



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

THIRD SECTION

CASE OF KOSENKO v. RUSSIA

(Applications nos. 15669/13 and 76140/13)

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Adequate psychiatric treatment administered in a regular detention facility for five months • Absence of aggravating factors related to material conditions of detention
Art 5 § 3 • Length of pre-trial detention • Authorities' failure to adduce relevant and sufficient reasons justifying extensions of detention • Authorities' failure to examine alternative measures
Art 8 • Respect for family life • Restrictions on family visits in remand prison • Domestic law conferring unrestricted discretion to authorities • Unjustified denial of leave from detention to attend mother's funeral

STRASBOURG

17 March 2020

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 Kosenko v. Russia,

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

Paul Lemmens, *President*,
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Helen Keller,
Dmitry Dedov,
María Elósegui,

Lorraine Schembri Orland, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 25 February 2020,

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

INTRODUCTION

The case concerns the applicant's pre-trial detention on charges of mass disorder and violence against a public official during the dispersal of a public assembly at Bolotnaya Square in Moscow on 6 May 2012, the alleged lack of medical assistance and restrictions on family life during his pre-trial detention.

THE FACTS

1. The applicant was born in 1975 and lives in Moscow. He was granted legal aid and was represented by Mr V.V. Shukhardin, a lawyer practising in Moscow.

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

4. The background facts relating to the planning, conduct and dispersal of the demonstration at Bolotnaya Square are set out in more detail in *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016) and *Yaroslav Belousov v. Russia* (nos. 2653/13 and 60980/14, §§ 7-33, 4 October 2016).

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

6. The applicant is a disabled person suffering from schizophrenia acquired during military service. From 2001 he had been under outpatient supervision by a psychiatric medical institution. In 2008 he was assessed as having a second-degree disability and since then he has been receiving a disability pension.

7. On 6 May 2012 the applicant took part in the demonstration at Bolotnaya Square. On 8 June 2012 he was arrested on suspicion of having participated in mass disorder and of having used violence against the police during the demonstration of 6 May 2012. He was charged under Article 212 § 2 (participation in mass disorder) and Article 318 § 1 (violence against a public official) of the Criminal Code and detained in a temporary detention facility of the Moscow Department of the Interior.

8. On 9 June 2012 the Basmannyy District Court of Moscow ordered the applicant's pre-trial detention. It referred to the gravity of the charges, the circumstances of the criminal case and the applicant's personality, and concluded that, faced with the risk of a prison term, he might obstruct the proper administration of justice or abscond. It noted that the applicant's state of health did not preclude his being detained.

9. From 25 June to 31 October 2012 the applicant was detained in detention facility IZ-77/4 in Moscow. There was no medical ward and the applicant was detained together with other inmates.

10. On 15 June 2012 charges were brought against the applicant. He was accused of having participated in mass disorder and of having used violence against the police. In particular, between 4 p.m. and 8 p.m. on 6 May 2012 he allegedly arrived at the site of the demonstration and followed the unlawful calls of other persons inciting the protestors to break through the police cordons surrounding the restricted area designated for the event. In doing so, he joined in an assault on K., one of the policemen whose task was to contain the demonstration; unidentified persons removed K.'s helmet and truncheon, and forced him to the ground while hitting and kicking him. The applicant allegedly hit K. once and kicked him once in the torso.

11. On 25 June 2012 the applicant was examined by a doctor, who recommended a consultation with a psychiatrist.

12. On 5 July 2012 the Basmannyy District Court of Moscow examined a request from the investigator to extend the term of the applicant's detention by four months. The request was supported, *inter alia*, by a certificate stating that the authorities had obtained information from undisclosed sources that the applicant had sufficient means to flee Moscow. The applicant requested that the court select an alternative preventive measure, having indicated, in particular, that he had no criminal record, he was a disabled person suffering from a mental disorder (schizophrenia) and was not fit for detention. He also alleged that he had been living with his family at his address, was supervised by a psychiatric medical institution and was receiving his disability pension at that address; he was unable to obstruct the investigation because the witnesses had already been questioned. He contested the information relied on by the investigator that he had sufficient means to flee as false and unlawfully obtained. The applicant asked for an alternative preventive measure, in particular for release on bail, or under a personal guarantee by two prominent human

rights activists, or for house arrest. The court examined the file and extended the applicant's detention. It held that the nature of the crime which had been committed gave sufficient grounds to presume that the applicant might reoffend, influence and threaten witnesses and other participants in the criminal proceedings, destroy evidence or otherwise obstruct the proper administration of justice. The extension was granted, as requested, until 6 November 2012.

13. The applicant's three lawyers lodged three separate appeals on 6, 9 and 12 July 2012. The points of appeal filed on 9 July 2012 indicated that the lawyer would file additional submissions after studying the verbatim records of the hearing of 5 July 2012.

14. On 6 and 20 July 2012 the applicant was examined by a psychiatrist and diagnosed with "sluggish schizophrenia". The report stated that his general condition was satisfactory, his orientation and response were adequate and that he showed no signs of aggression or anxiety; a complaint about poor sleep was noted, but the applicant refused to take sleep-inducing pills. On the latter date he was prescribed medication.

15. On 24 July 2012 a psychiatric forensic report was issued by a commission of experts. It stated that the applicant had been suffering from paranoid schizophrenia which rendered him incapable of understanding the nature and the adverse consequences of his acts. It further stated that the applicant was not capable of understanding the nature of the criminal proceedings against him, that he posed a risk to himself and others and needed to be placed in a psychiatric institution for inpatient treatment. As to the question whether the applicant was fit for pre-trial detention in a general detention facility, the experts stated that it was outside their competence.

16. On 10 and 30 August and 3 October 2012 the applicant was examined by a psychiatrist. The records stated that his condition was generally satisfactory, except for continued poor sleep. On the latter date he was observed as being emotionally subdued but irritable. He was prescribed two types of medication, the doses of which were adjusted each time in accordance with current condition.

17. On 16 August 2012 the Basmannyy District Court sent a letter to the applicant's lawyer referring to the intention he had indicated in the points of appeal of 9 July 2012 to file additional submissions and inviting him to do so by 14 September 2012. On 12 September 2012 the lawyer in question submitted a copy of his complaint of 9 July 2012.

18. On 24 September 2012 the Moscow City Court upheld the decision to extend the applicant's pre-trial detention ordered on 5 July 2012.

19. On 18 October 2012 the applicant's case was referred to the Zamoskvoretskiy District Court of Moscow for a ruling as to his compulsory placement in a psychiatric institution.

20. On 31 October 2012 the applicant was transferred to remand prison IZ-77/2 in Moscow, which had a medical ward with a psychiatric department.

21. On 1 November 2012 the Zamoskvoretskiy District Court of Moscow conducted a preliminary hearing of the applicant's case. The applicant requested that an alternative preventive measure be selected. He pointed out that the prosecution had not asked for an extension. The court, however, rejected the request on essentially the same grounds as those in the previous detention decisions, and extended the applicant's detention until 22 April 2013. A hearing of the applicant's case was fixed for 9 November 2012.

22. On 9 November 2012 the applicant challenged his continued detention as unlawful. The court dismissed his complaint, reiterating the same reasons for his detention.

23. The applicant appealed against the decisions of 1 November 2012 and 9 November 2012. He urged the court to reconsider the measure of restraint and to release him under a personal guarantee by two prominent human rights activists who had reiterated their undertaking in writing. On 13 February 2013 the Moscow City Court dismissed the applicant's appeals.

24. On 11 April 2013 the Zamoskvoretskiy District Court extended the applicant's detention on the same grounds as before, until 22 July 2013. The decision was upheld by the Moscow City Court on 8 July 2013.

25. On 10 July 2013, during proceedings in which the Zamoskvoretskiy District Court ordered a further extension of the applicant's detention until 22 October 2013, he complained that he was not allowed family visits at the remand prison, in particular by his sister, who was his legal guardian. He indicated that he had not received family visits for eight months and asked the court to secure his right to family visits. The applicant's sister also applied for permission to visit him, but the court ruled that it could not deal with the matter during the court hearings before the pronouncement of the judgment, and that it had no competence to decide on family visits outside the court hearings. The applicant appealed, complaining, in particular, of a lack of family visits and the court's refusal to address this issue. On 4 September 2013 the Moscow City Court examined the applicant's appeal and dismissed it, endorsing the reasons for his continued detention without taking cognisance of his complaint concerning the lack of family visits.

26. On 5 September 2013 the applicant's mother died. On 6 September 2013 the applicant's sister applied, on the applicant's behalf, to the Zamoskvoretskiy District Court and to remand prison IZ-77/2 for permission for the applicant to attend his mother's funeral. On 9 September 2013 the Ombudsman of the Russian Federation made the same application on the applicant's behalf. The applicant did not receive any reply to those requests and was therefore unable to attend the funeral, which took place on 11 September 2013.

27. On 8 October 2013 the Zamoskvoretskiy District Court examined the criminal charges against the applicant and found that he had committed the acts set out in the indictment. He was absolved from criminal liability on the grounds of mental incapacity and committed to internment in a psychiatric hospital for an undetermined duration.

28. On 11 October 2013, and 1 and 27 November 2013 the applicant received visits by his sister, each time for one and a half hours.

29. On 11 July 2014 the applicant was released from the psychiatric hospital and continued his treatment on outpatient basis.

RELEVANT LEGAL FRAMEWORK

30. The relevant provisions of domestic and international law on the general healthcare of detainees are set out in *Ivko v. Russia* (no. 30575/08, §§ 55-62, 15 December 2015).

31. The relevant provisions of the Pre-trial Detention Act are set out in *Resin v. Russia* (no. 9348/14, § 14, 18 December 2018).

THE LAW

I. JOINDER OF THE APPLICATIONS

32. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained under Article 3 of the Convention that for the first five months of his detention he had not received adequate medical assistance in relation to his mental illness. He claimed in particular, that the medication that he had been prescribed before his arrest had to be taken under regular psychiatric supervision, but that the treatment had continued after his arrest without any supervision and his condition had deteriorated as a result. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Submissions by the parties

34. The Government referred to the medical records concerning the applicant’s examinations by a psychiatrist (see paragraphs 14 and 16 above) and submitted that the medical assistance and treatment provided to him had been sufficient and appropriate to his state of health.

35. The applicant submitted that during his detention in IZ-77/4 his medical supervision by a psychiatrist had been insufficiently regular and that the medication prescribed to him had not always been available in the detention facility; occasionally his family had had to purchase the medication, which would only be passed to him after he had complained about the disruption in his treatment. As regards the period after his transfer to the medical ward of IZ-77/2 on 31 October 2012, his submissions concerned the conditions and treatment of other detainees, without any reference to his own situation.

B. Admissibility

36. 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.

C. Merits

37. The Court refers to the general principles set out in *Blokhin v. Russia* ([GC], no. 47152/06, § 146, 23 March 2016) and recently reiterated in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-48, 31 January 2019), in particular, as follows (references omitted):

“147. In this connection, the “adequacy” of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee’s state of health and his or her treatment while in detention, that diagnosis and care are prompt and accurate, and that where necessitated by the nature of a medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee’s health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities ...

148. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit ...”

38. The Court has previously examined a number of cases concerning the detention of mentally-ill persons in regular detention facilities, focussing under Article 3 of the Convention on the adequacy of the medical care provided in relation to the applicants’ mental disorders and, in some

instances, on the conditions of detention in those facilities. In particular, it found no violation of that provision in relation to a three-year period of detention in a regular facility where the applicant had been examined by a psychiatrist once a month, which appeared appropriate for his condition, and there was no indication that the deterioration in his condition, leading to suicide attempts, could be linked to a lack of medical care (see *Kudła v. Poland* [GC], no. 30210/96, §§ 95-99, ECHR 2000-XI). On the other hand, detention for several years in a facility which, according to the domestic medical specialists, was unsuitable in view of the applicant's mental condition, and where moreover the inmates suffered from overcrowding, was found to have been in breach of Article 3 of the Convention (see *Claes v. Belgium*, no. 43418/09, § 100, 10 January 2013). Likewise, the cumulative effects of the inadequate medical care and poor conditions of detention for three and a half years, which could be linked with the applicant's attempted suicide, constituted inhuman and degrading treatment contrary to Article 3 (see *Rivière v. France*, no. 33834/03, § 76, 11 July 2006; *Ślawomir Musiał v. Poland*, no. 28300/06, § 97, 20 January 2009; and *G. v. France*, no. 27244/09, §§ 41-46, 23 February 2012).

39. The above criteria were applied in a more recent case where the Court considered it decisive that the seriousness of the applicant's mental condition and the length of his stay in a regular detention facility had not been such as to justify a finding of a breach of Article 3 (see *Vasenin v. Russia*, no. 48023/06, § 100-03, 21 June 2016). In that case, six months' detention in the temporary detention facility without psychiatric treatment, pending the applicant's transfer to a high-security medical institution with intensive supervision, was not found to be contrary to Article 3 of the Convention because it had not led to a significant deterioration in his health, and because there had been no known risk of suicide (*ibid.*).

40. Turning to the present case, the Court observes that the applicant, a person with a known history of mental illness, was detained on 8 June 2012 and, pursuant to the court order of 25 June 2012, was placed in a regular detention facility IZ-77/4. On 5 July 2012 he was diagnosed with schizophrenia and was referred for a specialist consultation with a psychiatrist, which took place on 6 July 2012 and confirmed the diagnosis. In the course of the following three months the applicant had four psychiatric consultations. The records of those consultations stated that his physical and mental condition was satisfactory, he had no depressive or suicidal thoughts, and his health remained adequate and stable, although at the latest consultation he was observed as being emotionally subdued and irritable. Whenever medical treatment was prescribed to him, it was adapted to his current condition (see paragraphs 14 and 16 above). In the meantime, on 24 July 2012, an expert commission found the applicant's mental state such as to render him incapable of understanding the nature of the criminal proceedings against him and to warrant his placement in a psychiatric

institution for inpatient treatment because of the risk he posed to himself and others. The expert report did not indicate that it was urgent. The transfer to the medical ward of IZ-77/2 took place on 31 October 2012, which was reasonably soon in view of the continued routine supervision and treatment and the absence of any signs of serious deterioration in the applicant's mental health. As regards the complaint that the applicant had not been supplied with the prescribed medication unless he complained about disruption to his treatment, he did not provide any details about the specific instances when that had occurred, or any supporting documents.

41. In these circumstances, the Court has no grounds to conclude that the applicant's initial detention in the general detention facility IZ-77/4 had been incompatible with his state of health, given the medical supervision and treatment he received, the relatively short period under examination (less than five months) and the absence of aggravating factors related to the material conditions of his detention. Moreover, there is nothing in the case file to corroborate the applicant's allegation that his condition had significantly deteriorated as a result. Accordingly, this treatment did not reach the minimum level of severity required to fall within the scope of Article 3 of the Convention. The Court notes that the applicant did not complain about his subsequent detention and treatment after his transfer to IZ-77/2, or his subsequent placement in a psychiatric institution where he underwent successful treatment following the termination of the criminal proceedings against him, which resulted in his being discharged from the hospital (see paragraphs 27 and 29 above).

42. There has accordingly been no violation of Article 3 of the Convention on account of the quality of the applicant's medical treatment while he was detained in the regular detention facility.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

43. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention had not been based on a "reasonable suspicion" that he had committed a criminal offence. He also complained that his pre-trial detention had not been justified by "relevant and sufficient reasons", as required by Article 5 § 3 of the Convention. Article 5 of the Convention, in so far as relevant, reads 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 ...

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...

...

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

A. Submissions by the parties

44. The parties made essentially the same submissions under Article 5 of the Convention as in *Kovyazin and Others v. Russia*, nos. 13008/13 and 2 others, §§ 73-74, 17 September 2015. The relevant general principles applicable in this case were summarised by the Court in that judgment (*ibid.*, §§ 75-78).

B. Admissibility

45. As regards the alleged unlawfulness of the applicant’s detention, the Court notes that the court which ordered that measure was the Basmannyy District Court of Moscow; the detention was subsequently extended on several occasions by the same court and the Zamoskvoretskiy District Court; and the Moscow City Court upheld those decisions. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. Accordingly, the applicant’s detention was imposed and extended in accordance with a procedure prescribed by law.

46. As regards the allegation that the applicant’s detention was not based on a reasonable suspicion that he had committed criminal offences, his complaint under Article 5 § 1 of the Convention is linked to his complaint under Article 5 § 3 of a failure by the authorities to adduce relevant and sufficient reasons justifying the extensions of his detention pending the criminal proceedings. The Court reiterates that while Article 5 § 1 (c) of the Convention is mostly concerned with the existence of a lawful basis for detention within criminal proceedings, Article 5 § 3 of the Convention deals with the possible justification for such detention. Moreover, according to the Court’s established case-law under the latter provision, the persistence of a reasonable suspicion is a *sine qua non* for the validity of continued detention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts)). The Court therefore deems it more appropriate to deal with this complaint under Article 5 § 3 of the Convention (see *Kovyazin and Others*, cited above, § 71); *Taranenko v. Russia*, no. 19554/05, § 46, 15 May 2014; and *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011).

47. Furthermore, the Court finds that the applicant's complaint of a violation of Article 5 § 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It notes that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

48. The period of detention to be taken into consideration in this case started on 8 June 2012, the date of the applicant's arrest, and ended on 8 October 2013, when he was absolved of criminal liability and ordered to undergo compulsory treatment. Accordingly, the period in question is one year and four months. Having regard to the considerable length of detention in the light of the presumption in favour of release, the Court finds that the Russian authorities were required to put forward very weighty reasons for maintaining that measure against the applicant.

49. It can be seen from the detention orders and the Government's observations that the primary reason for the applicant's detention was the gravity of the charges. The domestic courts considered that, faced with the risk of prison, he was likely to abscond, reoffend or interfere with the administration of justice – although they did not elaborate on the reasons and did not refer to concrete facts supporting the likelihood of the adverse consequences of releasing him. Furthermore, the courts gave no valid reasons for dismissing his requests for an alternative preventive measure.

50. The Court has previously examined similar complaints lodged by defendants in the related cases of mass disorder and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Kovyazin and Others*, cited above, §§ 82-94; *Yaroslav Belousov*, cited above, §§ 133-38; and *Akimenkov v. Russia*, nos. 2613/13 and 50041/14, §§ 101-06, 6 February 2018). The Court noted, in particular, the domestic courts' reliance on the gravity of the charges as the main factor in the assessment of the potential to abscond, reoffend or obstruct the course of justice, and their reluctance to pay proper attention to each applicant's personal situation or to have proper regard to factors in favour of release. It also noted the courts' failure to thoroughly examine the possibility of applying a less rigid measure of restraint, such as bail.

51. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Indeed, the specific offence imputed to the applicant – taking part in an assault on a police officer, causing injuries but no lasting harm (classified as a serious offence) – may have initially warranted his pre-trial detention. However, with the passage of time, the nature and the seriousness of the offence as grounds for the applicant's continued detention inevitably became less and

less relevant (see *Artemov v. Russia*, no. 14945/03, § 75, 3 April 2014; *Kovyazin and Others*, cited above, § 85; and *Barabanov v. Russia*, nos. 4966/13 and 5550/15, § 51, 30 January 2018). The Court further notes that the applicant's detention was extended without serious consideration of alternative preventive measures, such as personal guarantees by prominent public figures submitted by the applicant (see paragraph 12 above).

52. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

53. The applicant complained under Article 5 § 4 of the Convention of a delay in the judicial examination of his appeal against the detention order of 5 July 2012. Article 5 § 4 provides as follows:

“4. 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. Submissions by the parties

54. The Government submitted that the reason for the delay in examining the applicant's appeal against the detention order of 5 July 2012 was that one of his lawyers who had lodged an appeal had indicated his intention to make further written submissions. They specified that on 16 August 2012 the Basmannyy District Court sent a letter setting a time-limit of 14 September 2012 for any additional submissions. However, on 12 September 2012 the lawyer sent a copy of his earlier points of appeal. The appeal hearing was scheduled for 24 September 2012 and took place as scheduled.

55. The applicant submitted that the appeal proceedings concerning the first extension of his pre-trial detention were pending before the Moscow City Court for seventy-one days and that there had been no justification for such a lengthy delay.

B. Admissibility

56. The Court notes that the Government provided copies of the applicant's appeals against the decision of 5 July 2012, one of which stated the lawyer's intention to make additional written submissions. They also submitted a copy of the Basmannyy District Court's letter of 16 August 2012 referring to his statement and inviting him to file additional submissions by 14 September 2012. It had been open to the lawyer to inform the court, either before or after receiving the court's letter, that he no

longer intended to do so, in order to bring the hearing forward. However, he had waited until 12 September 2012 before sending a copy of his earlier submissions. The applicant, for his part, did not contest the Government's submissions. Based on the above-mentioned facts, the Court finds that the two-month delay in the examination of the appeal in question cannot be attributed to the domestic court, because it only occurred in order to accommodate the request of the applicant's lawyer to file further submissions.

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

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained of a violation of Article 8 of the Convention on account of restrictions on family visits while he was in pre-trial detention and the refusal of short-term leave from detention to attend his mother's funeral. Article 8 reads as follows:

Article 8 (right to respect for private and family life)

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Submissions by the parties

59. The Government submitted that in accordance with the provisions of section 18 of the Pre-trial Detention Act (Federal Law no. 103-FZ of 15 July 1995) the applicant had been allowed two three-hour visits per month from members of his family or other persons, and that during the court hearings he had been able to communicate with his sister as his legal guardian. They referred to one occasion, on 4 September 2013, when the appellate court had granted her leave to discuss the case with the applicant during a certain time in the hearing room. Moreover, when on 10 July 2013 her application for permission to visit her brother was rejected by the court, she did not avail herself of the opportunity to appeal against that refusal, and there was no evidence of her having made any attempts to obtain meetings with him on other occasions.

60. On the second point, the Government submitted that the Russian legislation did not provide for a possibility of granting a detainee short-term leave to attend a funeral.

61. The applicant submitted that the limit on family visits during his detention was set in law rigidly; this had not allowed for an individualised assessment of his needs, or of any possible risks that more frequent visits would have presented in his case. He specified that his sister and mother had not been involved in the criminal case and therefore such a strict limit on visits had had no justification. He maintained his complaint about the impossibility of attending his mother's funeral, which had been refused for no reason.

B. Admissibility

62. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Restrictions on visits in the remand prison

63. The applicant complained that his requests and those of his sister for her to visit him in detention had been rejected or ignored for eight months; moreover, by law he had been unable to receive more than two family visits per months during his pre-trial detention and only in a room where he had been separated from his visitors by a glass partition.

64. The Court has established that denial of visits, separation barriers and other restrictive arrangements amount to an interference with the right to respect for family life (see *Moiseyev v. Russia*, no. 62936/00, § 247, 9 October 2008; *Andrey Smirnov v. Russia*, no. 43149/10, § 38, 13 February 2018; and *Resin*, cited above, § 24). It has also held that an inflexible and automatic regulation of short-visit arrangements, such as compulsory use of glass partitions between the detainee and the visitors, cannot be accepted as being "necessary in a democratic society". It specified that the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether the limitations are appropriate or indeed necessary in specific cases (see *Khoroshenko*, § 126; *Andrey Smirnov*, § 54; and *Resin*, § 33, all cited above).

65. As regards the matter of exercising visiting rights during a convicted prisoner's stay at a remand prison, the Court has previously found that section 18 of the Pre-trial Detention Act does not meet the "quality of law" requirement, in that it confers on the authority in charge of the case unrestricted discretion to grant or refuse prison visits. It does not limit the scope of the discretion and the manner of its exercise, and deprives the detainee of the minimum degree of protection against arbitrariness or abuse to which citizens are entitled under the rule of law in a democratic society (see *Resin*, § 36 cited above, with further references).

66. The Court notes that in the present case the applicant's allegations that he had very limited contacts with his family while in detention, pending and during the court hearings, appear well-founded. The fact that his sister had attempted to meet him during that period is confirmed by the verbatim record of the hearing of 10 July 2013, where her complaint to that effect is mentioned (see paragraph 25 above). The court on 10 July 2013 rejected the request to secure the applicant's right to family visits without consideration, in particular without finding out why the applicant had had no visits for the eight previous months, and without indicating how his right could be secured through other procedures. The court's refusal to examine the matter is particularly striking, given that the applicant's sister was his legal guardian. The Government's submission that the applicant and his sister could have obtained a meeting and did so relates to a later period, in October and November 2013 (see paragraph 28 above), and therefore cannot be taken into account.

67. The Court considers that this application discloses the same defects in the legal regulations as set out above, and that the restriction on the applicant's family life was not "in accordance with the law". In the light of the above considerations, the Court finds that there has been a violation of Article 8 of the Convention on account of the limitation on visits the applicant could receive during his pre-trial detention and trial.

2. *Leave to attend a funeral*

68. The Court observes that the Government did not contest that while in detention the applicant had not been granted short-term leave to attend his mother's funeral. They did not claim that he had not been eligible for such leave, but only referred to the lack of legal basis for it.

69. The Court reiterates that it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (see *Messina v. Italy* (no. 2), no. 25498/94, § 61, ECHR 2000-X; *Kurkowski v. Poland*, no. 36228/06, § 95, 9 April 2013; and *Vintman v. Ukraine*, no. 28403/05, § 78, 23 October 2014). It further reiterates that the refusal of leave to attend a relative's funeral constitutes an interference with the right to respect for family life (see *Schemkamper v. France*, no. 75833/01, § 31, 18 October 2005; *Lind v. Russia*, no. 25664/05, § 92, 6 December 2007; and *Feldman v. Ukraine* (no. 2), no. 42921/09, § 32, 12 January 2012). Whereas Article 8 does not guarantee an unconditional right to leave to attend a relative's funeral, and even though a detainee by the very nature of his situation may be subjected to various limitations of his rights and freedoms, every such limitation must be nevertheless justifiable as being "necessary in a democratic society" (see *Lind*, § 94, and *Feldman*, § 34, both cited above). The authorities can refuse an individual the right to attend the funeral of his parents only if there are compelling reasons for such refusal and if no

alternative solution can be found (see *Płoski v. Poland*, no. 26761/95, § 37, 12 November 2002, and *Guimon v. France*, no. 48798/14, §§ 44-51, 11 April 2019).

70. In the instant case the Russian authorities did not give any consideration to the applicant's request to attend the funeral. Their refusal was not based on an assessment of his individual situation; in fact, the Government submitted that the Russian legislation did not provide for a possibility of granting a detainee short-term leave to attend a funeral. Accordingly, the decision to refuse the applicant leave was taken in a manner incompatible with the State's duty to carry out an individualised evaluation of his particular situation and to demonstrate that the restriction of his right to attend a relative's funeral was "necessary in a democratic society".

71. There has therefore been a violation of Article 8 of the Convention on account of the refusal to grant the applicant leave to attend his mother's funeral.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 25,000 euros (EUR) and EUR 15,000 in applications nos. 15669/13 and 76140/13 respectively, in respect of non-pecuniary damage.

74. The Government claimed that those amounts were unwarranted and excessive.

75. The Court has found violations of Articles 5 § 3 and 8 of the Convention in respect of the applicant. In those circumstances, it 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, it awards him EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

76. The applicant also claimed EUR 2,370 for the costs and expenses incurred before the domestic courts and the Court in application no. 15669/13, representing twenty-nine hours at an hourly rate of EUR 80. The Government considered that the amount claimed was reasonable,

although the contract between the applicant and his representative was lacking. They also pointed out that the applicant had been granted legal aid.

77. The applicant also claimed EUR 1,200 for the costs and expenses incurred before the domestic courts and the Court in application no. 76140/13. The Government contested that sum as excessive, given the simplicity of the case.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, which represents the requested sum reduced on account of the inadmissible complaint, minus the EUR 850 already paid to the applicant's lawyer in legal aid, plus any tax that may be chargeable to the applicant.

C. Default interest

79. 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* to join the applications;
2. *Declares* the complaints under Articles 3, 5 § 3 and 8 of the Convention admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been no violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention;
6. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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- (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 17 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President