



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

FIRST SECTION

CASE OF TSARENKO v. RUSSIA

(Application no. 5235/09)

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 Tsarenko v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Elisabeth Steiner,
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. 5235/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vitaliy Viktorovich Tsarenko (“the applicant”), on 8 December 2008.

2. The applicant was represented by Ms M. Belinskaya and Ms T. Klykova, lawyers practising in St Petersburg. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 9 June 2009 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1989 and lived in St Petersburg until the time of his arrest.

A. The applicant's pre-trial detention

5. On 12 March 2007 the applicant was arrested on suspicion of killing and/or causing grievous bodily injuries to several individuals. On the following day the Pushkinskiy District Court of St Petersburg remanded him in custody.

6. On 10 May, 14 June, 29 August and 3 December 2007 and 18 January 2008 the Pushkinskiy District Court extended the authorised period of the applicant's detention for up to a total duration of one year.

7. On 26 February, 2 April and 3 June 2008 the St Petersburg City Court authorised further extensions of the applicant's pre-trial detention until 4 August 2008. No appeal was lodged against the extension orders.

8. On 21 July 2008 the pre-trial investigation was completed and the applicant was granted access to the case file.

9. On 30 July 2008 the St Petersburg City Court granted the prosecutor's application for a further extension of the applicant's detention until 12 September 2008, that is, for a total duration of eighteen months. The City Court referred to the gravity of the charges against the applicant, the existence of a reasonable suspicion of his involvement in the commission of the alleged offences and certain "objective circumstances", in particular, the fact that the defendants had not yet finished studying the case file.

10. On 5 August 2008 counsel for the applicant lodged an appeal against the extension order. Counsel pointed out that the City Court had failed to identify any concrete facts to justify the risks of absconding, reoffending or obstructing justice. She alleged a violation of Article 5 § 3 of the Convention. On 22 September 2008 the Supreme Court of the Russian Federation rejected the appeal, finding that the gravity of the charges could be taken into account when deciding to extend the pre-trial detention.

11. In the meantime, the prosecution applied for a further extension of the applicant's detention. It was submitted that he stood accused of a serious criminal offence and had not yet finished reading the case file. The defence objected to the extension and emphasised that the applicant had a place of permanent residence, no criminal record and positive references.

12. On 10 September 2008 the City Court granted the extension sought by the prosecution, referring to the gravity of the charges against the applicant and the medical findings that he did not have any health issues which could have required his release. The extension was granted until 4 October 2008, by reference to Article 109 of the Code of Criminal Procedure.

13. On 17 September 2008 counsel for the applicant appealed against the extension order. She submitted that neither the gravity of the charges nor the fact that the applicant had not finished studying the file were relevant or sufficient grounds for extending his pre-trial detention. On 5 November

2008 the Supreme Court rejected the appeal. Neither the applicant nor his counsel were present at the appeal hearing.

14. On 1 October 2008 the City Court granted a further extension of the applicant's detention until 4 December 2008, finding in particular as follows:

“The gravity and public dangerousness of the crimes imputed to Mr Tsarenko are such that an undertaking to appear would not be sufficient to guarantee his appearance before the investigator or in court or to ensure his law-abiding conduct.”

15. In the statement of appeal, counsel for the applicant pointed out that on 10 September 2008 the City Court had already granted one extension for the purpose of studying the file and that Article 109 §§ 7 and 8 of the Code of Criminal Procedure did not provide for a possibility to grant repeated extensions for that same purpose. In her submission, a second extension of the detention period, such as the one authorised by the City Court on 1 October 2008, was contrary both to the letter of Article 109 and to its interpretation given in the Constitutional Court's judgments no. 167-O of 25 December 1998 and no. 352-O of 11 July 2006 (cited below), and was therefore arbitrary and incompatible with Article 5 of the Convention.

16. The applicant sought leave to appear in person before the appeal court. On 20 November 2008 the Supreme Court refused him leave on the ground that the applicant had not submitted a separate statement of appeal and his presence would not therefore be indispensable. In the same hearing, the Supreme Court rejected the appeal against the extension order in a summary fashion. On the issue of the alleged unlawfulness of repeated extensions, it found as follows:

“The argument to the effect that the judge was not authorised to grant a second extension of the detention period for studying the criminal case file on the same grounds may not be taken into account because it is not founded on law, which was given an incorrect interpretation [*sic*].”

17. On 3 December 2008 the St Petersburg City Court granted a further extension of the applicant's detention until 4 February 2009, noting that the preventive measure was lawful and justified, taking into account the gravity of the charges and “information on [the applicant's] character”. On 19 January 2009 the Supreme Court refused the applicant leave to appear and rejected the appeal lodged by his counsel. It expressed the view that Article 109 § 7 permitted repeated extensions of the detention period when it was necessary to allow the defendant to finish studying the case file.

18. On 3 February and 1 April 2009 the City Court examined further requests by the prosecution for extensions of the applicant's detention and granted the extensions requested. It held that the applicant could not be released on an undertaking to appear because of the gravity and “public importance” of the crimes imputed to him. It also expressed the view that further extensions were lawful within the meaning of Article 109 § 8 of the

CCrP since the requests for extensions had been made within the seven-day time-limit mentioned in that provision.

19. On 5 February 2009 counsel for the applicant and the applicant himself submitted statements of appeal against the extension order of 3 February 2009. The applicant also sought leave to appear before the appeal court. Counsel pointed out that on 3 February 2009 the City Court had already granted a fourth extension in excess of the maximum eighteen-month detention period, which was incompatible with the requirements of Article 109 §§ 7 and 8 of the CCrP. By decision of 26 March 2009, the Supreme Court refused the applicant leave to appear, noting that his presence was not necessary because all the arguments were explained in sufficient detail in his counsel's submissions. In the same hearing, the Supreme Court rejected the appeals against the extension orders, holding that counsel had "incorrectly interpreted" the provisions of Article 109.

20. On 28 April 2009 the St Petersburg City Court extended the authorised period of the applicant's detention until 20 May 2009 for the purpose of allowing the prosecution sufficient time for complying with the legal requirement that a case be submitted for trial no later than fourteen days before the expiry of the detention period. As to the grounds for continued detention, the City Court noted that the grounds for preferring a custodial measure still obtained.

21. On 6 May 2009 the case against the applicant and other co-defendants was referred for trial. On 14 May 2009 the City Court held a preliminary hearing, in the absence of the applicant and his counsel, and indicated that the custodial measure "should remain unchanged". It did not set a time-limit for the measure or list any grounds for continuing its application.

22. On 28 May 2009 the City Court issued a decision by which it extended the detention period in respect of the applicant and six other co-defendants for a further six months. It referred to the gravity of the charges against them.

23. On 10 August 2009 the Supreme Court examined the appeals submitted by the applicant's counsel against the extension orders of 6 and 28 May 2009 and rejected them. Counsel and the applicant did not take part in the hearing.

24. On 5 November 2009 the City Court extended the period of detention in respect of all defendants for a further three months, noting the gravity of the charges and continuing examination of evidence.

25. On 6 April 2010 the St Petersburg City Court convicted the applicant and his co-defendants of various violent crimes committed for racial motives. The applicant was sentenced to three years and six months' imprisonment but relieved from serving the sentence owing to the expiry of the prescription period. The applicant was released from custody on the

same day. He did not file an appeal, but two of his co-defendants did. On 21 October 2010 the Supreme Court upheld the judgment on appeal.

B. Conditions of the applicant's detention

26. Before 24 November 2007, while the applicant was legally a minor, he was held in a special wing of remand prison no. IZ-47/1 of St Petersburg, popularly known as “Kresty”, and in remand prison no. IZ-47/2 of Tikhvin in the Leningrad Region. The applicant raised no complaints in respect of that period of detention.

27. After 24 November 2007, when he reached legal majority, the applicant was held together with adult detainees in various cells of remand prison no. IZ-47/1.

28. The Government produced, among other documents, two statements of 27 July 2009 from the director of remand prison no. IZ-47/1, according to which all the cells in which the applicant had been detained, had measured eight square metres and accommodated no more than three detainees, including the applicant. They also submitted disparate sheets from a certain register concerning transfers of detainees, all of which referred to a period prior to 24 November 2007.

29. According to the applicant, the cells measured eight square metres and were equipped with two three-tier bunk beds. The actual number of inmates ranged from four to six, including the applicant himself. The mandatory ventilation did not function and the toilet was not separated from the living area. Inmates used bed sheets to create a makeshift screen around it but warders considered it to be a violation of prison regulations and tore them down.

30. On 1 December 2008 the applicant complained about the conditions of detention to a supervising prosecutor. On 12 February 2009 the St Petersburg prosecutor sent a reply to his complaint, in which he acknowledged, in particular, that the personal space afforded to inmates in cell no. 47 was below the legal norm of four sq. m per person. On 20 February 2009 the prosecutor ordered the director of the remand prison to remedy a violation of the law and discipline those responsible.

31. According to the Government, on 31 March, 30 June and 30 July 2009 the St Petersburg prosecutor issued further warnings to the director of the remand prison, requiring him to improve the material conditions of the inmates' detention and bring them up to the applicable standards.

32. In August 2009 the applicant was transferred to a new cell of the same size which he shared with one detainee until he was released on 6 April 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (“CCrP”)

1. Time-limits for detention

33. Pursuant to Article 109 § 1, the initial pre-trial detention of an accused must not exceed two months. It may be subsequently extended up to six months.

34. Further extensions to up to twelve months are possible only in relation to persons accused of serious or particularly serious criminal offences, in view of the complexity of the case and if there are grounds justifying detention. An investigator's request for extension must be approved by the regional prosecutor (§ 2).

35. An extension of detention beyond twelve months and up to eighteen months may be authorised only in exceptional circumstances in respect of persons accused of particularly serious offences, upon an investigator's request approved by the Prosecutor General or his deputy (§ 3).

36. Extension of detention beyond eighteen months is prohibited and the detainee must be immediately released, unless the prosecution's request for an extension for the purpose of studying the case has been granted by a court in accordance with Article 109 § 8 of the CCrP (§ 4).

2. A supplementary extension for studying the case file

37. Upon completion of the investigation, the detainee must be given access to the case file no later than thirty days preceding the expiry of the maximum period of detention indicated in paragraphs 2 and 3 (§ 5).

38. If access was granted on a later date, the detainee must be released after the expiry of the maximum period of detention (§ 6).

39. If access was granted thirty days before the expiry of the maximum period of detention but the thirty-day period proved to be insufficient to read the entire case file, the investigator may request the court to extend the period of detention. The request must be submitted no later than seven days before the expiry of the detention period (§ 7).

40. Within five days of receipt of the request for an extension, the judge must decide whether to grant it or reject it and release the detainee. If the extension is granted, the period of detention is extended until such time as would be sufficient for the detainee and counsel to finish reading the case file and for the prosecution to submit the case to the trial court (§ 8).

B. Case-law of the Constitutional Court of the Russian Federation

41. Examining the compatibility of Article 97 of the RSFSR CCrP (now replaced by Article 109 of the CCrP) with the Constitution, on 13 June 1996 the Constitutional Court ruled as follows:

“... affording the defendant a sufficient time for studying the file must not result in ... his detention for a period of an unlimited duration. In that case such detention would amount to a sanction for using by the defendant of his procedural rights and thereby induce him to waive these rights ...”

42. On 25 December 1998 the Constitutional Court issued a further clarification of its position (decision no. 167-O), finding as follows:

“3. ... the studying of the file [by the defendant and his counsel] is a necessary condition for extending the term of detention [beyond eighteen months] but it may not be, taken on its own, a sufficient ground for granting such an extension... For that reason, in each particular case the prosecutor's application for extending the period of detention beyond eighteen months (Article 97 §§ 4, 6 of the RSFSR CCrP) must refer not to the fact that the defendant and his counsel continue to study the file ... but rather to factual information demonstrating that this preventive measure cannot be revoked and the legal grounds for its continued application remain ...

6. ... Article 97 § 5 of the RSFSR CCrP expressly provides that, on an application by a prosecutor, the judge may extend the defendant's detention until such time as the defendant and his counsel have finished studying the file and the prosecutor has submitted it to the [trial] court, but by no longer than six months. Accordingly, the law does not provide for lodging of repeated applications for extension of the defendant's detention, even after an additional investigation [has been carried out] ... In the absence of an express legal provision for repeated extensions of detention on that ground, any other interpretation of [Article 97] would breach the prohibition on arbitrary detention within the meaning of the Constitutional Court's decision of 13 June 1996.”

43. By decision no. 352-O of 11 July 2006, the Constitutional Court confirmed its position, by reference to above-cited decision no. 167-O, that in the absence of an express provision to that effect, time-limits during the pre-trial investigation may not be repeatedly extended, particularly on the same grounds, in excess of the maximum time-limit set out in the CCrP.

44. In decision no. 271-O-O of 19 March 2009, the Constitutional Court expressed the view that Article 109 § 8 (1) of the CCrP was compatible with the Constitution. Even though this provision did not define the maximum period within which an extension could be granted for the purpose of studying the case file, it did not imply the possibility of excessive or unlimited detention because, in granting an extension, the court should not rely solely on a well-founded suspicion that the defendant committed the offence but mainly base its decision on specific circumstances justifying the continued detention, such as his potential to exert pressure on witnesses or an established risk of his absconding or reoffending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that the conditions of his detention for the period from November 2007 to August 2009 were incompatible with 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. Admissibility

46. 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

47. The Government submitted that the applicant had not been subjected to torture, inhuman or degrading treatment or punishment during the period of his detention and that his health had not been impaired. The conditions of his detention were compatible with Russian law and the requirements of Article 3 of the Convention.

48. The applicant submitted that the cells had been severely overcrowded and that the St Petersburg prosecutor had acknowledged the problem of overcrowding. Inmates had less than two square metres of personal space at their disposal, which indicated a violation of Article 3 of the Convention. In addition, the applicant had suffered from passive smoking because the mandatory ventilation had not functioned, and from a lack of privacy when using the toilet.

49. The parties disagreed as to certain aspects of the applicant's conditions of detention in the remand centre. However, there is no need for the Court to establish the truthfulness of each and every allegation, since it finds a violation of Article 3 on the basis of the evidence that has been presented or is undisputed by the Government, for the following reasons.

50. From November 2007 to August 2009 the applicant was held in various cells, all of which measured eight square metres. Despite the Court's specific question about the conditions of the applicant's detention after November 2007, the extracts from the detainees' transfer register submitted by the Government covered only the period preceding that date. The Government did not offer any justification for their failure to submit

specific documents that could have allowed the Court to establish the exact number of detainees in the applicant's cells during the period under consideration. The only pertinent elements they produced were the certificates drafted by the prison director in 2009, according to which the cells accommodated up to three detainees, including the applicant. Whereas it is impossible to determine the specific periods of overcrowding, owing to the lack of prison records to which only the Government have access, it is clear that three detainees in an eight-square metre cell were afforded less than three square metres of floor space per person. Besides, the fact of overcrowding was further confirmed in February 2009 by the St Petersburg prosecutor in his reply to the applicant's complaint of December 2008 (see paragraph 30 above).

51. The Court reiterates that in many cases in which detained applicants had at their disposal less than three square metres of personal space, it has already found that the lack of personal space afforded to them was so extreme as to justify in itself a finding of a violation of Article 3 of the Convention (see, among many others, *Pitalev v. Russia*, no. 34393/03, § 47, 30 July 2009; *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 98, 12 February 2009; *Vlasov v. Russia*, no. 78146/01, § 81, 12 June 2008; *Kantyreva v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005). The Court is also mindful of the fact that the cells in which the applicant was detained contained some furniture and fittings, such as bunk beds and the lavatory, which must have further reduced the floor area available to him. The Court finds that the applicant was detained in those cramped conditions for approximately one year and nine months.

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

53. The Court finds accordingly that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in remand centre IZ-47/1 in St Petersburg from November 2007 to August 2009, which it considers to have been inhuman and degrading within the meaning of that provision.

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

54. The applicant complained under Article 5 § 1 of the Convention that his detention for the period from 4 October 2008 to 28 May 2009 had been unlawful and incompatible with the Convention requirements. The relevant part of Article 5 provides 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

55. 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

56. The Government submitted that the applicant's detention in excess of the maximum eighteen-month detention period had a legal basis in Article 109 §§ 4 and 7 of the CCrP which permitted the court to extend the detention period beyond eighteen months if that was necessary to allow the defendant to study the case file. By decision of 19 March 2009 (cited in paragraph 44 above), the Constitutional Court confirmed the compatibility of those provisions with the Constitution. The Government distinguished the present case from the *Korchuganova v. Russia* judgment (no. 75039/01, 8 June 2006), in which the Court found a violation of Article 5 § 1 of the Convention because the RSFSR Code of Criminal Procedure did not provide for a further extension of the applicant's detention in excess of six months for the purpose of studying the case file. In the Government's submission, the new Code of Criminal Procedure did not restrict the number of extensions.

57. The applicant pointed out that the maximum eighteen-month period of his pre-trial detention had expired on 12 September 2008 and that on 10 September 2008 the City Court had extended his detention until 4 October 2008 so as to allow him additional time to study the case file. This extension was lawful and compatible with Article 109 §§ 7 and 8 of

CCrP. However, further extensions granted by the City Court for the same purpose in the period up to 20 May 2009 were incompatible with the Constitutional Court's decision of 25 December 1998 (cited in paragraph 42 above) which held that repeated extensions could only be granted if the law expressly provided for a possibility of multiple extensions. Since Article 109 § 7 did not mention the possibility of multiple extensions, the ensuing period of detention was unlawful. The applicant also submitted that his detention from 20 to 28 May 2009 had been arbitrary because the City Court's extension order of 14 May 2009 had not set a time-limit for his detention or given any grounds for it (here he referred to the Court's findings in *Belevitskiy v. Russia*, no. 72967/01, §§ 91-92, 1 March 2007).

58. The Court reiterates that it falls to it to examine whether the applicant's detention was “lawful” for the purposes of Article 5 § 1, with particular reference to the safeguards provided by the national system. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 50). On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected “in accordance with a procedure prescribed by law”, Article 5 § 1 does not merely refer back to domestic law; like the expressions “in accordance with the law” and “prescribed by law” in the second paragraphs of Articles 8 to 11, it also relates to the “quality of the law”, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. “Quality of law” in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-... (extracts); *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Amuur*, cited above).

59. The Court observes that the applicable provisions on detention permitted up to eighteen months' detention during the investigation (Article 109 § 3, cited in paragraph 35 above) which could be extended by a judicial decision if the defendant needed more time to study the file (Article 109 §§ 7 and 8, cited in paragraphs 39 and 40 above).

60. In the present case, the eighteen months' detention of the applicant during the investigation expired on 12 September 2008. Upon request of the investigator, the City Court granted an extension until 4 October 2008 for

the purpose of studying the case file. It relied on Article 109 §§ 7 and 8 of the Code of Criminal Procedure. Subsequently, further extensions for the same purpose and by reference to the same legal provision were granted by the City Court on 1 October and 3 December 2008, 3 February, 1 and 28 April 2009. The parties disagreed on whether such repeated extensions were permitted under the applicable provisions of the domestic law. The Court has already examined a similar situation in the *Korchuganova v. Russia* case, in which it had regard to the interpretation given by the Russian Constitutional Court of the relevant provisions of the Code of Criminal Procedure (§ 51, case cited above). The Court noted that, according to the Constitutional Court's binding clarifications of 13 June 1996 and 25 December 1998 (cited in paragraphs 41 and 42 above), in the absence of an express legal provision for repeated extensions of detention on the ground that the defendant has not finished studying the file, the granting of such repeated applications for extension of the defendant's detention was not permitted by law and incompatible with the guarantee against arbitrary detention. The restrictive interpretation adopted by the Constitutional Court is consonant with the requirements of 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, among others, *Sherstobitov v. Russia*, no. 16266/03, § 113, 10 June 2010; *Shukhardin v. Russia*, no. 65734/01, § 67, 28 June 2007; *Nakhmanovich v. Russia*, no. 55669/00, § 79, 2 March 2006; and *Khudoyorov*, cited above, § 142).

61. The case-law of the Russian Constitutional Court required that a possibility to grant multiple extensions on the same ground be expressly mentioned and provided for in the criminal-procedure law. The adoption of a new Code of Criminal Procedure in 2003 did not affect the validity or applicability of the Constitutional Court's case-law and the text of new Article 109 closely followed that of the former Article 97. The Constitutional Court's decision of 19 March 2009, to which the Government referred, did not alter the Constitutional Court's position because it dealt not with the permissibility of multiple extensions but with an entirely different matter, namely, the fact that new Article 109 – by contrast to the former Article 97 – did not impose a six-month limitation on the maximum period of detention for the purpose of studying the case file (see the decision cited in paragraph 44 above). The courts of general jurisdiction in the instant case, and the Government in their submissions before the Court, adopted an extensive interpretation of Article 109, claiming that, in the absence of an express prohibition on multiple extensions on the same ground, the competent court should remain free to grant as many extensions as it considered appropriate in the circumstances of the case. However, neither the domestic courts nor the Government were able to show that the new Article 109 contained an express provision for repeated extensions of the

detention period for this purpose. It follows that their extensive interpretation of this provision sat ill with the restrictive interpretation adopted by the Russian Constitutional Court and was incompatible with the principle of the protection from arbitrariness enshrined in Article 5 of the Convention. Accordingly, the legal basis for the extension orders of 1 October and 3 December 2008, 3 February, 1 and 28 April 2009, which covered the period of the applicant's detention from 4 October 2008 to 20 May 2009, was deficient and the applicant's detention for that period was in breach of Article 5 § 1.

62. The Court further notes that on 14 May 2009 the City Court held a preliminary trial hearing and decided that the defendants, including the applicant, “should remain in custody”. It did not, however, give any grounds for maintaining the custodial measure or fix a time-limit for the extended detention. This situation has been examined in many cases against Russia in which the Court 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; *Bakmutskiy v. Russia*, no. 36932/02, §§ 112-114, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-114, 23 April 2009; *Shukhardin*, cited above, §§ 65-70; *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 14 May 2009 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness and that the ensuing period of the applicant's detention was not “lawful” within the meaning of Article 5 § 1.

63. In the light of the foregoing considerations, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 4 October 2008 to 28 May 2009.

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

64. The applicant complained that his detention pending the trial had been unreasonably long and had not been founded on relevant and sufficient reasons. He relied on Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

65. 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.

B. Merits

66. The Government submitted that the custodial measure had been imposed and extended in compliance with the requirements of the Code of Criminal Procedure and Article 5 of the Convention. Extensions of the custodial measure were justified not only by the gravity of the charges but also by other “essential and relevant factors”, such as the information on the applicant's participation in an extremist organisation and the risks of his reoffending, fleeing from justice or exerting pressure on witnesses.

67. The applicant contended that the domestic courts had considered the gravity of the charges to be a decisive factor for extending his period of detention. After 30 July 2008 they had also referred to the continuing study of the case file, which was not a relevant ground for maintaining the custodial measure, as the Constitutional Court had pointed out in its decisions of 13 July 1996 and 25 December 1998 (cited above). The risks of absconding and reoffending had been mentioned in some of the extension orders but not corroborated by any specific facts or evidence. The applicant further emphasised that he had never been charged with participation in any extremist or nationalist groups.

68. On the facts, the Court observes the applicant was arrested on 12 March 2007 and was convicted at first instance on 6 April 2010 and immediately released. The inordinate length of the applicant's pre-trial detention – more than three years – is a matter of grave concern for the Court. In these circumstances, the national authorities should put forward very weighty reasons for keeping the applicant in detention for such a long time.

69. All of the decisions extending the applicant's detention referred to the gravity of the charges against him as the first and decisive ground for keeping him in custody. They occasionally mentioned other factors, such as “public dangerousness” (decision of 1 October 2008) or “public importance” (3 February 2009) or “information on [the applicant's] character” (3 December 2008), without elaborating on how those elements were relevant for extending the applicant's detention. They did not refer to specific facts or evidence which could have substantiated the risk of the

applicant's absconding or reoffending. It appears that the St Petersburg City Court repeatedly used the summary stereotyped formula and its reasoning did not evolve with the passing of time to reflect the developing situation and verify whether the reasons for detention remained valid at the later stages of the proceedings. At no point in the proceedings did the Russian courts consider whether the length of the applicant's detention had already exceeded a "reasonable time".

70. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Khudoyorov*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko v. Russia*, no. 45100/98, §§ 91 et seq., 8 February 2005; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)). The Government did not put forward any argument which would enable the Court to reach a different conclusion in the instant case.

71. By failing to address concrete relevant facts and by relying mainly on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient" to justify its length. In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

73. The applicant complained that the Supreme Court had not reviewed speedily his appeals against the extension orders of 30 July, 10 September, 1 October and 3 December 2008 and 3 February 2009 and that he had not been allowed to appear before the Supreme Court. He 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. Admissibility

74. 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.

B. Merits

75. The Government submitted that on each occasion the Supreme Court had examined the statement of appeal within thirty days of receipt of the relevant materials, which was compatible with the requirements of the Code of Criminal Procedure. Even though the time period between the submission of a statement of appeal and the Supreme Court's appeal decision had sometimes exceeded forty days, such additional time had been needed to transfer materials from St Petersburg to Moscow, to provide the prosecutor with a copy of the appeal, to obtain his observations and to send a copy of his observations to the Supreme Court in Moscow and to the applicant and his counsel in St Petersburg. The Government pointed out that counsel for the applicant had been duly informed of the time and date of the hearing before the Supreme Court but, for unclear reasons, had not attended. The applicant's presence had not been deemed to be necessary because his objections to the extension order had been set out in sufficient detail in the statements of appeal.

76. The applicant contended that the "speediness" of the review should be determined by reference to the date when a statement of appeal was submitted. The time period from that date until the appeal decision of the Supreme Court had ranged from forty-one to forty-nine days, which was incompatible with the requirements of Article 5 § 4. The applicant submitted that his counsel had been notified of the appeal hearings but had been unable to go to Moscow owing to her involvement in other proceedings in St Petersburg. As a consequence, the appeal hearing had been conducted in the absence of the applicant and his counsel, in breach of the equality-of-arms principle implicit in Article 5 § 4.

77. The requirement of Article 5 § 4 that "the lawfulness of the detention be decided speedily" implies that the review proceedings must be conducted with due expedition (see *Medvedev v. Russia*, no. 9487/02, § 51, 15 July 2010, and *Lebedev v. Russia*, no. 4493/04, § 78, 25 October 2007). Counting from the date of submission of statements of appeals against the respective detention orders, the applicant's appeals were examined within the following periods: forty-eight days (detention order of 30 July 2008), forty-nine days (detention order of 10 September 2008), forty-four days (detention order of 1 October 2008), forty-one days (detention order of 3 December 2008) and forty-nine days (detention order of 3 February 2009).

78. The Government have not adduced any evidence to show that, having lodged those appeals, the applicant himself caused significant delays in their examination. Thus, the Court finds that the delays in the examination of the appeals against the decisions in question were attributable to the State (see *Rokhlina*, cited above, § 78).

79. The Court accepts that the domestic authorities required some time to allow the prosecution to submit their comments and to dispatch the relevant materials from St Petersburg to Moscow. However, even taking into account the heavy case-load of the Supreme Court, the Court considers that periods of more than forty days on each occasion cannot be considered compatible with the “speediness” requirement of Article 5 § 4 (compare *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).

80. Regard being had to the above, the Court finds that there has been a violation of Article 5 § 4 of the Convention. In the light of this finding, the Court does not need to determine whether the refusal of leave to appear in court also entailed a violation of Article 5 § 4 (compare *Gubkin*, cited above, § 158, and *Starokadomskiy v. Russia*, no. 42239/02, § 87, 31 July 2008).

V. ALLEGED VIOLATION OF ARTICLE 13 THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 3

81. Lastly, the applicant complained under Article 13 of the Convention that he had not had at his disposal an effective remedy for his above complaint under Article 3 of the Convention about the conditions of his detention in the remand centre. Article 13 reads as follows:

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

A. Admissibility

82. 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.

B. Merits

83. The Government submitted that the applicant could have asked for a meeting with the director of the remand centre and that he could have complained to an ombudsman, a supervising prosecutor or a court. The prison authorities had not prevented him from exercising his rights.

84. The applicant pointed out that the overcrowding problem had not concerned just him personally but was of a structural nature. In those circumstances, an application to any authority would have been futile, for the authorities would not have been able to put an end to a continuing violation of his right. The applicant emphasised that he had actually complained to a prosecutor, who, by letter of 20 February 2009, had instructed the director of the remand centre to remedy violations of the detainees' rights. However, despite the prosecutor's intervention and his further warnings issued on 31 March, 30 June and 30 July 2009, it was not until the applicant's case was communicated to the Russian Government that the conditions of his detention were improved and he was transferred from the overcrowded cell. The Government did not indicate whether any officials had been disciplined. Finally, the applicant submitted that he had not received any compensation for his detention in the overcrowded facility and that there was no legal mechanism for claiming such compensation.

85. The Court has found in the present case that there was a violation of Article 3 of the Convention on account of the overcrowding in the cell in which the applicant was detained. In general, Article 13 requires that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. As regards the specific problem of the conditions of detention, the Court reiterates that at least two types of relief are possible: an improvement of the relevant material conditions of detention and compensation for the damage or loss sustained on account of such conditions (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007).

86. The Court reiterates that it has already found a violation of Article 13 on account of the absence of an effective remedy for inhuman and degrading conditions of detention, finding as follows (see *Benediktov*, cited above, and *Vlasov v. Russia*, no. 78146/01, § 87, 12 June 2008):

“[T]he Government did not demonstrate what redress could have been afforded to the applicant by a prosecutor, a court or other State agencies, taking into account that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not only concern the applicant's personal situation [citations omitted]. The Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress [citations omitted].”

87. These findings apply *a fortiori* to the present case, in which the prosecutor had acknowledged that the conditions of the applicant's detention had fallen short of domestic legal requirements and instructed the director of the remand centre to remove the violations. Although the prosecutor's letter

was sent in February 2009 and it was followed by three similar warnings in March, June and July 2009, the applicant was not transferred from the overcrowded cell until several months later, in August 2009. The Government did not submit any information or evidence of any disciplinary or other proceedings against the State officials liable for the violation of the applicant's rights. The Court has already found that neither an application to an ombudsman, nor a complaint to the prosecutor or to a court constituted an effective remedy because they did not offer a prospect of obtaining either preventive or compensatory redress (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 83-89, 12 March 2009).

88. The Court concludes that there has been a violation of Article 13 of the Convention in conjunction with Article 3.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

91. The Government considered the claim excessive.

92. The Court notes that it has found a combination of violations in the present case and considers that the applicant's sufferings and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 24,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

93. The applicant also claimed EUR 23,600 for the costs and expenses incurred before the domestic courts and in the Strasbourg proceedings. He enclosed copies of legal-services contracts with his counsel and their receipts for payment of amounts stipulated therein.

94. The Government made no specific comments on this claim.

95. 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 were reasonable

as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in remand centre IZ-47/1 in St Petersburg;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 4 October 2008 to 28 May 2009;
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;
6. *Holds* that there has been a violation of Article 13 of the Convention, read in conjunction with Article 3;
7. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 24,000 (twenty-four thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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