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

FIRST SECTION

CASE OF POLONSKIY v. RUSSIA

(Application no. 30033/05)

JUDGMENT

STRASBOURG

19 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Polonskiy v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 30033/05) 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 Aleksandr Viktorovich Polonskiy ("the applicant"), on 3 August 2005.

2. The applicant was represented by Mr P. Kazachenok, a lawyer practising in Volgograd. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged that he had been ill-treated by the police, that the investigation into his allegations of ill-treatment had been inadequate and ineffective, that the criminal proceedings against him and his detention pending trial had been excessively long, and that his right to property had been infringed.

4. On 4 February 2008 the President of the First Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Volgograd.

A. The applicant's arrest and ill-treatment

6. On 28 January 2003 the applicant was arrested on suspicion of unlawful possession of arms and forgery of identity documents. He was taken to police department no. 2 in Volgograd and interrogated in the office of its deputy head, Mr T.

7. The applicant stated that Mr T. and the subordinate police officers had handcuffed and beaten him, seeking a confession. While he was sitting on a chair with his arms handcuffed behind the chair, the policemen administered electric shocks to his fingers through wires connected to a dynamo. The applicant fell onto the floor and one of the policemen stepped on his back. As the applicant was screaming, the policeman took off the applicant's sock and gagged his mouth.

8. At about 5 a.m. on 29 January 2003 the applicant was put in a temporary detention cell. In the cell he pulled out a nail from the window frame and tried to open his veins. His arms swelled up and he asked for a doctor. The warders gave him an antiseptic and allegedly handcuffed him to a bar in the corridor. An hour later he was again taken to the police station and beaten. The policemen threatened to torture his wife and sister and insisted that he confess.

9. On 30 January 2003 the applicant was questioned by the investigator and he complained to the latter about ill-treatment. The investigator ordered a medical examination. The applicant was immediately escorted to the Volgograd Regional Department of Forensic Medicine where he was examined by two medical experts. It can be seen from the medical report of the same date that he had numerous bruises on his forehead, left shoulder, left shoulder-blade and right leg, which had been caused by the impact of blunt objects. The injuries to his back and leg could have been the result of bumping against protruding objects. The applicant also had abrasions on his forearms, which had been caused by a sharp object, possibly a nail. Lastly the doctors recorded thermoelectrical burns on the applicant's fingers. They found that all injures had been inflicted one or two days before.

10. On 28 March 2003 the police arrested and allegedly beat the applicant's wife and sister. They were released on 31 March 2003. On the same day the applicant's sister was examined by a doctor who reported many bruises on her chest and waist and brain concussion. The applicant's wife was diagnosed with post-traumatic perforated otitis.

11. On 29 March 2003 the applicant's mother-in-law was also arrested and questioned by police officer Mr T. According to her testimony, he was drunk. He hit her several times in the face and verbally abused her. She was released on the same day. It transpires from a medical certificate issued on 30 March 2003 that she had a bruise on her face.

B. Investigation into alleged ill-treatment

12. The applicant stated that he had complained to the prosecutor's office about his ill-treatment, but had received no reply. He then signed a power of attorney for his mother who, on 26 August 2004, filed a complaint about the applicant's ill-treatment with the prosecutor's office. The applicant's wife, sister and mother-in-law also complained that they had been beaten by Mr T., a deputy head of police department no. 2, and the subordinate police officers.

13. The Tsentralniy District prosecutor questioned one of the police officers of police department no. 2 and he denied beating the applicant. No other investigative measures were taken. On 3 September 2004 the Tsentralniy District prosecutor refused to initiate criminal proceedings against the policemen, finding that there was no evidence of ill-treatment. He observed that the applicant had never complained about ill-treatment to the investigator in charge of his criminal case. He also noted that it had been impossible to question Mr T. as he had been on mission in Chechnya.

14. The applicant challenged the decision of 3 September 2004 before the Tsentralniy District Court of Volgograd.

15. On 22 March 2005 the Volgograd Regional prosecutor set aside the decision of 3 September 2004 and ordered an additional inquiry. On 14 December 2005 the Tsentralniy District Court of Volgograd discontinued the proceedings as the decision of 3 September 2004 had been annulled.

16. On 3 April 2005 the Tsentralniy District prosecutor for a second time refused to open criminal proceedings.

17. On 5 December 2005 the Volgograd Regional prosecutor set the decision aside and ordered that the Tsentralniy District prosecutor conduct an additional inquiry, and in particular question the applicant, his wife, mother and sister, his co-defendants, co-detainees, Mr T. and other police officers of police department no. 2, and obtain a medical examination of the applicant.

18. In December 2005 and January 2006 the Tsentralniy District prosecutor questioned the applicant's mother, sister, wife and mother-in-law, who described the circumstances of the applicant's arrest and complained that they had been intimidated and hit by Mr T. He also questioned Mr T. and another police officer, who denied beating the applicant or any of his relatives. On 24 January 2006 the Tsentralniy District prosecutor for a third time refused to open criminal proceedings,

finding that there was no evidence of ill-treatment. He noted that the applicant had never complained about ill-treatment. All complaints had been lodged by his mother after the criminal case against the applicant had been referred for trial. The mother "had been motivated by the desire to help her son avoid criminal responsibility for the serious criminal offences committed by him".

19. On the same day the decision was set aside by the prosecutor's immediate superior, who ordered an additional inquiry.

20. On 27 February 2006 the Tsentralniy District prosecutor for a fourth time refused to open criminal proceedings. He established on the basis of medical documents that the applicant and his relatives had received injuries. However, given that the policemen denied beating them, it was not possible to establish with certainty that the injuries had been inflicted by the police.

21. On 16 March 2006 the decision was set aside by the senior prosecutor, who found that the district prosecutor had not carried out the investigative measures specified in the decision of 5 December 2005 and ordered additional enquiries.

22. On 25 March 2006 the Tsentralniy District prosecutor again refused to open criminal proceedings, repeating verbatim the decision of 27 February 2006.

23. The applicant's mother challenged the decision before a court. On 22 June 2006 the Tsentralniy District Court of Volgograd quashed the decision, finding that the prosecutor had never questioned the applicant about the alleged ill-treatment and had failed to identify the police officers who could have been responsible for it.

24. On 8 August 2006 the Tsentralniy District prosecutor questioned the applicant, who provided a detailed account of his ill-treatment and again refused to open criminal proceedings for the same reasons as before.

25. On 9 October 2006 the decision was set aside by the superior prosecutor, who found that the inquiry had been incomplete. He ordered that the district prosecutor question the applicant's co-defendants and the police officer who had arrested the applicant.

26. On 19 October 2006 the Tsentralniy District prosecutor questioned the arresting officer who denied beating the applicant. He also questioned the applicant's co-defendants, who testified that they had seen the policemen beating the applicant or had seen his injuries. On the same day he issued a decision refusing to open criminal proceedings against the policemen for the same reasons as before.

27. The applicant's mother challenged the decision before a court. On 18 December 2006 the Tsentralniy District Court found that she had no standing to complain about her son's ill-treatment. On 27 February 2007 the Volgograd Regional Court quashed the decision of 18 December 2006 on appeal, finding that the applicant's mother had a power of attorney signed

by the applicant and had been officially recognised as his representative. It remitted the case to the District Court.

28. On 12 April 2007 the Tsentralniy District Court annulled the prosecutor's decision of 19 October 2006. It found that the applicant's allegations of ill-treatment were corroborated by medical evidence and by witnesses. The prosecutor had given insufficient reasons for the refusal to open criminal proceedings.

29. On 28 May 2007 the Tsentralniy District prosecutor again refused to open criminal proceedings. He found it was not possible to establish with certainty that the applicant's and his relatives' injuries had been inflicted by the police.

30. The applicant's mother challenged the decision before the Tsentralniy District Court. On 22 October 2007 the Tsentralniy District Court set aside the prosecutor's decision, finding that the prosecutor had failed to correct the defects pointed out in the judicial decision of 12 April 2007. In particular, he had not conducted a further inquiry or given sufficient and convincing reasons for the refusal to open criminal proceedings.

31. On 31 March 2008 a deputy Prosecutor of the Volgograd Region referred the case to the Volgograd Regional Investigations Committee with a recommendation to carry out an additional inquiry. It was necessary to question the policemen, the applicant's co-defendants and his neighbours and conduct other investigative measures.

32. On 9 June 2008 the Investigations Committee of the Tsentralniy District of Volgograd refused to open criminal proceedings against the policemen, repeating verbatim the decision of 28 May 2007. It appears that no additional enquiries were made.

33. On 4 September 2008 the Investigations Committee of the Tsentralniy District of Volgograd reconsidered its previous decision and decided to open criminal proceedings into the fact of the applicant's ill-treatment by unidentified police officers.

34. On 3 October 2008 the applicant was granted victim status.

C. Criminal proceedings against the applicant

1. Charges of unlawful possession of arms and forgery of documents

35. On 30 January 2003 the Voroshilovskiy District Court of Volgograd formally remanded the applicant in custody on charges of unlawful possession of weapons and forgery of identity documents. It found that the applicant did not deny that he unlawfully possessed weapons and that official seals had been found in his apartment. The court referred to the gravity of the charges, the applicant's previous criminal record and the fact

that he had no dependants, which gave reason to believe that he might abscond or interfere with the investigation.

36. The trial started on 25 November 2003.

37. On 6 April 2004 the Dzerzhinskiy District Court of Volgograd convicted the applicant as charged and sentenced him to three years' imprisonment starting from 28 January 2003.

38. On 27 July 2004 the Volgograd Regional Court upheld the judgment on appeal.

39. On 28 January 2006 the applicant completed his sentence.

2. Charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder

(a) The course of the investigation and the trial

40. On 18 April 2003 the applicant was charged with inflicting serious injuries.

41. On an unspecified date the applicant's case was joined with the cases of five other persons who had allegedly acted in conspiracy with the applicant.

42. On 20 October 2003 the applicant and his co-defendants were charged with organising an armed criminal gang, several counts of aggravated robbery, inflicting serious injuries and two counts of murder.

43. On 12 April 2004 the investigation was completed and six defendants, including the applicant, were committed for trial before the Volgograd Regional Court.

44. The defendants asked for a trial by jury.

45. On 20 April 2004 the Volgograd Regional Court fixed a preliminary hearing for 27 April 2004 to examine the request.

46. On 27 April 2004 the Volgograd Regional Court ordered that the defendants be tried by jury and fixed the opening date of the trial at 24 May 2004.

47. The hearings of 24 May, 28 June and 12 July 2004 were adjourned as a jury could not been formed.

48. On 14 September 2004 the jury was formed and the trial started on 29 September 2004.

49. Until the end of 2004 the court scheduled twenty hearings. Eight hearings were held as planned while five more hearings started but were interrupted in the middle and adjourned, as prosecution witnesses did not appear. Two hearings were rescheduled due to a power cut in the court building or to the absence of available courtrooms. Five hearings were postponed at the request of the defence.

50. In 2005 the court scheduled forty hearings. Sixteen hearings were held as scheduled. Eight hearings were postponed as a juror failed to appear and five hearings did not go ahead due to the absence of prosecution

witnesses. Eleven hearings were adjourned at the request of the defence or because counsel for one of the defendants did not appear.

51. In 2006 the court scheduled thirty-six hearings. Sixteen hearings were held as scheduled. Eight hearings did no go ahead as a juror or prosecution witnesses did not appear. Twelve hearings were adjourned due to counsel's absence or following a motion for adjournment by the defence team.

52. In 2007 the court scheduled thirty-one hearings. Thirteen hearings were held as planned. Eleven hearings were adjourned as the judge was ill, was on leave or was drafting judgments in unrelated cases, or because a juror did not appear. Seven hearings were postponed at the request of the defence team.

53. At the end of March 2008 the court scheduled thirteen hearings. Only three hearings were held as scheduled. Four hearings were adjourned at the request of the prosecutor. Three hearings did not go ahead as counsel for the victim was ill. Three hearings were adjourned because counsel for one of the defendants did not appear.

54. The proceedings are still pending before the trial court.

(b) Decisions concerning the application of a custodial measure

55. On 18 April 2003 the applicant gave an undertaking not to leave the town.

56. On 29 April 2003 the Tsentralniy District Court of Volgograd remanded the applicant in custody. The court referred to the gravity of the charge and the risk of the applicant's interfering with the investigation.

57. On 23 June 2003 the Tsentralniy District Court extended the applicant's detention until 10 September 2003, referring to the gravity of the charge and necessity of further investigation.

58. On 8 September 2003 the Tsentralniy District Court extended the applicant's detention until 10 December 2003, referring to the gravity of the charge and the complexity of the case. It noted that the applicant had initially been bound by an undertaking not to leave his place of residence, but that that preventive measure had been considered insufficient in view of the gravity of the charges and the risk of his absconding.

59. On 4 December 2003 the Tsentralniy District Court extended the applicant's and a co-defendant's detention until 10 April 2004, referring to the need for an additional investigation, the gravity of the charges and the applicant's unemployment. The court found that there was a risk of the defendants' absconding or re-offending.

60. On 20 April 2004 the Volgograd Regional Court accepted the case for trial and held that all six defendants should remain in custody.

61. On 27 April 2004 the Volgograd Regional Court ordered that the defendants remain in custody pending trial.

62. On 13 October 2004 the Volgograd Regional Court extended the defendants' detention until 12 January 2005, referring to the gravity of the charges.

63. The applicant appealed, claiming that he resided permanently in Volgograd and that there was no reason to believe that he would abscond or interfere with the proceedings. On 14 December 2004 the Supreme Court upheld the extension order on appeal. It found that the applicant had been charged with serious and particularly serious criminal offences and that his arguments were not sufficient to warrant the quashing of the extension order.

64. On 12 January 2005 the Volgograd Regional Court extended the defendants' detention, referring to the gravity of the charges and the risk of pressure on witnesses and jurors.

65. In his grounds of appeal the applicant submitted that he had never put pressure on witnesses and that there was no danger of his hampering the court proceedings. On 1 March 2005 the Supreme Court upheld the extension order on appeal. It repeated verbatim its reasoning set out in the decision of 14 December 2004.

66. On 7 April 2005 the Volgograd Regional Court extended the defendants' detention until 12 July 2005. The Regional Court found that, in view of the gravity of the charges, it was "opportune" to keep the defendants in custody. It rejected their requests to release them under an undertaking not to leave the town, as it could not exclude the risk of pressure on witnesses or jurors. The court found irrelevant the applicant's argument that it was not necessary to extend his detention as he was currently serving his sentence under the judgment of 6 April 2004 and, for that reason, could not tamper with witnesses or threaten jurors. It noted that the purpose of the applicant's detention was to ensure that the criminal proceedings were completed in good time. On 8 July 2005 the Supreme Court upheld the extension order on appeal.

67. On 29 June 2005 the Volgograd Regional Court extended the defendants' detention until 12 October 2005. It found that the defendants might interfere with the proceedings, as they were charged with serious criminal offences, including being members of an armed criminal gang, supposedly organised by the applicant. On 31 August 2005 the Supreme Court upheld the extension order on appeal.

68. On 4 October 2005 the Volgograd Regional Court extended the defendants' detention until 12 January 2006 for the same reasons as before.

69. On 5 July 2006 the Volgograd Regional Court extended the defendants' detention until 12 October 2006 for the same reasons as before.

70. In his grounds of appeal the applicant complained that the extension order had been poorly reasoned and the court's conclusions that he could abscond or put pressure on witnesses had been hypothetical and had not been supported by relevant facts. On 26 September 2006 the Supreme Court

upheld the extension order on appeal. It held that the gravity of the charges was a sufficient reason for the defendant's continued detention.

71. On 2 October 2006 the Volgograd Regional Court extended the defendants' detention until 12 January 2007, referring to the gravity of the charges and the defendants' "characters". The court also indicated that the purpose of the detention was to eliminate any risk of the defendants' absconding, re-offending or hampering the court proceedings.

72. The applicant appealed, claiming that the Regional Court had used a stereotyped formula to justify his detention and that its conclusions had been hypothetical. He also complained that he had not been given access to the materials submitted by the prosecution in support of their request for extension.

73. On 28 December 2006 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified. The defendants were charged with serious criminal offences, therefore they might abscond, re-offend or obstruct the proceedings. The allegedly excessive length of their detention, their poor health and permanent place of residence were not sufficient reasons to warrant release.

74. On 27 December 2006 the Volgograd Regional Court extended the defendants' detention until 12 April 2007 for the same reasons as before.

75. On 10 April 2007 the Volgograd Regional Court extended the defendants' detention until 12 July 2007 for the same reasons as before.

76. On 9 July 2007 the Volgograd Regional Court extended the defendants' detention until 12 October 2007, finding that there was no reason to vary the preventive measure.

77. In his grounds of appeal the applicant submitted that the length of his detention had exceeded a reasonable time and asked the court to place him under home arrest. On 27 September 2007 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

78. On 11 October 2007 the Volgograd Regional Court extended the defendants' detention until 12 January 2008, referring to the gravity of the charges and the risk of his absconding or intimidating the witnesses or jurors.

79. On 9 January 2008 the Volgograd Regional Court extended the defendants' detention until 12 April 2008 for the same reasons as before.

80. On 8 April 2008 the Volgograd Regional Court rejected the applicant's request to be released under an undertaking not to leave his place of residence and extended the defendants' detention until 12 July 2008. The decision reads as follows:

> "As the trial has not yet been completed, it is necessary to extend the defendants' detention.
>
> The court considers that the gravity of the charges justifies applying to the defendants a preventive measure in the form of detention.

> However, in addition to the gravity of the charges – namely organisation of an armed gang under [the applicant's] leadership and commission of assaults on citizens and murders – carrying a sentence of up to twenty years' imprisonment for each of the defendants, the court also takes into account other factors.
>
> Thus, the court is entitled to believe that ... application to the defendants of an undertaking not to leave the town or other preventive measures will not exclude the possibility of their absconding or exercising pressure on participants to the proceedings and jurors.
>
> The defendants' argument that their detention has been excessively long is not in itself sufficient to warrant release.
>
> The defendants have not produced any material showing the existence of factors making impossible [*sic*] their stay in detention facility conditions.
>
> The court is not convinced by the defendants' argument that they have not been granted access to the materials submitted by the prosecution in support of their requests for extension. The court has at its disposal only the materials from the criminal case file which had been studied by the defendants.
>
> The court considers that the grounds for the detention of the defendants charged with serious and particularly serious criminal offences are relevant and sufficient. Their detention serves the interest of the society, as it prevents commission of similar criminal offences and ensures high-quality and effective examination of the present criminal case.
>
> The criminal case file contains sufficient evidence against each defendant to justify an extension of their detention ..."

81. On 7 July 2008 the Volgograd Regional Court extended the defendants' detention until 12 October 2008, repeating verbatim the decision of 8 April 2008.

82. The applicant appealed, complaining that the decision had been taken in his absence and that the court had relied only on the gravity of the charges against him. On 10 September 2008 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

83. On 10 October 2008 the Volgograd Regional Court extended the defendant's detention until 12 January 2009, repeating verbatim the decision of 8 April 2008.

D. Impounding of the applicant's cars

84. On 4 April 2003 the investigator impounded the applicant's two cars as physical evidence in the criminal proceedings against him.

85. On 30 January 2006 the Dzerzhinskiy District Court of Volgograd ordered that the police return the cars to the applicant. The decision was not appealed against and became enforceable.

86. On 27 February 2006 the bailiffs opened enforcement proceedings.

87. On 26 April 2006 one of the cars was returned to the applicant's mother.

88. On 29 August 2006 the other car, a Mercedes 230, was also returned to the applicant's mother. However, it was immediately impounded again as physical evidence in connection with unrelated criminal proceedings opened at the request of its former owner, who had complained that the car had been stolen from him. It appears that the criminal proceedings are still pending.

89. On 6 September 2006 the bailiffs found that the judgment of 30 January 2006 had been enforced in full and terminated the enforcement proceedings.

II. RELEVANT DOMESTIC LAW

A. Criminal-law remedies against ill-treatment

1. Applicable criminal offences

90. Abuse of office associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

2. Investigation of criminal offences

91. The Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the CCrP), establishes that a criminal investigation may be initiated by an investigator or prosecutor upon the complaint of an individual (Articles 140 and 146). Within three days, upon receipt of such complaint, the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The refusal to open criminal proceedings is amenable to an appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

B. Placement in custody and detention pending trial

92. "Preventive measures" or "measures of restraint" (*меры пресечения*) include an undertaking not to leave a town or region, personal

surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112 of CCrP).

93. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

94. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

95. After arrest the suspect is placed in custody "during the investigation". The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention "during the investigation" is calculated up to the date on which the prosecutor sends the case to the trial court (Article 109 § 9).

96. From the date on which the prosecutor refers the case to the trial court, the defendant's detention is "before the court" (or "during the trial"). The period of detention "during the trial" is calculated up to the date of the judgment. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

97. The applicant complained that he had been beaten by police officers and that the authorities had not undertaken an effective investigation into his allegations of ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

A. Arguments by the parties

98. The Government submitted that the applicant had never complained about his ill-treatment to the competent domestic authorities, either personally or through counsel representing his interests in the criminal proceedings against him. All complaints had been lodged by his mother. In the Government's opinion, the mother's complaints did not count for exhaustion purposes. In any event, although the mother had appealed against the refusal to institute criminal proceedings to a higher prosecutor, such appeal did not constitute an effective remedy within the meaning of Article 35 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, § 60, 1 March 2007). The only effective remedy was a judicial appeal. The mother had not applied to a court until long after the events complained of, while the applicant himself had not had recourse to that remedy at all. Therefore, the applicant had not exhausted domestic remedies.

99. In the alternative, the Government argued that the delay in bringing the allegations of ill-treatment to the attention of the domestic authorities had undermined the effectiveness of the investigation. Indeed, the applicant's mother had for the first time complained to a prosecutor only a year and a half after the alleged ill-treatment, and had not applied to a court until two and a half years after those events. The domestic authorities had conducted several enquiries into the allegations of ill-treatment. In particular, they had questioned the policemen, the victims and the witnesses and had ordered a medical examination of the applicant. In the Government's opinion, the enquiries had been as adequate and effective as had been possible in view of the belated lodging of the complaint with the prosecutor and courts. In any event, the complaint under Article 3 was premature, as on 21 March 2008 the regional prosecutor had ordered an additional investigation into the applicant's allegations of ill-treatment.

100. Lastly, the Government submitted that the applicant's account of the ill-treatment did not concur with the reported injuries. It transpired from the medical certificate of 30 January 2003 that some of the applicant's injuries could have been the result of his bumping against protruding objects, while other injuries had been caused by the applicant's cutting himself with a nail. It was not therefore possible to establish beyond reasonable doubt that he had been beaten by the police. In any event, the treatment complained of had not attained a minimum level of severity, as the injuries had not been serious and had not resulted in any deterioration of the applicant's health.

101. The applicant submitted that the only effective remedy for his complaint under Article 3 would be the institution of criminal proceedings against the police officers who had ill-treated him. The domestic authorities had however consistently refused to open such an investigation. Thus, the applicant's complaints about ill-treatment dispatched through the detention facility administration had remained without reply. A complaint lodged with

the district prosecutor's office by his mother, acting under a power of attorney, had also been futile as that office had refused to open criminal proceedings against the police officers. The appeals against the refusal to higher prosecutors and courts had turned out to be ineffective as the district prosecutor's office had conspicuously disregarded their instructions and, after each reversal of its decision by the higher prosecutor or the court, had again issued a new refusal to open criminal proceedings.

102. As regards the additional investigation ordered by the regional prosecutor on 21 March 2008, the applicant argued that similar orders had been made before, namely on 5 December 2005 and 9 October 2006, but had not returned any positive results. Additional enquiries had invariably concluded with decisions refusing to open criminal proceedings. Indeed, on 9 June 2008 the district prosecutor's office again, for the ninth time, decided not to investigate the applicant's allegations of ill-treatment, citing the same reasons as had been earlier considered insufficient by higher prosecutors and courts. Therefore, the applicant considered that the domestic authorities had failed to conduct an adequate and effective investigation into his allegations of ill-treatment and that he had not had any effective domestic remedy for his complaint under Article 3.

103. The applicant further maintained that he had been beaten and tortured by electricity in the police department. His allegations had been confirmed by witness statements and medical evidence showing that he had numerous bruises and thermoelectric burns. The Government had not provided a convincing explanation for those injuries.

B. The Court's assessment

1. Admissibility

104. The Court considers that the question whether this complaint is premature in view of the pending investigation and whether the applicant exhausted domestic remedies in respect of his complaint under Article 3 are closely linked to the question of whether the investigation into his allegations of ill-treatment was effective. However, these issues relate to the merits of the applicant's complaints under Article 3 of the Convention. The Court therefore decides to join these issues to the merits.

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

2. Merits

(a) Effectiveness of the investigation

106. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

107. An investigation into serious allegations of ill-treatment must therefore be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

108. Further, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, *Reports* 1998-IV, § 67), and the length of time taken during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

109. In the present case the parties have disputed whether the applicant lodged a formal complaint about ill-treatment with the competent prosecutor's office. The applicant stated that he had dispatched such complaint through the detention facility administration, while the

Government disputed that fact. However, there is no need for the Court to resolve this controversy for the following reasons.

110. It has not been contested by the Government that on 30 January 2003, that is two days after the alleged ill-treatment, the applicant complained about police brutality to the investigator. He thereby drew the authorities' attention to his allegations. The medical examination ordered by the investigator seemed to corroborate the applicant's statements revealing numerous bruises and thermoelectrical burns on his body (see paragraph 9 above). The applicant's claim was therefore shown to be "arguable" and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see, for similar reasoning, *Egmez v. Cyprus*, no. 30873/96, § 66, ECHR 2000-XII, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 358 and 359, 6 April 2004). Although the investigator was required by domestic law to perform a preliminary inquiry with a view to opening criminal proceedings or refer the complaint to the competent investigative authority (see paragraph 91 above), he took no such action.

111. It was not until a year and a half later, in September 2004, and in response to a complaint lodged by the applicant's mother, that a preliminary inquiry was launched by the prosecutor's office. Its progress was however slow and it spanned over four years. Thus, the only investigative measure conducted before the end of 2005 was the questioning of one of the police officers involved in the applicant's arrest. The other police officers, the applicant, his relatives, co-defendants and co-detainees were questioned for the first time in 2006, that is more than three years after the alleged ill-treatment. In the Court's view, the belated commencement of the inquiry and the delays in its progress imputable to the domestic authorities resulted in the loss of precious time which could not but have a negative impact on the success of the investigation (see *Mikheyev v. Russia*, no. 77617/01, § 114, 26 January 2006).

112. The Court further notes that the prosecutor's office issued nine refusals to open criminal proceedings against the police officers. Eight of them were set aside as insufficiently reasoned by a higher prosecutor or a court. Indeed, the analysis of the prosecutor's decisions reveals that the prosecutor accepted too readily the police officers' denial that force had been used against the applicant and decided not to open criminal proceedings, finding, in total disregard of the medical evidence and witness statements, that there was no proof of ill-treatment or, in later decisions, that there were no grounds to believe that the injuries had been inflicted by the police. The prosecutor did not cite any reasons why he considered that the medical evidence was inconclusive or the witnesses were unreliable. The Court finds it particularly striking that after the decisions of 19 October 2006 and 28 May 2007 had been set aside by a court precisely on the

ground of a lack of reasoning, the prosecutor failed to abide by the court's instructions and remedy the flaws in its reasoning. Instead he issued, on 9 June 2008, a new decision repeating verbatim the decision of 28 May 2007. The prosecuting authorities' failure to provide sufficient reasons for the refusals to open criminal proceedings and their deferential attitude to the members of the police force must be considered to be a particularly serious shortcoming in the investigation (see, *mutatis mutandis*, *Aydın v. Turkey*, 25 September 1997, § 106, *Reports of Judgments and Decisions* 1997-VI).

113. The Court takes note of the fact that in September 2008 the domestic authorities reconsidered their decision not to open a criminal case and initiated criminal proceedings in respect of the applicant's allegations of ill-treatment. The decision of 4 September 2008 stated, however, that the case was opened against "unidentified police officers" (see paragraph 33 above), rather than against Mr T. or other police officers of police department no. 2 who had been identified by the applicant.

114. The Court is satisfied that the domestic authorities opened an inquiry into the applicant's allegations of police brutality. However, it finds that that inquiry was not conducted diligently, and that the authorities showed a lack of determination to prosecute those responsible. Indeed, more than five years after the events complained of no one had been charged, despite the fact that evidence corroborating the applicant's allegations had been discovered and the police officers accused by the applicant had been identified. Accordingly, the inquiry cannot be said to have been "effective" (see, for similar reasoning, *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V).

115. Further, the Court is not convinced by the Government's argument that the effectiveness of the inquiry had been undermined by the applicant's failure to have recourse to available domestic remedies. It has been established above that the applicant alerted the competent authorities to the alleged ill-treatment shortly after the events at issue (see paragraph 110 above). His mother, acting under the power of attorney signed by the applicant, lodged a formal complaint with the prosecutor's office and appealed against the refusals to open criminal proceedings to a higher prosecutor and a court. The mother's standing to lodge complaints and appeals on behalf of the applicant was recognised by domestic courts (see paragraph 27 above). The Court is satisfied that the applicant raised complaints about his ill-treatment before the appropriate domestic bodies and in compliance with the formal requirements laid down in domestic law.

116. Finally, as regards the Government's argument that the complaint under Article 3 is premature, the Court recognises that the investigation is still pending but, considering its length so far and the very serious shortcomings identified above, the Court does not consider that the applicant should have waited for completion of the investigation before filing his complaint with the Court, as the conclusion of those proceedings

would not remedy their overall delay in any way (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-...).

117. In the light of the foregoing, the Court dismisses the Government's preliminary objections and finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 under its procedural limb.

(b) Alleged ill-treatment of the applicant

118. As the Court has stated on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. 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 *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been held by the Court to be "inhuman" because, *inter alia,* it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "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 or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

119. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... ; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

120. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, the burden of proof may be regarded as resting on the authorities to provide a plausible and convincing explanation of how those injuries were caused (see *Salman,* cited above, § 100, and *Ribitsch*, cited above, § 34).

121. Turning to the facts of the present case, the Court notes that on the second day after his arrest the applicant was examined by forensic medical specialists who recorded numerous bruises, abrasions and electrical burns on his body. Their report contains precise and concurring medical observations and indicates dates for the occurrence of the injuries which correspond to the period spent in custody on police premises (see paragraph 9 above). The Government did not claim that the injuries could have predated the applicant's arrest. The Court is therefore convinced that the applicant sustained those injuries while in police custody.

122. The Court accepts the Government's explanation as to the origin of the abrasions on the applicant's arms. The applicant did not dispute that the abrasions had been caused by his attempt to open his veins using a nail. At the same time it notes that the Government did not provide any explanation for the bruises on the applicant's face and body and the electrical burns on his fingers. By contrast, the applicant presented a consistent and detailed description of the ill-treatment which corresponds to the nature and location of the recorded injuries. His allegations were supported by the testimony of his co-defendants, who stated that they had seen the policemen ill-treating the applicant (see paragraph 26 above).

123. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control, in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court finds it established to the standard of proof required in Convention proceedings that the bruises and electrical burns recorded in the medical report were the result of the treatment of which the applicant complained and for which the Government bore responsibility (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004).

124. The Court will next examine whether the treatment complained of attained a minimum level of severity such as to fall within the scope of Article 3. It is not convinced by the Government's argument that the minimum level of severity was not reached as the treatment had not resulted in any deterioration of the applicant's health. The absence of long-term health consequences cannot exclude a finding that the treatment is serious enough to be considered inhuman or degrading (see *Egmez,* cited above,

§§ 78 and 79). The applicant was hit at least several times in his face, shoulders, back and legs and was subjected to electric shocks, which is a particularly painful form of ill-treatment. Such treatment must have caused him severe mental and physical suffering, even though it did not apparently result in any long-term damage to his health. Moreover, it appears that the use of force was aimed at debasing the applicant, driving him into submission and making him confess to criminal offences. Therefore, the Court finds that the treatment to which the applicant was subjected was serious enough to be considered as torture.

125. Accordingly, having regard to the nature and extent of the applicant's injuries, the Court considers that the State is responsible under Article 3 on account of torture of the applicant by the police and that there has been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

126. The applicant complained that the investigation into his allegations of ill-treatment was ineffective contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

127. The Court observes that this complaint concerns the same issues as those examined in paragraphs 106 to 117 above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

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

128. The applicant complained of a violation of his right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons. He relied on Article 5 § 3 of the Convention which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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. Admissibility

129. The Government submitted that the applicant had not appealed to the Supreme Court about the detention orders issued during the investigation. He had not therefore exhausted effective domestic remedies in respect of that period.

130. The applicant argued that an appeal to the Supreme Court was not an effective remedy. It did not provide reasonable prospects of success as there was an administrative practice of holding defendants charged with serious criminal offences in custody during the investigation and trial.

131. The Court reiterates that the purpose of the rule requiring domestic remedies to be exhausted is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before those allegations are submitted to the Court. In the context of an alleged violation of Article 5 § 3 of the Convention, this rule requires that the applicant give the domestic authorities an opportunity to consider whether his right to trial within a reasonable time has been respected and whether there exist relevant and sufficient grounds continuing to justify the deprivation of liberty (see *Shcheglyuk v. Russia*, no. 7649/02, § 35, 14 December 2006).

132. The Court considers that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-...). Following his placement in custody on 29 April 2003 the applicant continuously remained in detention. It is not disputed that he did not lodge appeals against the extension orders issued before 13 October 2004. He did, however, appeal to the Supreme Court against the subsequent extension orders, claiming, in particular, that his detention had exceeded a reasonable time. He thereby gave an opportunity to the Supreme Court to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Supreme Court had to assess the necessity of further extensions in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody. The Court concludes that the applicant has exhausted domestic remedies and rejects the Government's objection.

133. Having reached the conclusion that the applicant made use of available domestic remedies, the Court does not consider it necessary to resolve the question whether he was absolved from the obligation to exhaust those remedies due to an administrative practice of violations of Article 5 § 3 (see *Aksoy v. Turkey*, 18 December 1996, § 57, *Reports of Judgments and Decisions* 1996-VI). In any event, the applicant did not submit any evidence to allow the Court to make findings concerning the existence of such practice.

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

B. Merits

1. Arguments by the parties

135. The Government argued that the applicant had been charged with many particularly serious criminal offences. He was moreover suspected of being an active member of an armed criminal gang committing crimes on a regular basis and presenting an increased danger to society. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V), they submitted that his membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. It had been necessary to hold the applicant in custody during the investigation and trial to prevent his interfering with witnesses and jurors who lived in the same area and were not segregated from society. The domestic courts had justified the extensions of his detention by reference to his previous criminal record, the absence of a permanent place of residence, employment or dependants, and the defence's failure to produce material showing that the applicant could not remain in the detention facility conditions. The Government considered that the applicant's detention had been founded on "relevant and sufficient" reasons.

136. The applicant submitted that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody. They had relied essentially on the gravity of the charges. The only other ground for his detention had been the domestic courts' finding that he could impede the investigation. That finding had not been supported by any evidence and, moreover, had been absurd. Before 28 January 2006 the applicant had been serving his sentence after conviction in an unrelated criminal case on charges of unlawful possession of arms and forgery of documents. His imprisonment had made it impossible for him to interfere with the proceedings.

137. The applicant further argued that by requiring him to produce material showing that he could not remain in detention the authorities had shifted the burden of proof onto him, contrary to Article 5 § 3 of the Convention. He had shown that he had a permanent place of residence, employment and family. However, the domestic authorities had continued to extend his detention, without demonstrating the existence of specific facts in support of their conclusion that he might abscond or interfere with witnesses or jurors. As to his previous criminal record, the domestic courts

had never referred to it in their detention orders. In any event, he had been convicted only once in 1995 and his criminal record had since been purged.

2. The Court's assessment

(a) General principles

138. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

139. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

140. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from

the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov,* cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

(i) Period to be taken into consideration

141. The Court observes that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c) with which it forms a whole. It ceases to apply on the day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Solmaz,* cited above, §§ 24 to 26, and *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175).

142. The applicant was remanded in custody on 29 April 2003 on charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder. He has been held in detention pending trial ever since. During part of that period, from 6 April 2004 to 28 January 2006, he was concurrently serving his sentence after conviction in an unrelated criminal case on charges of unlawful possession of arms and forgery of documents. The Court must verify which subparagraph of Article 5 § 1 was applicable during that period with a view to determining whether it should be taken into consideration for the purposes of Article 5 § 3.

143. The Court reiterates in this connection that the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and detention may be justified under more than one sub-paragraph of that provision (see, among many others, *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). In particular, in the case of *Eriksen v. Norway*, the Court considered that the applicant's detention was justified under both sub-paragraphs (a) and (c) of Article 5 § 1 and found that Article 5 § 3 was applicable (see *Eriksen v. Norway*, 27 May 1997, § 92, *Reports of Judgments and Decisions* 1997-III).

144. In the present case, on 6 April 2004 the applicant was convicted of unlawful possession of arms and forgery of documents and sentenced to a term of imprisonment which he completed on 28 January 2006. During that period he was detained "after conviction by a competent court" within the

meaning of Article 5 § 1 (a). At the same time, he was held in custody in connection with an unrelated set of criminal proceedings for the purpose of bringing him before the competent legal authority on suspicion of being a member of an armed criminal gang and having committed robbery, infliction of serious injuries and murder, a situation envisaged in Article 5 § 1 (c). It accordingly follows that, from 6 April 2004 to 28 January 2006, the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1. Taking into account that the applicant was detained on the basis of Article 5 § 1 (c), and notwithstanding the fact that his detention was also grounded on Article 5 § 1 (a), the Court considers that this period should be taken into consideration for the purposes of Article 5 § 3. Therefore, the applicant has been continuously detained pending trial on the charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder, since his placement in custody on 29 April 2003 until now, that is for more than five years and ten months.

(ii) Reasonableness of the length of the period in issue

145. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of his membership of an armed criminal gang and his involvement in the commission of robbery, infliction of serious injuries and murder. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify his continued detention and whether they displayed "special diligence" in the conduct of the proceedings. The inordinate length of the applicant's detention is a matter of grave concern for the Court. In these circumstances, the Russian authorities should have put forward very weighty reasons for keeping the applicant in detention for more than more than five years and ten months.

146. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or interfering with witnesses or jurors. In this respect they referred to the gravity of the charges, with particular emphasis on the charge of membership of an armed criminal gang, and the absence of permanent employment.

147. The gravity of the charges was the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. Thus, in the appeal decisions of 14 December 2004, 26 September and 28 December 2006 the Supreme Court found that the gravity of the charges outweighed the specific facts militating in favour of the applicant's release, such as the considerable length of his detention pending trial, his permanent place of residence and poor health (see paragraphs 63, 70 and 73 above). The courts assumed that the gravity of the charge carried such a preponderant weight that no other circumstances could have obtained the

applicant's release. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk that an accused might abscond or reoffend, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov,* cited above, § 81).

148. Another ground for the applicant's detention was his presumed membership of an organised criminal group. The Court accepts that in cases concerning organised crime the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). Taking into account that the applicant was suspected of being an active member of an organised criminal group, the Court accepts that the authorities could justifiably consider that the risk of pressure on witnesses and jurors was initially present. However, the Court is not persuaded that that ground could in itself justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of hampering the proceedings in a summary fashion without pointing to any aspect of the applicant's character or behaviour in support of their conclusion that he was likely to resort to intimidation. In the Court's view, such a generally formulated risk may not serve as justification for the applicant's detention for a period of more than five years. The domestic courts failed to consider the fact that that ground inevitably became less and less relevant with the passage of time. The courts' reasoning did not evolve to reflect the developing situation or to verify whether at the advanced stage of the proceedings that ground retained its sufficiency. The Court is not therefore convinced that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or jurors or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

149. Further, the domestic courts gauged the applicant's potential to reoffend by reference to his unemployment. This finding was disputed by the applicant, who maintained that he had permanent employment. It is not necessary for the Court to determine the applicant's employment situation. Even assuming that he was unemployed, it cannot be concluded from this fact alone that he was liable to commit new offences (see *Pshevecherskiy*

v. Russia, no. 28957/02, § 68, 24 May 2007). In any event, the mere absence of permanent employment could not serve as justification for more than five years' detention pending trial.

150. No other grounds have been relied on by the domestic courts. The Government referred in their observations to the applicant's previous criminal record and absence of permanent place of residence. The Court reiterates that it is not its task to assume the role of the national authorities who ruled on the applicant's detention or to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). Those arguments were advanced for the first time in the proceedings before the Court and the domestic courts never mentioned them in their decisions.

151. The Court also finds it peculiar that during the period from 6 April 2004 to 28 January 2006, when the applicant was serving his sentence in an unrelated criminal case, the domestic courts continued to refer to the danger of his absconding, reoffending or interfering with witness and jurors in their extension orders. The Court accepts that it may be necessary to issue custody orders in respect of convicted prisoners, for example to make possible the person's transfer from the correctional colony where he is serving his sentence to a detention facility situated in the area where the investigation and trial are conducted. However, in the present case the domestic courts did not refer to such a necessity. Instead, they repeated the stereotyped formula without any assessment of whether, considering the applicant's detention in a correctional colony, the risk of fleeing from justice, reoffending or intimidating witnesses or jurors was real. The Court considers that the extension orders issued between 6 April 2004 and 28 January 2006 clearly attested to the domestic courts' perfunctory attitude to the applicant's detention, which was extended automatically without concrete relevant facts being addressed or the changing circumstances taken into account. Although it is true that the extension orders issued during that period did not affect the applicant's situation in practical terms, as he was in any event being held after conviction by a competent court, this fact is not decisive for the Court's assessment. The existence of a violation is conceivable even in the absence of prejudice or damage; the question whether an applicant has actually been placed in an unfavourable position or sustained damage becomes relevant only in the context of Article 41 (see, among many authorities, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 67, 31 July 2008; *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A; and *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31).

152. The Court observes that all decisions extending the applicant's detention on remand were stereotypically worded and in summary form. They did not describe in detail the applicant's personal situation. Although in one of the extension orders the Regional Court stated that it had taken

into account "the defendants' characters", this statement was not accompanied by any description of the applicant's character or an explanation as to why it made his detention necessary (see paragraph 71 above). The domestic authorities' reluctance to devote proper attention to discussion of the applicant's personal situation is particularly manifest in the Regional Court's decisions of 20 and 27 April 2004, which gave no grounds whatsoever for the applicant's continued detention. The Regional Court only noted that "the defendants should remain in custody" (see paragraphs 60 and 61 above). It is even more striking that by that time the applicant had already spent a year in custody, the investigation had been completed and the case referred for trial.

153. After the case had been submitted for trial in April 2004 the trial court issued collective detention orders using the same summary formula to extend the detention of six persons. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee is incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk,* cited above, § 45; *Korchuganova,* cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

154. Lastly, the Court notes that the domestic authorities explicitly refused to consider whether the length of the applicant's detention had exceeded a "reasonable time" (see paragraphs 73 and 80 above). Such an analysis should have been particularly prominent in the domestic decisions after the applicant had spent several years in custody; however the reasonable-time test has never been applied.

155. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy,* cited above, §§ 99 et seq.; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... ; *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova,* cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX).

156. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration of more than five years. In these circumstances it will not be necessary to examine whether the

proceedings were conducted with "special diligence". However, the Court will address the Government's argument that the complexity of the applicant's case accounted for the length of the applicant's detention. It accepts that in cases concerning organised crime, involving numerous defendants, the process of gathering and hearing evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-suspects (see, *mutadis mutandis*, *Łaszkiewicz v. Poland*, no. 28481/03, §§ 59 and 61, 15 January 2008). However, it has already found, in similar circumstances, that the complexity of the case, the number or the conduct of the defendants could not justify more than five years' detention pending investigation and trial (see *Erdem v. Germany*, no. 38321/97, § 46, ECHR 2001-VII).

157. There has therefore been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

158. The applicant complained that the second set of criminal proceedings against him (the proceedings on the charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder) had been excessively long. He relied on Article 6 § 1 of the Convention which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

159. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see *Rokhlina,* cited above, § 81).

160. The period to be taken into consideration in respect of the criminal proceedings complained of began on 18 April 2003 when the charges of membership of an armed criminal gang, robbery, infliction of serious injuries and murder were laid against the applicant. The proceedings are still pending before the trial court. They have thus lasted to date more than five years and months.

161. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

162. The Government submitted that the length of the proceedings had been reasonable, having regard to the complexity of the case and the large number of defendants (6) and witnesses (45). The investigation had been prompt, without any periods of inactivity on the part of the investigating team. There had been a delay of several months immediately after the case had been referred for trial, but it had not been attributable to the trial court. It had been impossible for the court to form a jury as both parties kept objecting to the proposed formation. After the commencement of the trial, the hearings had been scheduled at regular intervals, although more than thirty of them had been adjourned due to consistent failures by the defendants' counsel, including the applicant's lawyer, to attend hearings, and due to their repeated requests for adjournments on various grounds. More than ten hearings had been adjourned because defence or prosecution witnesses had not appeared. The trial court had immediately made efforts to obtain their attendance. More than twelve hearings had been adjourned as jurors had not attended due to illness or other reasonable excuses. Only two adjournments had been attributable to the trial court: one hearing had to be rescheduled because of a power cut in the court building, and another hearing had been postponed as the judge had been on leave from 9 July to 21 August 2007. The trial, after having proceeded at a reasonable pace, had already entered into its final phase.

163. The applicant pointed out that the proceedings had lasted so far for more than five years and were still pending at first instance, which period was clearly in excess of a reasonable time. He submitted that although at the beginning the trial had progressed speedily with twenty-eight witnesses being examined in 2004, it had then slowed down. Only three witnesses had been heard by the trial court in 2005, three witnesses in 2006, six witnesses in 2007 and five witnesses in 2008. The trial court had not made any efforts to obtain the attendance of those witnesses who had failed to appear other than by sending repeated summonses to them. Moreover, many hearings had been adjourned due to the jurors' failure to attend. The trial court had refused to replace ailing jurors by substitutes, despite the applicant's request to that effect.

164. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

165. The Court acknowledges that the case was complex as it concerned several counts of robbery, infliction of serious injuries and murder allegedly committed by six members of an armed criminal gang. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings. Moreover, the fact that the applicant was being held in custody required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see *Korshunov v. Russia*, no. 38971/06, § 71, 25 October 2007).

166. The Court notes that neither party provided details of the investigation, which lasted approximately one year. However it accepts that, having regard to the complexity of the case, the length of the investigation was not excessive.

167. Turning to the trial stage of the proceedings, the Court observes that thirty-eight hearings were adjourned at the request of the defence, and that this slowed the proceedings down through no fault of the authorities.

168. On the other hand, the Court considers that certain delays were attributable to the domestic authorities. In particular, a delay of more than five months occurred between the applicant's committal for trial on 12 April 2004 and the commencement of the trial on 29 September 2004. Only five hearings were scheduled during that period and all of them were adjourned as the trial court was unable to form a jury that would satisfy both parties. The responsibility for this delay rests with the domestic authorities.

169. The Court further observes that although subsequent hearings were scheduled at regular intervals, many of them had to be adjourned for reasons for which the authorities bore responsibility. Thus, six hearings were rescheduled on logistical grounds or because of the judge's unavailability due to his involvement in another case, illness or leave. Twenty-two hearings did not go ahead because the members of the jury failed to appear and were not replaced by substitutes for unclear reasons. Four more hearings were adjourned at the prosecutor's request. The Court finds, on the basis of the documents in its possession, that the above adjournments resulted in an aggregate delay of approximately one year.

170. Finally, the slow progress of the trial was apparently caused by the conduct of witnesses. Witnesses defaulted on at least twelve occasions, resulting in substantial delays in the proceedings. Indeed, as was submitted by the applicant and not disputed by the Government, in 2004 the trial court examined twenty-eight witnesses over a period of three months and it took it four more years to examine the remaining seventeen witnesses. There is no indication in the case file that the trial court availed itself of the measures existing under national law to discipline the defaulting witnesses and obtain their attendance, to ensure that the case be heard within a reasonable time (see *Zementova v. Russia*, no. 942/02, § 70, 27 September 2007; *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007; and *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005). The Court finds that the delay

occasioned by the witnesses' failure to attend hearings and the trial court's failure to ensure their attendance is attributable to the State.

171. The Court notes that almost five years since the applicant's committal for trial, the trial court has not yet delivered judgment. It also notes that the applicant has spent all those years in custody. In these circumstances, it considers that the length of the proceedings has exceeded a "reasonable time".

172. There has therefore been a violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

173. The applicant complained about non-enforcement of the judgment of the Dzerzhinskiy District Court of Volgograd of 30 January 2006. He relied on Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

174. The Government submitted that both cars indicated in the judgment of 30 January 2006 had been returned to the applicant's mother within six months and two days after the judgment had become final. They considered that the judgment had been enforced within a reasonable time. They further submitted that, after being returned to the applicant's mother, one of the cars, a Mercedes 230, had been immediately impounded again in connection with the criminal proceedings into the theft of this car from its previous owner. The applicant had never complained to a court about the new impounding, although he had been advised to do so by the domestic authorities.

175. The applicant maintained his claims. He argued that the Mercedes 230 car had not been returned to him to date. The police had tricked his mother into signing documents confirming receipt of the car, but then refused to return it, claiming that it had been impounded in connection with another criminal case.

176. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable. Final judgments provide the beneficiaries with sufficiently enforceable claims. The failure by the domestic authorities to comply with a final judgment for a long time constitutes an interference

with the beneficiary's right to peaceful enjoyment of his possessions (see *Burdov v. Russia*, no. 59498/00, §§ 40 to 42, ECHR 2002-III).

177. The judgment of 30 January 2006 provided the applicant with an enforceable claim to have his cars returned. It became final as no ordinary appeal was made against it, and enforcement proceedings were instituted. It follows from the documents in the Court's possession that one of the cars was returned to the applicant's mother on 26 April 2006, while the second one, the Mercedes 230, was returned to her on 29 August 2006. The judgment was therefore enforced in full within seven months after it became enforceable, which does not appear excessive (compare *Inozemtsev v. Russia* (dec.), no. 874/03, 31 August 2006, and *Presnyakov v. Russia* (dec.), no. 41145/02, 10 November 2005).

178. The Court further notes that although the Mercedes 230 car was immediately impounded again as physical evidence in connection with an unrelated set of criminal proceedings, there is no indication in the case file that the applicant complained before the competent domestic courts that the new impounding was unlawful.

179. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. 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

181. The applicant claimed 7,000 euros (EUR) in respect of pecuniary damage which he sustained as a result of the seizure of his car. He also claimed EUR 110,000 in respect of non-pecuniary damage.

182. The Government submitted that the applicant had not produced any documents confirming pecuniary or non-pecuniary damage. They considered that the claim was excessive and that the finding of a violation would in itself constitute sufficient just satisfaction.

183. The Court observes that the applicant's claim for pecuniary damage is related to his complaint under Article 1 of Protocol No. 1 which has been rejected as manifestly ill-founded. The Court therefore dismisses the claim for pecuniary damage.

184. The Court further notes that it has found a combination of grievous violations in the present case. The applicant was beaten and subjected to electric shocks by the police. The investigation into his allegations of ill-

treatment was ineffective. He has spent more than five years in custody pending trial, his detention not being based on sufficient grounds. The criminal proceedings against him have been excessively long. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. However, the amounts claimed appear excessive. In particular, the Court observes that although the applicant has been held in detention pending trial for more than five years, during part of this period he was concurrently serving his sentence in an unrelated criminal case. The extension of his detention during that period did not prejudice his position or cause him any actual damage. The Court must take this fact into account when determining the amount of just satisfaction to be awarded. Making its assessment on an equitable basis and taking into account the gravity of the ill-treatment, the Court awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

185. The applicant also claimed EUR 100 for postal expenses.

186. The Government argued that the applicant had only submitted copies of the acknowledgement-of-receipt cards, which did not indicate the mailing costs.

187. The Court notes that under Rule 60 of the Rules of the 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". The applicant failed to itemise his claim or submit receipts or other vouchers on the basis of which the amount of postal expenses actually incurred by him could be established. Accordingly, the Court rejects the claim.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment by the police, the ineffectiveness of the investigation into his allegations of ill-treatment, the excessive length of the applicant's detention and the

excessive length of the criminal proceedings against him admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds* that there is no need to examine the complaint under Article 13 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 6 § 1 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, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE MALINVERNI

(*Translation*)

1. I voted with the majority in favour of finding a violation of Article 3 and Article 5 § 3 of the Convention. As regards that latter provision, I must however express my doubts as to the manner in which the Court calculated the period to be taken into consideration in determining whether the applicant had been put on trial within a reasonable time, as required by Article 5 § 3.

2. In the present case, on 6 April 2004, the applicant was given a prison sentence for possession of arms and forgery of documents. He served his sentence until 28 January 2008. During that time his detention was thus justified under Article 5 § 1 (a) of the Convention.

3. In that same period a judge remanded him in custody in respect of offences that were unrelated to his initial conviction. This second custodial measure was justified under Article 5 § 1 (c) of the Convention.

4. It transpired that, from 6 April 2004 to 28 January 2006, the applicant's detention fell under a combination of sub-paragraphs (a) and (c) of Article 5 § 1 of the Convention. In other words, for a certain period of time, his detention was based on two different overlapping provisions.

5. In order to assess the length of the detention on remand under Article 5 § 3, the Court considered that it also had to take into account the duration of the applicant's detention under Article 5 § 1 (a), thus bringing it to a total of five years and ten months (see paragraph 144):

> "Taking into account that the applicant was detained on the basis of Article 5 § 1 (c), and notwithstanding the fact that his detention was also grounded on Article 5 § 1 (a), the Court considers that this period should be taken into consideration for the purposes of Article 5 § 3."

6. When it then came to assess the reasonableness of the detention pending trial, the Court found a violation of Article 5 § 3 of the Convention.

7. Whilst it is acceptable, this manner of calculating the duration of pre-trial detention may also be called into question. It could also logically be argued that the period covered by sub-paragraph (a) of Article 5 § 1 should not be taken into account as the applicant would in any event have been in prison on that basis.