



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

FIRST SECTION

CASE OF YEVGENIY GUSEV v. RUSSIA

(Application no. 28020/05)

JUDGMENT

STRASBOURG

5 December 2013

FINAL

05/03/2014

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

In the case of Yevgeniy Gusev v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 28020/05) 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 Yevgeniy Petrovich Gusev (“the applicant”), on 19 July 2005.

2. The applicant was represented by Ms S. Mazayeva, a lawyer practising in Volgograd. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to inhuman and degrading treatment by having been deprived of food and sleep on the days on which he had been taken to the court-house for trial, that his detention had been unlawful and based on insufficient grounds, and that its judicial review had not been expeditious.

4. On 11 March 2010 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1952 and lives in Volgograd.

A. The applicant's arrest and detention pending investigation

6. At the material time the applicant held the post of President of Vostok-Plus, an open joint-stock company, which was a shareholder in the limited liability company Volga Aviaexpress Airlines (ООО "Авиакомпания Волга-Авиаэкспресс").

7. On 30 July 2003 the Volgograd Regional Prosecutor's Office instituted criminal proceedings for fraud involving a Yak-42 aircraft.

8. On 3 October 2003 an investigator filed charges against the applicant *in absentia* and ordered his placement on a domestic wanted list.

9. On 6 October 2003 the applicant was placed on an international wanted list.

10. On 8 October 2003 the Tsentralniy District Court of Volgograd ("Tsentralniy District Court") ordered the applicant's remand in custody *in absentia* on suspicion of fraud. The Tsentralniy District Court held as follows:

"... Following the institution of the criminal proceedings [the applicant] absconded from Volgograd.

On the basis of the operational information [provided by the law-enforcement authorities] about [the applicant's] whereabouts in the United Kingdom or Canada, on 6 October 2003 he was placed on an international wanted list.

... The court considers it necessary to grant the investigator's request [to authorise the applicant's remand in custody] since [the applicant] has sought to evade the investigation, was placed on an international wanted list and may obstruct the establishment of the truth in the case. The court also takes into account the gravity of the charges [against the applicant]."

11. On the same date the applicant was arrested in Volgograd, was served with a list of the charges and detained on the basis of the above detention order.

12. The exact time and place of the applicant's arrest are disputed between the parties. According to a report drawn up by a police officer, the applicant was arrested in the central district of Volgograd on 8 October 2003 at 6 p.m. and was subsequently brought to the Volgograd Regional Prosecutor's Office. According to the applicant, until 7 October 2003 he did not know anything about the criminal proceedings against him. As soon as he learned about them, he went to the investigation department of the Volgograd Regional Prosecutor's Office, where he was arrested on 8 October 2003 at about noon. During the subsequent trial several witnesses confirmed the applicant's version of events.

13. On 8 December 2003 the Tsentralniy District Court extended the applicant's pre-trial detention until 30 March 2004, giving the following reasons:

“... The court considers the [investigator’s detention] application well-founded and grants the request, as [the applicant] has been placed on an international wanted list and, therefore, may abscond from the investigation and the court. The court also takes into account the gravity of the charges.”

14. On 20 February 2004 the applicant was additionally charged with forgery, deliberate bankruptcy, tax evasion and a new count of fraud.

15. On 15 March 2004 the Tsentralniy District Court extended the applicant’s pre-trial detention until 30 May 2004. The court relied on the gravity of the charges against the applicant and the fact that he had been placed on an international wanted list prior to his arrest, which gave the court sufficient grounds to believe that, if at large, the applicant might obstruct the proceedings. The court held that the application of a non-custodial preventive measure was not possible. The court rejected the applicant’s argument that the procedure for placing a suspect on the international wanted list had not been complied with in his case. In the court’s opinion, as long as the relevant decisions had not been declared unlawful, the applicant’s placement on the wanted list was valid.

16. On 31 May 2004 the applicant’s case file was remitted to the Dzerzhinskiy District Court of Volgograd (“Dzerzhinskiy District Court”) for examination on the merits.

B. The applicant’s detention pending trial

1. Detention between 30 May and 14 June 2004

17. On 30 May 2004 the applicant’s detention ordered by the decision of 15 March 2004 expired. No other decision was made regarding his detention until 14 June 2004 (see paragraph 21 below). However, the applicant remained in detention.

18. On an unspecified date in 2005 the applicant sought compensation for unlawful detention between 30 May and 14 June 2004.

19. On 27 March 2006 the Tsentralniy District Court acknowledged that the applicant had been detained in the above period without a court order and awarded him 5,000 Russian roubles (about 150 euros at the material time).

20. On 26 April 2006 the Regional Court upheld the judgment on appeal.

2. Detention between 14 June and 26 October 2004

21. On 14 June 2004 the Dzerzhinskiy District Court fixed a date for a preliminary hearing of the case and held that the custodial preventive measure applied to the applicant and three other co-defendants “should remain unchanged”.

3. Detention between 26 October and 30 November 2004

22. On 26 October 2004 the Dzerzhinskiy District Court scheduled the opening day of the trial and ordered that the custodial preventive measure in respect of the applicant and his three co-defendants “should remain unchanged”. The applicant applied for release, but the application was dismissed with the following reasoning:

“[The applicant and his three co-defendants] are charged with serious crimes punishable with long-term imprisonment. The [custodial] preventive measure was applied [in respect of them] during the preliminary investigation after an assessment of the defendants’ personalities, their health and the gravity of the crimes [they are accused of]. The arguments of the defendants and their representatives about the initial unlawful application of the custodial measure ... cannot be taken into consideration, as this [issue] is not the subject-matter of the present hearing.”

23. The applicant appealed against the above decision, in so far as it concerned the custodial measure, arguing that it had not been necessary at that stage of the proceedings. The applicant’s co-defendants also appealed. The first appeal hearing by the Regional Court was scheduled for 21 December 2004 but was adjourned following a motion made by the defence on the same date, because two of the co-defendants’ counsel had not been duly summonsed to the hearing.

24. On 25 January 2005 the Regional Court upheld the decision of 26 October 2004 on appeal in a summary fashion. It noted as follows:

“The arguments of the co-defendants ... concerning the initial unlawful application of the custodial measure ... cannot be examined by the appeal court ... [at the present hearing]. The decisions taken by the court in this respect have already entered into legal force ... and can only be challenged in supervisory review proceedings.”

25. Following a complaint lodged by one of the applicant’s co-defendants, on 14 April 2005 the Presidium of the Regional Court quashed the appeal decision of 25 January 2005 by way of supervisory review, doing so on the basis that the lower court had failed to address the arguments advanced on behalf of the co-defendants by their representatives.

26. On 19 July 2005 the Regional Court again upheld the decision of 26 October 2004 on appeal.

4. Detention between 30 November 2004 and the applicant’s conviction on 7 June 2005

27. In the meantime, on 30 November 2004 the Dzerzhinskiy District Court extended the applicant’s and his three co-defendants’ detention for three months until 28 February 2005. It held as follows:

“The circumstances which prompted the application of the custodial measure have not changed. The defendants’ reference to the fact that they cannot exert pressure on witnesses or victims, as the preliminary investigation is over, and that they will not abscond as they have no previous criminal records and are not a danger to society, cannot be accepted by the court, because at the present time the trial has not yet

started, and the court has not begun the examination of the evidence in the case, including the examination of witnesses and victims...

In such circumstances the court does not find grounds for altering the custodial measure to a more lenient one..."

28. On 25 February 2005 the Dzerzhinskiy District Court extended the applicant's and his three co-defendants' detention for three months until 28 May 2005, even though the prosecution considered it no longer necessary and proposed to release them on an undertaking not to leave town:

"The defendants are charged with serious crimes punishable by long-term imprisonment. The custodial measure was applied [in respect of them] after consideration of their personalities, health, family situation, existence of dependents, and the gravity of the crimes [with which they have been charged]. No medical certificates indicating that the defendants cannot be detained in the remand prison for health reasons have been produced to the court.

The circumstances which prompted the application of the custodial measure have not changed so far. The defendants' statements that they cannot exert pressure on witnesses and victims, as the majority of them have already been questioned by the court, and that they will not abscond as they have no previous criminal records and are not a danger to society, cannot be accepted by the court, because at the present time the trial has not been completed and the court has not examined the evidence in full. The defendants' maintaining their innocence ... cannot justify changing the custodial measure to a more lenient one, as the court is yet to assess the cumulative evidence and to reach a conclusion as to the defendants' guilt or innocence..."

29. On 27 May 2005, having reiterated its previous reasoning, the Dzerzhinskiy District Court extended the applicant's and his three co-defendants' detention for another three months until 28 June 2005. The applicant appealed.

30. On 4 October 2005 the Regional Court upheld the decision of 27 May 2005 on appeal.

C. The applicant's conviction and release

31. On 7 June 2005 the Dzerzhinskiy District Court convicted the applicant of fraud, deliberate bankruptcy and tax evasion and sentenced him to four years' imprisonment. The pronouncement of the judgment took four hours, from 8.30 p.m. to 00.30 a.m. the following day. The applicant's and his co-defendants' request to be allowed to sit down during the pronouncement of the judgment was turned down.

32. On 4 October 2005 the Regional Court amended the judgment on appeal. The court quashed the applicant's conviction for deliberate bankruptcy and held that his sentence should be suspended for two years, and that he be placed on probation.

33. On 5 October 2005 the applicant was released.

D. Allegations of non-provision of sufficient food and deprivation of sleep on the days of court hearings

34. During the criminal proceedings the applicant was detained in remand prison IZ-34/1 of Volgograd. According to the applicant, on the days of the hearings he was woken up at 6 a.m., taken from his cell to the “waiting unit” or “assembly cell”, together with other detainees who had a hearing on that day, and later taken to the convoy area of the court-house. He had to wait in that area for many hours, sometimes until late in the afternoon, before the trial hearings started. Late in the evening the convoy would take him back to the remand prison. If there was a hearing on the following day, he had to endure the same early wake-up, long transfer and late arrival. He received no food on the days of the hearings, either at the remand prison or at the court-house.

35. According to the Government, the applicant was taken to the court-house on the following dates:

Year:	Dates:	Scheduled time of hearings:
2004	21, 22, 25 and 28 June	10 a.m.
	5 July	10 a.m.
	14, 20 24, 27 and 28 September	10 a.m., 10 a.m., 11 a.m., 11 a.m. and 11 a.m. respectively
	4, 19, 25, 26 October	2.30 p.m., 12 p.m., 11.30 a.m. and 12 p.m. respectively
	9, 22 and 30 November	10 a.m., 11 a.m. and 11 a.m. respectively
	20 December	10.30 a.m.
2005	31 January	10 a.m.
	7, 8, 14 and 25 February	11 a.m., 3 p.m., 3 p.m. and 2 p.m. respectively
	18, 28 and 29 March	11 a.m., 3 p.m. and 1 p.m. respectively
	8, 11, 12, 13, 15, 18, 20, 21, 22 April	12.20 p.m., 2 p.m., 12 p.m., 11 a.m., 11 a.m., 11 a.m., 10.30 a.m., 11 a.m. and 11 a.m. respectively
	11, 12, 13, 17, 20, 27 May	12 p.m., 10.30 a.m., 12 p.m., 11.30 a.m., 12 p.m. and 11 a.m. respectively
	3, 6 and 7 June	10.30 a.m., 11 a.m. and 11 a.m. respectively

36. The Government submitted that on the days of the applicant's transfers to the court-house he had been woken up at 6 a.m. as usual. As a rule, he had been returned to the remand prison before 10 p.m. On the rare occasions when the applicant had been returned to the remand prison after 10 p.m., he had been allowed to sleep at any time during the next day. The Government were unable to submit information as to the exact time of the applicant's arrivals at the remand prison from the court-house because the relevant documentation had been destroyed in 2006 and 2009 due to the expiry of the period for keeping those documents, but they affirmed that the court's working hours were from 9 a.m. to 6 p.m.

37. According to the Government, on the dates of the applicant's transfers to the District Court he received a standard breakfast before leaving the remand prison and dry rations (bread or dry biscuits, tinned first and second courses, sugar, tea, a plastic spoon and a plastic cup), in compliance with the applicable regulations. In the "waiting unit" of the remand prison and the convoy area of the court the applicant was provided with hot water (necessary to prepare packed meals) upon request. In case of his return to the remand prison before 9 p.m., the applicant received lunch and/or dinner depending on the time of his return. In support of their submissions the Government provided a certificate issued by the governor of IZ-34/1 on 7 May 2010 accompanied by orders (*распорядки*) for dry rations in respect of a certain number of detainees to be transported to the court-house and invoices (*накладные*) concerning the provision thereof. The orders were drawn up by an officer on duty. The invoices were signed by the governor and the chief accountant of the remand prison, as well as by the officers who had given and received the dry rations. The documents covered most of the relevant dates. The Government also submitted the remand prison canteen's menu for the relevant period.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. The relevant provisions of domestic law and practice concerning preventive measures including detention, proceedings to examine the lawfulness of detention and detainees' right to free food and eight hours of uninterrupted sleep are set out in the Court's judgment in the case of *Strelets v. Russia* (no. 28018/05, §§ 37-46, 6 November 2012).

39. The 2005 Annual Report by the Ombudsman for the Volgograd Region (www.volganet.ru/volgobl/society/upch/folder_4/folder_1/), point 2.10, provides, in its relevant parts, as follows:

"The Ombudsman is concerned about on-going problems with regard to the provision of normal food for suspects and accused persons during the days on which they are being transferred for participation in investigative actions or court hearings...

According to information [provided] by the Volgograd Region Police Department, the non-provision of food during investigative actions and court hearings and non-provision of eight hours of sleep at night were indeed confirmed. One of the reasons for that was shortage of the necessary prison vans. In 2005, according to official information, the law-enforcement agencies of the Region were provided with [additional] prison vans, but similar complaints continue to arrive...

In some complaints the detainees report that on days [when they must attend] court they are provided with dry rations but no hot water..."

40. The 2006 Report "Human Rights in regions of the Russian Federation" (volume 1, p. 95), prepared by a group of Russian regional NGOs in 2007 (www.mhg.ru/publications/A1AD8CC), provides, in its relevant part, as follows:

"As stated by the Ombudsman for the Volgograd Region ... the problem with food (being supplied to remand prisoners in the Volgograd Region) has been solved only recently. Until the present [changes], when a detainee was transferred for investigative actions or court hearings, he was not able to have breakfast, lunch and, sometimes, dinner. The dry rations given on those days could not be prepared because the detainees were not allowed to have hot water. The problem was solved only after the intervention of the Ombudsman."

41. Following an inquiry conducted in 2003, the Head of the Moscow Department for the Execution of Sentences of the Ministry of Justice (the authority in charge of all remand prisons in Moscow) prepared a report dated 26 November 2003. The relevant parts of the report read as follows (as cited in *Starokadomskiy v. Russia* (dec.), no. 42239/02, 12 January 2006):

"On leaving for court, each prisoner is handed dry rations against his signature... On that day the prisoner is excluded from the food distribution list (*снимается с котлового довольствия*). The composition of the dry rations takes account of the [applicable] food safety and nutritional requirements and ... includes pre-cooked first and second courses which do not require cooking and can be consumed as breakfast, lunch or dinner..."

Prisoners are taken out of [their] cells after 6 a.m. – in particular, for transport to courts – but not brought back to [their] cells until 10 p.m. The Moscow Department for the Execution of Sentences directs the [resolution of] problems relating to established breaches perpetrated by the convoy regiment (belated return from the courts, overcrowded prison vans, use of unauthorised routes). On many occasions in 2002, established breaches of the procedure for the transport of prisoners were brought to the attention of the command of the police convoy regiment – mostly, [those breaches occurred] because of belated return from the courts. Such incidents also took place in the first three months [of 2003]; in this connection on 4 March 2003 a notice about the belated return (after 10 p.m.) of prisoners from the courts in January and February 2003 was sent to the convoy regiment. Recently there have been no incidents of return of prisoners after 10 p.m."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that he had been subjected to inhuman and degrading treatment by being deprived of food and a normal amount of sleep on court days. He relied on Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

43. The Government submitted that the applicant had failed to exhaust available domestic remedies because he had not complained to the competent domestic authorities about the alleged violation of his rights under Article 3 of the Convention. The procedure for making claims before a court was established in Chapter 25 of the Code of Civil Procedure, as clarified by the Supreme Court's Ruling no. 2 of 10 February 2009. Relying on Resolution no. CM/ResDH(2010)35 adopted at the 1078th Meeting of the Committee of Ministers of the Council of Europe, the Government noted that statistics and a number of cases presented to the Committee had demonstrated the developing practice of the Russian courts in awarding compensation for non-pecuniary damage caused by unsatisfactory conditions of detention. The Government stressed that the applicant's complaints under Article 3 should therefore be dismissed for failure to exhaust domestic remedies.

44. On the merits, the Government argued that the applicant had been afforded sufficient opportunity to sleep between court hearings (see paragraph 36 above). The Government also submitted that the applicant had been provided with food on the days he was transported to the court-house (see paragraph 37 above).

45. The applicant argued that the alleged violations had been of a structural nature and that no effective domestic remedy existed to address them.

46. On the merits, the applicant submitted that the evidence provided by the Government had been contradictory and did not support their conclusions. He noted that the Government had not denied that he had occasionally been returned from the court-house to the remand prison after 10 p.m. He further noted that during the period in which there had been hearings every working day, in April-May 2005, he had not in fact had an opportunity to catch up on his sleep the following day, as the Government

had suggested. The applicant also drew the Court's attention to the fact that the pronouncement of the judgment had taken place at night. The applicant claimed that he had never been given any food or dry rations on court days. He claimed that the orders for dry rations and invoices provided by the Government (see paragraph 37 above) were insufficient evidence to prove that he had in fact been provided with food on court days over the course of the two years of the trial. He further challenged the validity of those documents and noted that the information regarding the number of persons indicated in the relevant orders did not correspond to the number of dry rations indicated in the invoices.

B. The Court's assessment

1. Admissibility

47. As regards the Government's non-exhaustion plea, the Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the respondent Government claiming non-exhaustion to indicate to the Court with sufficient clarity the remedies to which the applicants have not had recourse and to satisfy the Court that the remedies in question were effective and available in theory and in practice at the relevant time, that is to say that they were accessible, were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Guliyev v. Russia*, no. 24650/02, §§ 51-52, 19 June 2008, with further references).

48. The Court highlights its conclusions made in the judgment of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 100-119, 10 January 2012) that at the relevant time the Russian legal system did not provide an effective remedy that could have been used to prevent violations of Article 3 arising from general conditions of detention in remand prisons, to discontinue such violations and to provide detainees with adequate and sufficient redress. In particular, in that case the Court held that it had no examples of successful practical use of the remedy provided by Chapter 25 of the CCP, also relied on by the Government in the present case, and that the Chapter 25 remedy was therefore ineffective.

49. The Court also notes that it has already explicitly rejected the Government's plea of non-exhaustion of domestic remedies based on the remedy provided by Chapter 25 of the CCP in respect of complaints concerning non-provision of food on court days and deprivation of an

adequate amount of sleep between court hearings (see *Strelets*, cited above, §§ 47-51) – the problems which are at the heart of the present case. In the present case the effectiveness of the procedure under Chapter 25 of the Code of Civil Procedure has not been demonstrated by any court decision, so the Court has no reasons to depart from its conclusions in *Ananyev and others* and *Strelets*. Accordingly, the Court rejects the Government's objection.

50. Furthermore, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It notes that it is not inadmissible on any other ground. It must therefore be declared admissible.

2. Merits

(a) General principles

51. The Court reiterates that 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

52. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).

53. In the context of deprivation of liberty the Court has consistently stressed that to fall under Article 3 the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for 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 *Kudla*

v. Poland [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

54. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

55. Allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. However, in certain circumstances such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) Application of the general principles to the present case

56. The Court observes that in the period between June 2004 and June 2005 the applicant was transported to the Dzerzhinskiy District Court on forty-four occasions (see paragraph 35 above). It has not been disputed by the parties that on the days of court hearings the applicant was woken up at 6 a.m. The Court further notes that the Government were unable to provide information as to the exact time the applicant was brought back to the remand prison from the court-house and taken to his cell. The Government, however, acknowledged that on some occasions this took place after 10 p.m., in which case the applicant was given an opportunity to catch up on his sleep during the following day. The Court notes that on quite a few occasions the applicant was taken to the court-house several days in a row, especially at the later stages of the trial, in the period between April and June 2005. That schedule of court hearings made any extra sleep the following day impossible.

57. The Court further notes that the applicant’s allegation of lack of sleep is also corroborated to a certain extent by the 2005 annual report of the regional Ombudsman (see paragraph 39 above). The Court notes that Volgograd is a large city, that the prison system was suffering from a shortage of prison vans, and that the same prison van would dispatch a relatively large group of remand prisoners to different court-houses located in different parts of the city every day in the morning and collect them in the evening in order to take them back to the remand prison. Such a system inevitably leads to the accumulation of delays in the transportation of each prisoner, and the period between the time when he would leave his cell and return to it would thus often be unnecessarily protracted. The Court also is mindful of the fact, which was not disputed by the Government, that the pronouncement of the judgment which started on 7 June at 8.30 p.m. lasted until 00.30 a.m. on 8 June 2005 (see paragraph 31 above). This shows that court days did not always end at 6 p.m., as suggested by the Government

(see paragraph 36 above). Thus, although it is impossible to calculate precisely how much time the applicant had for sleep on each particular day, the Court finds it established that on many occasions the applicant was deprived of an adequate amount of sleep.

58. Regarding the alleged malnutrition, the applicant claimed that on the days of court hearings he had not received any food, either in the remand prison or in the court-house. The Court notes that, as submitted by the Government, the applicant could only receive ordinary meals in the remand prison in the event of his return from the court-house before 9 p.m. (see paragraph 37 above). The Court has established above that on many occasions the applicant was returned to the prison after that time. It follows that on those days he was prevented from eating hot food (lunches and dinners) in the remand prison.

59. The Government claimed that detainees transported to the court-house were provided with an ordinary (i.e. hot) breakfast before leaving the remand prison. This assertion contradicts the statement by the regional Ombudsman that at the relevant time detainees on remand in the Volgograd Region were unable to have breakfast on court days (see paragraph 40 above). This assertion also somewhat contradicts their submissions that in the “waiting unit” of the remand prison the applicant was provided with hot water for preparing the dry rations if he requested it (see paragraph 37 above). The Court further notes that in the case of *Strelets*, cited above, it examined a similar complaint in respect of the applicant’s co-defendant remanded in the same facility who, along with the applicant in the present case, had been brought to court on the same days. Contrary to their submissions in the present case, in that case the Government did not contest the co-defendant’s allegation that he had not received any breakfast at the remand prison prior to being transferred to the court-house (*ibid.*, § 59).

60. It appears from the cases examined by the Court that the usual timing of detainees’ transferrals from remand prisons prevented them from having an ordinary breakfast on court days (see, among others, *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 108, 12 February 2009; *Svetlana Kazmina v. Russia*, no. 8609/04, § 78, 2 December 2010; and, most recently, *Idalov v. Russia* [GC], no. 5826/03, § 105, 22 May 2012). Moreover, as can be seen from the report prepared by the domestic authorities in 2003 (see paragraph 41 above), on court days the detainees would have been excluded from the distribution of ordinary food within their remand prisons. In the present case the Government did not rely on any domestic rules which would have allowed the administration of remand prison *IZ-34/1* to proceed otherwise.

61. Against this background, and having regard to the material in its possession, the Court is not convinced that the applicant received an ordinary breakfast on the days of the court hearings.

62. Finally, the Government claimed that on court days the applicant had been provided with dry rations to take with him to the court-house. They supported their submissions with a number of documents (see paragraph 37 above). The Court notes, however, certain serious inconsistencies in the Government's submissions. First, the documents submitted do not cover all the dates on which the applicant was transferred to the court-house. Second, the number of persons indicated in the orders for dry rations did not always correspond to the number of dry rations indicated in the invoices for the relevant dates. Third, in respect of a similar complaint made by the applicant's co-defendant, the Government submitted two invoices dated 11 and 20 May 2005 concerning the provision of dry rations to a certain number of detainees (see *Strelets*, cited above, §§ 36 and 59) which do not match the invoices for the same dates submitted in the present case. Fourth, the Government's assertion that on court days the applicant was provided with hot water necessary to prepare packed meals (see paragraph 37 above) contradicts the statement by the regional Ombudsman, who pointed out that detainees in the Volgograd Region were not allowed to have hot water at the relevant time (see paragraph 40 above).

63. The Court admits that the above flaws in the Government's submissions could have a reasonable explanation. However, the Government did not offer any such explanation to the Court.

64. The Court further notes that the evidentiary value of the documents submitted by the Government is rather low. The certificate by the governor of IZ-34/1 was issued on 7 May 2010, in other words several years after the events in question. The orders for dry rations and the invoices were drawn up and signed by prison officers only. The fact that some dry rations were ordered and received by the officers does not necessarily imply that the applicant was provided with them. The Government were unable to make available to the Court documents that would have proved the provision of dry rations to the applicant. However, it appears that the authorities should have been in possession of documents bearing the applicant's signature in respect of every provision of dry rations he received (see paragraph 41 above).

65. In such circumstances the Court is not convinced that on all forty-four occasions on which the applicant was transferred to the court-house he received packed meals and/or ordinary meals. In any event, no evidence was submitted by the Government that the "waiting unit" of the remand prison or the convoy area of the court-house were equipped for heating and eating food at the time (see *Strelets*, cited above, § 60, with further references). The Court attaches great weight to the 2005 annual report by the regional Ombudsman (see paragraph 39 above), an independent official, which supports the applicant's allegations to a large extent. Finally, there is no evidence that the applicant was buying and bringing his own food to the court-house.

66. The Court notes that it has previously found a violation of Article 3 of the Convention in many Russian cases on account of applicants' confinement in cramped conditions in detention units of court-houses and a lack of proper nutrition on court days (see, among others, *Vlasov v. Russia*, no. 78146/01, § 96, 12 June 2008; *Salmanov v. Russia*, no. 3522/04, § 64, 31 July 2008; and *Starokadomskiy v. Russia*, no. 42239/02, § 58, 31 July 2008).

67. Having regard to the foregoing, the Court considers that in the circumstances of the present case the cumulative effect of malnutrition and inadequate sleep on the days of court hearings must have been of an intensity such as to induce in the applicant physical suffering and mental fatigue. This must have been further aggravated by the fact that the above treatment occurred during the applicant's trial, a time when he most needed his powers of concentration and mental alertness. The Court therefore concludes that the applicant was subjected to inhuman and degrading treatment contrary to Article 3 of the Convention (see, for similar reasoning, *Strelets*, cited above, § 62).

68. Accordingly, there has been a violation of that provision.

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

69. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had not been based on relevant and sufficient reasons. 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. The parties' submissions

70. The Government considered that the domestic judicial authorities had duly justified the applicant's pre-trial detention. They stressed that the risk of his absconding had been a real one, since the applicant had sought to evade the investigation and had been placed on a wanted list.

71. The applicant argued that he had been unaware of the institution of the criminal proceedings against him, or that he had been searched for, until 7 October 2003, following which he had immediately made an appointment with the investigation department of the Volgograd Regional Prosecutor's Office for 8 October 2003. He had been arrested at that appointment. There had been no proof that during his absence the investigation authority had ever tried to summon him, either at work or at home, or to inquire about his whereabouts. Therefore, the Government's argument that he "had sought to evade" the investigation was groundless. Moreover, the investigator had

obtained the first detention order of 8 October 2003 in the applicant's absence by fraud and in breach of the equality of arms principle, as the applicant was already being held at the premises of the Prosecutor's Office at that time. The "operational information" of the law-enforcement authorities about his whereabouts abroad had been entirely unsupported.

72. The applicant further argued that the reasoning advanced by the domestic court when detaining him had not been supported by any objective evidence. The court had referred to the fact that the applicant had been placed on an international wanted list prior to his arrest; however, the courts had refused to examine the lawfulness of his placement on that list, as was evident from the detention orders of 15 March 2003 and 26 October 2004 and the appeal decision of 25 January 2005. The applicant complained that on 25 February 2005 his detention had been extended despite the fact that the prosecutor had no longer deemed it necessary.

B. The Court's assessment

1. Admissibility

73. The Court notes that the Government did not put forward any formal objections to the admissibility of this complaint. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

74. In determining the length of detention during judicial proceedings under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Labita*, cited above, §§ 145 and 147; and *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7).

75. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its particular features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among

other authorities, *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A, and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

76. The persistence of a reasonable suspicion that an arrested person has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but 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 deprivation of liberty. Where such grounds are “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, §§ 152-153). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance in court (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

(b) Application of the general principles to the present case

(i) Period to be taken into consideration

77. The applicant was taken into custody on 8 October 2003. He was convicted on 7 June 2005. The total length of the applicant’s pre-trial detention therefore amounted to one year, seven months and thirty days.

(ii) Grounds for continued detention

78. The Court will start its analysis by recapitulating the main facts of the case concerning the applicant’s detention pending investigation and trial. The applicant was initially detained in October 2003 because he was suspected of a criminal offence and because he had allegedly sought to evade the investigation following the institution of the criminal proceedings against him and had been placed on a wanted list (see paragraph 10 above).

79. The applicant’s detention pending the investigation was subsequently extended in November 2003 and March 2004 with reference to the gravity of the charges against him and the fact that he had been placed on an international wanted list prior to his arrest, which gave the court sufficient grounds to believe that if at large the applicant might seek to obstruct the proceedings. Under these circumstances the court held that the application of a non-custodial preventive measure was not possible (see paragraphs 13 and 15 above).

80. The Court further observes that at the trial stage in the period between 30 May and 14 June 2004 the applicant remained in detention without any judicial order at all, and later on, between 14 June and 26 October 2004 his detention was extended without any reasons being given (see paragraphs 17 and 21 above).

81. In the subsequent period of the applicant's detention pending trial the applicant's detention was extended on four occasions with reference to the gravity of the charges against him, the severity of the potential sentence, and the necessity for the court to finish the examination of the evidence. On one occasion the prosecutor took the side of the defence and proposed the application of an alternative measure of restraint not involving deprivation of liberty, but the court ordered the extension of the accused's detention for a further period (see paragraphs 22, 27, 28 and 29 above).

82. Throughout the whole period of the applicant's detention pending trial the court issued collective detention orders in respect of the applicant and his three co-defendants.

83. It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of specific facts in support of their conclusions that the applicant might abscond or obstruct justice in some other way. The Court reiterates in this respect that it is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Fedorenko v. Russia*, no. 39602/05, § 68, 20 September 2011).

84. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that this reason cannot in itself serve to justify long periods of detention. 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 a continuation of detention be used to anticipate a custodial sentence (see, among other authorities, *Fedorenko*, cited above, § 67). This is particularly true in cases such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial review of whether the evidence collected supported a reasonable suspicion that the applicant had committed the offences he was charged with (see *Rokhlina*, cited above, § 66).

85. The domestic courts tried to demonstrate the existence of the risk of absconding or obstructing the proceedings by reference to the fact that the applicant had been placed on international wanted list after the institution of the criminal case. However, the mere fact of being on a "wanted list" does not mean that the person has gone into hiding. The important factor in measuring the risk of absconding is the actual behaviour of the suspect, and not his formal status as a "person on a wanted list". At no time in the

present case did the domestic court address the applicant's argument that his placement on the wanted list had been unlawful and that he had not known until 7 October 2003 and could not have known about the institution of the criminal proceedings against him. The "operational information" which served as a basis for the placement of the applicant's name on the wanted list was not examined in the court proceedings, and, as such, reference to such "information" is too imprecise to support the conclusion that the applicant was absconding (see, *mutatis mutandis*, *Govorushko v. Russia*, no. 42940/06, §§ 41 and 46, 25 October 2007, and *Aleksanyan v. Russia*, no. 46468/06, § 187, 22 December 2008). This is all the more true in the present case where the "operational information" as to the applicant's whereabouts (in the UK or Canada) proved to be inaccurate, given that the applicant was arrested in his hometown in Russia. It further appears that the domestic court gave no consideration at all to the circumstances of the applicant's arrest, which, in the Court's view, was an important factor in the assessment of the applicant's behaviour and intentions and of the possible risks he might represent for the normal conduct of the proceedings. Thus, this aspect of the case could not reasonably justify the domestic courts' conclusions that the applicant would abscond.

86. The domestic courts also referred to the applicant's "character" and "personality". However, at no point did the domestic courts describe the applicant's personality or character in detail. Furthermore, they did not mention any particular fact that had arisen in the applicant's case or evidence supporting their conclusion that his "character" or "personality" warranted his continued detention. The courts never specified why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding or interfering with the course of justice to exist and to be decisive.

87. The Court also observes that the courts did not give due consideration to the progress of the proceedings. Thus, the preliminary investigation in the present case had ended by 31 May 2004 (see paragraph 16 above), but the applicant remained in detention for another year, until his conviction on 7 June 2005, even when the prosecution saw no need for the continued application of detention as a measure of restraint (see paragraph 28 above). The Court reiterates in this connection that whilst at the initial stages of the investigation the risk that an accused person might pervert the course of justice may be self-evident and justify keeping him or her in custody, after the evidence has been collected that ground becomes less strong (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006). The argument forwarded by the trial court – namely that it had not yet completed the examination of evidence – was irrelevant: the fact that the trial court is still to hear the case does not prevent the release of the defendant.

88. The Court finally notes that the courts issued collective detention orders in respect of the applicant and his co-defendants without a

case-by-case assessment of the grounds for detention in respect of each of them. The Court has already found such a practice incompatible with Article 5 § 3 of the Convention (see, among others, *Sizov v. Russia*, no. 33123/08, § 54, 15 March 2011; *Yuriy Yakovlev v. Russia*, no. 5453/08, § 86, 29 April 2010; and *Sorokin v. Russia*, no. 7739/06, § 67, 30 July 2009).

89. Having regard to the materials in its possession and the above considerations, the Court considers that the domestic courts did not convincingly demonstrate the existence of genuine requirements of public interest which outweighed the rule of respect for individual liberty in the applicant's case. Even though some of the reasons adduced for extending the applicant's detention were "relevant", they were not clearly "sufficient" to justify the applicant's detention throughout the period concerned. In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

91. The applicant further complained that the lawfulness of his detention pursuant to the court order of 26 October 2004 had not been decided speedily. He relied on Article 5 § 4 of the Convention, which reads as follows:

"4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

92. The Government explained the length of the examination of the applicant's appeal against the decision of 26 October 2004 by the fact that the applicants' co-defendants and their representatives had also lodged appeals against the above decision, which had required the appeal court to obtain the attendance of all interested parties. Since the appeal hearing scheduled for 21 December 2004 had been adjourned following a request made by the defence, the subsequent period was not attributable to the authorities. On 14 April 2005 the appeal decision of 25 January 2005 had been quashed by the Presidium of the Volgograd Regional Court following a supervisory review complaint lodged by one of the applicant's co-defendants, thus, the authorities could also not be held responsible for the period of the subsequent appeal proceedings.

93. The applicant maintained his complaint and submitted that delays in the appeal proceedings had been wholly due to the fault of the domestic authorities.

B. The Court's assessment

1. Admissibility

94. 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.

2. Merits

(a) General principles

95. The Court reiterates that Article 5 § 4, in guaranteeing to individuals arrested or detained a right to bring proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given “speedily” is undeniably one such guarantee; while one year per level of jurisdiction may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Howiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

96. Although the number of days taken by the relevant proceedings is obviously an important element, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, the delay attributable to the applicant and any factors causing a delay for which the

State cannot be held responsible (see *Jablonski*, cited above, §§ 91-94, and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000).

(b) Application of the general principles to the present case

97. The Court notes that the applicant's appeal against the detention order of 26 October 2004 was examined for the first time on 25 January 2005. The Government did not claim that the applicant had delayed lodging his appeal against the detention order. Neither did they adduce any evidence to show that, having lodged his appeal, the applicant had himself caused any delays in its examination. Having regard to the reasons for the adjournment of the appeal hearing scheduled for 21 December 2004 (see paragraph 23 above), it appears that the overall delay in those proceedings was wholly due to the fault of the domestic authorities. The appeal proceedings lasted almost three months, and that period can be attributed to the authorities in full.

98. The Court reiterates that it has found a violation of Article 5 § 4 in Russian cases where appeal proceedings lasted twenty (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009), twenty-six (see *Mamedova*, cited above, § 96) or twenty-seven days (see *Pichugin v. Russia*, no. 38623/03, §§ 154-156, 23 October 2012), stressing that their entire duration was attributable to the authorities.

99. Having regard to its established case-law on the issue and the circumstances of the present case, the Court considers that the period of almost three months cannot be considered compatible with the "speediness" requirement of Article 5 § 4. In view of this finding the Court is not required to examine the subsequent proceedings which took place in respect of the examination of the lawfulness of the court order of 26 October 2004 (see paragraphs 25 and 26 above).

100. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. Lastly, the applicant complained under Article 5 § 1 about the alleged unlawfulness of his arrest and detention; under Article 5 § 5 of insufficient compensation for his unlawful detention between 30 May and 14 June 2005; under Article 6 about the length of the proceedings and the findings of the domestic courts; under Article 7 of his erroneous conviction; and under Article 8 of a failure to consider his family situation when the issue of his detention was examined. He also complained under Article 13 of a lack of an effective remedy in respect of his continued detention and the length of the criminal proceedings.

102. The Court has examined the above complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in

so far as the matters complained of are within its competence, the Court finds that they do not disclose any 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 200,000 euros (EUR) in compensation for pecuniary damage, half of this sum representing the salary he would have received in the period between October 2003 and October 2005 had he not been detained, and the other half representing the sum he estimated corresponded to appropriate compensation for damage inflicted to his health. The applicant further claimed EUR 200,000 in compensation for non-pecuniary damage caused to him by the excessive length of the proceedings, lack of sufficient reasons for his continued detention, malnutrition and lack of sleep on the days of court hearings.

105. The Government submitted that there was no causal link between the violations found and the pecuniary damage claimed by the applicant. As to the applicant’s claim in respect of the non-pecuniary damage, the Government submitted that it was excessive.

106. The Court does not discern any causal link between the violations found and the pecuniary damage claimed; it therefore rejects this claim. As regards non-pecuniary damage, the Court considers that the applicant must have suffered distress and frustration resulting from the violations of Articles 3, 5 §§ 3 and 4 found in the present case. However, the amount claimed by the applicant appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

107. The applicant also claimed 600,000 Russian roubles (RUB, approximately 15,000 EUR) in compensation for the costs of his legal

representation before the Court. He submitted a copy of an agreement (no. 5/513) with Ms S. Mazayeva of 10 May 2005 and a receipt confirming the payment of RUB 500,000 pursuant to that agreement to the Volgograd Bar Association, of which Ms S. Mazayeva is a member. He further claimed RUB 4,198 for postal expenses incurred before the Court and submitted a postal receipt.

108. The Government argued that the expenses claimed were not reasonable.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 6,100 for the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible:
 - (a) the complaint under Article 3 of the Convention concerning the alleged malnutrition and lack of an adequate amount of sleep on the days of court hearings;
 - (b) the complaint under Article 5 § 3 concerning the alleged lack of sufficient reasoning for the applicant's continued detention;
 - (c) the complaint under Article 5 § 4 concerning the alleged lack of speedy judicial review of the lawfulness of the applicant's detention pursuant to the court order of 26 October 2004;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the domestic authorities to provide the applicant with an adequate amount of food and sleep on the days of court hearings;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the failure of the domestic court to advance sufficient reasoning for the applicant's continued detention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the protracted examination of the lawfulness of the applicant's detention pursuant to the court order of 26 October 2004;
6. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - (ii) EUR 6,100 (six thousand and one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President