 22 May 2012, and, most recently, *Eskerkhanov and Others v. Russia*, nos. 18496/16 and 2 others, §§ 45-49, 25 July 2017).

34. The Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged the breaches of the Convention as claimed by him.

35. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)).

36. In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

37. Lastly, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application may be restored to the Court's list of cases in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

38. In view of the above, it is appropriate to strike out of the list of cases the part of the application concerning: the inhuman and degrading conditions of the applicant's detention in remand prison IZ-47/4 in St Petersburg between 5 June 2010 and 29 July 2011, the lack of relevant and sufficient reasons for the applicant's pre-trial detention between 5 June 2010 and 24 August 2011, and the lack of a speedy judicial review of the detention order of 24 August 2010.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONFINEMENT IN A METAL CAGE

39. The applicant complained that his confinement in a metal cage in the remand prison for the purposes of his participating, by means of a video link, in the court's examination of his appeals against the detention orders on 6 April and 28 June 2011 had violated his human dignity. The complaint falls to be examined under Article 3 of the Convention, which provides as follows:

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

### A. Admissibility

40. The Government submitted that the applicant's complaint could be examined in the light of Article 6 § 2 of the Convention. Accordingly, having regard to the fact that the applicant had been acquitted of all charges by the judgment of 11 January 2013, no separate issue would arise under Article 6 of the Convention, including the issue of the applicant's confinement in a metal cage.

41. Being the master of the characterisation to be given in law to the facts of the case, the Court considers that the applicant's complaint would be more appropriately examined under Article 3 of the Convention. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

42. The Government submitted that the Court had previously found violations of Article 3 of the Convention on account of applicants being confined in metal cages in courtrooms. However, the present case was different. The applicant had not been physically present in the courtroom during the hearing. He had remained in the remand prison and participated in the hearing by means of a video link. The metal cage had separated the applicant from the video equipment and the technical staff at the remand prison who had operated it. The applicant had not alleged that he had been exposed to the public and thus subjected to humiliation. In any event, the degree of such humiliation would be much lower if a person was not physically present in the courtroom, and would hardly go beyond "the

inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment".

43. The applicant maintained his complaint.

*2. The Court's assessment*

**(a) General principles**

44. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

45. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). Although the question of whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

46. Treatment is considered to be "degrading" within the meaning of Article 3 when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 202, ECHR 2012). The public nature of the treatment may be a relevant or an aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 of the Convention. However, the absence of publicity will not necessarily prevent a given treatment from falling into that category: it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26; *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, 6 March 2007; and *Kummer v. the Czech Republic*, no. 32133/11, § 64, 25 July 2013).

47. In order for treatment to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see *V. v. the United Kingdom*, cited above, § 71). Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3.

Nevertheless, under this provision, the State must ensure that a person is detained in 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 of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

48. Respect for human dignity forms part of the very essence of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III).

49. The Court has previously found that holding a person in a metal cage in a courtroom constituted in itself – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are hallmark of a democratic society – an affront to human dignity, and amounted to degrading treatment in violation of Article 3 of the Convention (see *Svinarenko and Slyadnev*, cited above, §§ 122-39; *Urazov v. Russia*, no. 42147/05, §§ 82-83, 14 June 2016; and *Vorontsov and Others v. Russia*, nos. 59655/14 and 2 others, § 31, 31 January 2017).

**(b) Application of these principles to the present case**

50. The Court observes that on 6 April and 28 June 2011 the City Court examined the applicant's appeals against the detention orders of 22 February and 30 May 2011, respectively. The applicant participated in those hearings by means of a video link from the remand prison, where he was confined in a metal cage for that purpose.

51. The Court notes that, unlike the previous cases in which it found a violation of Article 3 of the Convention on account of the applicants' confinement in metal cages during their personal attendance of court hearings (see paragraph 49 above), the applicant in the present case was not physically present in the courtroom.

52. The Court further notes the Government's argument to the effect that since the applicant had not been physically present in the courtroom and had therefore not been publicly exposed in the metal cage, the degree of his humiliation, if any, could have hardly gone beyond "the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment". The Court reiterates, however, that the absence of publicity will not necessarily prevent a given treatment from falling into the category of degrading treatment (see paragraph 46 above).

53. In such circumstances, having regard to the objectively degrading nature of holding a person in a metal cage, the Court considers that the applicant's confinement in a metal cage at the remand prison for the purposes of his participation by means of a video link in the judicial examination of his appeals amounted to degrading treatment.

54. There has therefore been a violation of Article 3 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF PROCEDURAL FLAWS IN THE DETENTION PROCEEDINGS

55. Lastly, the applicant complained under Article 5 § 4 of the Convention regarding a number of procedural flaws in the detention proceedings, namely that his lawyer had not had sufficient time to study the prosecution material and have a confidential exchange with him prior to the hearing of 24 August 2010, and that at the hearing of 22 February 2011 his lawyer had been replaced with legal aid counsel. Article 5 § 4 of the Convention 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

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

### B. Merits

#### *1. The parties' submissions*

##### (a) The Government

57. The Government contested the applicant's argument. As regards the alleged violation of Article 5 § 4 of the Convention on account of the detention hearing of 24 August 2010, they submitted that on 20 and 23 August the hearings had been adjourned at the request of the applicant's lawyer until the last day of the applicant's detention, 24 August 2010. Besides, taking into account the number of documents submitted to the District Court by the prosecution and the fact that the defence had already been familiar with most of them, a two-hour adjournment of the hearing had been sufficient for the applicant's lawyer to prepare her submissions. Furthermore, the prosecution's arguments for extending the applicant's detention had been substantially the same in the course of the proceedings, and had not required lengthy preparatory work on the part of the defence. In so far as the applicant complained that he had had no opportunity to have a confidential exchange with his lawyer prior to the hearing of 24 August 2010, the Government submitted that, since there had been no room designed for private communication between an accused and his lawyer at the courthouse, the only opportunity which the applicant had had to

communicate with his lawyer had been in the courtroom, which the applicant had refused. Taking into account the fact that the hearing of 24 August 2010 had not come as a surprise for the defence, it was not clear why the applicant's lawyer had not communicated with the applicant at an earlier stage at the remand prison. Furthermore, since no pivotal questions in the proceedings against the applicant had been decided during the hearing of 24 August 2010, the applicant's limited opportunity to communicate with his lawyer was unlikely to have affected its outcome. There had therefore been no violation of Article 5 § 4 of the Convention on that account.

58. As regards the alleged violation of Article 5 § 4 of the Convention in connection with the detention hearing of 22 February 2011, the Government explained that the applicant's lawyer, who had been duly notified of the hearing, had failed to appear, for which the State could not be held responsible. The applicant's lawyer should have been aware of the provisions of Article 108 § 4 of the Code of Criminal Procedure, which provided that detention proceedings could be conducted in the absence of a party (except for an accused) who had been properly notified of a hearing but who failed to inform the court of any reasonable excuse for their failure to appear. Consequently, in the present case, the District Court had proceeded with the hearing after appointing legal aid counsel for the applicant. There had therefore been no violation of Article 5 § 4 of the Convention on that account either.

**(b) The applicant**

59. The applicant maintained his complaints. As regards the alleged violation of Article 5 § 4 of the Convention in the hearing of 24 August 2010, the applicant explained that prior to that date he had been represented by a different lawyer. Consequently, the newly retained lawyer had not been familiar with the case and had not had an opportunity to discuss the defence's position with him at an earlier stage. Regarding the alleged violation of Article 5 § 4 of the Convention in the hearing of 22 February 2011, the applicant submitted that, pursuant to Article 109 § 8 of the Code of Criminal Procedure, the prosecution should have applied to the court for an extension of his detention seven days before the end of the previously authorised detention period, whereas this rule had been violated, which had resulted in a violation of his right to defence.

*2. The Court's assessment*

**(a) General principles**

60. The Court reiterates that, by virtue of Article 5 § 4 of the Convention, an arrested or detained person is entitled to bring proceedings for a court's review of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1 of the

Convention, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). Although it is not always necessary for the procedure under Article 5 § 4 to be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

61. When the lawfulness of detention pending investigation and trial is examined, the proceedings must be adversarial and must always ensure equality of arms between the parties – the prosecutor and the detainee. This means, in particular, that the detainee should have access to the documents in the investigation file which are essential for assessing the lawfulness of his detention. The detainee should also have an opportunity to comment on the arguments put forward by the prosecution. Some form of legal representation of the detainee may be required, namely when he is unable to defend himself properly, or in other special circumstances (see *Lebedev v. Russia*, no. 4493/04, § 77, 25 October 2007, with further extensive references).

62. Detention proceedings require special expedition, and Article 5 does not contain any explicit mention of a right to legal assistance in this respect. The difference in aims explains why Article 5 contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness. Therefore, as a rule, a judge may decide not to wait until a detainee avails himself of legal assistance, and authorities are not obliged to provide him with free legal aid in the context of detention proceedings (see *Lebedev*, cited above, § 84).

**(b) Application of the above principles to the present case**

*(i) Detention hearing of 24 August 2010*

63. As regards the first part of the applicant's grievance, the Court notes that the hearing of 24 August 2010 was initially scheduled for 20 August 2010. However, it was adjourned on two occasions at the request of the applicant's lawyer – until 23 and 24 August 2010 respectively, the latter date being the last day of the previously authorised detention period. The Court further notes that on 24 August 2010 the applicant retained a new lawyer, who joined the proceedings on the same day at 4 p.m. The newly appointed lawyer requested that the District Court further adjourn the hearing until 25 August 2010 so as to enable her to study the prosecution file. However, the court only granted a two-hour adjournment.

64. The Court observes firstly that responsibility for the applicant's not appointing a new lawyer at an earlier stage could not be attributed to the domestic authorities. Furthermore, should the District Court have granted the applicant's application for an adjournment of the detention hearing until 25 August 2010, this would have made his detention between 24 August and 25 August 2010 unlawful under Article 5 § 1 of the Convention. Therefore, the two-hour adjournment granted by the District Court so that the applicant's newly appointed lawyer could study the prosecution file, which was not particularly large or complex (see paragraphs 14 and 57 above), was prompted by the urgency of the situation, and in the Court's view this did not by itself amount to a violation of Article 5 § 4 of the Convention.

65. As to the applicant's inability to have a confidential exchange with his newly appointed lawyer before the detention hearing, the Court notes that, owing to the last-minute appointment of the new lawyer by the applicant, they were only able to have an exchange prior to the hearing in the courtroom. However, the applicant waived his right to do so by refusing to communicate with his lawyer in such conditions. In the absence of any specific allegations to the effect that there were reasonable grounds to believe that their conversation might be overheard, the Court considers that this situation did not give rise to a violation of Article 5 § 4 of the Convention either (compare to *Khodorkovskiy v. Russia*, no. 5829/04, §§ 230-32, 31 May 2011).

*(ii) Detention hearing of 22 February 2011*

66. The Court notes that the applicant's lawyer was duly informed of the hearing of 22 February 2011, but was unable to attend. The applicant asked the District Court to adjourn the hearing, relying on the lawyer's illness. However, as no proof was provided to justify the lawyer's absence, his application was rejected. The Court further notes that the examination of the issue of the applicant's detention took place in the applicant's presence and in the presence of legal aid counsel appointed for the applicant by the court.

67. The Court has regard to: the particular expedition required in proceedings concerning deprivation of liberty, the unavailability of the applicant's lawyer on the day of the hearing, the applicant's personal attendance at the hearing, his representation by legal aid counsel appointed by the court, and the lack of any allegations that the assistance rendered by the applicant's legal aid counsel was manifestly inadequate. Consequently, the Court considers that the decision of the District Court to proceed with the hearing in the absence of the applicant's lawyer was reasonable and did not upset the fairness of the remand proceedings.

68. In view of the factors considered above, the Court finds that the detention hearing of 22 February 2011 complied with the requirements of Article 5 § 4 of the Convention.

*(iii) Conclusion*

69. There has therefore been no violation of Article 5 § 4 of the Convention on account of procedural flaws in the proceedings whereby the applicant's detention was extended on 24 August 2010 and 22 February 2011.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 29,700 euros (EUR) in respect of pecuniary damage. This amount represented the approximate amount spent by the applicant's relatives on food, clothes and medicines for him during his detention period; the applicant's loss of earnings during the detention period; and the sum required for a future operation and subsequent therapy in connection with a health condition triggered during the detention period. The applicant further claimed EUR 56,000 in respect of non-pecuniary damage.

72. The Government did not make any comments.

73. The Court considers that the applicant's claim for loss of earnings is unsubstantiated. In any event, it remains open to the applicant to recover the allegedly lost earnings in domestic legal proceedings. As regards the remaining part of the applicant's claim for pecuniary damage, there is no causal link between the violation found and the claim in respect of pecuniary damage. Consequently, the Court finds no reason to award the applicant any sum under this head.

74. As to the non-pecuniary damage, making its assessment on an equitable basis, and having regard to the award made to the applicant under the unilateral declaration (see paragraph 29 above and *Urazov*, cited above, § 106), the Court awards the applicant EUR 950 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

75. The applicant made no claim for costs and expenses. The Court therefore makes no award under this head.

### C. Default interest

76. 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 arrangements 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 the complaints:
   (a) under Article 3 of the Convention regarding the inhuman and degrading conditions of the applicant's detention in remand prison IZ-47/4 in St Petersburg between 5 June 2010 and 29 July 2011;
   (b) under Article 5 § 3 of the Convention regarding the lack of relevant and sufficient reasons for the applicant's pre-trial detention between 5 June 2010 and 24 August 2011; and
   (c) under Article 5 § 4 of the Convention regarding the lack of a speedy examination of the applicant's appeal against the detention order of 24 August 2010;

2. *Declares* the following complaints admissible:
   (a) the complaint under Article 3 of the Convention about the applicant's confinement in a metal cage in the remand prison for the purposes of his participation, by means of a video link, in the hearings concerning his detention;
   (b) the complaint under Article 5 § 4 of the Convention concerning procedural flaws in the examination of the issue of the applicant's detention on 24 August 2010 and 22 February 2011;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's confinement in a metal cage in the remand prison for the purposes of his participation, by means of a video link, in the hearings concerning his detention;

4. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of procedural flaws in the examination of the issue of the applicant's detention on 24 August 2010 and 22 February 2011;

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 950 (nine hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 17 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Stephen Phillips<br>Registrar | Helena Jäderblom<br>President |