



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

FIRST SECTION

CASE OF KOVALEVA v. RUSSIA

(Application no. 7782/04)

JUDGMENT

STRASBOURG

2 December 2010

FINAL

02/03/2011

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

In the case of Kovaleva 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 7782/04) 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, Ms Irina Ivanovna Kovaleva (“the applicant”), on 3 February 2004.

2. The applicant, who had been granted legal aid, was represented by Mr A. Kiryanov and Ms Ye. Kiryanova, lawyers practising in Taganrog. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 10 October 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Taganrog, in the Rostov Region.

A. Applicant's arrest, ensuing detention and conviction

6. On 15 June 1998 a prosecutor opened a criminal investigation against the applicant.

7. On 18 December 1998 the applicant was arrested and allegedly beaten up by police officers. On 19 December 2002 the prosecutor refused to institute criminal proceedings against the police officers.

8. On 15 December 1999 she was released on bail.

9. On 14 March 2000 the Rostov Regional Court received the case file and commenced the trial against the applicant and four other persons.

10. On 13 June 2000 the Rostov Regional Court found the applicant guilty of fraud and extortion and conditionally sentenced her to five years' imprisonment. However, on 2 November 2000 the Supreme Court of the Russian Federation quashed the judgment on appeal and remitted the case for a retrial.

11. On 14 May 2001 the Rostov Regional Court found the applicant guilty of fraud, extortion, robbery, kidnapping, and theft and sentenced her to seven and a half years' imprisonment. She was taken into custody from the courtroom.

12. On 16 January 2002 the Supreme Court quashed the judgment of 14 May 2001 on appeal and remitted the case for a retrial. The applicant was remanded in custody pending the determination of the criminal charges against her.

13. On 1 July 2002 the Rostov Regional Court extended the applicant's detention until 1 October 2002. It found as follows:

“The defendants [the applicant and four other persons] are charged with kidnapping, illegal deprivation of liberty, burglary and other crimes.

They have been in custody: ..., [the applicant] – since 18 December 1998, ...

The Prosecutor requested that the defendants' detention be extended by 3 months.

Having examined the Prosecutor's request, and having heard the parties to the proceedings, the court considers it necessary to extend the defendants' detention by 3 months, that is, until 1 October 2002 inclusive, because they are charged with serious and particularly serious criminal offences.

Under Articles 255 and 256 of the Russian Code of Criminal Procedure, the defendants' detention on remand is extended by 3 (three) months, that is, from 1 July 2002 to 1 October 2002.”

14. On 6 November 2002 the Supreme Court of Russia upheld the extension order, finding that it was sufficiently justified.

15. On 1 October and 31 December 2002 and 31 March, 26 June, 25 September and 15 December 2003 the Rostov Regional Court extended the applicant's detention until 1 January, 31 March, 30 June, 26 September,

25 December 2003 and 15 March 2004 respectively. The wording of the decisions was identical to that applied in the decision of 1 July 2002.

16. The applicant appealed against each of the above-mentioned extension orders to the Supreme Court, arguing that they were not sufficiently reasoned and that the court had not taken into consideration her individual situation. On 12 February, 14 May, 16 July, 16 October and 24 December 2003 and 31 March 2004 respectively, the Supreme Court of Russia upheld the above-mentioned decisions on appeal.

17. In the meantime, on 19 February 2004 the Rostov Regional Court extended the defendants' pre-trial detention until 19 May 2004, citing the gravity of the charges against them. The applicant appealed against the extension to the Supreme Court.

18. On 10 March 2005, that is, after the applicant's conviction by the Regional Court (see paragraph 20 below), the Supreme Court of Russia discontinued the examination of the applicant's appeal because she had been convicted by the Regional Court in the interim.

19. As regards the trial proceedings in the period from 27 February 2002 to 25 February 2004, the case was adjourned on over forty-two occasions: at the request of the applicant and her co-defendants, who wished to study the case file or the records of the hearings; at the requests of the applicant and her co-defendants for the replacement of their representatives and the need for their newly appointed representatives to study the case file; due to the illness of the defendants' representatives and their failure to appear before the court; and due to the illness of the applicant and co-defendants or following complaints made by them concerning their health. On one occasion the hearing was adjourned due to the failure of the authorities to transport the defendants to the courtroom.

20. On 17 May 2004 the Regional Court found the applicant guilty of multiple counts of fraud, multiple counts of kidnapping, extortion, theft and robbery and sentenced her to five years' imprisonment.

21. The applicant lodged an appeal. She claimed, in particular, that lay judges had sat on the bench unlawfully. The law had been changed and after 1 January 2004 lay judges were no longer permitted to take part in the administration of justice.

22. On 10 March 2005 the Supreme Court of the Russian Federation held an appeal hearing. The Supreme Court dismissed her appeal as unsubstantiated. As to her allegations about the allegedly unlawful composition of the tribunal, the court found that the trial had begun before 1 January 2004 and that the participation of two lay judges in the determination of the criminal charges against her had been in accordance with the principle of continuity of the trial.

B. Conditions of the applicant's detention

1. Conditions of detention in detention facility IZ-61/1 of Rostov-on-Don

23. From 14 May 2001 to 17 May 2005 the applicant had been held in detention facility IZ-61/1 of Rostov-on-Don (*Следственный Изолятор ИЗ-61/1 Главного управления Федеральной службы исполнения наказаний по Ростовской области*). Throughout this period the applicant had been held in the following cells:

- (a) cell no. 181 measuring 25.5 square metres and designed to accommodate 7 detainees;
- (b) cell no. 184 measuring 36.8 square metres and designed to accommodate 10 detainees;
- (c) cell no. 186 measuring 24.8 square metres and designed to accommodate 7 detainees;
- (d) cell no. 191 measuring 34.6 square metres and designed to accommodate 9 detainees; and
- (e) cell no. 84 (punishment cell) measuring 6.5 square metres and designed for one person.

(a) The Government's account

24. The design capacity of the cells had not been exceeded.

25. In each cell the applicant had an individual bed and had been provided with bedding (a mattress, a pillow, a blanket, two bed sheets and a pillowcase), personal hygiene items, tableware, potable water and cleaning supplies.

26. Each cell had two windows measuring 1.14 by 1.32 meters, which allowed sufficient access of daylight. The cells had been equipped with filament lamps (four lamps per regular cell, one lamp per punishment cell) and security lights. The level of artificial lighting had corresponded to established sanitary norms and had allowed the inmates to read and write.

27. All cells had been ventilated by a system of extractor fans. Natural ventilation through windows had also been available.

28. The applicant had received food of adequate quality and quantity in accordance with established legal norms.

29. In support of their observations the Government provided several certificates issued by the director of IZ-61/1 in November 2006 and photographs of the cells in which the applicant had been held.

(b) The applicant's account

30. The cells in which the applicant had been held had always been overcrowded. They had accommodated up to twenty inmates at any given time. The inmates had slept in shifts.

31. The cells had been dimly lit by two filament lamps. Access to natural light had been limited because the windows had been heavily barred from both the inside and outside. It had been impossible to read or write in such light. The outside grids on the windows had not been removed until April 2003.

32. There had been no vents in the windows, and therefore, no access to fresh air. The air in the cells had always been stiff and heavy with smoke. Starting from April 2003 the window panes had been taken out in spring until late autumn.

33. Food had been scarce and of poor quality. The complaints raised by the applicant and other inmates in this regard had been to no avail.

34. The applicant had never been provided with any personal hygiene items.

35. The applicant claimed that the photographs of the cells in question provided by the Government had been taken after her departure from IZ-61/1 and apparently after emergency repairs.

2. Conditions of confinement in the courthouse

(a) The Government's account

36. The Government submitted that the holding cells (*конвойное помещение*) of the Rostov Regional Court had been situated in the semi-basement of the premises. The holding cells area had contained eight individual cells measuring four square metres and three collective cells measuring twenty square metres. The holding cells area had been equipped with one lavatory pan shared by the detainees and the wardens. All cells had been equipped with extractor fans. They had been illuminated with filament lamps.

37. The detainees had been provided with dry rations (*сухой паек*) when taken to the courthouse. They had received hot food in accordance with a schedule before their departure from, and after their return to, the detention facility.

38. The Government supported their submissions with certificates issued by the director of IZ-61/1 on 26 November and 30 November 2006 and photographs of the holding cells area of the Rostov Regional Court (showing the corridor passage with barred doors and the bathroom unit).

(b) The applicant's account

39. At the courthouse the applicant had been detained in a badly lit damp windowless cell measuring one square meter without ventilation or heating. The furnishing of the cell had consisted of a small bench. The walls in the cell had been coated with “shuba”, a sort of abrasive concrete lining. The

cell had not been equipped with a lavatory or a wash basin. The applicant had been obliged to beg the wardens to take her to the lavatory.

40. On the days of court hearings, the applicant had been taken to the “assembly section” of the detention facility before breakfast, and on most occasions she had been taken back to the detention facility after dinnertime had already passed. She had never been given any dry rations to take with her to the courthouse, and she had never seen other detainees receive any. The applicant's relatives had not been allowed to supply her with food on the days of court hearings.

41. The applicant noted that the Government had not provided photographs of the cells of the court's holding cells area.

C. The sale of the applicant's flat

42. On 15 October 1998 the applicant authorised Mr A. to sell her flat. On 29 December 1998 Mr A. sold the applicant's flat. The transfer of title to the flat was subsequently registered by the regional registrar's office.

43. On 18 March 2003 the police refused to institute criminal proceedings against the registrar on suspicion of an allegedly fraudulent sale of the applicant's flat. The applicant was also informed of the right to contest the sale before a civil court.

II. RELEVANT DOMESTIC LAW

44. For a summary of the relevant domestic law governing various aspects of detention, proceedings for the examination of its lawfulness, time-limits for a trial to take place and conditions of detention, see *Gubkin v. Russia*, no. 36941/02, §§ 56-80, 23 April 2009.

III. RELEVANT INTERNATIONAL INSTRUMENTS

45. Relevant international documents concerning the general conditions in Russian penitentiary establishments and the conditions of detention of women can be found in the judgment of 1 June 2006 in the case of *Mamedova v. Russia* (no. 7064/05, §§ 51-53).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained of the allegedly appalling conditions of her detention in pre-trial detention facility IZ-61/1 of Rostov-on-Don and of the conditions of her confinement at the Rostov Regional Court. She 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. Submissions by the parties

47. The Government asserted that the conditions in detention facility IZ-61/1 of Rostov-on-Don had complied with the requirements of domestic penitentiary law and fell far short of “inhuman treatment” as developed in Convention case-law. So did the conditions of the applicant's confinement at the courthouse.

48. The applicant challenged the Government's descriptions of the conditions of her detention and confinement at the courthouse as factually inaccurate.

B. The Court's assessment

1. Admissibility

49. The Court notes 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.

2. Merits

50. The Court reiterates that to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention a given form of treatment must attain a minimum level of severity (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of detention, account must be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

(a) Conditions of the applicant's detention in IZ-61/1 of Rostov-on-Don

51. The Court notes that in the present case the parties have disputed most aspects of the conditions of the applicant's detention. 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 facts presented to it which the respondent Government have failed to refute.

52. Having agreed in principle on the size of the cells, the parties disputed the number of detainees who shared them with the applicant. While the Government averred that the applicant had always had 3.5-3.8 square meters of personal space in each cell (with the exception of the punishment cell where the applicant had had 6.5 square meters), the applicant argued that the cell population had considerably exceeded the design capacity of the cells and that the detainees had had to sleep taking turns.

53. In this connection, the Court observes that Convention proceedings such as the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

54. Turning to the facts of the present case, the Court notes that the Government, in their plea concerning the number of detainees, relied on the certificates issued by the director of facility IZ-61/1. The Court observes that the certificates in question were not corroborated by any documents enabling the Court to verify their validity. The Court observes in this respect that it was open to the Government to submit copies of registration logs recording the cell population (*журналы покамерного размещения*) and showing the names of inmates detained together with the applicant in the relevant period. Taking into account the relatively short time between the applicant's departure from the facility in May 2005 and the communication of the present complaint to the respondent Government in October 2006, the domestic authorities should have had such registration logs available for at least the last two years of the applicant's detention (considering the three-year time-limit for storage of such documents). The director's certificates issued in November 2006 are therefore of little evidential value for the Court's analyses.

55. Having regard to the principles indicated in paragraph 50 above, together with the fact that the Government did not submit any convincing relevant information, the Court will examine the issue concerning the alleged overcrowding of the cells on the basis of the applicant's submissions.

56. According to the applicant, the occupants of the cells in IZ-61/1 were afforded less than 1 square metre of personal space (see paragraph 30 above). The number of detainees in the cells of IZ-61/1 was greater than the number of available bunks. It follows that the detainees, including the applicant, had to share the sleeping facilities, taking turns to rest. The applicant spent four years in such conditions.

57. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63, and *Benediktov v. Russia*, no. 106/02, § 37, 10 May 2007).

58. The Court has frequently found violations of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Benediktov*, cited above, §§ 33 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (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; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI).

59. The Court has also on a number of occasions found violations of Article 3 of the Convention on account of lack of personal space afforded to detainees in detention facility IZ-61/1 of Rostov-on-Don (see *Gubkin*, cited above, §§ 92-101; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 88-97, 25 June 2009; and *Bordikov v. Russia*, no. 921/03, §§ 55-64, 8 October 2009).

60. Having regard to its case-law on the subject and the material in its possession, the Court notes that the Government have not provided any evidence or made any submissions capable of persuading it to reach a different conclusion in the present case.

61. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility IZ-61/1 of Rostov-on-Don, which the Court considers to be inhuman and degrading treatment within the meaning of Article 3 of the Convention.

(b) Conditions of the applicant's confinement at the Rostov Regional Court

62. The Court observes at the outset that the thrust of the applicant's complaint relates to the conditions of her confinement in the holding cells area of the courthouse and hunger on the days of court hearings.

63. As to the confinement at the courthouse, the Court observes that the parties disagreed as to the measurements of the cells where the applicant was detained. While the applicant claimed to have been detained on each occasion in an individual cell measuring one square metre, the Government averred that individual cells at the court measured four square meters. The Court notes, first of all, that the Government's submissions in this respect

are not corroborated by any evidence. It further notes that, in response to the same query with respect to one of the applicant's co-defendants in the domestic proceedings (see *Vladimir Krivonosov v. Russia*, no. 7772/04, §§ 40-41, 15 July 2010, not final) and relying on the results of an inspection of the holding cells area of the Rostov Regional Court, the Government previously stated that the individual cells of the detention unit measured 1-1.5 square metres. The Court further observes that the Government failed to furnish any evidence to support their submissions relating to the availability of free access to toilet facilities and other physical conditions of the applicant's detention in the holding cells area of the Rostov Regional Court. In such circumstances the Court is inclined to accept the applicant's submission that she had been held in cells for escorted prisoners measuring 1 square metre, that those cells were poorly ventilated and lit and that she only had access to the toilet as directed by the warden (compare to *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 107, 12 February 2009).

64. Furthermore, it appears that the applicant did not receive appropriate nutrition on the days when she was transported to the court. The Government did not contest the assertion that on the days of court hearings the applicant left the detention facility before breakfast and did not return there until after dinner (see *Denisenko and Bogdanchikov*, cited above, § 108; and *Vlasov v. Russia*, no. 78146/01, § 96, 12 June 2008; compare *Starokadomskiy v. Russia*, no. 42239/02, § 58, 31 July 2008; see, by contrast, *Bagel v. Russia*, no. 37810/03, § 69, 15 November 2007). Although the Government provided a certificate issued by the head of the detention facility to the effect that the applicant received dry rations when taken to the courthouse, no evidence was provided as to the availability of necessary facilities in the holding cells area of the Regional Court for heating or eating food (compare to *Salmanov v. Russia*, no. 3522/04, § 64, 31 July 2008, and *Starokamoskiy*, cited above, § 58).

65. Thus, in the present case on numerous occasions and over a period of several years, the applicant was confined in unacceptable conditions in the holding cells of the Rostov Regional Court without being provided with adequate nutrition. Such treatment occurred during the applicant's trial, at a time when she needed her powers of concentration and mental alertness the most, and was alternated with detention in the detention facility, which the Court has found to have amounted to inhuman and degrading treatment. The Court takes the view that the above considerations, taken cumulatively, are sufficient to warrant the conclusion that the inhuman and degrading treatment to which the applicant was subjected exceeded the minimum level of severity required for the finding that there has been a violation of Article 3 of the Convention.

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

66. The applicant complained under Article 5 § 3 of the Convention that the duration of her pre-trial detention had been in breach of the “reasonable time” requirement. Article 5 § 3 provides 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 ...”

A. Submissions by the parties

67. The Government submitted that the applicant's continued detention had been made necessary by the special gravity of the charges against her and by the fact that her name had been on a wanted list.

68. The applicant argued that in the period from December 1999, when she had been released on bail, and May 2001, when she had been taken into custody again, she had not committed any crimes, nor had she put pressure on witnesses or absconded. However, for over three years after that time, she had been held in detention merely on the basis of the gravity of the charges against her whilst awaiting conviction. At no point did the domestic authorities consider her personal situation.

B. The Court's assessment

1. Admissibility

69. The Court firstly reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Klyakhin v. Russia*, no. 46082/99, § 57, 30 November 2004; and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

70. Furthermore, the Court observes that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision. Rather, that individual is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see *Panchenko*, cited above, § 93, and *Kudla v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

71. Turning to the circumstances of the present case, the Court observes that the applicant was taken into custody for the first time on 18 December 1998 and was released on bail on 15 December 1999. This period of the applicant's detention, having been interrupted by the applicant's release and having ended more than six months before the introduction of the applicant's complaint on 3 February 2004, should not be taken into account. The applicant was subsequently detained on 14 May 2001 after her conviction by the Rostov Regional Court. She remained detained after the quashing of the conviction by the Supreme Court of Russia on 16 January 2002. It follows that the period from 14 May 2001 to 16 January 2002 was justified under Article 5 § 1 (a) of the Convention and should, therefore, also be excluded from the Court's consideration. Accordingly, the period to be taken into consideration in the present case started to run from 16 January 2002 and ended on 17 May 2004 when the applicant was again convicted. It therefore amounted to two years and four months.

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

2. Merits

73. 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 that person's 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*, cited above, §§ 152 and 153).

74. 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 (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, § 30, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8).

75. Turning to the circumstances of the present case, the Court accepts that the applicant's detention may initially have been warranted by the reasonable suspicion of her involvement in the commission of several criminal offences. However, after a certain lapse of time the persistence of a

reasonable suspicion by itself no longer sufficed. Accordingly, the domestic authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding her in custody.

76. The Court observes that in the period from January to July 2002 the domestic court kept the applicant in detention without citing any particular reason (see paragraph 12 above). Subsequently, in the period from July 2002 to May 2004 the court extended the applicant's detention on eight occasions. The only ground relied upon for continuing her detention was the fact that she was charged with "serious" and "particularly serious" criminal offences (see, in particular, paragraphs 13, 15 and 17 above).

77. The Court has repeatedly held that although the severity of the sentence faced is a relevant element in the assessment of the risk of the accused absconding or reoffending, 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 detention be used to anticipate a custodial sentence (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Panchenko*, cited above, § 102; *Khudoyorov*, cited above, § 180; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

78. The Court notes the Government's argument that the applicant's name had been on a wanted list. In this connection, the Court observes that since the applicant's arrest in 1998 she had not been searched for by the police. In so far as the Government may be understood to imply the risk of the applicant's absconding, in the absence of any references to this risk in the extension orders the Court finds that the existence of such a risk was not established.

79. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. It is of particular concern to the Court that the Russian authorities persistently used a standard form summary formula to justify the extension of the applicant's detention. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and her co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable time" requirement in respect of each individual member of the group (see *Gubkin*, cited above, § 144; *Bakhmutskiy*, cited above, § 141; *Aleksey Makarov v. Russia*, no. 3223/07, § 53, 12 June 2008; *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova v. Russia*, no. 75039/01, § 76, 8 June 2006; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

80. The Court finds, therefore, that by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

82. The applicant complained that she had been denied the right to effective judicial review of her complaint against the order to extend her detention of 19 February 2004. She relied on Article 5 § 4 of the Convention, which provides 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

83. The Government submitted that the applicant's appeal against the extension order of 19 February 2004 had been received by the Rostov Regional Court on 12 March 2004. However, for an unknown reason it had not been dispatched in due time to the Supreme Court. As a result, it had been dealt with only after the applicant's conviction, on 10 March 2005, and the examination of the applicant's appeal had therefore been terminated. The domestic authorities admitted that this chain of events had not fully complied with the requirements of the domestic rules of criminal procedure. Nevertheless, in their view, the decision of 10 March 2005 had not breached the applicant's rights, because on the same day the Supreme Court had examined the applicant's appeal against her conviction and had addressed all arguments relating to the alleged violations of the rules of criminal procedure. There had therefore been no violation of the applicant's rights under Article 5 § 4 of the Convention.

84. The applicant maintained her claim.

B. The Court's assessment

1. Admissibility

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

2. Merits

86. The Court observes that it has previously examined similar complaints raised by the applicant's co-defendants and found that the termination of the examination of the applicants' appeal against the extension order of 19 February 2004 amounted to a violation of the applicants' rights under Article 5 § 4 of the Convention (see *Gubkin*, cited above, §§ 148-158, and *Bakhmutskiy*, cited above, §§ 144-148;). In the latter case cited above the Government expressly acknowledged the violation.

87. In the circumstances of the present case the Court finds no reason to hold otherwise. It therefore concludes that there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

88. The applicant complained that the length of the criminal proceedings against her had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which provides, in its relevant part, as follows:

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

A. Submissions by the parties

89. The Government submitted that some adjournments of the proceedings had been caused by circumstances beyond the parties' control (the illness of the defendants and their representatives) and some by circumstances beyond the control of the domestic authorities (such as the replacement of representatives by the defendants and review of the case file by the defendants' newly appointed representatives). The applicant and the other defendants had made full use of their procedural rights and should have been aware that this would result in the protraction of the proceedings. There had therefore been no fault attributable to the domestic authorities and no violation of the applicant's right to have her case heard within a reasonable time, as provided for in Article 6 § 1 of the Convention.

90. The applicant submitted that the criminal proceedings against her had lasted six years and three months: from 18 December 1998 to 10 March 2005. During this time the domestic court had passed three sentences, two of which had been found to be unlawful and subsequently quashed on appeal. The applicant's full use of the resources afforded by law in her defence could not be held against her.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Period to be taken into consideration

92. 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 meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are terminated (see, among many authorities, *Rokhlina v. Russia*, no. 54071/00, § 81, 7 April 2005). The “charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test of whether “the situation of the [suspect] has been substantially affected” (see *Deweert v. Belgium*, 27 February 1980, § 46, Series A no. 35).

93. The period to be taken into consideration in the present case began from the date of the applicant's arrest on 18 December 1998 when she was first affected by the “charges” against her. The period in question ended on 10 March 2005, when the applicant's conviction became final. It follows that the period to be taken into consideration lasted six years, two months and twenty-three days. This period spans the investigation stage and two levels of jurisdiction, the trial court and the court of appeal having examined the case on three occasions.

(b) Reasonableness of the length of proceedings

94. 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. On the latter point, what is at stake for the applicant also has to be taken into consideration (see, among many other authorities, *Korshunov v. Russia*, no. 38971/06, § 70, 25 October 2007; *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006; and *Rokhlina*, cited above, § 86).

95. The Government did not allege that the proceedings in the criminal case against the applicant had been complex. The Court sees no reason to hold that they were.

96. Regarding the applicant's conduct, the Court notes that the case was adjourned on several occasions at the applicant's request (see paragraph 19 above). However, the applicant should not be held responsible for adjournments which were necessary for her to study the case file and the records of the hearings and to arrange for the replacement of representatives whose services she considered ineffective. The applicant was free to take full advantage of the resources afforded by national law in her defence (see *Rokhlina*, cited above, § 88, and *Kalashnikov*, cited above, § 129). Furthermore, the Court considers that the delays resulting from the absence of the applicant's representative from the hearings were negligible compared to the overall length of proceedings.

97. Turning to the conduct of the domestic authorities, the Court observes that the Government have not submitted any satisfactory explanation for the rather substantial periods of inactivity on the part of the domestic court when it came to the examination on appeal of the applicant's convictions of 13 June 2000, 14 May 2001 and 17 May 2004. In this connection, the Court notes that the periods under consideration amounted to five, eight and ten months respectively, and that their aggregate length delayed the proceedings by almost two years.

98. Having regard to the foregoing, and – particularly given that she had been held in detention throughout the substantial period in which the proceedings were pending – what was at stake for the applicant, the Court considers that the length of the proceedings in the present case did not satisfy the “reasonable time” requirement.

99. There has accordingly been a breach of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

100. Lastly, the applicant complained under Article 2 of the Convention of ill-treatment in police custody on 18 December 1998, under Article 3 of inadequate medical assistance in the detention facility, of unlawful placement in a disciplinary cell and about the conditions of her transport between the detention facility and the courthouse. She complained under Article 5 about her arrest on 18 December 1999 and of the excessive length of her pre-trial detention from 18 December 1998 to 15 December 1999.

The applicant further complained under Article 6 about the composition of the tribunal which convicted her on 17 May 2004 and of a lack of impartiality on the part of certain judges who participated in her appeal proceedings. She complained under Articles 7 and 8 that her continuous detention had prevented her from taking care of her son and elderly parents. Finally, the applicant complained under Article 1 of Protocol No. 1 to the Convention about the allegedly fraudulent sale of her flat.

101. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage for the above violations of her rights.

104. The Government considered that this claim was excessive and that the finding of a violation would constitute adequate just satisfaction.

105. The Court notes that it has found a combination of serious violations in the present case. The applicant spent four years in custody, in inhuman and degrading conditions. Her detention was not based on sufficient grounds and was excessively lengthy. She was denied the right to an effective review of her continued detention and the right to a trial within a reasonable time. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

106. The applicant claimed 64,391.35 Russian roubles (RUB) for legal fees incurred in the domestic proceedings, photocopying, postal and translation expenses.

107. The Government submitted that, as regards the applicant's claim for reimbursement of expenses for legal representation, the supporting documentation did not prove that the expenses at issue were incurred in connection with the prevention of, or redress for, alleged violations of the Convention. They made no further comments regarding the remaining claims for costs and expenses.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant in addition to the legal aid already granted the sum of EUR 800 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

109. The Court considers it appropriate that 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* admissible

- (a) the complaint under Article 3 concerning the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don from 14 May 2001 to 17 May 2005 and conditions of her confinement at the Rostov Regional Court;
 - (b) the complaint under Article 5 § 3 concerning the length of the applicant's pre-trial detention from 16 January 2002 to 17 May 2004;
 - (c) the complaint under Article 5 § 4 concerning the alleged ineffectiveness of the judicial review of the applicant's complaint against the detention order of 19 February 2004;
 - (d) the complaint under Article 6 § 1 concerning the length of the criminal proceedings against the applicant;
- and inadmissible the remainder of the application;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don from 14 May 2001 to 17 May 2005 and on account of her confinement at the Rostov Regional Court;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's detention on remand;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of lack of judicial review of the applicant's complaint against the detention order of 19 February 2004;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings against the applicant;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

André Wampach
Deputy Registrar

Christos Rozakis
President