



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

FIRST SECTION

CASE OF KUPTSOV AND KUPTSOVA v. RUSSIA

(Application no. 6110/03)

JUDGMENT

STRASBOURG

3 March 2011

FINAL

03/06/2011

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

In the case of Kuptsov and Kuptsova v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 6110/03) 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 two Russian nationals, Mr Denis Vasilyevich Kuptsov (“the first applicant”) and his mother, Ms Lyudmila Aleksandrovna Kuptsova (“the second applicant”), on 10 January 2003.

2. The applicants were represented by Mr A. Dubovskoy, a lawyer practising in Volgograd. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the first applicant had been detained in appalling conditions, that his detention on remand had been unlawful and excessively long and had not been attended by appropriate procedural guarantees and that the criminal proceedings against him had been unfair.

4. On 20 February 2007 the President of the First Section decided to communicate the above complaints to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. 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

6. The applicants are a son and his mother. They were born in 1987 and 1962 respectively and live in Volgograd.

A. The first applicant's arrest and detention at the police station

7. On 29 October 2002 the first applicant, a minor at that time, was arrested on suspicion of several counts of robbery committed in conspiracy with others. Until 6 November 2002 he was held at the Krasnoarmeyskiy District police station. On 6 November 2002 he was transferred to remand centre no. 4 in Volgograd.

1. The first applicant's description of the conditions of his detention

8. During the night of 29 to 30 October 2002 the first applicant was held in cell no. 1 together with adults. The cell was overcrowded. Inmates had to take turns to sleep.

9. On 30 October 2002 he was transferred to cell no. 4. The cell measured about 8 sq. m and accommodated ten inmates. The cell had no windows. It was equipped with a dim lamp which was never switched off.

10. Inmates slept on a bench about 20 cm wide and 2 m long or on the concrete floor. They were not provided with bedding. They had to remain standing during the day as the bench was not big enough for all of them to sit on.

11. Inmates were not allowed to exercise outdoors. Two or three times a day they were escorted to the toilets.

12. Inmates were not provided with any food or drinking water. They ate food supplied by relatives and drank tap water from the toilets.

2. The Government's description of the conditions of the first applicant's detention

13. According to the Government, the Krasnoarmeyskiy District police station did not have a temporary detention facility. All detained persons were held in five cells for temporarily arrested persons (*комнаты для временно доставленных*). The cells were not equipped with beds. Bedding and food were not provided. Drinking water was provided upon request. Outdoor exercise was not organised as the police station had no exercise yard. The police station had toilet facilities which inmates could use upon request. It was not possible to establish in which cells the first applicant had

been held or the number of inmates in those cells, as the registers for that period had been destroyed on the expiry of the statutory storage period.

14. It can be seen from an undated report issued by the Ministry of the Interior, submitted by the Government, that the cells for temporary arrested persons at the Krasnoarmeyskiy District police station had no windows. Each cell had forced ventilation and artificial lighting and was equipped with benches. The cells had no beds or lavatory bowls. Inmates were allowed to use communal toilet facilities upon request. The same information is contained in the report of 26 April 2007 prepared by the Volgograd Regional Department of the Ministry of the Interior.

15. Further, it follows from an affidavit by an acting head of the Krasnoarmeyskiy District police station that the police station's registers for 2002 had been lost. It was therefore impossible to establish the cell in which the first applicant had been held.

16. The Government also submitted black and white photographs of cells nos. 1 and 4. The photographs show small windowless rooms with bare concrete walls, narrow benches along one of the walls and an electric lamp above the door. No other furniture or equipment is visible.

B. Criminal proceedings against the first applicant

17. On 30 October 2002 the first applicant was questioned by the investigator and admitted his guilt. The second applicant was present during the questioning. Ms S., who had been appointed by the investigator to act as the first applicant's counsel, was also present.

18. On 31 October 2002 the Krasnoarmeyskiy District Court of Volgograd remanded the first applicant in custody. The court referred to the gravity of the charges and the risk of his absconding or interfering with the investigation. It also noted that the first applicant was unemployed. A prosecutor and the applicants were present at the hearing. Ms S. did not attend.

19. On 1 November 2002 the second applicant, in her capacity as the first applicant's guardian, lodged an appeal. She referred to the first applicant's young age, permanent place of residence and positive references. She further submitted that placement in custody would interrupt his studies at school. She also informed the appeal court that she had retained counsel Mr D. to represent the first applicant and asked that he be invited to the appeal hearing.

20. On 6 November 2002 the first applicant was formally charged with several counts of armed robbery in conspiracy with others.

21. On 14 November 2002 the prosecutor submitted, in reply to the second applicant's appeal submissions against the custody order of 1 November 2002, that there was a strong evidentiary basis against the first applicant, in particular his confession, witness statements and the results of

the search in his flat, where some of the stolen objects had been found. There were reasons to believe that the first applicant might abscond, reoffend or interfere with the investigation. He had regularly skipped school, had negative references from the teachers and his parents had no influence over him. Further, some of the stolen objects had not yet been discovered and the first applicant might destroy them if released. One of the accomplices was hiding from the police and the first applicant might influence him and induce him to conceal the information about the offences committed. In any event, it was necessary to isolate the first applicant and his accomplices from each other to prevent collusion. Finally, the prosecutor submitted that the first applicant and his accomplices were dangerous and immoral as they had robbed kindergartens, had assaulted elderly nightwatchmen and had destroyed kindergartens' property intended for young children.

22. On 3 December 2002 the Volgograd Regional Court upheld the decision of 31 October 2002 on appeal, finding that it had been well reasoned and justified. The District Court had correctly relied on the gravity of the charges and the information on the first applicant's character. The first applicant was not brought to the courtroom. His counsel was not notified of the date of the hearing and was also absent. The prosecutor was in attendance and made oral submissions.

23. On 24 December 2002 the Krasnoarmeyskiy District Court extended the first applicant's detention until 16 February 2003. The court found that the first applicant had not attended school, had been charged with particularly serious offences and might therefore abscond, reoffend or interfere with the investigation. The applicants, counsel Mr D. and the prosecutor attended the hearing.

24. On 14 February 2003 the Krasnoarmeyskiy District Court granted a further extension of the first applicant's detention until 16 April 2003, repeating the reasons set out in the decision of 24 December 2002. The first applicant and his counsel were present at the hearing.

25. On 11 March 2003 the Volgograd Regional Court upheld the decision on appeal. It endorsed the reasoning of the District Court. The first applicant was not brought to the courtroom, whereas his counsel and the prosecutor were present.

26. On 16 April 2003 the investigation was completed and the case was sent for trial before the Krasnoarmeyskiy District Court.

27. On 30 April 2003 the Krasnoarmeyskiy District Court decided to join the first applicant's case and the cases of his four accomplices, found that the case should be examined by a single judge and fixed the first trial hearing for 14 May 2003. It further ordered that the defendants should remain in custody.

28. On 27 May 2003 the Volgograd Regional Court quashed the decision of 30 April 2003, finding that the District Court had unlawfully refused to have the case examined by a bench of three judges.

29. On 2 June 2003 the Krasnoarmeyskiy District Court decided to join the first applicant's case and the cases of his four accomplices, ordered that the case be examined by a bench comprising a professional judge and two lay judges and fixed the first trial hearing for 10 June 2003. It further held that the defendants should remain in custody.

30. On an unspecified date a judicial bench consisting of a presiding judge and two lay judges, Ms G. and Mr R., was formed.

31. The hearing of 10 June 2003 was adjourned until 18 June 2003 because counsel for the first applicant did not appear. According to the applicants, counsel Mr D. was not notified of the date of the hearing.

32. On 11 June 2003 counsel for the first applicant lodged an appeal against the decision of 2 June 2003. The case file was forwarded to the Volgograd Regional Court and the hearing of 18 June 2003 was cancelled.

33. On 15 July 2003 the Volgograd Regional Court upheld the decision of 2 June 2003 on appeal.

34. On 31 July 2003 the case file was returned to the Krasnoarmeyskiy District Court. The District Court scheduled the next trial hearing for 26 August 2003.

35. The hearing of 26 August 2003 was adjourned until 27 August 2003 because counsel for the first applicant did not appear. According to the applicants, counsel Mr D. was not notified of the date of the hearing.

36. The Krasnoarmeyskiy District Court held trial hearings on 27 and 28 August and 2, 9, 10, 11, 17, 18, 24, 25 and 30 September 2003.

37. On 1 October 2003 the Krasnoarmeyskiy District Court convicted the first applicant of aggravated robbery and sentenced him to nine years' imprisonment.

38. The first applicant appealed. In particular, he complained that the composition of the trial bench had been unlawful because Ms G. and Mr R. did not appear on the official list of lay judges. He enclosed an officially published list of lay judges of the Krasnoarmeyskiy District of Volgograd.

39. On 9 December 2003 the Volgograd Regional Court ordered an inquiry into the first applicant's complaint about the allegedly unlawful composition of the trial court. On 8 January 2004 the Administrative Department of the Supreme Court concluded that the trial bench had been composed lawfully. Ms G. and Mr R. appeared on the list of lay judges of the Krasnoarmeyskiy District Court.

40. On 17 February 2004 the Volgograd Regional Court upheld the conviction on appeal and reduced the sentence to seven years and six months' imprisonment. It found that the trial bench had been composed lawfully. The first applicant's counsel was present at the appeal hearing but the first applicant himself had not been brought to the courtroom. He

remained in the remand centre and followed the proceedings through a videoconference system.

41. The applicants submitted a copy of a judgment of the Krasnoarmeyskiy District Court delivered in an unrelated civil case on 31 January 2003. It follows from the judgment that Ms G. acted as a lay judge in the proceedings. The applicants also submitted an affidavit by a former employee of the Krasnoarmeyskiy District Court who testified that Ms G. had been employed by the court for at least five years and received a salary.

42. The Government submitted a copy of the list of judges of the Krasnoarmeyskiy District Court approved by the Volgograd Regional Legislature on 2 July 2002. The list mentioned Ms G. and Mr R. They also produced a certificate issued on 24 April 2007 by the acting president of the Krasnoarmeyskiy District Court, stating that Ms G. had never been employed by that court.

II. RELEVANT DOMESTIC LAW

A. Statutory requirements for conditions of detention

43. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences (“the Detention of Suspects Act”, no. 103-FZ of 15 July 1995) provides that suspects and defendants detained during the investigation and trial are held in remand centres (section 8). They may be transferred to temporary detention centres (*IHC*) if this is necessary for the purposes of the investigation or trial and if transport between a remand centre and a police station or courthouse is not feasible because of the distance between them. Such detention at a temporary detention centre may not exceed ten days per month (section 13).

44. 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 22 of the Detention of Suspects Act). Detainees should be kept in conditions which satisfy sanitary and hygiene 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 (section 23). Detainees are entitled to a one-hour-long daily walk (section 17).

45. Annex no. 1 to Order no. 174dcp by the Interior Ministry on measures for enhancement of the activities of police units on duty in the Russian Federation provides that persons arrested on suspicion of an administrative offence should be placed in a cell for temporarily arrested persons (*комнаты для временно доставленных*) at the police station. Such cells must meet sanitary and hygiene requirements. The period of

detention in such cells must not normally exceed three hours (paragraph 48.2). A person arrested on suspicion of a criminal offence must be placed in a temporary detention centre (*IIBC*) as soon as a record of the arrest has been drawn up (paragraph 54).

B. Right to legal assistance

46. Since 1 July 2002 criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

47. By Article 50 of the Code, the investigator, the prosecutor or the court should provide the suspect or the accused with legal-aid counsel upon his or her request. Article 51 provides that counsel must, without exception, be appointed by the investigator, prosecutor or the court if, *inter alia*, the suspect or the accused is a minor. Counsel must be appointed if the suspect or the accused has not retained a lawyer.

C. Placement in custody and detention

48. The Constitution guarantees the right to liberty. Arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours (Article 22).

49. In accordance with the Code of Criminal Procedure, “preventive measures” or “measures of restraint” (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

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

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

52. After arrest the suspect is placed in custody “during the investigation”. The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention “during the

investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

53. From the date the prosecutor forwards the case to the trial court, the defendant's detention is “before the court” (or “during the trial”). Within fourteen days of receipt of the case file (if the defendant is in custody), the judge is required either: (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). Upon receipt of the case file, the judge must determine, in particular, whether the preventive measure applied should be lifted or changed (Article 228 (3) and Article 231 § 2 (6)).

54. The period of detention “during the trial” is calculated up to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

55. The presence of the accused, his or her counsel and the prosecutor is mandatory at hearings where issues relating to detention are examined. Where the accused is a minor his or her guardian may also attend the hearing. If a party to the proceedings was duly notified of the date of the hearing but failed to appear without a valid reason the court may proceed with the hearing in the absence of that party. This rule does not apply to situations where it is the accused who fails to appear. The hearing cannot in any case proceed in the absence of the accused (Article 108 § 3 and Article 109 § 2).

56. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10).

D. Lay judges

57. In accordance with section 1(2) of the Federal Law on lay judges at the federal courts of general jurisdiction in the Russian Federation (“the Lay Judges Act” no. 37-FZ of 10 January 2000, in force at the material time), lay judges were persons authorised to sit in civil and criminal cases as non-professional judges.

58. Section 2 provided that lists of lay judges were to be compiled for every district court by local self-government bodies; the lists were subject to confirmation by the regional legislature. The confirmed list was to be submitted to the relevant district court no later than one month before the expiry of the term of office of the lay judges on the previous list. The term of office of lay judges was five years.

59. Section 6 determined the procedure for the selection of lay judges at the regional courts. It provided that the president of the regional court was to draw names at random from the overall list of lay judges assigned to the

district courts situated in the territory of the region concerned. The number of lay judges assigned to every professional judge should be at least three times as many as the number needed for a hearing. From the list of lay judges assigned to him the professional judge was to select two lay judges by lot to sit in a particular case.

60. Under the terms of section 9, lay judges could only be called for service in a regional court once a year, for the entire duration of the court proceedings in a particular case.

E. Civil-law remedies against illegal acts by public officials

61. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen must be fully compensated for by the tortfeasor. Pursuant to Article 1069, a State agency or a State official is liable towards a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated for at the expense of the federal or regional treasury. Articles 151 and 1099 to 1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage must be compensated for irrespective of any award for pecuniary damage.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

62. The first applicant complained that the conditions of his detention in the Krasnoarmeyskiy District police station had been in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

63. The Government submitted that the first applicant had not exhausted the domestic remedies available to him. In particular, he had not lodged a complaint with a prosecutor. Nor had he sought compensation for non-pecuniary damage before a court.

64. The first applicant maintained his claims.

65. The Court notes that the Government have already raised the same arguments in respect of the issue of exhaustion of domestic remedies in a number of cases concerning conditions of detention in Russia. The Court has examined and dismissed them, finding the remedies ineffective (see, for example, *Khrstoforov v. Russia*, no. 11336/06, § 18, 29 April 2010, and *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 84-91, 12 March 2009). The Court discerns nothing in the Government's submissions to depart from its earlier findings. The Government indicated such remedies as complaint to a prosecutor and a civil action. They however failed to refer to a relevant legal basis. Nor did they suggest that there was an established line of authorities in domestic practice where damages had in fact been awarded in situations comparable to the present case. It follows that the Government's objection must be dismissed.

66. 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.

B. Merits

67. The Government acknowledged that the first applicant had been detained in inhuman conditions. In particular, the conditions of his detention had not met the requirements of the Detention of Suspects Act (see paragraphs 43 and 44 above) because he had not been provided with food, an individual sleeping place and bedding and outdoor exercise had not been organised.

68. The first applicant maintained his claims.

69. The Court reiterates, firstly, that it has on many occasions considered that the mere fact of holding an applicant in custody in a cell designed only for short-term detention disclosed a violation of Article 3 (see, for example, *Khrstoforov v. Russia*, no. 11336/06, §§ 23-27, 29 April 2010; *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006; and *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008). The first applicant in the present case had been detained for eight days in a cell for temporarily arrested persons at the police station designed for short-term detention not exceeding three hours. Accordingly, the cell lacked the basic amenities indispensable for extended detention. It did not have a window and offered no access to natural light or air. It was not equipped with bunks and bedding was not provided. There was no toilet or sink. Inmates were not given any food.

70. Further, the Court observes that the cell in which the first applicant had been held was overpopulated. According to the information submitted by the first applicant, which was not disputed by the Government, the first applicant was afforded less than 1 sq. m of personal space. He was confined to his cell day and night without any possibility of outdoor exercise. The

Court reiterates in this connection that in previous cases where the applicants disposed of less than 3 sq. m of personal space, it found that the overcrowding was severe enough to justify, in its own right, a finding of a violation of Article 3 of the Convention (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

71. Taking into account its case-law on the subject, the material submitted by the parties, and the Government's acknowledgment of a violation of Article 3, the Court reaches the same conclusion in the present case. Having regard to the cumulative effect of the factors analysed above and to the applicant's minor age, the Court finds that the conditions in which the first applicant was held diminished his human dignity and caused him distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of the first applicant's detention in a cell for temporarily arrested persons at the Krasnoarmeyskiy District police station in Volgograd amounted to inhuman and degrading treatment.

72. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

73. The first applicant complained under Article 5 § 1 (c) of the Convention that his detention from 16 April to 1 October 2003 had been unlawful. In particular, he alleged that he had remained in custody after the authorised period of his detention had expired on 16 April 2003. Article 5 § 1 (c) reads as follows:

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

...

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

A. Admissibility

74. 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.

B. Merits

75. The Government submitted that the first applicant's detention "during the trial" from 16 April to 1 October 2003 had been lawful. At the material time the domestic courts had interpreted Article 255 § 2 of the Code of Criminal Procedure (see paragraph 54 above) as permitting the detention of an accused without a court order for up to six months from the date of receipt of the case file by a court. A judicial order had been required only if detention "during the trial" exceeded six months. In the present case the file had been received by the trial court on 16 April 2003 and the first applicant had been convicted on 1 October 2003, less than six months later.

76. The first applicant maintained his claims.

77. The Court notes that on 16 April 2003 the order for the first applicant's pre-trial detention expired. Nevertheless, it was not until 30 April 2003 that a court ruled that he should remain in custody during the trial. During those fourteen days the first applicant was kept in detention on the basis of the fact that the criminal case against him had been referred to the court competent to try the case.

78. The Court has already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been submitted to the trial court. It has held that the practice of keeping defendants in detention without judicial authorisation or clear rules governing their situation is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Fursenko v. Russia*, no. 26386/02, §§ 77-79, 24 April 2008; *Lebedev v. Russia*, no. 4493/04, §§ 52-59, 25 October 2007; *Melnikova v. Russia*, no. 24552/02, §§ 53-56, 21 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 86-93, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, §§ 55-59, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; *Khudoyorov v. Russia*, no. 6847/02, §§ 144-151, ECHR 2005-X; *Ječius v. Lithuania*, no. 34578/97, §§ 60-64, ECHR 2000-IX; and *Baranowski v. Poland*, no. 28358/95, §§ 53-58, ECHR 2000-III).

79. The Court sees no reason to reach a different conclusion in the present case. As noted above, in the period from 16 to 30 April 2003 there was no judicial decision authorising the first applicant's detention. In these circumstances the Court finds that the detention was not "lawful" for Convention purposes.

80. It is further noted that on 30 April 2003 the District Court set the opening date for the trial and held that the first applicant and his co-

defendants “should remain in custody”. It did not, however, give any grounds for maintaining the custodial measure or fix a time-limit for their extended detention. This situation has also been examined in many cases against Russia, in which the Court has found that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time was incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1. Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Avdeyev and Veryayev v. Russia*, no. 2737/04, §§ 45-47, 9 July 2009; *Bakhtmutskiy v. Russia*, no. 36932/02, §§ 112-114, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-114, 23 April 2009; *Shukhardin v. Russia*, no. 65734/01, §§ 65-70, 28 June 2007; *Ignatov v. Russia*, no. 27193/02, §§ 79-81, 24 May 2007; *Solovyev v. Russia*, no. 2708/02, §§ 97-98, 24 May 2007; *Nakhmanovich*, cited above, §§ 70-71; and *Khudoyorov*, cited above, §§ 134 and 142). The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 30 April 2003 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness and that the ensuing period of the first applicant's detention was not “lawful” within the meaning of Article 5 § 1.

81. The Court further observes that on 27 May 2003 the decision of 30 April 2003 was quashed by the appeal court. However, it was not until 2 June 2003 that the District Court issued a new detention order. It follows that from 27 May to 2 June 2003 the first applicant was detained without a court order. Given that under the Russian Constitution and the rules of criminal procedure no exceptions to the rule of judicial authorisation of detention on remand are permitted or provided for (see paragraphs 48 and 51 above), the Court finds that from 27 May to 2 June 2003 there was no “lawful” basis for the first applicant's detention.

82. Finally, the decision of 2 June 2003, like the previous decision of 30 April 2003, did not cite any grounds to justify the continued detention of the first applicant or fix a time-limit either for his extended detention or for the re-examination of the issue of detention by the District Court. As it happened, the District Court did not return to the issue of detention until the end of the trial on 1 October 2003. For four months the first applicant remained in a state of uncertainty as to the grounds and time-limit for his detention. In these circumstances, the Court considers that the District Court's decision of 2 June 2003 did not comply with the requirements of Article 5 § 1 for the same reasons as stated in paragraph 80 above.

83. It follows from the above that there has been a violation of Article 5 § 1 of the Convention on account of the first applicant's detention from 16 April to 1 October 2003.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

84. The first applicant further complained that his right to trial within a reasonable time had been infringed and alleged that the orders for his detention had not been founded on sufficient reasons. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

85. 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.

B. Merits

86. The Government submitted that the duration of the first applicant's detention had not been excessive. The investigation and trial had been completed within a year. The detention had been based on sufficient reasons. The detention orders had not been grounded solely on the gravity of the charges. The domestic courts had also referred to the risk of the first applicant's absconding, reoffending or impeding the investigation.

87. The first applicant maintained his claims.

88. The Court observes that the first applicant was taken into custody on 29 October 2002. On 1 October 2003 he was convicted. Thus, the period to be taken into consideration lasted slightly more than eleven months. Although this period appears to be relatively short, the Court reiterates that Article 5 § 3 of the Convention cannot be seen as authorising detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

89. It is not disputed by the parties that the first applicant's detention was initially warranted by a reasonable suspicion of his involvement in several

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

90. In his submissions of 14 November 2002 (see paragraph 21 above) the prosecutor referred, in addition to the gravity of the charges against the first applicant, to the specific circumstances of the case. In particular, he referred to the fact that some of the stolen objects had not yet been discovered and the defendants might destroy them, to the risk of influence on the accomplice who had been hiding from the police and to the necessity of isolating the defendants from each other to prevent collusion. The Court is prepared to accept that those arguments might justify the first applicant's detention, provided that they were supported by evidence (see *Aleksandr Makarov*, cited above, § 127). The Court is unable to detect any reasoning in the detention orders showing that the courts checked the validity of the arguments advanced by the prosecutor or verified whether they retained their relevance and validity throughout the entire duration of the criminal proceedings. The detention orders issued during the investigation relied on the risks of the first applicant's absconding, reoffending or interfering with the proceedings, without mentioning any specific factual basis for the existence of such risks, while the two detention orders issued during the trial, in the decisions of 30 April and 2 June 2003, did not refer to any grounds at all. However, the Court considers that it is not necessary to pursue this issue in further detail. Taking into account the contents of the prosecutor's submissions of 14 November 2002, it will proceed on the assumption that the first applicant's detention was based on “relevant” and “sufficient” reasons and will focus its assessment on the issue of whether the competent national authorities displayed “special diligence” in the conduct of the proceedings.

91. The Court notes in this connection that the first applicant was a minor at the relevant time and was of school age. His detention deprived him not only of his liberty, but also of an opportunity to attend school and pursue secondary education. It was, therefore, more important than usual for the authorities to display special diligence in ensuring that he was brought to trial within a reasonable time (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 157, *Reports of Judgments and Decisions* 1998-VIII).

92. The first applicant's case concerned five defendants and was of a certain complexity. The Court reiterates in this connection that in cases

involving numerous defendants, collecting evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-suspects (see, *mutadis mutandis*, *Łaskiewicz v. Poland*, no. 28481/03, §§ 59 and 61, 15 January 2008). In the present case the investigation was completed within less than six months. There is no evidence of any significant periods of inactivity on the part of the prosecution authorities. The Court is satisfied that the investigation was conducted with due expedition.

93. Turning to the trial stage of the proceedings, the Court observes that a delay of more than four months occurred between the first applicant's committal for trial on 16 April 2003 and the commencement of the trial on 27 August 2003. During that period, the District Court issued a preliminary decision on 30 April 2003, fixing an opening date for the trial and allocating the case to a judicial formation. However, that decision was quashed on appeal on 27 May 2003 because the District Court had unlawfully rejected the defendants' request for their case to be examined by a bench of three judges. The resulting delay in the proceedings is attributable to the conduct of the domestic authorities (see, *mutatis mutandis*, *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008, and *Uglanova v. Russia*, no. 3852/02, § 34, 21 September 2006). A new decision concerning the court's composition and the date for the commencement of the trial was given on 2 June 2003 and was upheld on appeal on 15 July 2003. The Court notes the long interval between the two decisions, for which no explanation was provided by the Government. Nor did the Government explain why it took the District Court six more weeks after the decision of 15 July 2003 to schedule the first trial hearing. The Court concludes from the above that the authorities bore responsibility for the four-month delay in the commencement of the trial.

94. Against this background, and taking into account the fact that a higher than usual degree of diligence in the conduct of the proceedings was required in view of the first applicant's age, the Court finds that the first applicant was denied a "trial within a reasonable time", in violation of Article 5 § 3.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

95. The first applicant further complained that he had not been assisted by counsel at the hearing of 31 October 2002, had been neither present nor represented at the appeal hearing of 3 December 2002 and had not been brought to the courtroom for the appeal hearing of 11 March 2003. Moreover, his appeals against the detention orders of 31 October 2002 and 14 February 2003 had not been examined speedily. He relied on Article 6

§ 1 and Article 13 of the Convention. The Court considers that these complaints fall to be examined under Article 5 § 4, which is the *lex specialis* for matters of deprivation of liberty (see *Reinprecht v. Austria*, no. 67175/01, § 55, ECHR 2005-XII). Article 5 § 4 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. Admissibility

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

B. Merits

1. Submissions by the parties

97. The Government submitted that first applicant and his guardian, the second applicant, had both been present at the hearing of 31 October 2002. They had not requested legal assistance. The first applicant had not asked to be brought to the hearings of 3 December 2002 and 11 March 2003. Accordingly, those hearings had been conducted in accordance with the requirements of Article 5 § 4. Further, the Government acknowledged that the appeal against the decision of 31 October 2002 had not been examined speedily. However, this fact had not breached the first applicant's rights because the appeal had been dismissed and he had subsequently been convicted as charged.

98. The first applicant maintained his claims. In particular, he referred to Article 51 of the Code of Criminal Procedure (see paragraph 47 above) and argued that as he had been a minor, participation of counsel in all hearings had been compulsory.

2. The Court's assessment

(a) Participation at the hearings of 31 October and 3 December 2002

99. The Court observes that on 30 October 2002 counsel was appointed by the investigator to defend the first applicant's interests. Counsel did not appear at the hearing of 31 October 2002, at which the first applicant was remanded in custody. The first applicant and his mother, the second applicant, were present, as well as the prosecutor. In her appeal submissions, the second applicant informed the appeal court that she had

retained a lawyer to represent the first applicant and asked that he be invited to the appeal hearing. However, for reasons which were not explained by the parties the lawyer was not present at the appeal hearing of 3 December 2002. The first applicant was not brought to the courtroom either, whereas the prosecutor participated in the hearing and made submissions.

100. The Court reiterates that the possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B). As a general rule, a detainee should have a right to participate personally in a hearing where his detention is discussed (see *Lebedev*, cited above, § 113). As regards legal representation, the Court has 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, in addition to the applicant's personal presence, 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).

101. It is important to take into account the fact that the first applicant in the present case was a minor. The Court has already found it to be essential for a lawyer to be present at a hearing where a juvenile is remanded in custody, otherwise a necessary safeguard would be denied (see *Bouamar*, cited above, § 60). The Government did not explain why counsel appointed by the investigator to defend the first applicant did not appear at the hearing of 30 October 2002. The Court sees two possible explanations. The first is that he was not summoned to appear, in which case the fault lay with the District Court. The second possibility is that counsel was summoned but neglected his duty to appear. The Court considers that in that case the court was confronted with a manifest failure by State-appointed counsel to provide effective representation to a juvenile defendant and was therefore required either to adjourn the hearing or to assign another counsel with a view to ensuring that the procedural guarantees contained in Article 5 § 4 were complied with. Given that participation of counsel was mandatory under domestic law (see paragraphs 47 and 55 above), the Court finds the passive attitude of the District Court unacceptable.

102. Further, the Court notes that the Regional Court did nothing to cure on appeal the shortcomings of the proceedings before the District Court. On the contrary, those shortcomings were aggravated because the proceedings before the Regional Court did not themselves satisfy the requirements of Article 5 § 4. Indeed, neither the first applicant nor his lawyer was present at the appeal hearing of 3 December 2002, whereas the prosecutor attended and made oral submissions. The Court is of the view that to ensure equality of arms it was necessary to give the first applicant the opportunity to appear

at the same time as the prosecutor, either in person or through some form of legal assistance, so that he could reply to his arguments. As the first applicant was not afforded an adequate opportunity to participate in the examination of his appeal on 3 December 2002, the appeal proceedings did not meet the “equality of arms” requirement of Article 5 § 4.

103. There has therefore been a violation of Article 5 § 4 on that account.

(b) Participation in the hearing of 11 March 2003

104. The Court observes that on 14 February 2003 the District Court extended the first applicant's detention for two months. Both the first applicant and his counsel were present at that hearing. On 11 March 2003 the Regional Court examined the first applicant's appeal against the extension order. The appeal hearing was attended by a prosecutor and counsel for the first applicant, but not the first applicant himself.

105. The Court reiterates that, in principle, it is permissible for the court of appeal reviewing a detention order issued by a lower court to examine it in the presence of the detainee's lawyer. However, that is true only when the hearing before the first-instance court offered sufficient procedural guarantees (see *Lebedev*, cited above, § 114). There is no reason to believe that the first-instance hearing of 14 February 2003 did not comply with the requirements of Article 5 § 4. The first applicant and his counsel were both present and made submissions. Having regard to the fact that the first applicant was represented by counsel at the appeal hearing of 11 March 2003, having himself attended the first-instance hearing of 14 February 2003, the Court is satisfied that the proceedings as a whole were adversarial and the principle of equality of arms was respected. Moreover, taking into account the fact that the prosecutor did not put forward any new arguments, and that the basis for the detention was not amended, the first applicant's personal attendance was not required (see, *mutatis mutandis*, *Sorokin v. Russia*, no. 7739/06, § 82, 30 July 2009, and, by contrast, *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000).

106. There has therefore been no violation of Article 5 § 4 of the Convention on that account.

(c) Speediness of the review

107. The Court notes that it took the domestic courts thirty-three days to examine the first applicant's appeal against the detention order of 31 October 2002 and twenty-five days to examine the appeal against the extension order of 14 February 2003. There is nothing to suggest that the first applicant, having lodged the appeals, caused delays in their examination. The Court considers that these two periods cannot be considered compatible with the “speediness” requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to

the authorities (see, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were not “speedy”, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the appeal proceedings lasted thirty-six, twenty-six, thirty-six and twenty-nine days).

108. There has therefore been a violation of Article 5 § 4 of the Convention on that account.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

109. The first applicant further complained under Article 6 § 1 of the Convention that he had been tried and convicted by a court which was not composed in accordance with the law. The relevant parts of Article 6 § 1 read as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law.”

A. Admissibility

110. 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.

B. Merits

111. The first applicant submitted that the lay judge Ms G. had unlawfully participated in the examination of his case. Firstly, she had participated in the examination of another case that same year, which was prohibited by domestic law. Secondly, there was evidence that she had been employed by the Krasnoarmeyskiy District Court and had received a salary. Finally, the statutory requirement that lay judges should be drawn by random lots for their participation in a specific case had not been complied with in his case.

112. The Government submitted that the lay judge Ms G. had been competent to sit in the first applicant's case as she had been lawfully elected to this office by the regional legislature. In their opinion, the fact that she had previously participated in another case had not rendered her participation in the first applicant's case unlawful. They also disputed the first applicant's allegation that Ms G. had been an employee of the Krasnoarmeyskiy District Court. They relied in that connection on the certificate of 24 April 2007 stating that Ms G. had never been employed by

that court (see paragraph 42 above). Accordingly, the trial bench had been composed in accordance with the procedure prescribed by domestic law.

113. The Court reiterates that the phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000). The Court is therefore required to examine allegations such as those made in the present case concerning a breach of the domestic rules on the appointment of judicial officers. The fact that the allegation in the present case concerned lay judges does not make it any less important as, under the Russian law then in force, in their judicial capacity lay judges enjoyed the same rights as professional judges (see *Zakharkin v. Russia*, no. 1555/04, § 146, 10 June 2010).

114. The Court has already found violations of Article 6 § 1 of the Convention in a number of cases against Russia pertaining to the appointment of lay judges. A finding of a violation has been reached on account of the domestic authorities' failure to produce documentary evidence showing that the lay judges had been appointed to the office in accordance with the procedure established by domestic law, combined with the apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and the maximum length of service per year (see, for example, *Fedotova v. Russia*, no. 73225/01, §§ 41-44, 13 April 2006, and *Posokhov v. Russia*, no. 63486/00, §§ 40-44, ECHR 2003-IV).

115. Turning to the present case, the Court observes that the Government produced the decision of the Volgograd Regional Legislature selecting Ms G. and Mr R. to serve as lay judges at the Krasnoarmayskiy District Court (see paragraph 42 above). The Court is therefore satisfied that the lay judges who heard the first applicant's case had been lawfully appointed to that office. It remains to be examined whether the requirements of the Lay Judges Act regarding the composition of the bench in a particular case were observed.

116. The Court notes that although under section 6 of the Lay Judges Act (see paragraph 59 above), lay judges should have been drawn by random lots for participation in a specific case, there is no evidence that lots had been drawn in the first applicant's case. Furthermore, the first applicant produced documentary evidence showing that in January 2003 the lay judge Ms G. had also participated in the examination of an unrelated civil case. This evidence prompts the conclusion that she had been called for service at least two times in the same year, which amounted to a substantive breach of the rules for selection of lay judges provided for in section 9 of the Lay Judges Act (see paragraph 60 above). The apparent failure to observe the requirements of the Lay Judges Act regarding the drawing of random lots and the maximum length of service per year leads the Court to the

conclusion that the Krasnoarmayskiy District Court which convicted the first applicant could not be regarded as a “tribunal established by law”.

117. In view of the above finding, it is unnecessary to examine separately whether the lay judge Ms G. was employed by the Krasnoarmayskiy District Court, as the first applicant alleged.

118. The Court concludes that the fairness of the criminal proceedings against the first applicant was undermined by serious defects in the selection of the lay judges who heard his case. There has therefore been a violation of Article 6 § 1 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

119. The Court has examined the other complaints submitted by the first applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set forth 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.

120. Lastly, the Court has examined the complaints lodged by the second applicant. It observes that the second applicant was not a victim of the alleged violations. It therefore considers that these complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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.”

122. The first applicant did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the allegedly inhuman conditions of the first applicant's detention in a cell for temporarily arrested persons, the alleged unlawfulness of his detention from 16 April to 1 October

2003, the excessive length of his detention, the lack of procedural guarantees at the custody hearings of 31 October and 3 December 2002 and 11 March 2003, the alleged violation of his right to a speedy judicial decision concerning the lawfulness of his detention and the allegedly unlawful composition of the trial court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the first applicant's detention in a cell for temporarily arrested persons;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the period from 16 April to 1 October 2003;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of legal assistance at the hearing of 31 October 2002 and the absence of the first applicant and his counsel from the appeal hearing of 3 December 2002;
6. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the first applicant's absence from the appeal hearing of 11 March 2003;
7. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings concerning the first applicant's appeals against the detention orders of 31 October 2002 and 14 February 2003;
8. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unlawful composition of the trial court;
9. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 3 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President