



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

FIRST SECTION

CASE OF VADIM KOVALEV v. RUSSIA

(Application no. 20326/04)

JUDGMENT

STRASBOURG

10 May 2011

FINAL

10/08/2011

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

In the case of Vadim Kovalev 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 20326/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vadim Vladimirovich Kovalev (“the applicant”), on 7 April 2004.

2. The applicant was represented by Mr V. Prokofyev, a lawyer practising in Rostov-on-Don. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in cramped conditions and that his detention had been excessively long.

4. On 4 September 2008 the President of the First Section decided to communicate the complaint under Article 5 § 3 to the Government. It was also decided to examine the merits of the application at the same time as its admissibility. Subsequently, on 27 May 2010 further observations were requested from the parties under Article 3 of the Convention, and on 6 December 2010 a further factual information request was made to the parties with regard to the complaint under Article 5 § 3.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Rostov-on-Don.

A. The applicant's arrest and ensuing detention

6. On 12 February 2004 criminal proceedings were instituted against the applicant, at the material time Deputy Head of the Transport Safety Department, and he was arrested on suspicion of bribe-taking. The arrest took place in the absence of the lawyer. A search was carried out at the flat where he was staying. The applicant was released on the same day.

7. The applicant challenged the lawfulness of the institution of the criminal proceedings against him and of his arrest. However, on 3 August 2004 and 8 February 2005 respectively the Rostov Regional Court in the final instance dismissed his claims.

8. The applicant further challenged the lawfulness of the search carried out at his flat. On 14 February 2004 the Leninskiy District Court of Rostov-on-Don held that the search had been carried out in compliance with the domestic law. The applicant alleged that he had not been informed of the above decision until 18 May 2004. Thus, he had been prevented from lodging an ordinary appeal against it. Later, the applicant tried to initiate a supervisory review of the decision of 14 February 2004. However, on 31 May 2004 the Rostov Regional Court found that there were no grounds for quashing the decision of 14 February 2004.

9. On 10 March 2004 the Leninskiy District Court of Rostov-on-Don remanded the applicant in custody. The decision read as follows:

“... From the material submitted by the prosecution, it follows that [the applicant] was charged with several particularly serious offences, and there are grounds to suspect him of having committed other similar crimes ... Besides, as it follows from the submitted material, during the search carried out at the applicant's flat on 12 February 2004, [the applicant's wife] went to the balcony and threw out [documents], suggesting that she was therefore trying to hide material evidence from the investigation ... This gives grounds to believe that, if not detained, [the applicant] may interfere with the proper administration of justice by destroying or hiding evidence, preventing the investigative authorities from uncovering other instances of his illegal activities, as well as putting pressure on those witnesses who had not yet been identified or questioned.

[The applicant] did not provide any medical documents certifying that his state of health prevented him from being held in detention ...”

10. The applicant's detention interrupted the inpatient treatment he had meanwhile been undergoing for an aggravated chronic kidney condition (acute pyelonephritis).

11. On 22 March 2004, on appeal, the Rostov Regional Court upheld the detention order of 10 March 2004, finding that it had been lawful and justified.

12. On 7 May 2004 the Leninskiy District Court, citing the gravity of the charges against the applicant, extended his detention until 12 June 2004. On 19 May 2004, on appeal, the Rostov Regional Court upheld the above decision.

13. On 9 June 2004 the Leninskiy District Court extended the applicant's detention until 12 August 2004. The court held as follows:

"... [The applicant] is charged with several particularly grave crimes committed by an organised group; until now, the investigating authorities have not identified all those involved in the criminal activities in respect of which [the applicant] has been charged; [the applicant] knows the persons in question. In view of the above, the court considers that, if not detained, the applicant might threaten witnesses and destroy the evidence, thereby obstructing justice ..."

14. The applicant appealed, claiming that the above decision was groundless. In particular, the applicant did not know any of the witnesses, all the relevant documents were seized by the investigating authorities, the applicant was suspended from work, his access to documents was restricted and the key to his office was confiscated. Furthermore, the applicant stated that he had no criminal record, that he had a permanent place of residence and a family, that, prior to his detention, he had been undergoing medical treatment for pyelonephritis but that the treatment had been interrupted and thus the condition had been aggravated and that others involved in the case had been given more lenient preventive measures.

15. On 30 June 2004, on appeal, the Rostov Regional Court upheld the lawfulness of the decision of 9 June 2004 without considering the arguments put forward by the applicant.

16. On 10 August, 8 September and 9 November 2004 the Leninskiy District Court extended the applicant's detention until 12 September, 12 November and 12 December 2004 respectively. The court again referred to the gravity of the charges against the applicant and the risk that he might put pressure on witnesses or otherwise obstruct justice.

17. On 25 August, 20 September and 19 November 2004 respectively, the Rostov Regional Court upheld the above decisions on appeal.

18. On 10 December 2004 the pre-trial investigation was completed and the criminal case against the applicant and four other co-defendants was referred for trial to the Rostov Regional Court. The applicant remained in detention.

B. The applicant's trial

19. On 21 December 2004 the Rostov Regional Court scheduled a preliminary hearing for 29 December 2004. The issue of the applicant's detention was left unexamined.

20. On 29 December 2004 the Rostov Regional Court adjourned the preliminary hearing until 12 January 2005. The issue of the applicant's detention was again left unexamined.

21. On 12 January 2005 the Rostov Regional Court held the preliminary hearing, and on 13 January 2005 the court ordered that the preventive measure applied to the applicant should remain unchanged.

22. On 1 March 2005 the applicant made an application for release, which on 2 March 2005 was dismissed by the Rostov Regional Court with reference to the absence of sufficient grounds for altering the preventive measure.

23. On 7 June 2005 the Rostov Regional Court maintained the applicant's custodial measure and extended it until 11 September 2005. The court reasoned its decision by the fact that the criminal case against the applicant was being examined at the final stage of the judicial investigation, that the applicant was charged with several particularly serious offences and that, if released, he might abscond or otherwise obstruct the administration of justice.

24. On 11 August 2005, on appeal, the Supreme Court of Russia upheld the lawfulness of the above extension order.

25. Prior to the applicant's trial, some details of the applicant's criminal case were disclosed by the local media.

26. On 8 September 2005 the Rostov Regional Court convicted the applicant of abuse of office, bribe-taking and forgery and sentenced him to eight years' imprisonment.

27. On 22 December 2005 the Supreme Court of Russia modified the qualification of the crimes committed by the applicant and reduced the sentence to four years' imprisonment.

C. Conditions of the applicant's detention

28. From 15 March 2004 to 21 April 2006 the applicant had been held in remand prison IZ-61/1 of Rostov-on-Don (*Следственный Изолятор ИЗ-61/1 Главного управления Федеральной службы исполнения наказаний по Ростовской области*). Throughout this period the applicant had been held in cells nos. 50, 55, 116, 120, 121, 122, 126, 179 and household service units (*жилые секции отряда хозяйственного обслуживания*) nos. 156 and 159.

(a) The Government's account

29. As regards the cells' measurements and the number of inmates detained therein together with the applicant, the Government submitted as follows.

(a) **cell no. 50** measuring 15.2 square metres accommodated up to 4 detainees;

(b) **cell no. 55** measuring 16.1 square metres accommodated up to 4 detainees;

(c) **cell no. 116** measuring 56.2 square metres accommodated up to 14 detainees;

(d) **cell no. 120** measuring 15.9 square metres accommodated up to 4 detainees;

(e) **cell no. 121** measuring 16 square metres accommodated up to 4 detainees;

(f) **cell no. 122** measuring 15.9 square metres accommodated up to 4 detainees;

(g) **cell no. 126** measuring 44.5 square metres accommodated up to 12 detainees;

(h) **cell no. 179** measuring 32.8 square metres accommodated up to 8 detainees;

(i) **household unit no. 156** measuring 44.2 square metres accommodated up to 18 detainees; and

(j) **household unit no. 159** measuring 31.3 square metres accommodated up to 10 detainees.

30. In each cell the applicant had an individual bed and had been provided with bedding (a mattress, a pillow, a blanket, two bed sheets, a pillowcase and a towel) and tableware (a spoon, a mug and a plate).

31. Each cell had windows measuring at least 1.2 by 0.9 meters. The windows had been barred from both the inside and the outside. The access of fresh air and day light had not been restricted. The level of natural lighting had corresponded to the established sanitary norms and allowed the inmates to read and write.

32. The cells had been illuminated with 100 watt filament lamps, which had been on from 6 a.m. to 10 p.m. on weekdays and from 7 a.m. to 11 p.m. on weekends and holidays. At night-time the cells had been lit by 75 watt security lights with tinted glass shades. Security lights had not disturbed the inmates' sleep.

33. All cells had been equipped with extractor fans and a heating system, both functioning properly at the relevant time. The average winter temperature in the cells did not go below +18 degrees Celsius, and the average summer temperature did not go above +23 degrees Celsius.

34. The applicant had received food of adequate quality in accordance with the established legal norms.

35. The applicant had not applied for medical assistance during his stay in the remand prison.

36. In support of their submissions the Government provided several certificates issued by the director of IZ-61/1 on 21 June 2010, the results of a laboratory examination of the microclimate of the cells (illumination, temperature, relative air humidity and air circulation) in 2004-2006 and statements by wardens (although not dated). The Government further annexed to their submissions copies of documents certifying that registration logs of the detention facility had been destroyed due to the expiry of the time-limit for their storage.

(b) The applicant's account

37. As regards the cells' measurements and the number of inmates detained therein the applicant submitted as follows:

(a) **cell no. 50** where the applicant had been held from January to mid-July 2005 measured approximately 7 square metres and housed from 6 to 9 detainees;

(b) **cell no. 55** where the applicant had been held from August 2004 to January 2005 measured approximately 7 square metres and housed from 6 to 8 detainees;

(c) **cell no. 116** where the applicant had been held from mid-July to the beginning of September 2005 and from mid-September to mid-December 2005 measured approximately 30 square metres and housed up to 24 detainees;

(d) **cell no. 120** where the applicant had been held during two days in January 2005 measured approximately 7 square metres and housed from 6 to 8 detainees;

(e) no specifics were provided for the **cell no. 121** where the applicant had been held during one day in January 2005;

(f) **cell no. 122** where the applicant had been held during a week in the beginning of September 2005 and from mid-December 2005 to mid-February 2006 measured approximately 7 square metres and accommodated 6 detainees;

(g) **cell no. 126** where the applicant had been held from April to August 2004 measured approximately 30 square metres and accommodated over 26 detainees;

(h) **cell no. 179** where the applicant had been held from March to April 2004 measured approximately 22.5 square metres and accommodated up to 16 detainees;

(i) no specifics were provided for **household units nos. 156 and 159**.

38. The appalling sanitary condition of the cells had been aggravated by the arrangement of the lavatory, elevated by 0.7 meters above the floor level and separated on one side by a 1-meter-high brick or steel partition. As a result a person using the toilet was in plain view of his cellmates.

39. The 1-hour outside walks had not been available on the days when the applicant had been taken to participate in investigative actions or court hearings. Likewise, on such days the applicant had been deprived of shower, normally available once a week. In the period from January to September 2005 when the applicant had been participating in the hearing of his case, he had waited up to three-four weeks to take a shower.

40. Besides two superficial medical checkups no other medical assistance had been provided to the applicant.

II. RELEVANT DOMESTIC LAW AND COUNCIL OF EUROPE DOCUMENTS

41. For a summary of the relevant domestic law and Council of Europe documents see *Veliyev v. Russia*, no. 24202/05, §§ 100-115, 24 June 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained of the allegedly appalling conditions of his detention in remand prison IZ-61/1 of Rostov-on-Don. He relied on Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

43. The Government contested that argument and considered that the conditions of detention in that prison had not been incompatible with Article 3 of the Convention.

44. The applicant disagreed and maintained his complaint.

B. The Court's assessment

1. Admissibility

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

2. Merits

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

47. The Court notes that the parties disagree on just about every aspect of the conditions of the applicant's detention, including the size of the cells and the number of detainees in each. Most importantly, the Government deny that the cells in question were overcrowded, and have submitted official certificates provided by the authorities of the remand prison in question to that effect, whereas the applicant insists on his initial account of events.

48. Having observed the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreement on all of the aforementioned aspects as the case file contains sufficient documentary evidence to confirm the applicant's allegations of severe overcrowding in remand prison IZ-61/1 of Rostov-on-Don, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

49. The Court notes that in its judgments in the cases of *Vladimir Krivonosov v. Russia*, no. 7772/04, §§ 86-98, 15 July 2010; *Bordikov v. Russia*, no. 921/03, §§ 55-64, 8 October 2009, no. 47095/99; *Bakmutskiy v. Russia*, no. 36932/02, §§ 88-97, 25 June 2009; and *Gubkin v. Russia*, no. 36941/02, §§ 92-101, 23 April 2009, it examined the conditions of detention in the same remand prison in different time periods between 1998 and 2005 and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding. In the case of *Gubkin*, § 83, the Government expressly acknowledged that the cells had been somewhat overcrowded.

50. Since the Government did not support its own submissions with reference to any original prison documentation, the Court is prepared to accept its previous findings as sufficient confirmation that the overcrowding of cells was a problem in remand prison IZ-61/1 at about the same time as the applicant was detained there. Furthermore, the Court cannot accept the statements made by various prison officials (see paragraph 36 above) as sufficiently conclusive, as they lack any reference to original prison records and are apparently based on personal recollections and not on any objective data (see *Ovchinnikov v. Russia*, no. 9807/02, § 70, 17 June 2010; *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007).

51. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

52. Having regard to its case-law on the subject and the material in its possession, the Court notes that the Government have not provided any

evidence or made any submissions capable of persuading it to reach a different conclusion in the present case.

53. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison IZ-61/1 of Rostov-on-Don from 15 March 2004 to 21 April 2006, which the Court considers to be inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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

54. The applicant complained under Article 5 § 3 of the Convention that the duration of his pre-trial detention had been in breach of the reasonable time requirement. Article 5 § 3 provides as follows:

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

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

1. Submissions by the parties

56. The Government submitted that the preventive measure in the form of detention had been applied to the applicant and subsequently extended in view of the seriousness of the charges against him and other relevant circumstances, such as, for example, the applicant's wife's attempt to destroy documents which could be of evidential significance for the case. On each occasion the applicant's state of health was duly taken into account by the domestic court. The extensions of the applicant's detention were necessary in order to complete the investigation, and they did not exceed the reasonable time requirement.

57. The applicant submitted that the main argument for holding him in custody had been the gravity of the charges against him. The domestic court never demonstrated the existence of specific facts in support of their conclusion that he might abscond, put pressure on witnesses or otherwise hamper the investigation. The fact that the applicant's wife had allegedly tried to hide certain evidence was an assumption devoid of any proof and

could not be given much weight since, in any event, the search had taken place in the applicant's absence. The applicant was taken into custody regardless of the fact that, in the meantime, he had been undergoing inpatient medical treatment in connection with the aggravation of his chronic condition.

2. The Court's assessment

58. The applicant was taken in custody on 10 March 2004. On 8 September 2005 he was convicted. Thus, the period to be taken into consideration lasted eighteen months.

59. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of his involvement in bribery. 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).

60. The Court observes that in the period from March 2004 to December 2004 when the case was under investigation, the judicial authorities relied, in addition to the gravity of the charges against the applicant, to the risk of his interference with the investigation by destroying or hiding the evidence, regard being had, in particular, to the attempts of the applicant's wife to destroy certain documents relevant for the case during the search, preventing the investigating authorities from identifying all those involved in the criminal activity and exerting pressure on those witnesses who had not been identified or questioned (see paragraphs 9, 12, 13 and 16 above). The Court considers that the reasons advanced by domestic courts during the relevant period were both "relevant" and "sufficient" (compare to *Yudayev v. Russia*, no. 40258/03, §§ 70-71, 15 January 2009, and *Isayev v. Russia*, no. 20756/04, §§ 145-153, 22 October 2009).

61. As regards the subsequent period when the criminal case against the applicant was pending before the trial court, the Court observes that from December 2004 to June 2005 the applicant was kept in detention in the absence of any relevant grounds: from 13 December 2004 to 13 January 2005 there was no valid court order authorising the applicant's detention (see paragraphs 16 and 19-21 above) and from 13 January to 7 June 2005 the domestic court maintained the applicant in detention without citing any particular reason (see paragraphs 21 and 23 above). Subsequently from June to September 2005 the applicant's detention was explained by the advanced

stage of the proceedings, the gravity of the charges against him and the risk of his absconding or otherwise obstructing justice (see paragraph 23 above).

62. Concerning the domestic courts' reliance on the gravity of the charges against the applicant, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see, among many other references, *Vladimir Krivonosov*, cited above, § 133; *Gubkin*, cited above, § 142; and *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007). Any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Moskovets v. Russia*, no. 14370/03, § 83, 23 April 2009; and *Belevitskiy*, cited above, § 102).

63. As regards the existence of a risk of absconding, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Goroshchenya v. Russia*, no. 38711/03, § 87, 22 April 2010, with further references). In the present case in the period under consideration the domestic authorities gave no reasons why they considered the risk of the applicant's absconding to be decisive. Neither did they give any reasons substantiating the alleged risk of the applicant's obstructing justice. The Court therefore finds that the existence of the above risks has not been established.

64. As to the domestic courts' reliance on the advanced stage of the proceedings against the applicant, the Court considers that this circumstance as such, without close examination and assessment of any pertinent facts, cannot be regarded as a relevant or sufficient reason for continued detention.

65. The Court further emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures to ensure his or her appearance at the trial (see *Goroshchenya*, cited above, § 89, with further references). During the entire period of the applicant's detention pending trial the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

66. Having regard to the above, the Court concludes that the applicant's detention pending trial was not based on "relevant" and "sufficient" reasons which could justify its length. It therefore finds it unnecessary to ascertain whether the national authorities displayed "special diligence" in the conduct of the proceedings during that period.

67. The Court accordingly finds that there has been a violation of Article 5 § 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The applicant complained under Article 6 § 1 that the institution of the criminal proceedings against him and the search carried out at his flat on 12 February 2004 had been unfair and about the absence of a lawyer during his arrest. He further complained under Article 6 § 1 that the domestic court had failed to correctly establish the circumstances of the case or give due consideration to his arguments, that they had used unreliable evidence and convicted him in violation of the domestic law. Lastly, he complained under Article 6 § 2 that the presumption of his innocence had been violated.

69. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government submitted that the applicant's claim was excessive and that the finding of a violation would in itself constitute sufficient just satisfaction.

73. The Court considers that the applicant has suffered non-pecuniary damage as a result of his detention in overcrowded conditions for two years and one month. He has also suffered non-pecuniary damage as a result of

the length of his detention pending trial which had not been based on “relevant” and “sufficient” reasons. In these circumstances, the Court considers that the suffering and frustration caused to the applicant cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

74. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 5 § 3 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 applicant’s detention in remand prison IZ-61/1 of Rostov-on-Don from 15 March 2004 to 21 April 2006;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 10 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President