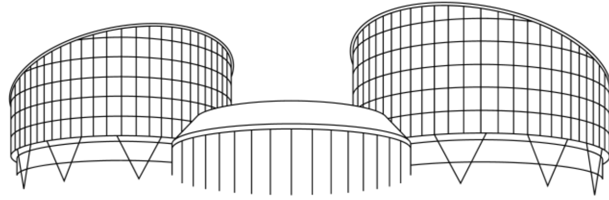

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SLYUSAREV v. RUSSIA

(Application no. 60333/00)

JUDGMENT

STRASBOURG

20 April 2010

FINAL

20/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Slyusarev v. Russia,

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Boštjan M. Zupančič,
Anatoly Kovler,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele, *judges,*
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 60333/00) 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 Vladimir Yuryevich Slyusarev ("the applicant"), on 25 April 2000.

2. The applicant, who had been granted legal aid, was represented by Ms K. Kostromina, a lawyer with the Centre of Assistance to International Protection, a Moscow-based human-rights NGO. The Russian Government ("the Government") were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, *inter alia*, that the taking of his glasses by the police after his arrest in 1998 amounted to inhuman and degrading treatment.

4. By a decision of 9 November 2006 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in Moscow.

7. Late in the night of 2 July 1998, a Ms P. was assaulted at the entrance of her house. Two of her neighbours apprehended the applicant on suspicion that he had committed the crime and handed him over to the police. The applicant was taken to the Moscow Pechatniki District Police Department (*ОВД «Печатники»*) for questioning. It appears that at a certain point the applicant's glasses were partially broken and the police took them away from the applicant, who was short-sighted (according to the applicant, he needed glasses of 3.5 dioptres).

8. At the police station the applicant signed a written statement in which he confessed that he had tried to rob Ms P. using a gas handgun, and that there had been a short fight between him and one of her neighbours. The neighbours confirmed that testimony in written statements taken by the police officers.

9. On 3 July 1998 the police instituted criminal proceedings against the applicant on suspicion of armed robbery of Ms P. and illegal possession of firearms. On an unspecified date the applicant was also charged with three counts of fraud, which were not related to the episode with Ms P.

10. On 4 July 1998 the applicant was taken by the policemen to see a doctor. It appears that the applicant did not complain to the doctor about any injury.

11. On 6 July 1998 the applicant was questioned again in connection with the robbery, now in the presence of his lawyer. This time the applicant retracted his initial statement of confession.

12. On an unspecified date the applicant was transferred from the police department to a pre-trial detention centre (isolation unit *IZ-48/1*) in Moscow. The applicant alleged that he had asked the administration of the unit to provide him with new glasses, but his request had been refused. According to the applicant, he also asked the investigator in charge of his case to arrange for him to have his eyesight examined by an oculist.

13. On 14 July 1998 the applicant filed an application for release with the Preobrazhenskiy District Court, in which he gave his version of the events of 2 July 1998. He contended that Ms P. had stolen money from him, and that he had tried to retrieve his money or have her arrested. He claimed that he was not guilty of robbery and that his arrest had been unlawful. Among many other arguments, he indicated that he was short-sighted, that his glasses had been taken from him by the police, and that his eyesight was deteriorating.

14. According to the applicant, on 1 September 1998 he had complained to the investigator about the deterioration of his eyesight. On 9 September

1998 the investigator ordered the applicant's examination at the Moscow Helmholtz Eye Disease Institute.

15. On 14 September 1998 the applicant's wife filed a complaint with the district prosecutor, claiming that the applicant had been beaten up by the police shortly after his arrest. She also requested the prosecution to return the glasses to her husband.

16. The prosecutor opened a preliminary inquiry (*прокурорская проверка*) into those allegations. On 16 October 1998 the prosecutor informed the applicant's wife that he had decided not to pursue the case.

17. On an unspecified date the applicant complained about the deterioration of his eyesight to the investigator, who ordered the applicant's examination by an oculist.

18. On 25 November 1998 the applicant underwent a medical examination at an eye hospital. The doctors detected a reduction of his left eye's mobility as a result of a "contusion". Further, the doctors found that the applicant's eyesight had dropped to 0.07-0.04 and that he needed glasses of 5 dioptres. However, the doctors concluded that the applicant was able to attend to himself, orient himself and move around indoors.

19. On 1 December 1998 the applicant's lawyer lodged a formal request with the investigator in charge of the applicant's case seeking to have the glasses returned to the applicant.

20. On 2 December 1998 the investigator returned the glasses to the applicant. According to him, the glasses were found in the safe box of one of the policemen of the Pechatniki District Police Department who had dealt with the applicant's case.

21. On 3 December 1998 the pre-trial investigation was completed and the case file and the bill of indictment were filed with the Moscow Lyublinskiy District Court for examination on the merits.

22. On 25 December 1998 the District Court remitted the case file to the prosecutor, stating that the applicant had not had enough time to read the case file because his glasses had been taken away and returned only on 2 December 1998. The prosecution authorities were ordered to put the case file at the applicant's disposal anew in order to enable him to prepare his defence properly.

23. In December 1998 the prosecutor re-opened the inquiry into the applicant's allegations of ill-treatment. She questioned witnesses to the applicant's apprehension. Further, she requested the State bureau of forensic expertise to establish whether the impairment of the applicant's health could have been provoked by the alleged beatings.

24. On an unspecified date in January 1999 the investigator in charge of the case provided the applicant with new glasses instead of his old ones. Some time afterwards the case file with the bill of indictment was re-submitted to the court by the prosecution.

25. On 5 April 1999 the forensic expert drew up a report, stating that no evidence of beatings was established, that the applicant had suffered from myopia since 1989 and that the impairment of the applicant's eyesight could have been explained by his chronic myopia.

26. On 15 April 1999 the prosecutor closed the inquiry for lack of evidence of a crime. The investigator concluded that the bruises had been received by the applicant in the fight with the neighbours of Ms P., and that his eye problems were not related to the events of 3 July 1998. The applicant's wife challenged that decision. On 31 July 2000 she was informed that following an additional inquiry the prosecutor had decided not to pursue the investigation.

27. The applicant raised the issue of ill-treatment during the court proceedings against him. He challenged the admissibility of his initial confessions, claiming that they had been extracted by force. The applicant's defence counsel requested a new medical expert report in order to determine whether the injuries sustained by the applicant could have been caused by beatings. The District Court dismissed that motion on the ground that such an examination had already been carried out.

28. On 15 June 1999 the District Court found the applicant guilty of one count of armed robbery, one count of illegal possession of firearms and several counts of fraud and sentenced him to nine years' imprisonment. On 3 November 1999 the Moscow City Court dismissed an appeal by the applicant and upheld the lower court decision of 15 June 1999. The City Court confirmed the conclusions of the first-instance court and held that no evidence of ill-treatment had been discovered.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that although he was very short-sighted, his glasses had been taken away from him and returned only five months later. This had debased his human dignity and resulted in serious impairment of his eyesight. The applicant referred to Article 3, which reads as follows:

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

A. The parties' submissions

30. The Government accepted that the applicant had been deprived of his glasses without a legal basis and that for a certain period of time his

ability to participate in the proceedings had been limited. However, as to the impairment of the applicant's eyesight, the doctors had concluded that it was due to natural causes. Even without the glasses the applicant had been able to move around indoors and attend to himself. Therefore, the treatment complained of could not be considered as inhuman or degrading. Furthermore, the violation of the rights of the defense had been acknowledged at the domestic level, the glasses had been returned to the applicant and he had been given additional time to study the case file. Therefore, his rights had been fully restored.

31. The Government further maintained that between 3 July and 1 December 1998 neither the applicant nor his lawyer had requested the investigator to return the glasses. The glasses were returned to the applicant on 2 December 1998, a day after such a request had been lodged by the defense. As to the new glasses, they had been given to the applicant as soon as they had been made.

32. The applicant maintained his complaints stressing that the authorities had acknowledged the breach of his rights, and that he had been so seriously short-sighted that without glasses he had been unable to read or write. Although the court had ordered the return of his glasses and given him an additional two days to read the case file, this had clearly been insufficient. In the applicant's words, after his arrest his eyesight had dropped "from 3.5 to 6 dioptres".

33. The applicant further maintained that from July to December 1998 he had lodged several complaints with competent authorities seeking to get his glasses back. In particular, he had mentioned the problem in his application for release of 14 July 1998. Further, he had complained about the rapid deterioration of his eyesight. He stressed that since his eyesight had deteriorated after his arrest, he needed an examination by an ophthalmologist to obtain a prescription for new glasses. The investigator had ordered such an examination to be carried out on 9 September 1998; however, the applicant had not been taken to see the doctor until 25 November 1998. It had taken the authorities another two months to have new glasses made for the applicant.

B. The Court's assessment

34. The Court notes that the applicant's glasses were taken from him shortly after his arrest on 3 July 1998. The Government admitted that the taking of the glasses had been unlawful in domestic terms. However, it does not automatically make the authorities responsible for a breach of Article 3 of the Convention. The Court recalls in this respect that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Previously the Commission has held that a few days spent in detention without glasses did not amount to ill-treatment (see *A.K. v*

the Netherlands (dec.), no. 24774/94, 6 April 1995; cf. *Jamal-Aldin v. Switzerland* (dec.), no. 19959/92, 23 May 1999), and the Court does not see any reason to disagree with that. Therefore, if the glasses had been returned to the applicant quickly, no issue under Article 3 would have arisen.

35. As opposed to the example cited above, in the case at hand the applicant did not have glasses for several months. The applicant alleged that it had resulted in serious impairment of his eyesight. However, he did not produce any medical evidence relating to the period before his arrest. Furthermore, the domestic expert concluded that the impairment of the applicant's eyesight had been due to natural causes (see paragraph 25 above). The Court does not see any reason to disagree with that finding.

36. On the other hand, even if having no glasses had no permanent effect on the applicant's health, he must have suffered because of it. As follows from the case file, he had myopia of medium severity. Without glasses he was able to "attend to himself, orient himself and move around indoors" (see the doctors' report cited in paragraph 18 above), but it is clear that he could not read or write normally, and, besides that, it must have created a lot of distress in his everyday life, and given rise to a feeling of insecurity and helplessness. The Court thus considers that the applicant's situation, due to its duration, was serious enough to fall within the scope of Article 3 of the Convention.

37. The Government maintained that the applicant himself had been responsible for that situation. He had not complained about the taking of his glasses until December 1998. The Court recalls that, indeed, in certain contexts the behaviour of the alleged victim may be taken into account in defining whether the authorities can be held responsible for the treatment complained of. As a rule, Article 3 prohibits ill-treatment irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, this rule is not without exceptions. Thus, if a prisoner does not receive requisite medical assistance from the authorities, it may entail the State's responsibility only if he made reasonable steps to avail himself of such assistance (see *Valašinas v. Lithuania*, no. 44558/98, § 105, ECHR 2001-VIII, and *Knyazev v. Russia*, no. 25948/05, § 103, 8 November 2007). Therefore, in the present case the applicant's own conduct is an important element which should be assessed among other relevant factors.

38. Before addressing this argument of the Government it is necessary to rule upon the facts of the case, which are disputed between the parties. Whereas the Government alleged that the applicant had not complained about the taking of his glasses until December 1998, the applicant contested that assertion. He claimed to have raised that complaint several times throughout the investigation, in particular, in his application for release of 14 July 1998.

39. The case file contains no evidence that the applicant raised that issue in July-August 1998. Indeed, in his application for release of 14 July 1998 the applicant mentioned the situation concerning his glasses (see paragraph 13 above). However, in that application he primarily sought to prove that he was innocent, that his arrest and the criminal prosecution had been unlawful, and that he should be released. The applicant did not ask to have his glasses returned or to have his eyesight examined. In any event, it is unclear whether the court reviewing the lawfulness of the detention was competent to examine that issue and take appropriate measures.

40. In other circumstances the Court might have interpreted the applicant's wording as an implicit request warranting appropriate reaction from the authorities (see, *mutatis mutandis*, *Aksoy v. Turkey*, 18 December 1996, § 56, *Reports of Judgments and Decisions* 1996-VI). However, in the circumstances there are no reasons to speculate on it, especially given that the applicant was represented by a lawyer of his choice who could have advised him to raise this issue before a competent authority (the investigator) in a more straightforward manner.

41. On the other hand, the Court cannot accept the Government's contention that the applicant did not raise the issue of the glasses until 2 December 1998. Having examined the materials in its possession the Court finds that the investigator had been aware of the applicant's problem well before that date. On 9 September 1998 the investigator ordered an examination of the applicant by an ophthalmologist – apparently in response to a request lodged by the defence some time earlier. It is unclear when such a request was lodged, but the Court is prepared to conclude that as from early September 1998 the prosecution knew about the difficult situation of the applicant. In any event, on 14 September 1998 the applicant's wife requested the district prosecutor to return the glasses to her husband (see paragraph 15 above).

42. It is true that the authorities did not remain passive; the applicant was sent to an ophthalmologist who made a prescription, and finally the applicant was given new glasses. However, it took the authorities almost five months to procure new glasses for him. Furthermore, the Government did not explain why his old glasses were not given back to him as soon as the investigator learned about the applicant's problem. Even though they were partially broken, they could have alleviated the difficulty he faced.

43. The Court has consistently stressed that certain forms of legitimate treatment or punishment – for example, a deprivation of liberty – may involve an inevitable element of suffering or humiliation. However, under Article 3 of the Convention the States must ensure that a person is detained in conditions which are compatible with respect for his human dignity, and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96,

§§ 92-94, ECHR 2000-XI). Taking the applicant's glasses could not be explained in terms of the "practical demands of imprisonment", and, even more so, was unlawful in domestic terms. The Government did not explain why the investigator had not returned old glasses when he had learned about the applicant's situation. Finally, the Government did not provide any explanation for the delay of two and half months before the applicant was examined by a specialist doctor or why it took a further two months to have the new glasses made.

44. In such circumstances the Court concludes that the treatment complained of was to a large extent imputable to the authorities. Having regard to the degree of suffering involved in this case, and its duration, the Court concludes that the applicant was subjected to degrading treatment. There was, therefore, a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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."

46. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

47. In the instant case, on 7 December 2006 the Court invited the applicant to submit his claims for just satisfaction before 9 February 2007. However, the applicant did not submit any such claims. In view of the above, the Court makes no award under Article 41 of the Convention (see, for example, *Şirin v. Turkey*, no. 47328/99, §§ 27-29, 15 March 2005, and *Pravednaya v. Russia*, no. 69529/01, §§ 43-46, 18 November 2004).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 3 of the Convention.

Done in English, and notified in writing on 20 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President