



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

FIRST SECTION

CASE OF AREFYEV v. RUSSIA

(Application no. 29464/03)

JUDGMENT

STRASBOURG

4 November 2010

FINAL

04/02/2011

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

In the case of Arefyev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 29464/03) 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 Vitaliy Alekseyevich Arefyev (“the applicant”), on 1 August 2003.

2. The applicant was represented by Mr R. Shkryuba, a lawyer practising in Ivanovo. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his detention in temporary detention facility in Ivanovo had been inhuman and degrading, that his detention had been unlawful and that the proceedings by which he had sought to challenge the lawfulness of his pre-trial detention had not complied with the requirements of Article 5 § 4 of the Convention.

4. On 24 October 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lived until his arrest in the town of Teykovo in Ivanovo Region.

A. Applicant's arrest and release on a written undertaking

6. On 6 April 2003 the applicant was arrested on suspicion of aggravated extortion. Two days later an investigator asked the Teykovo Town Court to remand him in custody. On the same day the Town Court adjourned consideration of the investigator's request for seventy-two hours. The applicant did not appeal.

7. On 9 April 2003 the investigator ordered the applicant's release on a written undertaking not to leave the town, reasoning as follows:

“The present criminal case was opened on 6 April 2003, at 5 p.m. On the same day at 5.15 p.m. an investigator, Ms S., arrested [the applicant] in compliance with Article 91 of the Russian Code of Criminal Procedure. On 8 April 2003, at 3.15 p.m., the applicant was charged under Article 163 § 2 of the Russian Criminal Code and a decision on bringing a request to a court for authorisation of [the applicant's] detention was issued. That request was examined by the court and by virtue of Article 108 § 3 (7) of the Russian Code of Criminal Procedure [the court] adjourned the examination of the request until 2 p.m. on 11 April 2003. In his decision the judge did not mention that [the applicant's] detention had been extended.

Due to the fact that [the applicant's] detention has expired, he should be released.”

B. Applicant's placement in custody. Detention order of 11 April 2003

8. On 11 April 2003 the Teykovo Town Court resumed consideration of the investigator's request of 8 April 2003 and authorised the applicant's placement in custody, finding that he had been charged with a serious criminal offence, had a criminal record, was a danger to society, was unemployed and did not have a permanent source of income. The court concluded that the applicant was liable to abscond and interfere with the course of justice.

9. On the same day the applicant appealed against the decision of 11 April 2003, arguing that there were no grounds for his placement in custody. He had a permanent place of residence, had started working and had no intention of absconding.

10. On 15 April 2003 the Ivanovo Regional Court upheld the decision of 11 April 2003, endorsing the Town Court's reasoning.

C. Detention order of 9 June 2003

11. A transcript of a telephone conversation produced by the Government reveals that on 5 June 2003 an investigator of the Teykovo town police department informed the applicant's lawyer, Mr Shkryuba, that a request for extension of the applicant's detention was to be sent to the Teykovo Town Court on the following day. The investigator asked for

confirmation of the lawyer's availability for the court hearing. Mr Skhryuba replied that he would not be able to attend as he had to take part in a seminar starting on 9 June 2003.

12. On 9 June 2003 the Teykovo Town Court extended the applicant's detention for twenty-six days, until 6 July 2003, finding that he had been charged with a serious criminal offence and had a previous conviction, also that he was unemployed and did not have a permanent source of income and thus, if released, he was liable to pervert the course of justice and abscond. The Town Court noted that by 6 July 2003 the total period of the applicant's detention would amount to two months and twenty-six days. The applicant's lawyer did not attend the hearing on 9 June 2003. The record of that hearing provided to the Court by the Government shows that the Town Court read in open court thirty-two pages of material presented to it by the investigator and attached to the case file. The materials comprised records of various investigative actions, including the previous decisions on the applicant's arrest and detention. A court registrar made an entry in the record stating that the parties had no objections or amendments.

13. The applicant appealed. He complained that the decision of 9 June 2003 had been taken in the absence of his lawyer, who had not been summoned to the hearing, and that he had not been provided with copies of the case file materials attached to the investigator's application for the extension of the detention. A letter of 21 June 2003 from the President of the Ivanovo Town Bar Association was enclosed. The President informed the Regional Court that the applicant's lawyer, Mr Shkryuba, had not been summoned to the hearing of 9 June 2003 as the summons had arrived at the Bar Association only hours before the hearing, by which time Mr Shkryuba had departed on an official mission and therefore it had been impossible to notify him promptly of the hearing.

The applicant further argued that the maximum authorised two-month period of his detention had expired on 8 June 2003, taking into account that he had remained in custody during the three days after his arrest in April 2003. Thus, his detention from 8 to 9 June had had no legal basis.

14. On 3 July 2003 the Ivanovo Regional Court held an appeal hearing. The applicant's lawyer attended. At the end of the hearing the Regional Court issued a decision upholding the extension order of 9 June 2003. The relevant part of the appeal decision read as follows:

"It follows from the case file materials that the criminal case requires a certain amount of investigative actions for which additional time is needed.

At the same time there are no grounds for change or cancellation of the measure of restraint which was applied to [the applicant]. [The applicant] is charged with a criminal offence which belongs to the category of serious [offences]; [he] has previous convictions [and has had] a suspended sentence; [he] does not have any source of income [and], if released, [he] could pervert the course of justice and abscond.

On the basis of the aforementioned, the court correctly concluded [that it was] possible to extend [the applicant's] detention.

It also follows from the case materials that in the course of the pre-trial investigation [the applicant] concluded an agreement with counsel, Mr R. Shkryuba, who had been duly notified about the examination of the present case, which is confirmed by the case file materials. [He] did not attend the hearing, his failure to attend being due to his participation in a seminar, in which Mr R. Shkryuba took part merely as a member of the audience, cannot be considered a valid reason.

According to a court record, [the applicant]'s rights prescribed by Article 47 of the Russian Code of Criminal Procedure were explained to him; he did not submit any requests.

In such circumstances the fact that the case was examined in the absence of counsel Mr R. Shkryuba cannot be considered a violation of [the applicant's] right to defence.”

D. Detention order of 3 July 2003

15. On 3 July 2003 the Teykovo Town Court authorised an extension of the applicant's detention for an additional twenty-nine days, that is until 4 August 2003. The Town Court found no grounds for changing the measure of restraint, holding that the applicant had been charged with several serious offences, he had no “official” place of employment, and had a previous conviction, having received a suspended sentence. The Town Court noted that all those facts attested to the “criminal orientation” of the applicant's personality and that if released he was liable to reoffend, pervert the course of justice and abscond. As regards the applicant's argument that his detention from 8 to 9 June 2003 had been unlawful, the Town Court held as follows:

“By virtue of Article 109 § 10 of the Russian Code of Criminal Procedure [the court] accepts the arguments by the defence that the three days of [the applicant's] detention in the capacity of a suspect (from 6 to 9 April 2003) should be included in the period of his detention. Thus, the aforementioned three days should be included in the total period of [the applicant's] detention.”

16. On 15 July 2003 the Ivanovo Regional Court upheld the detention order of 3 July 2003, supporting the reasoning of the Town Court. The Regional Court, however, excluded the remarks about the applicant's personality from that detention order.

E. Further extensions of detention

17. It appears from the parties' submissions that after 4 August 2003 the applicant's detention was regularly extended in view of his alleged liability to abscond, pervert the course of justice and reoffend.

F. Conviction

18. On 31 October 2003 the Teykovo Town Court found the applicant guilty of several counts of aggravated robbery and sentenced him to four years' imprisonment. On 9 December 2003 the Regional Court upheld the conviction.

G. Conditions of the applicant's pre-trial detention

19. From 14 April to 29 December 2003 the applicant was detained in temporary detention facility no. 1 in the town of Ivanovo (hereinafter "facility no. IZ-37/1" or "the detention facility").

20. The Government, relying on a certificate issued on 10 December 2007 by the director of facility no. IZ-37/1, submitted that during the period in question the applicant had been detained in three different cells. Cell no. 135, where he was detained on 14 and 15 April 2003, measured 30.8 square metres and housed three other detainees. From 15 April to 14 October 2003 the applicant was kept in cell no. 93, measuring 21.8 square metres and accommodating twenty-two detainees. From 14 October 2003 until his release the applicant was detained in cell no. 61. Seventeen other inmates shared 25.3 square metres of that cell with the applicant. The Government noted that the applicant, having been provided with a complete set of bedding, had an individual sleeping place at all times. However, as it follows from the above-mentioned certificate provided by the director, the number of inmates indicated by the facility for each cell in which the applicant had been detained was an average one.

21. Citing the information provided by the director of the facility, the Government further submitted that the cells received natural light and ventilation through a large window 1.2 metres long and 0.9 metres wide. The cells had ventilation shafts and were equipped with lights which functioned day and night. Each cell was equipped with a lavatory pan, a sink and a tap for running water. The pan was separated from the living area by a partition one metre and eighty centimetres high. Inmates were allowed to take a shower once a week for forty minutes. Clean bedding was also provided once a week. The cells were disinfected. Inmates were afforded an hour of outdoor recreation per day in small yards equipped with wooden benches and covered by a shed roof against rain and snow. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms". According to the Government, detainees including the applicant were provided with medical assistance. The Government furnished a copy of the applicant's medical record.

22. The applicant did not contest the cell measurements. However, he insisted that the cells had been severely overcrowded and that he had had

less than two square metres of living space. He stressed that cell no. 93, where he had spent the major part of his detention in facility no. IZ-37/1, had ten sleeping places and had usually housed twenty-eight to thirty-six inmates. Cell no. 61, equipped with twelve bunks, had also been overcrowded. Inmates had to take turns to sleep. They were not provided with bedding. The applicant further submitted that the sanitary conditions had been appalling. The cells were infested with insects but the management did not provide any insecticide. There was no artificial ventilation in the cells. It was impossible to take a shower, as a large number of inmates had to take a shower simultaneously during a very short period of time. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. The lavatory pan was separated from the living area by a small partition. At no time did inmates have complete privacy. No toiletries were provided. The food was of poor quality and in short supply. Everyday outdoor exercise usually lasted less than an hour. Recreation yards were no more than small boxes measuring ten square metres, separated from each other with concrete walls and covered with a metal net. The applicant further argued that medical assistance was unavailable.

H. Alleged beatings in the detention facility

23. According to the applicant, in April 2003 a group of officers of a special-purpose squad arrived at the detention facility for the purpose of rendering practical assistance in maintaining the detention regime. Their method of assistance was as follows: they gave detainees ten seconds to leave a cell. Those who failed to comply were severely beaten up. The applicant alleged that he too had been beaten up. However, no serious injuries were caused.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

24. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Placement in custody and detention

25. Until 1 July 2002 criminal law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, “the old CCrP”). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the new CCrP”).

1. Preventive measures.

26. “Preventive measures” or “measures of restraint” include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 89 of the old CCrP, Article 98 of the new CCrP).

2. Authorities ordering detention

27. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

Under the old CCrP, a decision ordering detention could be taken by a prosecutor or a court (Articles 11, 89 and 96).

The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor, supported by appropriate evidence (Article 108 §§ 1, 3-6).

3. Grounds for remand in custody

28. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge and information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

29. Before 14 March 2001, remand in custody was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were “exceptional circumstances” in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment, if they had previously defaulted, had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had allegedly committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1)

and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

4. Arrest and release following the arrest

30. Article 94 of the new CCrP prescribes that on expiration of forty-eight hours following arrest an accused should be released if a decision authorising his detention has not been issued or if a court has adjourned consideration of the detention issue. If a decision authorising an accused's placement in custody or extension of his detention has not been issued within forty-eight hours of the arrest the head of a detention facility should release the accused after notifying investigating authorities or a prosecutor of the release.

5. Time-limits for detention

(a) Two types of remand in custody

31. The Codes make a distinction between two types of remand in custody: the first being “during investigation”, that is while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being “before the court” (or “during judicial proceedings”), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

(b) Time-limits for detention “during investigation”

32. After arrest the suspect is placed in custody “during investigation”. The maximum permitted period of detention “during investigation” is two months, but this can be extended for up to eighteen months in “exceptional circumstances”. Under the old CCrP, extensions were authorised by prosecutors of ascending hierarchical levels but they must now be authorised by judicial decisions taken by courts of ascending levels (under the new CCrP). No extension of detention “during investigation” beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

33. The period of detention “during investigation” is calculated up to the date on which the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

34. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of

the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

35. Under the old CCrP, the trial court was entitled to refer the case back for “additional investigation” if it found procedural defects that could not be remedied at the trial. In such cases the defendant's detention was again classified as “during investigation” and the relevant time-limit continued to apply. If, however, the case was remitted for additional investigation but the investigators had already used up all the time authorised for detention “during investigation”, a supervising prosecutor could nevertheless extend the detention period for one additional month, starting from the date on which he or she received the case. Subsequent extensions could only be granted if the detention “during investigation” had not exceeded eighteen months (Article 97).

(c) Time-limits for detention “before the court”/“during judicial proceedings”

36. From the date the prosecutor refers the case to the trial court the defendant's detention is classified as “before the court” (or “during judicial proceedings”).

37. Before 15 June 2001 the old CCrP set no time-limit for detention “during judicial proceedings”. On 15 June 2001 a new Article, 239-1, entered into force which established that the period of detention “during judicial proceedings” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or at the request of a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

38. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court receives the file to the date on which judgment is given. The period of detention “during judicial proceedings” 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).

6. Proceedings to examine the lawfulness of detention

(a) Detention “during investigation”

39. Under the old CCrP, the detainee or his or her counsel or representative could challenge a detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required to review the lawfulness of and justification for a detention or extension order

no later than three days after receipt of the relevant papers. The review was to be conducted in camera in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances, if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the detainee's release (Article 220-1). An appeal to a higher court lay against the judge's decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (see paragraph 96 below) (Article 331 *in fine*).

40. Under the new CCrP, an appeal against a judicial decision ordering or extending detention may be lodged with a higher court within three days. The appeal court must rule on the appeal within three days of its receipt (Article 108 § 10).

(b) During judicial proceedings

41. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should be held in custody or released pending the trial hearings (Article 222 § 5 and Article 230 of the old CCrP, Article 228 (3) and Article 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP).

42. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including remand in custody (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

43. An appeal against such a decision lies to a higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

7. Time-limits for trial proceedings

44. Under the old CCrP, within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix a date for the trial; (2) to refer the case back for further investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court having jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

45. The duration of the entire trial proceedings is not limited in time.

46. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days after it was lodged. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this period could be extended by up to two months (Article 333). No further extensions were possible.

The new CCrP provides that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

C. Relation between a period of pre-trial detention and duration of a sentence

47. Article 72 §§ 3 and 4 of the Russian Criminal Code of 1996 provides that the time spent by the accused person in pre-trial detention and detention pending trial is included in the duration of the deprivation of liberty pursuant to the conviction.

III. RELEVANT INTERNATIONAL DOCUMENTS

General conditions of detention

48. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

“b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION IN FACILITY NO. IZ-37/1

49. The applicant complained that the conditions of his detention in facility no. IZ-37/1 in Ivanovo had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

50. In their observations lodged with the Court on 23 January 2008 the Government firstly submitted that in view of the applicant's failure to raise his grievances before any competent Russian authority the present complaint should be dismissed for failure to exhaust domestic remedies. In particular, they argued that the applicant could have improved his situation by lodging complaints with the administration of the detention facility or bringing an action in tort. The Government stressed that there exists an effective judicial practice of tort actions in the Russian Federation by which detainees are able to obtain compensation for damage resulting from their detention in unsatisfactory conditions. The Government cited a case of a Mr D., who had been awarded 25,000 Russian roubles (RUB) against the Federal Service for Execution of Sentences in compensation for damage which had caused him to be infected with scabies in a remand prison.

51. In another line of argument the Government, while alleging that the applicant's complaint was manifestly ill-founded, acknowledged that the domestic sanitary norm of four square metres of personal space per inmate had not always been respected in detention facility no. IZ-37/1. However, they stressed that failure to respect such a sanitary norm should not immediately lead to a finding a violation of Article 3 of the Convention, as the Court should take into account the remaining features of the conditions of the applicant's detention (lighting, sanitary conditions, privacy, etc.) which complied with domestic legal requirements and the guarantees of Article 3 of the Convention.

52. In their further observations lodged with the Court on 8 May 2008 the Government submitted that an internal inquiry into the applicant's complaints concerning the conditions of his detention had been carried out. The inquiry confirmed that the applicant had been detained in overcrowded cells. As a result of the inquiry a decision had been taken to institute disciplinary proceedings against officials of the facility responsible for admitting an excessive number of inmates to the facility. However, in view of the fact that the officials responsible no longer worked in the detention facility, the proceedings were discontinued.

53. The applicant insisted that the conditions of his detention had been inhuman and degrading. He pointed to the Government's failure to correctly cite the certificate issued by the facility director in respect of the number of detainees. The applicant noted that the director had merely indicated an average number of inmates and had failed to produce original records listing the exact number of inmates in the cells on different dates or to indicate the maximum number of inmates detained together with the applicant.

B. The Court's assessment

1. Admissibility

54. As to the Government's objection about the applicant's failure to exhaust domestic remedies, the Court has already rejected identical objections by the Russian Government in a number of cases regarding the conditions of detention, having found that neither a complaint to the administration of a detention facility (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007, with further references) nor a tort action (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009, and, most recently, *Artyomov v. Russia*, no. 14146/02, § 112, 27 May 2010) could be regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention. Moreover, in the case of *Nazarov v. Russia* (no. 13591/05, § 77, 26 November 2009) the Court has dealt with the Government's argument on the basis of the reference to the award made by the Russian courts in favour of a Mr D. The Court noted that the problems arising from the conditions of the applicant's detention had apparently been of a structural nature, for which no effective domestic remedy had been shown to exist, and that the case to which the Government had referred did not concern detention in overcrowded cells but rather a detainee's infection with scabies. The Court finds no reason to depart from its previous findings in the present case. Accordingly, it dismisses the Government's objection as to non-exhaustion of domestic remedies.

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

2. Merits

56. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-37/1 in Ivanovo. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of the facts which have been presented to it and which the respondent Government did not refute.

57. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the cells in which the applicant had been detained. The applicant claimed that the number of detainees in the cells had considerably exceeded their design capacity. Although in their final observations to the Court the Government no longer disputed the overcrowding in the cells, the Court still considers it necessary

to address the evidence presented to it by the Government in support of their description of the conditions of the applicant's detention.

58. The Court notes that in their initial observations the Government, relying on certificates issued by the director of the detention facility four years after the applicant's detention in that facility had come to an end, submitted that the applicant had had an individual sleeping place at all times. At the same time they did not refer to any original source of information on the basis of which their assertion could be verified. In this connection the Court notes that on several previous occasions when the Government have failed to submit original records it has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable, given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs v. Russia*, no. 20075/03, § 91, 7 December 2009). The Court is of the view that these considerations hold true in the present case. The certificates prepared by the Russian authorities four years after the events in question cannot be regarded as sufficiently reliable sources of data.

59. Accordingly, having regard to the Government's admission made in their final observations (see paragraph 52 above), the Court finds it established that the cells in facility no. IZ-37/1 were overcrowded. The Court also accepts the applicant's submissions that, owing to the overpopulation in the cells and the resulting lack of sleeping places, he had to take turns with other inmates to rest. Given the size of the cells and number of detainees detained in them at the same time, the Court entertains doubt that there was sufficient floor space even to pace out the cell.

60. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

61. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that it has already found a violation of Article 3 on account of detention of applicants in overcrowded conditions in detention facility no. IZ-37/1 (see *Korobov and Others v. Russia*, no. 67086/01, §§ 22-30, 27 March 2008).

62. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for almost a year was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

63. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. IZ-37/1 in Ivanovo.

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

64. The applicant complained under Article 5 § 1 (c) of the Convention that his detention from 8 to 9 June 2003 had been unlawful. The relevant parts of Article 5 provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

A. Submissions by the parties

65. In their observations lodged with the Court on 23 January 2008 the Government first submitted that by virtue of Article 109 of the new Russian CCrP the initial period of a suspect's detention may not exceed two months. They further acknowledged that in violation of Article 109 § 10 (1) of the new CCrP the Teykovo Town Court had not included the three days of the applicant's detention in April 2003 in the two-month period of his detention authorised on 11 April 2003. However, the Government stressed that the applicant's complaint was inadmissible because he had failed to exhaust domestic remedies. Neither in the hearing on 11 April 2003 nor in his grounds of appeal against the decision of 11 April 2003 did the applicant

dispute the lawfulness of his detention from 8 to 9 June 2003. It was not until 3 July 2003 that the matter was addressed by the Town Court. The Government pointed out that the Town Court had immediately accepted the applicant's arguments and had added the period from 8 to 9 June 2003 to the entire period of the applicant's detention on remand. In the alternative, the Government submitted that the applicant was no longer a victim of the alleged violation as, having acknowledged the mistake, the domestic courts had corrected it by deducting the period from the applicant's sentence.

66. In their further observations lodged with the Court on 8 May 2008 the Government stressed that the entire period of the applicant's detention, including the period from 8 to 9 June 2003, had been lawful, particularly so because the time spent by the applicant in pre-trial detention had been included in the term of his sentence.

67. The applicant maintained his complaints, arguing that his detention from 8 to 9 June 2003 had been unlawful. He had raised the complaint before the domestic courts on a number of occasions. However, they had been to no avail. In particular, on 3 July 2003 the Regional Court had completely disregarded his arguments pertaining to that period of his detention. The applicant accepted the Government's assertion that on 3 July 2003 the Town Court had acknowledged the mistake. However, no redress for the violation of his right had been offered. The applicant further submitted that the *post factum* authorisation of that period of his detention could not legitimise it. In addition, the inclusion of that period in the sentence was not "appropriate redress" in the circumstances of the case.

B. The Court's assessment

1. Admissibility

(a) Exhaustion issue

68. The Court notes the Government's submission that the applicant had failed to complain to the Town Court at the hearing on 11 April 2003, or to the Regional Court in his grounds of appeal against the decision of 11 April 2003, that his detention from 8 to 9 June 2003 had been unlawful.

69. In this connection, the Court reiterates that on 11 April 2003 the Town Court authorised the applicant's placement in custody. The decision did not indicate the date on which the authorised period of the detention was to expire. It also did not contain any indication as to the method of the calculation of the authorised period of the applicant's detention (see paragraph 8 above). However, it follows from the parties' interpretation of the relevant legal provisions of the Russian Code of Criminal Procedure, that the initial period of the applicant's detention was to last no more than

two months and was to include the three days of his detention in April 2003. In these circumstances, the Court is of the opinion that in the absence of any indication that on 11 April 2003 the Town Court had erred in application of the domestic law and had incorrectly calculated the two-month period by failing to include the three days of the applicant's detention in April 2003, it was not until 8 June 2003, when, as the parties confirmed, the two-month period of the detention had expired and no further detention order had been issued, that the applicant had learnt about the alleged violation of his right. It is therefore not surprising that he only raised his grievances before the domestic courts for the first time in June 2003, while arguing against a further extension of his detention. It follows that the applicant must be considered to have exhausted the domestic remedies and that the Government's objection as to non-exhaustion of domestic remedies should be dismissed.

(b) Victim status

70. Further, the Government argued that the applicant had been deprived of his victim status when the Town Court had deducted the time spent by the applicant in pre-trial detention from his sentence.

71. The Court observes that it has already addressed the same argument by the Russian Government in the case of *Lebedev v. Russia* (no. 4493/04, §§ 43-48, 25 October 2007). In particular, having found that by virtue of Article 72 of the Russian Criminal Code the time spent in custody is automatically deducted from the final sentence, irrespective of whether or not it was irregular (see paragraph 47 above), and that the inclusion of the time spent in custody in the overall time to be served by the applicant had therefore not been in any way connected to the alleged violation of Article 5 § 1 of the Convention, the Court concluded that the applicant could not be said to have lost his victim status within the meaning of Article 34 of the Convention.

72. The Court sees no reason to depart from that finding in the present case. The Government's objection should therefore be dismissed.

(c) Conclusion

73. To sum up, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) General principles

74. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

75. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Application of the general principles to the present case

76. The Court once again reiterates that the applicant's placement in custody was authorised by the Teykovo Town Court on 11 April 2003. It follows from the Government's submissions that the Town Court was in violation of domestic legal norms by not including the applicant's detention in April 2003 in the calculation of the initial two-month period of his detention. As a consequence of that omission, despite the fact that (this was not disputed by the parties) the initial two-month period of the applicant's detention had expired on 8 June 2003, taking into account the time spent by him in detention in April 2003, it was not until 9 June 2003 that the Town Court authorised a further extension of his detention.

77. The Court reiterates that for detention to be “lawful” within the meaning of Article 5 § 1, it has to conform to both the substantive and procedural rules of the domestic law (see paragraph 74 above). The authorised period of the applicant's detention expired on 8 June 2003. It was only on the following day that the Town Court issued the subsequent detention order. In this connection, the Court observes that the Government

did not point to any legal provision which permitted an accused to continue to be held once the authorised detention period had expired. The Russian Constitution and rules of criminal procedure vested the power to order or extend detention in courts (see paragraph 27 above). No exceptions to that rule were permitted or provided for, no matter how short the duration of the detention.

78. The Court further observes that even though the Town Court decision of 3 July 2003 purported to cover, to some extent, the applicant's detention from 8 to 9 June 2003, it could not have constituted a "lawful" basis for his detention in the period preceding the date of its issue (see *Belov v. Russia*, no. 22053/02, § 82, 3 July 2008, with further references). The Russian Constitutional Court emphasised that Russian law did not contain "any provisions permitting the court to take a decision extending the defendant's detention [some time] after the previously authorised time-limit ha[d] expired, in which case the person [would be] detained for a period without a judicial decision" (as cited in the *Khudoyorov* judgment, cited below, § 56). As the Court has already held in a number of cases, any *ex post factum* authorisation of detention is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness (see, for example, *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X (extracts); *Solovyev v. Russia*, no. 2708/02, § 99, 24 May 2007; and *Shukhardin v. Russia*, no. 65734/01, § 69, 28 June 2007). The Court sees no reason to reach a different conclusion in the present case. It follows that the applicant's detention, in so far as it had been addressed by the decision of 3 July 2003 in respect of the preceding period, was not "lawful" under domestic law.

79. The Court thus concludes that from 8 to 9 June 2003 there was no formal decision authorising the applicant's detention. The applicant was in a legal vacuum that was not covered by any domestic legal provision (see *Shukhardin*, cited above, § 85). In the absence of any decision that could have served as a "lawful" basis for the applicant's detention in the impugned period, the Court finds that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 8 to 9 June 2003.

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

80. The applicant complained about the procedure relating to the extension of his pre-trial detention, in particular that his lawyer had not been able to attend the hearing on 9 June 2003 and that he had not been served with the materials presented by the investigator to the Town Court in support of his request for the extension of the applicant's detention after

9 June 2003. The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Submissions by the parties

81. The Government, relying on the transcript of the telephone conversation between the investigator and the applicant's lawyer, argued that despite the fact that the written summons had reached the Bar Association hours before the hearing on 9 June 2003, the lawyer had been notified of the hearing on 5 June 2003 and immediately made clear that he was unable to attend. Having been aware of his lawyer's inability to appear at the hearing, the applicant did not take any steps to retain new counsel. The Government stressed that the lawyer had been duly summoned to the hearing and that his failure to attend because he wished to take part in a seminar could not justify his absence.

82. The Government further submitted that the applicant had attended the hearing, had been given ample opportunity to state his position and could have asked the Town Court to ensure his legal representation by another lawyer. However, the applicant did not make use of that right.

83. As regards access to the documents, the Government stressed that Russian law does not impose an obligation on investigating authorities to provide a suspect with copies of materials sent to a court in support of a request for an extension of the suspect's detention. However, by virtue of Article 45 of the Russian Constitution the applicant had a right to study those materials at the court hearing. The documents had been examined at the hearing in the presence of the applicant, who could have commented on them freely, could have raised arguments in his defence, and so on. The applicant did not request additional access to the file. Furthermore, those documents were also the subject of the examination at the appeal hearing before the Regional Court, when both the applicant and his lawyer attended and could have raised objections.

84. The applicant, without disputing the fact that on 5 June 2003 his lawyer had been informed about the hearing on 9 June 2003, argued that the telephone conversation could not be considered “an official notification” as it had been done by the investigator by telephone and in the absence of an official authorisation from the presiding judge. The official summons reached the Bar Association on 9 June 2003 when the lawyer was no longer able to attend, having left for a seminar in another town. As regards the inability to study the investigator's materials attached to the request for the extension of the detention, the applicant noted that he had not been served

with the documents which could have enabled him to prepare his defence in advance, and that not all the materials presented by the prosecution to the Town Court had been read out at the hearing.

B. The Court's assessment

1. The alleged refusal of access to the materials

85. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine “not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention”. A court examining the lawfulness of detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151). While national law may satisfy the requirement of “equality of arms” in various ways, whatever method is chosen should ensure that the other party is aware that observations have been submitted and that he or she will have a real opportunity to comment thereon (see *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

86. The Court observes that there is no indication in the present case that the applicant did not receive a copy of the investigator's request for extension. The applicant also did not claim that he had been denied an opportunity to comment on it. The thrust of his complaint was directed against the investigator's alleged refusal to grant him access to the materials which formed the basis for the extension request. The Court is, however, not convinced by the applicant's allegation.

87. Firstly, the Court reiterates the Government's argument that it was the duty on the Town Court to act fairly, as required under Russian law, which entailed an entitlement to full disclosure of the adverse material in the Town Court's possession. As follows from the minutes of the court hearing of 9 June 2003, the Town Court read out in open court the documents attached to the investigator's request for extension. The applicant did not submit any evidence in support of his allegation that the content of certain documents had remained unknown to him. In fact, he was unable to indicate any document to which he had not been granted access. There is no

indication that the investigator relied on any documents which the applicant had been unable to inspect.

88. The Court also does not lose sight of the Government's argument that it was open to the applicant to ask the Town Court for additional time to study the materials to amend the line of his defence, taking into account the content of the documents. In this respect the Court reiterates its finding in the case of *Shops v. Germany* (no. 25116/94, § 46, ECHR 2001-I) that an accused complaining of denial of access to investigation files must in principle have duly applied for such access in compliance with the national law. The Court is of the opinion that the principle is fully applicable to the circumstances of the present case. It therefore finds it significant that following the reading out of the documents the applicant, when questioned by the judge, stated clearly that he had no requests, amendments or objections.

89. In conclusion, although the Court is concerned that, as the Government pointed, the applicable provisions of the Russian Code of Criminal Procedure do not require that the prosecution's submissions in support of a defendant's detention be communicated either to him or to his lawyer prior to a court hearing, which, in certain cases, may strip the defendant of an opportunity to effectively challenge the lawfulness of his detention (see *Shops*, cited above, §§ 51-55), it is satisfied that in the circumstances of the present case the applicant was able to consult the documents, to comment on the investigator's request for extension and to effectively challenge the statements or views which the prosecution based on these documents (see, for similar reasoning, *Sorokin v. Russia*, no. 7739/06, §§ 75-77, 30 July 2009, and, by contrast, *Nikolova*, cited above, § 63, and *Garcia Alva*, cited above, §§ 40 to 43). Accordingly, he had an effective opportunity to challenge the reasons for his detention.

90. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Lawyer's absence from the hearing

91. The Court notes that from the evidence submitted by the Government, the authenticity of which was not disputed by the applicant, it appears that four days prior to the hearing on 9 June 2003 the investigator informed the applicant's lawyer that a detention hearing would be scheduled and asked him to confirm his availability. The lawyer stressed that he would not be able to attend in view of his participation in a seminar starting on 9 June 2003. Furthermore, the Town Court sent a summons to the lawyer, which reached his office several hours before the hearing. However, the lawyer had already left for the seminar and the summons could not be served on him in person. The hearing of 9 June 2003 was held in the applicant's lawyer's absence.

92. Although the parties disputed whether the telephone conversation could, in fact, constitute official and sufficiently clear notification of the hearing on 9 June 2003 and whether the applicant's lawyer had waived his right to attend the hearing by departing to the seminar, the Court does not need to settle these differences of opinion. Having acknowledged that the scope of the obligation under Article 5 § 4 is not identical in all circumstances or for every kind of deprivation of liberty, the Court has already held on a number of occasions that it is the nature of the proceedings and the capabilities of an applicant which determine whether legal representation is required by Article 5 § 4 of the Convention in an oral hearing in the context of an adversarial procedure (see *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002, and *Bouamar v. Belgium*, 29 February 1988, § 57, Series A no. 129, with further references). For instance, in the case of *Bouamar* (cited above) the Court found it to be essential that a lawyer be present at the hearing where the applicant, a juvenile, had been remanded in custody in prison, otherwise an essential safeguard would be denied. The same findings were made by the Court in the case of *Megyeri v. Germany* (12 May 1992, Series A no. 237-A), concerning a person detained on the ground of mental illness, and the case of *Sanchez-Reisse v. Switzerland* (21 October 1986, § 47, Series A no. 107) pertaining to the detention of a foreigner unfamiliar with the State's legal system. In addition, in the case of *Woukam Moudefo v. France* no. 10868/84, Commission decision of 8 July 1987), where the appeal concerned complex questions of law, it was found that the applicant had been unable without a lawyer to present his case properly and satisfactorily.

93. Turning to the circumstances of the present case, the Court notes that the issues discussed during the hearing of 9 June 2003 concerned only the gravity of the charges against the applicant and the risk that he might pervert the course of justice or abscond. That risk was formulated by the prosecutor and the court in general terms and its existence was inferred from the nature and gravity of the charges and the assessment of the applicant's character and personal situation (his employment status and sources of income). Given that the hearing did not involve any discussion of complex legal or factual issues, the Court is satisfied that the applicant's presence was sufficient to ensure that the proceedings were adversarial and the principle of equality of arms was respected. The applicant did not argue that he had been unable to effectively follow the proceedings or to respond to the prosecution's arguments. The same issues had been previously discussed on two other occasions in the applicant's and his counsel's presence and the applicant had had an opportunity to familiarise himself with the position of the prosecution and the arguments advanced by his lawyer in favour of his release. There is no evidence that the applicant's circumstances had materially changed since the previous hearings or that any new arguments were put forward by the prosecution in support of the applicant's continued

detention. The fact that the applicant appeared in person before the court, in the circumstances of the case, afforded him the necessary safeguards.

94. Finally, the Court attributes particular weight to the fact that the applicant did not object to the hearing being held in his counsel's absence (see, for similar reasons, *F.W. v. the Netherlands*, no. 15519/89, Commission decision of 6 December 1991).

95. Taking into account that no new issues were examined during the hearing, that the prosecutor did not put forward any new argument, and that the basis for remand in custody was not amended, the Court is of the opinion that the proceedings in which the extension of his detention was examined satisfied the requirements of Article 5 § 4 (see *Duda v. Poland*, no. 67016/01, §§ 51-52, 19 December 2006).

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government did not comment.

101. The Court observes that it has found a combination of violations in the present case. The Court accepts that the applicant suffered humiliation and distress on account of the inhuman and degrading conditions of his detention and the absence of a legal basis for his detention from 8 to 9 June 2003. In these circumstances, it considers that the applicant's suffering and

frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, and taking into account in particular, the length of the applicant's detention in the inhuman and degrading conditions, it awards him 10,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

102. The applicant did not make any claims for costs and expenses incurred before the domestic courts and the Court.

103. Accordingly, the Court does not award anything under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention in facility no. IZ-37/1 in Ivanovo and the unlawfulness of his detention from 8 to 9 June 2003 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 (c) the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President