



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

FIRST SECTION

CASE OF CHUDUN v. RUSSIA

(Application no. 20641/04)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

28/11/2011

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

In the case of Chudun v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

Julia Laffranque,

Linós-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 20641/04) 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 Baylak Noozunovich Chudun (“the applicant”), on 7 April 2004.

2. The applicant was represented by Mr S. Damdyn, a lawyer practising in Kyzyl, Tyva Republic. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their representative Mr G. Matyushkin.

3. The applicant complained that the conditions of his detention in the remand prison had been appalling, that his detention on remand had been unlawful and excessively long and that the criminal case against him had not been examined within a reasonable time.

4. On 10 January 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided (pursuant to former Article 29 § 3 of the Convention) to rule on the admissibility and merits of the application at the same time.

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 applicant was born in 1974 and lives in Kyzyl in the Tyva Republic of the Russian Federation.

A. Applicant's arrest, ensuing detention and trial

7. On 21 January 2000 criminal proceedings were instituted against the applicant on suspicion of banditism, robbery, theft of firearms and illegal deprivation of liberty.

8. On 22 January 2000 the applicant was arrested; he was released three days later under a written undertaking not to leave his place of residence.

9. On 3 March 2000 the preventive measure was changed to detention in custody, and on 4 March 2000 the applicant's name was put on a wanted list.

10. On 22 May 2000 the applicant was arrested, and on 25 May 2000 he was detained in remand prison IZ-17/1 of Kyzyl, Tyva Republic.

11. On 13 July 2000 the acting Prosecutor of the Tyva Republic extended the applicant's and his co-defendants' detention until 21 October 2000, relying on the particular gravity of the charges against them and the likelihood that they would obstruct the course of justice and abscond if released.

12. On 10 and 23 October 2000 the acting Prosecutor of the Tyva Republic and the Deputy Prosecutor General of the Russian Federation respectively extended the applicant's and his co-defendants' detention until 22 November 2000 and 21 January 2001 respectively, endorsing the reasons given in the decision of 13 July 2000.

13. On 20 January 2001 the applicant was committed for trial before the Supreme Court of the Tyva Republic. According to the Government, the applicant's detention from 21 January to 20 March 2001 was not covered by any legal order as the domestic authorities were not required to issue one under the legislation governing criminal procedure at the material time.

14. On 15 February 2001 the Supreme Court of the Tyva Republic suspended the examination of the criminal case because one of the applicant's co-defendants had violated the conditions of his release on bail and had absconded. The case file was sent to the Prosecutor of the Tyva Republic in order for a search to be organised. The Supreme Court also noted that the prosecution authorities were to "determine the issue of the application of a measure of restraint [in respect of the applicant and his co-defendants]".

15. The Supreme Court of the Tyva Republic resumed the proceedings on 5 March 2001 and fixed a hearing for 12 March 2001. That hearing was adjourned until 20 March 2001 because some of the victims and the lawyers failed to appear.

16. On 20 March 2001 the Supreme Court of the Tyva Republic returned the case file to the prosecution authorities with an order to correct certain serious procedural defects, noting that defence rights had been violated. In the same decision the Supreme Court held that the measure of restraint applied to the co-defendants, including the applicant, should “remain unchanged” because of the gravity of the charges against them.

17. On 20 July 2001 the acting Prosecutor of the Tyva Republic, relying on the gravity of the charges and the defendants’ liability to abscond, obstruct the course of justice and re-offend, extended the applicant’s and his co-defendants’ detention until 20 August 2001. A further extension until 20 September 2001 was ordered by a deputy Prosecutor General of the Russian Federation, with a reference to the same grounds.

18. On 14 September 2001 the prosecution authorities returned the case file to the Supreme Court of the Tyva Republic, which on 2 October 2001 remitted the case again for additional investigation, citing serious violations of defence rights which had not been remedied during the previous referral of the case file to the prosecution authorities. The Supreme Court also ordered that the defendants should remain in custody, given the gravity of the charges against them.

19. Having received the case file, on 11 October 2001 the deputy prosecutor of the Tyva Republic extended the applicant’s and co-defendants’ detention until 11 November 2001, relying on the grounds used previously, namely the gravity of the charges and the defendants’ liability to abscond, reoffend and obstruct the course of justice.

20. On 8 November 2001 the additional investigation ended and the case file was sent to the Supreme Court of the Tyva Republic. It fixed the first hearing for 6 December 2001. However, that hearing and subsequent hearings scheduled for 10 January and 12 March 2002 were adjourned because of the involvement of the presiding judge in other unrelated proceedings.

21. In the meantime, the composition of the bench changed: a new presiding judge and lay assessor were assigned to the case. Between 12 March and 13 June 2002 the Supreme Court of the Tyva Republic fixed five hearings, of which three were adjourned because the co-defendants’ lawyers failed to appear, one was rescheduled because the victims did not attend, and one was adjourned because it was necessary to serve the applicant with a copy of the indictment act in the Tyvan language.

22. On 13 June 2002 the Supreme Court of the Tyva Republic, finding that the prosecution authorities had committed serious procedural violations at the indictment stage, referred the case back for additional investigation

with an order to respect the rights of the defendants, including their right to the services of an interpreter, etc. The Supreme Court also stressed that the defendants should remain in detention.

23. On 15 November 2002 the Supreme Court of the Russian Federation quashed the decision of 13 June 2002 in the part concerning the referral of the case for additional investigation and sent the case for examination on the merits by the Supreme Court of the Tyva Republic. At the same time the Supreme Court of the Russian Federation held that there were no grounds to change the measure of restraint applied to the defendants and that they should therefore remain in custody.

24. After receiving the case file on 4 February 2003, the Supreme Court of the Tyva Republic fixed the first hearing for 12 February 2003. That hearing was adjourned until 3 March 2003 because the co-defendants' counsel failed to appear. On 3 March 2003 the hearing was adjourned on account of the examination of an application requesting release filed by one of the co-defendants. On 18 March 2003 the Supreme Court of the Tyva Republic resumed the examination of the above-mentioned application for release, and on 19 March 2003 it stayed the proceedings until 26 March 2003 because of the necessity to appoint counsel for one of the co-defendants.

25. On 24 March 2003 the Supreme Court of the Tyva Republic extended the defendants' detention for an additional three months, until 24 June 2003, holding as follows:

“Taking into account the prosecutor's arguments that [the defendants] are charged with a criminal offence which belongs to the category of particularly serious [offences], punishable by a maximum of 10 years' imprisonment, [and] having regard to the particular complexity of the criminal case and [the fact] that the release from custody of the defendants, who represent an increased danger to society, may considerably impede a thorough, complete and objective examination of the circumstances of the case, the measure of restraint applied to the defendants should remain unchanged.”

26. Of the three hearings scheduled between 26 March and 24 June 2003 by the Supreme Court of the Tyva Republic, two were adjourned because the co-defendants' lawyers and the victims failed to appear, and one was postponed to provide counsel with additional time to study the material in the case file.

27. On 24 June 2003 the Supreme Court of the Tyva Republic, using identical wording to that in the decision of 24 March 2003, extended the defendants' detention until 24 September 2003.

28. Between 24 June and 25 September 2003 the Supreme Court of the Tyva Republic fixed four hearings, of which two were adjourned because the defence counsel failed to appear or were on annual leave, one was postponed because a co-defendant was ill, and one was rescheduled on account of a victim's failure to attend.

29. On 25 September 2003 the Supreme Court of the Tyva Republic once again extended the defendants' detention for an additional three months, until 24 December 2003, citing the same grounds as in the previous two detention orders of 24 March and 24 June 2003.

30. The applicant appealed against the decision of 25 September 2003, arguing that his detention from 24 to 25 September 2003 had not been covered by any legal order, in violation of the requirements of the Russian Code of Criminal Procedure, that when extending his detention the court had referred solely to the gravity of the charges, and that his detention in general had been excessively long.

31. On 4 December 2003 the Supreme Court of Russia upheld the decision of 25 September 2003 on appeal. The court noted that the applicant's and his co-defendants' detention had been regularly extended in compliance with the requirements of the Russian legislation on criminal procedure. It further stressed that in extending the defendants' detention the Supreme Court of the Tyva Republic had correctly relied on the gravity of the charges. With regard to the detention from 24 to 25 September 2003, the Supreme Court of the Russian Federation held that the detention had been lawful, since the prosecution authorities had submitted the application for the extension before 24 September 2003 and the Supreme Court of the Tyva Republic had scheduled the hearing for the day after, 25 September 2003.

32. In the meantime, the Supreme Court of the Tyva Republic had listed nine hearings between 25 September and 9 December 2003. Of those hearings, two were adjourned because the victims failed to appear, three hearings were rescheduled because the co-defendants' counsel were either involved in other proceedings or failed to appear, one was postponed because the presiding judge was ill, one was postponed at the request of one of the counsel and two were cancelled because it was necessary to determine the issue of the defendants' representation.

33. On 18 December 2003 the Supreme Court of the Tyva Republic, relying on the same grounds as in the detention orders issued in 2003, issued another collective decision in respect of the defendants, extending their detention until 24 March 2004. Subsequent identically worded detention orders were issued by the Supreme Court of the Tyva Republic on 19 March and 18 June 2004, extending the defendants' detention until 24 June and 24 September 2004 respectively. Appeals lodged by the applicant against the extension orders of 19 March and 18 June 2004 were to no avail.

34. Between 14 January and 15 June 2004 nineteen hearings were adjourned, mostly on account of the failure of the participants in the trial (witnesses, victims, counsel) to appear before the court for various reasons.

35. On 25 August 2004 the Supreme Court of the Tyva Republic convicted the applicant, along with ten other co-defendants, of robbery and

theft of firearms and sentenced him to eight years and five months' imprisonment. The applicant decided not to lodge an appeal.

B. Conditions of the applicant's detention in facility IZ-17/1

36. From 8 June 2000 to 28 September 2004 the applicant was detained in detention facility IZ-17/1 of Kyzyl in the Tyva Republic. During this period the applicant was held in cells nos. 18, 19, 21, 22, 26, 29, 36, 43, 51, 53, 56 and 80.

1. The applicant's account

37. For an extended period of time the applicant was held in cell no. 51 measuring 7.5 square metres and containing up to twelve inmates simultaneously.

38. The applicant alleged that he had contracted tuberculosis as a result of his detention in such cramped conditions.

2. The Government's account

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

- (a) **cell no. 18** measuring 29 square metres accommodated from four to seven detainees between 7 December 2000 and 28 June 2001;
- (b) **cell no. 19** measuring 29.4 square metres accommodated from six to seven detainees between 17 October and 7 December 2000;
- (c) **cell no. 21** measuring 35 square metres accommodated from seven to nine detainees between 10 October and 19 November 2001;
- (d) **cell no. 22** measuring 31 square metres accommodated from six to eight detainees between 9 June and 17 October 2000 and between 25 October 2003 and 29 March 2004;
- (e) **cell no. 26** measuring 28.9 square metres accommodated from five to six detainees between 2 April and 8 August 2002;
- (f) **cell no. 29** measuring 29.4 square metres accommodated from three to seven detainees between 8 August and 31 October 2002;
- (g) **cell no. 36** measuring 44.4 square metres accommodated from eight to eleven detainees between 29 March and 28 September 2004;
- (h) **cell no. 43** measuring 40.4 square metres accommodated from six to ten detainees between 2 September and 10 October 2001;
- (i) **cell no. 51** measuring 13.7 square metres accommodated from three to four detainees between 28 June and 2 September 2001;
- (j) **cell no. 53** measuring 21.2 square metres accommodated from four to six detainees between 19 November 2001 and 2 April 2002;

(k) **cell no. 56** measuring 45.4 square metres accommodated from eight to eleven detainees between 20 July and 25 October 2003;

(l) **cell no. 80** measuring 23.9 square metres accommodated from three to seven detainees between 31 October 2002 and 20 July 2003.

40. In each cell the applicant had an individual sleeping place and bedding.

41. The applicant was able to take daily one-hour outside walks, which took place in the specially equipped exercise yards.

42. The lavatories in the cells, equipped with a flush system, were separated from the living area by one-meter-high brick partitions enabling the inmates to comply with their needs in private. They were situated at a distance from the dining table.

43. The applicant could take a fifteen-minute shower once a week. After each shower, he received fresh bedding.

44. The cells were equipped with drinking-water tanks. The detainees were also allowed to use electric kettles.

45. The applicant was given food three times a day in accordance with the established legal norms.

46. The cells were equipped with dining tables and benches corresponding to the number of detainees, forty centimetres of table and bench being allowed for each detainee.

47. All cells were ventilated by a system of exhaust ventilation. Natural ventilation was also available. The cells were also equipped with a heating system providing an adequate temperature in line with sanitary norms. The average temperature in the cells was maintained at 18-24 degrees Celsius.

48. Until 2003 the windows in the cells were covered with metal screens. These were subsequently removed to provide better access to daylight and fresh air. The artificial lighting consisted of one 100-150 watt light bulb per cell. Bigger cells were lit by two 100 watt light bulbs.

49. The authorities ensured regular disinfection and pest control in the facility.

50. Upon admission to the facility the applicant underwent an initial medical examination, including a fluorography examination (no pathologies were discovered) and blood tests to detect syphilis and HIV (both were negative). The applicant had no specific health-related complaints upon his admission. In December 2001 the applicant suffered an episode of catarrhal tonsillitis and received appropriate treatment; in March 2002 he was diagnosed with acute pyelonephritis and received appropriate treatment (subsequently the diagnosis was not confirmed); in September 2003 he was diagnosed with osteochondrosis, for which he receives regular treatment. The applicant's allegations that he had contracted tuberculosis while in detention facility were disproved by the results of his fluorography examination of 26 February 2008.

51. In support of their observations the Government provided several certificates issued by the governor of IZ-17/1 on 29 February 2008, together with the applicant's prison card which recapitulates the numbers of the cells where the applicant was detained throughout his stay in the facility and the dates on which he was transferred from one cell to another, a list of food items supplied to detainees in the relevant period, and records from the applicant's medical file. Although the certificates attesting to the number of inmates contained in the cells with the applicant mention enclosures containing statements by prison officers and by the applicant's inmates Ch., V. and B. (who were held together with the applicant in cell no. 51 of the facility), these enclosures were not made available to the Court.

II. RELEVANT DOMESTIC LAW

52. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the RSFSR (Law of 27 October 1960, "the old CCrP"). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

A. Preventive measures

53. "Preventive measures" (*меры пресечения*) include an undertaking not to leave a town or region, personal security, bail, and detention (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention

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

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

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

C. Grounds for ordering detention on remand

57. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the

old CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status, and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

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

D. Time-limits for detention

1. Two types of detention

59. The Codes distinguished between two types of detention, the first being "pending the investigation", that is while a competent agency – the police or a prosecutor's office – investigated the case, and the second "before the court" (or "during the trial"), that is, while the case was being tried in court. Although there was no difference in practice between them (the detainee was held in the same detention facility), the calculation of the time-limits was different.

2. Time-limits for detention "pending the investigation"

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

61. The period of detention "pending the investigation" is calculated to the day when the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

62. Access to the case-file materials is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, at the request of a prosecutor, may grant an extension of detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

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

3. Time-limits for detention “before the court”/“during the trial”

64. From the date the prosecutor forwards the case to the trial court, the defendant’s detention is “before the court” (or “during the trial”).

65. Before 14 March 2001 the old CCrP set no time-limit for detention “during the trial”. On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention “during the trial” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant’s release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or at the request of a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with a particularly serious criminal offence.

66. The new CCrP establishes that the term of detention “during the trial” is calculated from the date the court receives the file and to the date the judgment is given. The period of detention “during the trial” 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).

E. Time-limits for trial

67. Under the old CCrP, within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for an additional investigation; (3) to stay

or discontinue the proceedings; or (4) to refer the case to a court with jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). The trial must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

68. The duration of the trial is not limited.

69. Under the old CCrP, the appeal court was required to examine an appeal against a first-instance judgment within ten days of its receipt. In exceptional circumstances or in complex cases or proceedings before the Supreme Court this time-limit could be extended by up to two months (Article 333). No further extensions were possible. The new CCrP establishes that the appeal court must start the examination of the appeal no later than one month after its receipt (Article 374).

F. Conditions of detention

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

71. Order no. 7 issued on 31 January 2005 by the Federal Service for the Execution of Sentences deals with the implementation of the “Remand Prison 2006” programme. The programme is aimed at improving the functioning of remand prisons so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in remand prisons and seeks to reduce and stabilise the number of detainees in order to resolve the problem. The programme mentions detention facility IZ-17/1 of Kyzyl, Tyva Republic, as one of the remand prisons affected. On 1 July 2004 its design capacity was 402 detainees, but it actually housed 605 inmates.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

Conditions of detention

72. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“46. Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ...”

Extracts from the 7th General Report [CPT/Inf (97) 10]

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee’s mandate (cf. CPT/Inf (92) 3,

paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ...”

Extracts from the 11th General Report [CPT/Inf (2001) 16]

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

73. The applicant complained that his detention in remand prison IZ-17/1 of Kyzyl, Tyva Republic, in conditions of extreme overcrowding, had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

74. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. They submitted, in particular, that the applicant could have lodged a civil claim for damage sustained as a result of the allegedly inhuman and degrading conditions of his detention. The Government relied on the case of a Mr D. who had successfully brought a civil claim for damages resulting from the conditions of his detention in a correctional colony.

75. The Court has already examined the same objection by the Russian Government on a number of occasions and dismissed it, finding that an application to a court with a view to obtaining redress for allegedly inhuman and degrading conditions of detention cannot be regarded as an effective domestic remedy (see, most recently, *Gladkiy v. Russia*, no. 3242/03, § 55, 21 December 2010, and *Artyomov v. Russia*, no. 14146/02, § 112, 27 May 2010). In the absence of any additional evidence enabling the Court to depart from such a finding in the present case, the Court dismisses the Government’s objection.

76. The Government further objected to the examination of the conditions of the applicant’s detention as a continuous situation. They argued that, since the application was lodged on 7 April 2004, the Court should only have regard to the period starting from 7 October 2004, claiming that the preceding period fell outside the six-month time limit set out in Article 35 § 1 of the Convention.

77. The Court has previously established that continuous detention in the same detention facility under similar conditions warrants examination of the detention as a whole, without dividing it into separate periods (see *Gubkin v. Russia*, no. 36941/02, § 86, 23 April 2009). In the present case the applicant was held in the same detention facility uninterruptedly, and it appears that the conditions of his detention did not vary substantially from cell to cell. The Court considers, therefore, that the applicant’s detention from 8 June 2000 to 28 September 2004 should be examined as a whole and that the Government’s objection should be dismissed.

78. The Court further notes that the applicant’s complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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*

79. Relying on their description of the prison, the Government asserted that the conditions in it were satisfactory. The conditions complied with the hygienic standards of domestic penal law and fell far short of “inhuman treatment” as developed in the Convention case-law. The Government noted that some cells where the applicant had been detained were indeed somewhat overcrowded, but this overcrowding was not excessive, and in any event, in each cell the applicant had been provided with an individual sleeping place. They further submitted that adequate medical assistance had been available to the applicant at all times.

80. The applicant maintained his complaint.

2. *The Court’s assessment*

81. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-01, ECHR 2001-VIII). When a person is held in detention the State must ensure that he is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas*, cited above, § 102, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant’s specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The duration of the detention is also a relevant factor.

82. Turning to the facts of the present case, the Court notes that the applicant’s main concern was the extreme overcrowding of the cell no. 51 where he had been held during an unspecified but prolonged period of time. The Court further notes that while the applicant claimed to have been afforded less than one square metre of personal space in the above cell (see paragraph 37 above), the Government averred that the cell in question had

afforded the applicant personal space exceeding three square metres and that the applicant had always had an individual sleeping place and bedding (see paragraphs 39 and 40 above).

83. The Court reiterates that Convention proceedings such as those arising from the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-founded nature of the applicant's allegations (see *Fedotov v. Russia*, no. 5140/02, §§ 60 and 61, 25 October 2005, and *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009 in the context of complaints about material conditions in detention facilities).

84. The Court notes that the Government, in their plea concerning the number of detainees, relied on the certificates issued by the governor of facility IZ-17/1. The Court observes that the certificates in question, issued in February 2008, long after the applicant's release from the above-mentioned detention facility, were not supported by any documents enabling the Court to verify their validity. The Court observes in this regard that it was open to the Government to submit copies of registration logs recording the cell population (*журналы покамерного размещения*) and showing the names of inmates detained together with the applicant in the relevant period. The Court further observes that, even assuming that the original prison documentation was no longer available, the Government had at their disposal statements by the inmates detained with the applicant in cell no. 51 (see paragraph 51 above). They preferred, however, not to submit those statements to the Court. The governor's certificates alone are, therefore, of little evidential value for the Court's analyses.

85. On the other hand, there are convincing indications to support the applicant's allegation of severe overcrowding. First of all, the Government themselves agreed in principle that the cells had been somewhat overcrowded (see paragraph 79 above). Furthermore, as can be seen from Order no. 7 issued on 31 January 2005 by the Federal Service for the Execution of Sentences, on 1 July 2004 the design capacity of facility IZ-17/1 of Kyzyl was exceeded by 50 per cent: it was designed to accommodate 402 detainees but it actually housed 605 inmates (see paragraph 71 above).

86. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penal system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006). The Court has previously held, albeit in a different context, that it is not open to a State authority to cite lack of funds

as an excuse for not honouring their obligations (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). This consideration applies *a fortiori* in the context of Article 3 of the Convention, as in the present case.

87. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Ovchinnikov v. Russia*, no. 9807/02, §§ 67-73, 17 June 2010; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 88-97, 25 June 2009; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *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).

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

89. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 8 June 2000 to 28 September 2004 in facility IZ-17/1 of Kyzyl, Tyva Republic, which the Court considers to amount to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

90. The applicant complained under Article 5 § 1 (c) of the Convention that his detention from 24 to 25 September 2003 had been unlawful in that it had not been covered by any valid court order. The relevant parts of Article 5 provide:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

A. Admissibility

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

B. Merits

1. Submissions by the parties

92. The Government argued that the applicant’s detention between 24 and 25 September 2003 had complied with the substantive and procedural provisions of the domestic law and had therefore been lawful within the meaning of Article 5 § 1 (c) of the Convention. They submitted, in particular, that the expiry of the term of the applicant’s detention on 24 September 2003 did not exclude the possibility of his further detention because the prosecutor’s request for a further extension had been submitted to the court prior to that date. Furthermore, the applicant’s detention for fifteen hours from midnight on 24 September 2003 to 3 p.m. on 25 September 2003 was covered by Article 22 of the Russian Constitution, which provided for the possibility of holding a person in custody for up to forty-eight hours prior to a judicial decision.

93. The applicant argued that after the expiry of the term of his detention on 24 September 2003 until the subsequent extension order of 25 September 2003 his detention had had no basis in domestic law and had therefore been in breach of Article 5 § 1 (c) of the Convention.

2. The Court’s assessment

94. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof (see, among many other authorities, *Khudoyorov*, cited above, § 124).

95. Turning to the present case, the Court notes that on 24 June 2003 the Supreme Court of the Tyva Republic extended the applicant’s detention on remand for three months, until 24 September 2003. The Court further notes that on 25 September 2003 the Supreme Court of the Tyva Republic further extended the applicant’s detention on remand for three months, until 24 December 2003. It follows, therefore, that the applicant’s detention between 24 and 25 September 2003 was not covered by any legal order.

96. The Court has previously examined an identical set of factual circumstances in the light of their compatibility with the requirement of “lawfulness” enshrined in Article 5 § 1 (c) in the case of one of the applicant’s co-defendants (see *Lamazhyk v. Russia*, no. 20571/04, §§ 67-71, 30 July 2009). In that case the Court reached the following conclusion:

“71. The Court thus concludes that from 24 to 25 September 2003 there was no formal decision authorising the applicant’s detention. The applicant was in a legal vacuum that was not covered by any domestic legal provision (see *Shukhardin*, cited above, § 85). In the absence of any decision that could have served as a “lawful” basis for the applicant’s detention in the impugned period, the Court finds that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant’s detention on remand from 24 to 25 September 2003.”

97. In the circumstances of the present case the Court finds no reason to hold otherwise. It therefore concludes that the applicant’s detention on remand from 24 to 25 September 2003 was in violation of Article 5 § 1 (c) of the Convention.

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

98. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had been excessively long and based solely on the gravity of the charges against him. Article 5 § 3 provides as follows:

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

A. Admissibility

99. The Government invited the Court to reject the applicant’s complaint relating to the period of his detention up to 7 October 2003. In their opinion, the Court had competence to examine the applicant’s detention only with regard to the six months preceding the submission of his application form. Moreover, the applicant had not appealed against the detention orders issued before 25 September 2003.

100. The Court considers that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention is complaining of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following his arrest on 22 May 2000 the applicant remained continuously in pre-trial detention until his conviction on 25 August 2004. Although he did not lodge appeals against the extension orders issued before September 2003, he appealed to the Supreme Court of

Russia against the detention orders of 25 September 2003, 19 March 2004 and 18 June 2004. He thereby gave the Supreme Court an opportunity to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Supreme Court had to assess the necessity of further extensions in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody (see, for similar reasoning, *Lamazhyk*, cited above, § 80; *Lyubimenko v. Russia*, no. 6270/06, § 62, 19 March 2009; and *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009). The Court therefore dismisses the Government's objection.

101. The Court therefore notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

102. The Government submitted that the recourse to the custodial measure in respect of the applicant and its extension throughout the proceedings was in compliance with the requirements of both the domestic law and Article 5 § 3 of the Convention. The applicant's detention had been based on grounds which were relevant and sufficient. Its overall length had been reasonable.

103. The applicant maintained his complaint.

2. The Court's assessment

104. The Court reiterates that the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of that person's continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, §§ 152 and 153).

105. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release

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

106. Turning to the circumstances of the present case, the Court observes that the applicant was arrested on 22 May 2000 and remained in custody until his conviction on 25 August 2004. The period under consideration lasted slightly over four years and three months.

107. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion of his involvement in the commission of several criminal offences. However, after a certain lapse of time the persistence of a reasonable suspicion, in itself, no longer sufficed. Accordingly, the domestic authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding him in custody.

108. The Court notes that the authorities repeatedly extended the applicant's detention, relying on the gravity of the charges against him as the main factor and on his potential to abscond or otherwise obstruct the course of justice.

109. As regards the authorities' reliance on the gravity of the charges as the decisive element, 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 v. Russia*, no. 7772/04, § 133, 15 July 2010; *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).

110. 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 the domestic authorities gave no reasons why they considered the risk of the applicant's absconding to be decisive. Nor did they give any reasons substantiating the

alleged risk of the applicant's obstructing justice in any other way. The Court therefore finds that the existence of the above risks has not been established.

111. 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 for ensuring his or her appearance at the trial (see *Lamazhyk*, cited above, § 94). At no point during the entire period under consideration did the authorities 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 least, seek to explain in their decisions why such alternatives would not have ensured that the trial followed its proper course.

112. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. It is of particular concern to the Court that the Russian authorities persistently used a summary formula to justify the extension of the applicant's detention. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable time" requirement in respect of each individual member of the group (see *Gubkin*, cited above, § 144; *Aleksey Makarov v. Russia*, no. 3223/07, § 53, 12 June 2008; *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova v. Russia*, no. 75039/01, § 76, 8 June 2006; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). The Court also deplores the fact that during certain periods the applicant was detained without any formal decision authorising his detention (see paragraphs 13, 20-22 and 97 above).

113. In view of the foregoing, the Court finds that by relying essentially on the gravity of the charges against the applicant, without an assessment of any concrete facts pertaining to his individual situation or considering the possibility of applying an alternative preventive measure, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient" for a period of more than four years. In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

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

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

A. Admissibility

116. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

117. The Government submitted that the proceedings in the applicant’s case lasted four years, seven months and four days. The case was under investigation for one year, one month and six days. The length of the trial was due to repeated adjournments of the hearings caused by the frequent absences of counsel, victims and witnesses, and other reasons beyond the domestic authorities’ control (almost two years). A short delay (eleven days) was caused by the applicant’s request to be provided with a copy of the indictment act in the Tyvan language (notwithstanding the applicant’s alleged proficiency in Russian) and, as a consequence, the necessity to read out the indictment act in both languages during the trial. In addition, a rather long delay (almost seven months) was caused by the referral of the case for additional investigation on 13 June 2002 following the defendants’ requests. Some minor delay occurred on account of the illness of the presiding judge and his involvement in the examination of other unrelated criminal cases (over a month). The Government further submitted that the domestic court had made diligent attempts to expedite the proceedings by ensuring, *inter alia*, the attendance of witnesses and the replacement of counsel. They further stressed that the overall length of the proceedings was justified by the particular complexity of the case, and the need to study the thirty-five volumes of the case file and to obtain the attendance of sixteen victims, sixty-six witnesses, twelve defendants, twelve counsel and three lawyers. Having regard to the foregoing, the Government concluded that the length

of the proceedings in the present case did not breach the “reasonable time” requirement set out in Article 6 § 1 of the Convention.

118. The applicant maintained his complaint.

2. The Court’s assessment

(a) Period to be taken into consideration

119. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is “charged” within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued. The “charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, an alternative “test” being whether “the situation of the [suspect] has been substantially affected” (see, most recently, *Kovaleva v. Russia*, no. 7782/04, § 92, 2 December 2010).

120. The period to be taken into consideration in the present case began on the date of the applicant’s arrest on 22 January 2000 when he was first affected by the “charges” against him. The period in question ended on 25 August 2004 when the Supreme Court of the Tyva Republic convicted the applicant. It follows that the period to be taken into consideration lasted four years, seven months and four days before the investigating authorities and the trial court.

(b) The reasonableness of the length of proceedings

121. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court’s case-law – in particular, the complexity of the case, the applicant’s conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant also has to be taken into consideration (see, among many other authorities, *Kovaleva*, cited above, § 94, and *Gubkin*, cited above, § 165).

122. The Court accepts that the proceedings at issue were complex. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. The Court further reiterates that the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Lamazhyk*, cited above, § 113, with further references).

123. As regards the applicant’s conduct, the Court notes the Government’s argument that the applicant had to bear responsibility for the delays in the proceedings caused by his request to provide him with a copy

of the indictment in the Tyvan language and by his and his co-defendants' requests for the referral of the case for additional investigation in June 2002 (see paragraphs 21 and 22 above). In this connection, the Court observes that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in his defence (see *Gubkin*, cited above, § 167, with further references). In any event, the above actions by the applicant did not contribute to the aggregate length of the proceedings in any significant way.

124. Turning to the conduct of the domestic authorities, the Court notes that it led to some substantial delays in the proceedings. In particular, the Court observes that an aggregate delay of approximately fifteen months was caused by the referral of the case for additional investigation on three occasions, by the prosecution authorities' repeated failure to comply with the trial court's orders and correct procedural defects, and by a change in the composition of the bench (see paragraphs 16, 18, 21 and 22 above). In this regard, the Court reiterates that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004).

125. The Court furthermore notes that the conduct of the applicant's co-accused and their counsel, and of the victims and witnesses, was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend (see paragraphs 15, 21, 24, 26, 28, 32 and 34) and the Supreme Court's failure to discipline them is attributable to the State (see *Lamazhyk*, cited above, § 116, and *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007). The Court is mindful of the Government's argument that the domestic authorities made certain efforts to expedite the proceedings. However, even if such measures were, in fact, applied, their effectiveness would appear to be open to doubt as counsel, witnesses and victims failed to attend hearings throughout the entire duration of the trial proceedings.

126. Having examined all the material before it, and taking into account the overall length of the proceedings, what was at stake for the applicant, that he was detained on remand and the fact that the proceedings were pending for the most part before the trial court with no apparent progress, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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.”

128. On 13 May 2008 the Court invited the applicant to submit his claims for just satisfaction. He did not submit any claims within the required time-limit.

129. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant’s right not to be subjected to the inhuman and degrading treatment. Since this right is of absolute character, the Court finds it possible to award the applicant 17,000 euros (EUR) by way of non-pecuniary damage (compare *Nadrosov v. Russia*, no. 9297/02, §§ 53-54, 31 July 2008; *Mayzit*, cited above, §§ 87-88; and *Igor Ivanov v. Russia*, no. 34000/02, §§ 48-50, 7 June 2007), plus any tax that may be chargeable.

130. 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 conditions of the applicant’s detention from 8 June 2000 to 28 September 2004 in facility IZ-17/1 of Kyzyl, Tyva Republic;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant’s detention from 24 to 25 September 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 6 § 1 of the Convention on account of the excessive length of the proceedings against the applicant;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 17,000 (seventeen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President