



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

FIRST SECTION

CASE OF VLASOV v. RUSSIA

(Application no. 78146/01)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vlasov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 78146/01) 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 Aleksey Yuryevich Vlasov (“the applicant”), on 4 July 2001.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr V. Kuznetsov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions in which he had been detained and transported had been inhuman and degrading, that the length of his detention and the criminal proceedings against him had been excessive, that unjustified restrictions had been imposed on family visits, correspondence and exchange of documents, and that he did not have an effective remedy at his disposal in respect to these complaints.

4. By a decision of 14 February 2006, the Court declared the application partly admissible.

5. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in Moscow. He was the director of a diamond manufacturing and export company (“the company”).

A. Criminal proceedings against the applicant

1. Arrest and detention pending trial

7. On 9 July 1999 a criminal case (no. 144129) was opened against the applicant. He was suspected of having smuggled diamonds by using forged export contracts, an offence under Article 188 § 4 of the Criminal Code.

8. On 18 August 1999 the applicant was arrested. On 20 August 1999 a prosecutor remanded him in custody.

9. On 16 September 1999 the Preobrazhenskiy District Court of Moscow dismissed the applicant’s request for release on bail. On 7 October 1999 the Moscow City Court upheld the refusal on appeal.

10. On 14 October 1999 a deputy Prosecutor General extended the applicant’s detention until 9 January 2000. On 16 December 1999 the Preobrazhenskiy District Court dismissed the applicant’s challenge to the extension order because, in the court’s view, the applicant’s “character” justified the detention. On 17 January 2000 the Moscow City Court upheld that decision on appeal.

11. On 30 December 1999 a deputy Prosecutor General extended the applicant’s detention until 18 May 2000. On 19 April 2000 the Preobrazhenskiy District Court dismissed the applicant’s appeal against the extension order, finding that the order had been “lawful and justified”, but without giving further grounds in support of this finding.

12. On 16 May 2000 a deputy Prosecutor General extended the applicant’s detention until 18 August 2000. On 4 August 2000 the Preobrazhenskiy District Court dismissed the applicant’s challenge to the extension order, finding that it had been lawful and justified. On 27 December 2000 the Moscow City Court upheld that decision on appeal.

13. On 16 August and 18 September 2000 the acting Deputy Prosecutor General extended the applicant’s detention until 18 September and 18 November 2000 respectively. On 26 September 2000 the Preobrazhenskiy District Court of Moscow dismissed the applicant’s challenge to the extension orders, finding that they had been justified on account of the applicant’s “character” and the absence of “gross violations” of the criminal-procedure laws. On 9 January 2001 the Moscow City Court

upheld that decision on appeal, referring to the applicant's "character" and the gravity of the charges against him.

14. On 17 November 2000 the Prosecutor General extended the applicant's detention until 18 February 2001. On 31 January 2001 the Preobrazhenskiy District Court of Moscow dismissed the applicant's challenge to the extension order, finding that the applicant's "character" and the gravity of the charge rendered his detention lawful and justified. On 23 April 2001 the Moscow City Court upheld that decision on appeal.

2. Splitting-up of criminal cases

15. On 9 December 2000 the applicant was additionally charged with offences under Articles 188 § 3 (smuggling), 191 § 2 (unlawful trade in precious stones), and 327 (forgery of official documents) of the Criminal Code.

16. On 28 December 2000 fifteen counts of smuggling, unlawful export of precious stones and forgery of documents were severed into a new criminal case, which was given the number 9307.

17. On 18 February 2001 the investigation into the remaining charges in the framework of case no. 144129 was stayed. On 26 February 2002 the investigation resumed and has since been pending.

3. Trial in case no. 9307

18. On 12 January 2001 the applicant was given access to the case file. Further to the prosecution's requests, on 16 February and 16 April 2001 the Moscow City Court extended the applicant's detention until 18 April and 18 August 2001 respectively. On each occasion the court noted that there were no grounds to vary the preventive measure imposed on the applicant, in spite of the arguments advanced by the defence and the personal sureties offered on the applicant's behalf by a Member of Parliament and a member of the Russian Academy of Sciences. It also referred to the gravity of the charges and to the applicant's "character". On 11 April and 23 May 2001 the Supreme Court upheld the City Court's decisions on appeal, finding that there were "no sufficient grounds to vary the preventive measure".

19. According to the Government, the applicant's counsel, Mr Korolev and Mr Dudnik, were deliberately dilatory in dealing with the case-file materials. On 26 February 2001 the investigator asked the president of the Moscow bar to ensure counsel's regular attendance. On 28 March and 25 April 2001 the investigator's superior repeated that request. The Government produced four reports of 1, 8 and 18 June 2001. In these reports investigation officers described private conversations with the applicant's representatives, who allegedly stated that they would procrastinate until the maximum period of the applicant's detention had expired.

20. On 13 July 2001 case no. 9307 was submitted for trial before the Golovinskiy District Court of Moscow.

21. On 6 August 2001 the District Court remitted the case for further investigation. On 3 October 2001 that decision was set aside by the Moscow City Court, and the trial resumed.

22. On 11 December 2001 the District Court fixed a hearing for 25 December but then adjourned it to 28 January 2002 because the applicant's counsel had gone on holiday.

23. On 28 January 2002 the District Court refused the applicant's petition for release. On 21 February 2002 the Moscow City Court upheld that decision on appeal.

24. On 15 March 2002 the District Court extended the applicant's detention until 29 April 2002, finding that his release would hinder "a thorough, comprehensive, and objective examination of the case".

25. On 1 April 2002 the District Court remitted case no. 9307 for further investigation. It found that the charges were formulated vaguely, that the applicant had not been questioned as a suspect, that his access to the file had been unlawfully restricted, and that the severing of certain charges had not been justified. These defects were to be remedied by the investigation. The court authorised the applicant's further detention.

4. Release on bail and conviction in case no. 9307

26. On 12 July 2002 the Golovinskiy District Court released the applicant on bail.

27. The hearing fixed for 26 July 2002 had to be adjourned until 9 September 2002 because one lawyer was involved in concurrent proceedings and the other was on leave.

28. On 2 October 2002 the hearing was adjourned on account of the prosecutor's illness. On 18 March and 13 May 2003 the hearings were postponed at the applicant's request.

29. On 28 July 2003 the Golovinskiy District Court found the applicant guilty of smuggling and unlawfully trading in diamonds. The applicant was sentenced to five years and six months' imprisonment, suspended for three years. On 29 November 2003 the Moscow City Court upheld that judgment on appeal.

B. Restrictions on family visits and correspondence

1. Restrictions on family visits

30. On 24 December 1999 the investigator refused leave for a visit by the applicant's mother and his wife. She stated that the investigator had discretion to authorise visits, but was not obliged to do so.

31. According to the Government, on unspecified dates in 1999 the applicant was allowed to see his wife on “humanitarian grounds”.

32. On 27 October 2000 the investigator refused counsel’s request of 28 September 2000 to allow the applicant to see his wife. The investigator indicated that the applicant’s wife was aware “of certain circumstances that [were] relevant to the matters under investigation” and also had “an interest in the outcome [of the case]”. As “family visits [could] be used to establish contact with other members of the organised criminal group or obstruct the establishment of the truth”, the wife’s visit would be “inopportune”.

33. On 4 January 2001 the investigator refused a visit by the applicant’s seven-year-old daughter, stating that the applicant could use the visit to obstruct the investigation.

34. On 17 January, 23 February, 12 and 13 March, 12 April, 14 May, 1 June and 2 July 2001 the investigator allowed the applicant to see his mother and/or daughter. According to the Government, in 2001 and 2002 the applicant was granted twenty-six family visits.

2. Restrictions on the applicant’s correspondence and exchange of documents

35. On 20 December 1999 the applicant sent a complaint about the refusal to allow family visits and interference with his correspondence to the Basmanniy District Court of Moscow. On the following day the head of the correspondence department of the remand centre refused to post the complaint, citing the following reasons:

“The court will not accept the complaint for examination in its present form. I also consider it necessary to explain that, under the Custody Act:

(a) the investigator may approve no more than two visits per month but by law he is not obliged to do so (section 18 § 3);

(b) pursuant to section 20 § 2, all correspondence is subject to censorship, including by the investigator who is in charge of the criminal case.

The complaint has no prospects of success (*жалоба бесперспективна*).”

36. On 22 December 1999 the applicant complained to the Ministry of Justice and the Prosecutor General’s Office that his complaint had not been posted. On 13 January 2000 the applicant’s complaint to the Ministry of Justice was returned to him. No reply from the Prosecutor General’s Office was received.

37. On 9 February 2000 the investigator refused to post the applicant’s letters to his wife and mother. She returned them to the director of the remand centre with the following note:

“I am returning you the letters by Mr Vlasov, the defendant in criminal case no. 144129, addressed to Mrs L. Vlasova and dated 11, 24 and 28 January 2000, and to Mrs I. Vlasova, of 11 and 25 January 2000.

On the basis of section 20 § 2 of the Custody Act these letters may not be sent to the addressees.”

38. The applicant submitted to the Court copies of handwritten letters to his mother, dated 11, 24 and 28 January 2000.

39. On 6 March 2000 the applicant issued forms of authority to his counsel, Mr Kuznetsov and Ms Vasilyeva. By a letter of 20 March 2000, the first deputy director of the Investigations Department of the Ministry of the Interior returned the forms to the director of the remand centre, advising him as follows:

“I would ask you to explain to Mr Vlasov, the defendant in criminal case no. 144129, that, pursuant to section 17 of the Custody Act and paragraph 12.11 of the Internal Rules for Remand Centres (approved by order no. 486 of 20 December 1995), detainees may enter into civil transactions on the basis of a form of authority certified by the head of the remand centre.

Since the forms of authority issued by Mr Vlasov to Mr V. Kuznetsov and Ms M. Vasilyeva list actions which, under the civil legislation currently in force, are not civil transactions, there are no grounds for forwarding these forms to Mr Kuznetsov or Ms Vasilyeva.”

40. On 30 August 2000 the applicant’s counsel submitted to the investigator a series of documents concerning the customs proceedings to which the applicant’s company was a party. On 28 September 2000 the investigator refused to transmit these to the applicant and appended them to the case-file, indicating that the applicant would be able to read them only after the investigation had been completed.

41. According to the Government, in 2001 the applicant sent no letters to his relatives. His letters to public authorities were not subject to censorship and were posted without delay. Incoming letters were handed over to him on the day of receipt.

42. On 29 May 2001 counsel for the applicant asked for permission to pass to his client (i) a copy of a complaint to the Supreme Court, and (ii) a book “International instruments on human rights”. The director of the remand centre made a handwritten note on the petition: “I agree to accept a copy of the complaint”.

3. Judicial decisions on the applicant’s complaints about restrictions

43. On 28 March and 5 September 2000 the applicant complained to the Presnenskiy District Court of Moscow about the interception of the authority forms and commercial documents. By decisions of 7 April and 9 June 2001, the District Court disallowed the applicant’s complaints, finding that the law did not provide for judicial review of the investigator’s

decisions concerning restrictions on family visits, correspondence or exchange of documents. On 3 October 2001 the Moscow City Court confirmed on appeal that the applicant's complaints were not amenable to judicial review.

44. On 4 and 11 September 2000 the applicant complained to the Basmannyy District Court of Moscow about the restrictions on family visits and correspondence imposed by the investigator. On 10 July 2001 the Basmannyy District Court, by a non-procedural communication, informed him that these complaints could not be examined by a court.

45. The applicant complained to the Constitutional Court that he had not been able to obtain judicial review of restrictions on family visits, correspondence and exchange of documents.

46. By a decision of 21 December 2001 (no. 298-O), the Constitutional Court confirmed its constant case-law to the effect that all decisions by an investigator or prosecutor which affected an interested party's constitutional rights and were not related to the merits of the criminal charge were amenable to judicial review (see paragraph 75 below). It emphasised that this approach was fully applicable to the investigator's decision concerning restrictions on family visits, correspondence or exchange of documents. The Constitutional Court held that the judicial decisions refusing examination of the applicant's complaints were to be reviewed in accordance with the established procedure.

47. On 8 July 2004 the Presnenskiy District Court of Moscow re-examined many of the complaints lodged by the applicant in course of the criminal proceedings in 2000 and 2003, including those concerning restrictions on correspondence, exchange of documents and family visits. The District Court dismissed those complaints for the following reasons.

48. The District Court found that the refusal to transmit customs documents from the lawyer to the applicant had been justified because the former had indicated that the documents were related to the criminal case. On that basis the documents had been included in the case file as evidence, in accordance with the Code of Criminal Procedure. The applicant had been advised that he would be able to study the documents in question when examining the case file following completion of the preliminary investigation.

49. With regard to the refusal to pass the power of attorney of 29 March 2000, the District Court held that the Internal Rules for Remand Centres (those issued both by the Ministry of the Interior and by the Ministry of Justice) prohibited detainees from authorising their representatives to carry out any actions other than civil transactions. As the scope of the applicant's power of attorney had not been confined to civil transactions, the refusal had been lawful. The District Court did not refer to a specific provision of the Internal Rules for Remand Centres.

50. As to the restrictions on family visits, the District Court referred to the relevant provisions of the Custody Act and the Internal Rules for Remand Centres. It noted that the decision on whether or not to allow a family visit was to be taken by the investigator in the light of the particular circumstances of the case. The decisions made by the investigator in the applicant's case had subsequently been reviewed and approved by the Investigations Committee of the Ministry of the Interior and by the Prosecutor General's Office. Accordingly, the District Court concluded that the decisions had been lawful and justified.

51. Finally, the District Court found that five of the applicant's letters to his relatives had been intercepted by the investigator because they either contained information on the criminal case, revealing secret information from the preliminary investigation, or expressed contempt for the law-enforcement authorities, which might foster a negative attitude among his relatives towards the law-enforcement bodies and thus obstruct the establishment of the truth in the criminal case. The District Court held that the interception of those letters had been compatible with the domestic law and with international treaties, including Article 8 of the Convention.

52. On 27 December 2004 the Moscow City Court endorsed, in a summary fashion, the findings of the District Court.

C. Conditions of the applicant's detention and transport

1. Detention at remand centre no. IZ-99/1

53. From 27 August 1999 until his release on 12 July 2002 the applicant was held in special-purpose remand centre no. IZ-99/1 (formerly no. IZ-48/4, commonly known as "Matrosskaya Tishina").

54. The applicant was held in ten different cells that measured either fourteen sq. m and had six sleeping places, or thirty-two sq. m and contained ten bunks. The design capacity of the cells was not exceeded.

55. The window frames were bricked in with semi-transparent glass cubes. In addition, there was a layer of thick bars with so-called "eyelashes", that is, slanted plates, approximately two cm apart, welded to a metal screen. This construction gave no access to natural air or light. The Government submitted that the "eyelashes" had been removed on 25 November 2002. The applicant indicated that between February 2000 and summer 2002 private fans had been prohibited in the cells, but that ventilation was on during the day.

56. The lavatory pan was placed in the corner of the cell. The Government produced a photo of the pan showing that it was separated from the living area by an eighty-five-centimetre-high tiled brick partition and shower curtains above it. The applicant responded that the partition and curtains had apparently been a recent development; during the period of his

detention there had been no tiles and the hanging of curtains of any kind had been prohibited. Furthermore, until 22 August 2001 the walls had been covered with so-called *shuba*, a sort of abrasive concrete lining, designed to prevent detainees from leaning on the walls or writing on them.

57. Open-air exercise was permitted for one hour a day and a shower could be taken for twenty minutes once a week.

58. The cells were constantly lit with fluorescent lighting. The applicant claimed that insufficient lighting had impaired his eyesight, which had fallen by 2.5 dioptries. On 21 June 2001 he asked to see an ophthalmologist and repeated his request no fewer than seven times between 30 July 2001 and 20 June 2002. The Government explained that no consultation had been arranged because the medical unit of the remand centre had no resident ophthalmologist and because the applicant had often been absent for court hearings. The applicant responded that the hearings had not started until 28 January 2002, that is, more than seven months after he had asked for consultation.

59. Finally, the applicant submitted that he had been the only non-smoker in his cells and had suffered from passive smoking. The Government indicated that the separation of non-smokers from smokers had been materially impossible.

60. In support of his submissions the applicant produced affidavits by his former cellmates, Mr I., Mr Ku. and Mr Ko.

2. Conditions of transport

61. The applicant was transported from the remand centre to the courthouse and back more than 120 times. Transport was arranged by officers of the Convoy Regiment of the Moscow Police Department (*конвойный полк ГУВД г. Москвы*).

62. The prison vans (Gaz-3307 and Gaz-3309) in which the applicant was transported had a passenger cabin which was 3.8 m long, 2.35 m wide, and 1.6 m high. The cabin was divided into two multi-occupancy cubicles, designed for twelve inmates each, and one single-occupancy cubicle. The cubicles were equipped with benches. On 7 February 2001, in response to the applicant's complaints, the officer-in-command of the Convoy Regiment ordered that he be transported in a separate van. The applicant specified that a separate van had been made available to him only thirteen times.

63. The Government submitted that the prison-van heaters and interior lights had been powered by the van engine. The vans were naturally ventilated through the emergency hatch and additional hatches with controlled airflow. The Government asserted that the applicant had received breakfast and dinner at the remand prison and that he had been allowed to bring his own food to court. It follows from the certificate issued by the head of remand centre no. IZ-99/1 that dry rations had been given to detainees from 2003 onwards.

64. In their post-admissibility submissions the Government enclosed two reports prepared by the officer-in-command of the Convoy Regiment on 28 March and 3 April 2006. According to these reports, the design capacity of prison vans had never been exceeded in 2001-2003 and the travel time from remand centre no. 99/1 to the Golovinskiy District Court had been in the range of two to three hours, depending on traffic.

65. The applicant denied that the van had been heated or sufficiently ventilated. He indicated that the travel time between the remand centre and the court had been excessively long, and sometimes as long as three or four hours. During the entire journey he had been kept in the locked van without food or drink or access to a toilet.

66. The applicant produced a detailed table which listed the time he had spent before departure in the “waiting cubicle” at the remand centre, the time on the way to the courthouse and the time on the way back. The table covered the period from 25 December 2001 to 22 March 2002, in which he had been transported on twenty days. Of those twenty times, on six occasions the aggregate travel time on a given day had ranged from five to seven hours and on a further eleven occasions it had been longer than seven hours, with a maximum of 10.5 hours on 25 December 2001. The table also indicated that on four days the design capacity of the prison van had been exceeded by at least ten additional persons.

67. Between 20 February 2001 and 17 June 2002 the applicant sent nine complaints about the “torturous” conditions of transport to many officials, including the director of the remand centre, the Prosecutor General and the officer-in-command of the Convoy Regiment. According to the Government, the officer-in-command of the Convoy Regiment had acknowledged that there had been “some irregularities” in the transport of detainees and ordered that the applicant be transported by a separate van. A copy of that report was not made available to the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions governing detention matters

68. 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). At the material time, a decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96 of the RSFSR Code of Criminal Procedure, the “CCrP”).

69. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year’s imprisonment (Article 96 of the CCrP). The amendments of 14 March 2001 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 allegedly committed.

70. After his or her arrest the suspect was placed in custody “pending investigation” for an initial two-month period (Article 97 of the CCrP). Further extensions could be granted by prosecutors at ascending levels of jurisdiction.

71. Once the investigation had been completed and the defendant had received the charge sheet and finished reading the case file, the file was submitted to a trial court. From that date a defendant’s detention was “before the court” (or “pending trial”). Until 14 March 2001 the Code of Criminal Procedure set no time-limit for detention “pending trial”. On 14 March 2001 a new Article 239-1 was inserted, which established that the period of detention “during trial” could not normally exceed six months from the date the court received the file.

B. Provisions governing family visits and correspondence

72. The Custody Act (Federal Law on the Detention of Suspects and Defendants, no. 103-FZ of 15 July 1995) provides as follows:

Section 17. Rights of suspects and defendants

“Suspects and defendants have the right:

...

(5) to meet with relatives and other persons listed in section 18;

(6) to keep documents and records relating to the criminal case or to exercise of their rights and lawful interests...

...

(8) to maintain correspondence and to use writing utensils;

...

(18) to enter into civil transactions.”

Section 18. Meetings with counsel, relatives and other persons

“Upon written consent of the official or authority in charge of the criminal case, a suspect or defendant may have up to two meetings per month with relatives and other persons, each visit to last for up to three hours...”

Section 20. Correspondence

“Suspects and defendants may correspond with relatives and other persons, without any limitation on the number of incoming and outgoing letters or telegrams...

Correspondence by suspects and defendants is to be carried out through the administration of the remand prison and is subject to censorship. Censorship is carried out by the administration of the remand prison and, if necessary, by the official or authority in charge of the criminal case.

Letters that contain information which may obstruct the establishment of the truth in a criminal case or facilitate the commission of a crime, are drafted with use of cryptography or cipher, or contain State or other secrets protected by law, may not be sent to the addressee or returned to the suspect or defendant. Instead, they are remitted to the official or authority in charge of the criminal case...”

73. The Internal Rules for Remand Centres of the Ministry of the Interior (order no. 486 of 20 December 1995, in force until 12 May 2000) provided as follows:

“8.1 Suspects and defendants may send and receive any number of letters or telegrams.

8.2 Letters and telegrams are sent and received through the administration of the remand centre. Correspondence by suspects and defendants is subject to censorship.

8.9 Letters and telegrams addressed to victims or witnesses, as well as those containing any information whatsoever in respect of the criminal case [in issue], insults, threats, calls to violence, commission of crimes or other offences, information on security measures in the remand centre, its employees, ways of transmission of prohibited items, and any other information that may impede the establishment of the truth in the criminal case or facilitate criminal activities... are not dispatched to the addressee... and [are] handed over to the official or authority in charge of the criminal case.

12.11 A suspect or defendant may draft a power of attorney authorising another person to carry out a civil transaction. The power of attorney must be drafted in an established form and certified by the head of the remand centre in accordance with Article 185 § 3 of the Civil Code.

The administration of the remand centre must supply a blank power of attorney to a suspect or defendant, at his or her request and at his or her own expense, and, if necessary, explain the procedure for filling it out. The power of attorney is passed or sent to the person whose is named therein, through the official or authority in charge of the criminal case.

16.1 A suspect or defendant may be allowed a family visit on the basis of a written consent issued by the official or authority in charge of the criminal case. The consent is valid for one visit only.”

74. The Internal Rules for Remand Centres of the Ministry of Justice (order no. 148 of 12 May 2000) provided as follows:

“84. Letters... are received and dispatched through the administration of the remand centre. Correspondence of detainees is subject to censorship.

91. Letters and telegrams addressed to suspects and defendants who are at large, victims, witnesses, as well as those containing any information whatsoever in respect of the criminal case [in issue], insults, threats, calls to violence, commission of crimes or other offences, information on security measures in the remand centre, its employees, ways of transmission of prohibited items, and any other information that may impede the establishment of the truth in the criminal case or facilitate criminal activities... are not dispatched to the addressee... and [are] handed over to the authority in charge of the criminal case.

92. All correspondence by the detainees shall be recorded in a special register in which the dates of receipt and dispatch are noted...

122. By consent of the official or authority who is in charge of the criminal case, a suspect or defendant may issue a power of attorney to his or her representative for conducting a civil transaction. The power of attorney must be certified by the head of the remand centre, in accordance with Article 185 § 3 of the Civil Code.”

C. Case-law of the Constitutional Court

75. On 23 March 1999 the Constitutional Court issued Ruling no. 5-P on the constitutional compatibility of those provisions of the RSFSR Code of Criminal Procedure which restricted the possibility of lodging appeals against an investigator’s decisions to certain procedural actions. The Court considered that the constitutional right to judicial protection against actions or decisions impairing citizens’ rights and freedoms could not be restricted and that the interested party should therefore have the right to lodge a complaint with a court. It held that all decisions by the investigative authorities affecting constitutional rights and freedoms should be amenable to judicial review, provided that examination of their lawfulness and justification would not prejudice the merits of the criminal case.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION IN RELATION TO THE CONDITIONS OF THE APPLICANT’S DETENTION

76. The applicant complained under Article 3 of the Convention that the conditions of his detention in the Matrosskaya Tishina remand centre (no. 99/1) had been inhuman and degrading. Relying on Article 13 of the Convention, he claimed that no domestic remedy had been available to him

in order to obtain an improvement in the conditions of detention. The relevant Articles provide:

Article 3

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

Article 13

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

A. Submissions by the parties

77. The applicant contested the Government’s description of the conditions of detention as factually untrue and maintained his account of the conditions. He claimed that he had sent many complaints about various aspects of the conditions of detention to supervising prosecutors and to the administration of the remand centre. He alleged that he had handed over several complaints to a supervising prosecutor who had inspected the cells. Even assuming that the domestic law provided for a judicial review of the conditions of detention, in practice the courts refused to examine such complaints, in the same way as they had refused to examine his complaints about restrictions on family visits and correspondence.

78. The Government submitted that the conditions of the applicant’s detention had been generally compatible with Article 3. The applicant had sent more than one hundred complaints to various authorities but had never asked for an improvement in his conditions of detention. He had not complained about the conditions of detention to either the supervising prosecutors or to the director of remand centre no. 99/1, or to the Preobrazhenskiy District Court of Moscow, which had had territorial jurisdiction over the remand centre. The Government therefore inferred that the applicant had had effective remedies at his disposal.

B. The Court’s assessment

1. Article 3 of the Convention

79. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim’s behaviour (see

Balogh v. Hungary, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of his liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

80. The applicant spent two years and almost eleven months in a Moscow remand prison. Although there was no allegation of overcrowding beyond the design capacity or of a shortage of sleeping places (see, by contrast, *Grishin v. Russia*, no. 30983/02, § 89, 15 November 2007, and *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI), the conditions in the prison were nevertheless extremely cramped. The applicant was alternately held in thirty-square-metre cells housing ten inmates and smaller fifteen-square-metre cells accommodating six detainees. It follows that the living area per inmate varied from 2.5 to 3 sq. m.

81. The Court reiterates that in certain cases the lack of personal space afforded to detainees in Russian remand prisons was so extreme as to justify, in its own right, a finding of a violation of Article 3 of the Convention. In those cases applicants usually disposed of less than three sq. m of personal space (see, for example, *Kantyreva v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005). By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the possibility of using the toilet in private, availability of ventilation, access to natural light or air, adequacy of heating arrangements, and compliance with basic sanitary requirements. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four sq. m per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007, and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III).

82. The cells in which the applicant was held had no window in the proper sense of this word. Instead, a part of one wall where – according to

the original design – a window should have been, was bricked in with semi-transparent glass cubes. This arrangement cut off any fresh air and also significantly reduced the amount of daylight that could penetrate into the cell. Moreover, densely spaced metal shutters fixed to the external wall barred access to daylight to a still greater extent. The Government confirmed that this contraption had been removed only in November 2002, that is, several months after the applicant's release from the remand centre.

83. The possibility for outdoor exercise was limited to one hour a day. Moreover, on days of court hearings, the applicant forfeited the opportunity to go outdoors. It appears that cells were ventilated but inmates were formally prohibited from owning or operating portable fans. It follows that for almost three years the applicant had to spend a considerable part of each day practically confined to his bed in a cell with poor ventilation and no window (compare *Peers*, cited above, § 75).

84. Having regard to the cumulative effect of those factors, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in poorly lit and ventilated cells with many other inmates for almost three years must have caused him distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of his detention amounted to inhuman and degrading treatment.

85. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Matrosskaya Tishina remand centre (no. 99/1).

2. Article 13 of the Convention

86. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, the judgment in *Kudla v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

87. Turning to the facts of the present case, the Court notes that the Government put special emphasis on the fact that the applicant had not asked any domestic official for an improvement in the conditions of his detention. The applicant denied this, and insisted that he had handed over several complaints to the supervising prosecutor. The Court does not need to resolve this controversy. It recalls that it has already found a violation of Article 13 on account of the absence of an effective remedy in respect of

inhuman and degrading conditions of detention, concluding (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007):

“[T]he Government did not demonstrate what redress could have been afforded to the applicant by a prosecutor, a court or other State agencies, taking into account that the problems arising from the conditions of the applicant’s detention were apparently of a structural nature and did not only concern the applicant’s personal situation (compare *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and, most recently, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006). The Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress (see, to the same effect, *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006; *Dvoynikh v. Ukraine*, no. 72277/01, § 72, 12 October 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 112, 13 September 2005).”

88. These findings apply *a fortiori* to the present case, in which the Government did not point to any domestic remedy by which the applicant could have obtained redress for the inhuman and degrading conditions of his detention or put forward any argument as to its efficiency.

89. There has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant to complain about the general conditions of his detention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RELATION TO THE CONDITIONS OF THE APPLICANT’S TRANSPORT

A. Submissions by the parties

90. The applicant complained under Article 3 of the Convention that the conditions of transport between the remand centre and the courthouse had been inhuman and degrading. The vans had been cramped, unheated and inappropriate for the transport of detainees. He had been denied food, drink and access to a toilet for up to eight consecutive hours. In his view, such treatment amounted to torture.

91. The Government submitted that prison vans had been heated and ventilated. Following his complaint, the applicant had been transported in a separate van. He had been given food at the remand centre and could take his own food with him.

B. The Court's assessment

92. The Court points out that it has found a violation of Article 3 in a case where an applicant was transported together with one other detainee in a single-occupancy cubicle which measured one square metre. Although the travel time did not exceed one hour, the Court considered such transport arrangements impermissible, irrespective of the duration. It also noted that the applicant in question had had to endure these cramped conditions twice a day on the two hundred days on which court hearings were held (see *Khudoyorov v. Russia*, no. 6847/02, §§ 118-120, ECHR 2005-... (extracts)).

93. On the facts, the Court observes that, save for thirteen times when the applicant was transported in a special van, he was brought to the court hearings in standard-issue prison vans on more than one hundred days. The passenger cabins of those vans were designed for the transportation of twenty-five detainees on a floor space measuring less than nine square metres, which left an area of approximately fifty by fifty centimetres for each detainee. The height of the cabin (1.6 m) was not sufficient for a man of normal stature to enter or stand up without hunching, which required the detainees to remain in a seated position at all times while inside the van. In addition to the already cramped conditions, it appears from the table compiled by the applicant that the van was occasionally occupied by a total number of detainees exceeding the design capacity (see paragraph 66 above). In their post-admissibility submission the Government relied on a report prepared in 2006 which purported to certify that the design capacity of prison vans had not been exceeded in 2001 or 2002 (see paragraph 64 above). This report is of little evidential value for the Court because it does not refer to any sources of information, such as registers of detainees or other records, on the basis of which it was compiled and by which that assertion could be verified. Moreover, other domestic documents which are less remote in time from the period under consideration than the report drafted in 2006 convince the Court otherwise. Thus, it appears that overcrowding of prison vans transporting prisoners in Moscow in 2002 was one of the problems reported by the authority in charge of remand centres as a result of an inquiry carried out in 2003 (see the letter of 26 November 2003 from the head of the Moscow Directorate for the Execution of Punishments, cited in *Starokadomskiy v. Russia* (dec.), no. 42239/02, 12 January 2006).

94. Furthermore, the Court is not satisfied that prison vans, as described by the parties, were sufficiently lit, ventilated and heated. The Government indicated that the heating and lighting systems were only operational when the engine was running. Given that there were no windows or other openings giving access to natural light, the detainees remained in darkness – and, occasionally, in the cold – once the engine was stopped. Natural

ventilation through the emergency hatches was obviously inadequate on hot days, given the cramped conditions inside the van.

95. The Court observes that the applicant remained in these conditions for extended periods of time on each journey. The Government acknowledged that the travel time *each way* had been as long as two or three hours. According to the table the applicant produced, the *aggregate* travel time on any given day had been in the range of five to eight hours. Whereas it is impossible to establish with absolute certainty the duration of a journey on every occasion, what is important for the Court's assessment is that the time spent by the applicant in the van was far from negligible and lasted on average six hours per day.

96. It further appears that the applicant did not receive sufficient and wholesome food on the days when he was transported to the court. It follows from the Government's own submissions that distribution of dry rations had only begun in 2003, that is, after the applicant's release (see paragraph 63 above). Permission to take one's own food cannot substitute for appropriate catering arrangements, because it is primarily the State that is responsible for the well-being of persons deprived of their liberty. Besides, the Court is not convinced by the Government's assertion that the applicant could eat breakfast and dinner at the remand centre on such days. It follows from the table compiled by the applicant that he had been often taken to the "waiting cubicle" before breakfast time and that he had returned to the remand centre too late for dinner. The belated return to remand centres is confirmed in the above-mentioned letter of 26 November 2003.

97. The Court reiterates that the assessment of the minimum level of severity which a given form of treatment must attain if it is to fall within the scope of Article 3 depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162, and *Kudła*, cited above, § 91). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

98. In the present case the applicant was transported more than one hundred times in standard-issue prison vans which were sometimes filled beyond their design capacity. Given that he had to stay inside that confined space for several hours, these cramped conditions must have caused him intense physical suffering. His suffering must have been further aggravated by the absence of adequate ventilation and lighting, and unreliable heating. The Court also notes with concern the inappropriate catering arrangements. Having regard to the cumulative effect which these conditions of transport

must have had on the applicant, the Court finds that the conditions of transport from the remand centre to the courthouse and back amounted to “inhuman” treatment within the meaning of Article 3 of the Convention. It is also relevant to the Court’s assessment that the applicant was subjected to such treatment during his trial or at the hearings with regard to applications for an extension of his detention, that is, when he most needed his powers of concentration and mental alertness (compare *Khudoyorov*, cited above, § 120).

99. There has therefore been a violation of Article 3 of the Convention on account of the conditions in which the applicant was transported.

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

100. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had been excessively long and not founded on sufficient grounds. Article 5 § 3 provides as follows:

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

A. Submissions by the parties

101. The applicant submitted that the judicial review of his petitions for release had been limited to formal aspects. The domestic courts had not examined any concrete facts arguing for or against the necessity of depriving him of his liberty. The decisions of the Preobrazhenskiy District Court and Moscow City Court had not established any specific requirements of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty.

102. The Government submitted that the placement of the applicant in custody had been lawful and justified, that his detention had been extended in strict compliance with the domestic law and that he had been able to obtain a judicial review of all detention orders. They pointed out that the applicant had committed the crime in conspiracy with other individuals who had not been identified by the investigative authorities by the time the cases against the applicant were severed. In their submission, that fact had buttressed the domestic courts’ findings that the applicant – if released – would be able to abscond, influence witnesses or obstruct justice.

B. The Court's assessment

103. 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 special 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*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła*, cited above, § 110).

104. 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 him to be released provisionally once his continuing detention ceases to be reasonable (see, for instance, *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*, judgment of 27 June 1968, Series A no. 8, § 4).

105. The applicant was held in custody from 18 August 1999 to 12 July 2002 when he was released on bail. Such a length of pre-trial detention – over two years and ten months – is a matter of concern for the Court. It observes that at no point in the proceedings did the domestic authorities consider whether the length of his detention had already lasted beyond a “reasonable time”. The fact that the maximum time-limits permitted by the domestic law were not exceeded may not be a decisive element in the Court's assessment. As the Court has previously found in other Russian cases, the calculation of the domestic time-limits depended solely on the gravity of the charges, which was decided upon by the prosecution and was not subject to judicial review (see *Shcheglyuk v. Russia*, no. 7649/02, § 43, 14 December 2006, and *Khudoyorov*, cited above, § 180).

106. The Court observes that Russian criminal procedure law, as it was worded before the legislative amendments of 14 March 2001, allowed the suspect to be held in detention on the sole ground of the dangerous nature of the crime he was charged with (see paragraph 69 above). Acting in accordance with these provisions, the domestic courts extended the applicant's detention and rejected his petitions for release, relying mainly on the gravity of the charges against him (see, in particular, the decisions of 31 January, 16 February and 16 April 2001). They also occasionally mentioned other grounds, such as the applicant's “character” (see the decisions of 16 December 1999 and 26 September 2000) or the risk of

interference with justice (see the decision of 15 March 2002). The decisions did not refer to any factual basis for these findings.

107. According to the Court's constant case-law, although the severity of the sentence faced by the applicant is a relevant element in the assessment of the risk of absconding, 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 (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51). This is particularly relevant in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence that has so far been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, *loc. cit.*).

108. As regards the grounds for detention other than the gravity of the charges, the Court observes that the domestic courts did not provide details of what they understood by the applicant's "character" or why it was necessary for him to remain in custody. Nor did they mention any specific facts supporting their finding that there existed a risk of interference with justice. On the other hand, it is a matter of serious concern for the Court that the courts gave no heed to the applicant's arguments that he had a permanent place of residence in Moscow and that a Member of Parliament and a prominent scientist had offered personal guarantees of his appearance, or other relevant facts which mitigated the risk of his absconding. The domestic courts insisted that it was incumbent on the applicant to prove that there existed sufficient grounds for him to be released (see the Supreme Court's decisions of 11 April and 23 May 2001).

109. The Court reiterates that 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, warrants a departure from the rule of respect for individual liberty. 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 *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). 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 permissible only in exhaustively enumerated and strictly defined cases (see *Ilijkov*, cited above, §§ 84-85, with further references).

110. The Court finds that by failing to address concrete relevant facts and by relying mainly on the gravity of the charges, the authorities extended

the applicant's detention on grounds which cannot be regarded as "sufficient". The authorities thus failed to justify the applicant's continued detention pending trial (see *Rokhlina*, cited above, § 69).

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

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF AN EXCESSIVE LENGTH OF CRIMINAL PROCEEDINGS

112. The applicant complained under Article 6 § 1 about the excessive length of the criminal proceedings against him. The relevant part of Article 6 § 1 provides:

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

A. Submissions by the parties

113. The applicant contended that the domestic authorities had not shown due diligence in the conduct of the proceedings. On account of the poor quality of the investigation, the District Court had been unable to begin trial and had returned the case for further investigation on two occasions, namely on 6 August 2001 and 1 April 2002. The applicant had been the only defendant and the case had not been particularly complex. In case no. 144129, no investigative steps had been taken since 18 February 2001, when the investigator had stayed the proceedings. Even assuming that some delays had been attributable to his counsel, the Government did not furnish a convincing explanation for the other delays.

114. The Government considered that the length of proceedings in both criminal cases (no. 144129 and no. 9307) was compatible with the "reasonable-time" requirement. They laid particular emphasis on the fact that from 5 January to 23 July 2001 delays had been due to the conduct of the applicant's counsel, who had deliberately lingered over the case materials. They also indicated that on 6 August 2001 and 1 April 2002 the District Court had remitted the case for additional investigation following a request by counsel. In any event, those decisions had been subsequently quashed by the City Court. The Government maintained that case no. 9307 had been a complex and voluminous one, contained in fifty-five binders, and counsel for the applicant had greatly contributed to the delays in its examination.

B. The Court's assessment

115. The Court reiterates that the reasonableness of the length of the 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 (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

116. The Court takes the date of the applicant's arrest on 18 August 1999 as the starting point of the criminal proceedings. The case against him was subsequently split into two. In case no. 9307 the final judgment was given on 29 November 2003, that is, four years and three months later. According to the most recent information supplied by the parties, the investigation in case no. 144129 was resumed on 26 February 2002 and has been pending since.

117. As regards case no. 9307, the Court notes that it involved a number of counts of smuggling and for that reason presented a certain complexity. However, 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 *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI). The Court is not convinced by the Government's claim that the delays were primarily caused by the applicant's lawyers. It notes that the applicant studied the case-file from 12 January to 13 July 2001, that is for six months, which does not appear excessive given the volume of the case-file. On the other hand, the proceedings were delayed owing to the conduct of the domestic authorities. After the case had been submitted for trial in July 2001, the trial would not be able to begin for almost one year because of the domestic courts' disagreement on the existence of defects in the investigation documents and the need for further investigative actions. Having regard to the above circumstances, the Court considers that the length of the proceedings in case no. 9307 exceeded a "reasonable time" (compare *Korshunov v. Russia*, no. 38971/06, § 73, 25 October 2007).

118. Furthermore, the Court notes that the global length of proceedings in case no. 144129 has already exceeded eight years to date. The Government did not furnish any explanation for such an inordinate duration. The Court finds that in that case the "reasonable time" requirement has also been breached.

119. There has therefore been a violation of Article 6 § 1 on account of an excessive length of proceedings in both criminal cases against the applicant.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS ON FAMILY VISITS

120. The applicant complained under Article 8 of the Convention about excessive restrictions on family visits during his pre-trial detention. Article 8 provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Submissions by the parties

121. The applicant submitted that an absolute ban on family visits during seventeen months of pre-trial detention had been in breach of the domestic law which provided for the detainee’s right to two family visits a month (section 18 of the Custody Act). He had had access to all the relevant materials long before the beginning of the investigation in 1999 and he had been granted access to the case-file on 15 January 2001; thus, he had not been able to communicate any secret information to his wife in the intervening period. He had been tried and convicted alone, which excluded the possibility of collusion with “other unidentified persons”, to which the Government alluded.

122. The Government submitted that, by virtue of sections 17 and 18 of the Custody Act, the investigator had the power, rather than an obligation, to authorise up to two family visits per month, provided that such visits would not be contrary to the interests of the investigation. In refusing visits by the applicant’s relatives, the investigator had been guided by the necessity to prevent disclosure of the secret of the investigation. It had been taken into account that the applicant would have been able to pass information, through his relatives, to his unidentified accomplices at liberty and that the applicant’s wife had been involved in his business activities. The Government claimed that in 1999 the applicant had been permitted – on “humanitarian grounds” – to talk to his wife in the presence of the investigator and escort policemen. However, he had used these meetings to communicate further information about the case. In 2001 and 2002 the applicant had been granted twenty-six family visits. The Government emphasised that the applicant’s daughter had used only one of the three authorisations that had been issued; she had refused to return to the remand centre after visiting her father once.

B. The Court's assessment

123. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family. Such restrictions as limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (see, among other authorities, *Estrikh v. Latvia*, no. 73819/01, § 166, 18 January 2007; *Kučera v. Slovakia*, no. 48666/99, § 127, ECHR 2007-... (extracts); and *Klamecki v. Poland* (no. 2), no. 31583/96, § 144, 3 April 2003).

124. The Court observes that from the moment of the applicant's arrest in August 1999 and until mid-January 2001 all requests for family visits were refused by the investigator. The Government's claim that in 1999 he had been allowed to meet his wife in the presence of police officers was not supported by any evidence. The Court finds that the seventeen-month-long ban on family visits amounted to an interference with the applicant's right to respect for his family life.

125. The Court must first examine whether the interference was "in accordance with the law". The interference was based on section 18 of the Custody Act and the Internal Rules for Remand Centres which provided for investigator's discretion to authorise up to two family visits per month (see paragraphs 72 and 73 above). The Court is therefore satisfied that the refusal of family visits had a basis in domestic law. It reiterates, however, that the expression "in accordance with the law" does not merely require that the impugned measure should have a basis in domestic law but also refers to the quality of the law in question. The law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to the impugned measures. In addition, domestic law must afford a measure of legal protection against arbitrary interference by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law for legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in

question, in order to give the individual adequate protection against arbitrary interference (see, for instance, *Lupsa v. Romania*, no. 10337/04, §§ 32 and 34, ECHR 2006-...., and *Al-Nashif v. Bulgaria*, no. 50963/99, § 119, 20 June 2002).

126. The Court notes that both the Custody Act and the Internal Rules for Remand Centres were accessible to detainees. However, they fell short of the requirement of foreseeability because they conferred unfettered discretion on the investigator in this matter but did not define the circumstances in which a family visit could be refused. The impugned provisions went no further than mentioning the possibility of refusing family visits, without saying anything about the length of the measure or the reasons that may warrant its application. No mention was made of the possibility of challenging the refusal to issue an authorisation or whether a court was competent to rule on such a challenge (see also the Court's findings below under Article 13 of the Convention). It follows that the provisions of Russian law governing family visits did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities, so that the applicant did not enjoy the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (compare *Ostrovar v. Moldova*, no. 35207/03, § 100, 13 September 2005, and *Calogero Diana v. Italy*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, §§ 32-33). In view of the above, the Court considers that the interference at issue cannot be regarded as having been "prescribed by law". In the light of this finding, it is not necessary to assess whether the other conditions set out in paragraph 2 of Article 8 have been complied with.

127. There has therefore been a violation of Article 8 on account of the restriction on the applicant's right to family visits.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS ON CORRESPONDENCE AND EXCHANGE OF DOCUMENTS

A. Submissions by the parties

128. The applicant complained under Article 8 of the Convention, cited above, about restrictions on his correspondence and exchange of documents with his counsel. Relying on copies of three of the intercepted letters addressed to his mother, he maintained that they had not contained any subversive information or insults, contrary to the Government's assertion. Had such information been present, under domestic law the letters would not have been returned to him. Censorship of his correspondence with the courts had been proven by the refusal of the director of the remand centre to

post his complaint on the ground that it would have no prospect of success. Restrictions on the exchange of documents, including commercial documents and forms of authority, had had no basis in the domestic law.

129. The Government submitted that the domestic law (sections 17 and 20 of the Custody Act, and paragraph 84 of the Internal Rules for Remand Centres) provided for censorship of correspondence between the detainee and his family. Only five of the applicant's letters had not been posted because they had contained either information about the criminal case that could obstruct the establishment of the truth, or insulting statements about law-enforcement authorities. Correspondence with the prosecutor's offices, judicial bodies and other official authorities had not been subject to censorship. Such letters had been posted without delay.

B. The Court's assessment

130. The Court observes that the applicant was prohibited from posting (a) a complaint to the Basmanny District Court; (b) five letters to his mother and wife; (c) two forms of authority to his lawyer; and from receiving (d) the documents relating to the customs proceedings, and (e) a law book. In the Court's view, these restrictions amounted to an interference with the exercise of the applicant's right to respect for his correspondence.

131. The Court reiterates that any "interference by a public authority" with the right to respect for correspondence will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is "necessary in a democratic society" in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34, and *Niedbala v. Poland*, no. 27915/95, § 78, 4 July 2000).

132. The Court will examine in turn whether each instance of the interference in issue was in accordance with paragraph 2 of Article 8.

1. Refusal to post a complaint to a court

133. On 21 December 1999 the head of the correspondence unit of the remand centre refused to post the applicant's complaint to a court on the ground that it had "no prospects of success" (see paragraph 35 above). It does not appear that his power to assess the prospects of success of a complaint addressed to a court derived from any provision of the domestic law. The Government did not indicate any legal basis for the interference.

134. Accordingly, the Court finds that the interception of the applicant's complaint to the Basmanny District Court did not have a basis in law. It also reiterates in this connection that correspondence may not be stopped for raising complaints about prison matters or delayed until such complaints

have first been examined by the prison administration (see *Puzinas v. Lithuania* (no. 2), no. 63767/00, § 33, 9 January 2007). In the light of the above, it is not necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with.

2. Refusal to post letters to the applicant's wife and mother

135. In February 2000 the investigator refused to post five of the applicant's letters to his wife and mother, written in January 2000. In doing so, the investigator merely referred to section 20 § 2 of the Custody Act, without giving further details (see paragraph 37 above). When examining the applicant's complaint about that decision, in 2004 the domestic courts determined that the letters had contained either confidential information on the pending criminal proceedings or expressed contempt for the law-enforcement authorities. The courts did not refer to any specific phrases or statements in the letters.

136. The Court is satisfied that the interference was "prescribed by law". Section 20 of the Custody Act, read together with paragraph 8.9 of the Internal Rules for Remand Prisons (in force at the material time), provided for censorship of detainees' correspondence with their families and permitted interception of letters containing information on a criminal case or insulting language (see paragraph 73 above).

137. The Court also accepts that the interference pursued legitimate aims, namely "the prevention of disorder or crime" and "the protection of morals".

138. Nevertheless, the Court is unable to find that the interference was "necessary in a democratic society", notably because there was no supporting evidence to that effect. At no point in the domestic or Strasbourg proceedings did the Russian authorities identify any fragments or elements in the applicant's letters that had contained information on the criminal case or offensive language. If such statements were indeed present in the letters, it was incumbent on the domestic authorities to include at least a reference to them in the grounds for refusal. The Court, for its part, does not discern any such information in the three letters produced by the applicant. Furthermore, on a more general level, the Court reiterates that it has already determined that a prohibition on private correspondence "calculated to hold the authorities up to contempt" or employing "improper language against prison authorities" was not "necessary in a democratic society" (see *Ekinici and Akalin v. Turkey*, no. 77097/01, § 47, 30 January 2007, and *Silver and Others*, cited above, §§ 91 (c) and 99 (c)).

139. In the light of the above, the Court finds that the interception of the applicant's letters to his family was not "necessary in a democratic society".

3. Interception of the forms of authority

140. In March 2000 the applicant issued documents authorising his counsel to carry out certain actions on his behalf. These documents were stopped by the investigators on the ground that their scope extended beyond the authority to carry out civil transactions (see paragraph 39 above). In refusing to transmit these documents to the applicant's lawyers, the investigators referred to section 17 of the Custody Act and paragraph 12.11 of the Internal Rules for Remand Centres. The domestic courts which examined the applicant's complaint also mentioned these rules, without specifying the relevant parts.

141. The Court is unable to read the prohibition on delegation of authority extending beyond civil transactions into the text of either section 17 of the Custody Act or paragraph 12.11 of the Internal Rules. The interpretation given by the Ministry of the Interior and later endorsed by the District Court and the Government in the Strasbourg proceedings is obviously at variance with the ordinary meaning of these provisions. Whereas section 17 § 18 of the Custody Act explicitly provided for a prisoner's right to enter into civil transactions, paragraph 12.11 of the Internal Rules contained a more detailed regulation of the procedure for issuing a form of authority. In addition, the latter provision required the prison administration to supply a blank form and explain the procedure for filling it in. No element in these provisions can be reasonably interpreted as prohibiting the prisoner from authorising his representative to perform any actions on his behalf other than civil transactions.

142. It follows that the prohibition on the passing of the authority forms was arbitrary and not "prescribed by law". The Court also reiterates that correspondence with lawyers, whatever its purpose, is privileged under Article 8 and that the reading of a prisoner's mail to and from a lawyer, still less its interception, is only permissible in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused, in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature (see *Campbell*, cited above, § 48). In the light of the above, it is not necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with.

4. Appending of customs documents to the case file

143. In August 2000, counsel for the applicant attempted to send certain customs documents to him. The investigator refused to pass those to the applicant and appended them to the criminal case file (see paragraph 40 above). The domestic courts held that the documents had been treated as exhibits because counsel had mentioned that they had been relevant to the criminal case.

144. The Court observes that, as a result of the decision by the investigator to join the customs documents to the case file, the applicant could only have access to them after a delay of several months, in January 2001, when he was allowed to study the case-file. The Court, however, is prevented from analysing the reasons for which the investigator decided that the documents at issue had evidential value, because no text of his decision is available in the case-file. In fact, it does not appear that an appropriate procedural decision was ever issued; no copy is available in the case file and the domestic courts ruled on the applicant's complaint without mentioning the date of that decision.

145. In these circumstances, the Court cannot find that the interception of the customs documents was "prescribed by law". This finding makes it unnecessary to examine whether the other requirements of paragraph 2 of Article 8 were complied with.

5. Refusal of a law book

146. In May 2001, the director of the remand centre allowed counsel to pass to the applicant a copy of a judicial complaint but not a law book (see paragraph 42 above).

147. The Court notes that the decision to refuse the law book did not refer to any legal provision, whereas section 17 § 6 of the Custody Act explicitly provided for a prisoner's right to have material for the defence of his rights and lawful interests. It follows that the prohibition on the passing of the law book was arbitrary and not "prescribed by law". Accordingly, it is not necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with.

C. Conclusion

148. In sum, the Court has found above that the impugned measures affecting the applicant's correspondence and exchange of documents were not "prescribed by law" or "necessary in a democratic society". There has therefore been a violation of Article 8 of the Convention on account of those restrictions.

VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION, TAKEN TOGETHER WITH ARTICLE 8

A. Submissions by the parties

149. The applicant complained under Article 13 of the Convention, read in conjunction with Article 8, that the domestic courts had refused to

examine his complaints concerning restrictions on family visits and correspondence. He pointed out that on 21 December 2001 the Constitutional Court had confirmed its established case-law that all decisions by an investigator should be amendable to judicial review. The crux of the problem had not been the theoretical availability of remedies in the domestic law but rather the arbitrary application of the law by lower courts. As a consequence, he had been denied an effective domestic remedy in respect of his complaint concerning restrictions on correspondence and family visits.

150. The Government acknowledged that on 10 July 2001 the applicant's complaint had been disallowed as not amenable to judicial review. After the Constitutional Court determined, on 21 December 2001, that these matters must be subject to judicial review, the applicant's complaints had been re-examined by the Presnenskiy District Court and the Moscow City Court in 2004.

B. The Court's assessment

151. The Court observes that the possibility of contesting the investigator's decisions affecting a detainee's constitutional rights has existed at least since March 1999, when the Constitutional Court declared incompatible with the Constitution the criminal-law provisions which restricted the scope of judicial review (see paragraph 75 above). That jurisprudence notwithstanding, in 2001, first the Presnenskiy District Court by an inadmissibility decision and subsequently the Basmanny District Court by a non-procedural letter refused to examine the applicant's complaints concerning restrictions on his right to respect for his family life and correspondence. The Presnenskiy District Court's decisions were upheld on appeal by the Moscow City Court.

152. After the Constitutional Court – on an application by the applicant – explicitly stated that his complaints should be amenable to judicial review, the domestic authorities remained passive for almost three years and took no steps to re-examine the applicant's complaints. In fact, such a review was only carried out two years after the applicant's release in July 2002 and more than six months after his conviction had become final in November 2003. The Government did not furnish any explanation for that inordinate delay.

153. The Court reiterates that, to satisfy the requirements of Article 13, a remedy must be effective and accessible both in theory and in practice. In the present case the applicant's access to judicial review was initially barred by the Moscow courts' reluctance to comply with the case-law of the Constitutional Court. Although his complaints were ultimately examined, this occurred only four years later, when the applicant was already at liberty and the decisions he complained about no longer affected his rights. In the

light of the above, the Court finds that the applicant did not have an effective remedy for his complaints about restrictions on family visits and correspondence.

154. There has therefore been a violation of Article 13 of the Convention, taken in conjunction with Article 8.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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. Pecuniary damage

156. The applicant claimed 5,325,000 Russian roubles (RUB) for loss of salary, RUB 154,000 which had allegedly been spent on food and hygiene articles during the detention period, and 14,271 US dollars and RUB 17,636, representing the value of his seized property and bank accounts.

157. The Government emphasised that the alleged loss of earnings had been a consequence of the decision to ascertain the applicant’s criminal liability, which fell outside the scope of the Court’s review in the present case. Likewise, the complaints about the seizure of property or bank accounts had not been raised in these proceedings.

158. The Court observes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. There was no causal link between the violations found and the alleged loss of earnings. Likewise, the expenses relating to the purchase of food and hygiene articles cannot be said to have been occasioned by the conditions of detention which led the Court to find a violation of Article 3. Finally, the complaint concerning the alleged violation of the applicant’s property rights was not raised in the proceedings before the Court. In the light of the above, the Court rejects the applicant’s claim for pecuniary damage.

B. Non-pecuniary damage

159. The applicant claimed in total RUB 22,339,000 in respect of non-pecuniary damage caused by his lengthy detention, isolation from his family and deterioration in his health.

160. The Government considered that the claim was excessive in the light of the Court’s case-law.

161. The Court notes that it has found a combination of serious violations in the present case. The applicant spent almost three years in custody, in inhuman and degrading conditions, and was frequently transported to and from the courthouse in conditions which were likewise inhuman and degrading. His detention was not based on sufficient grounds and also excessively long. He was denied the right to see his family for a lengthy period and severe restrictions were imposed on his correspondence. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 35,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

C. Costs and expenses

162. The applicant claimed RUB 8,638 in postal expenses and RUB 60,000 in legal fees which he had paid in 1999.

163. The Government pointed out that the claim for legal fees was not supported with any document describing their nature, and that postal receipts did not clearly show that postal expenses had been necessary for preventing or redressing violations of the applicant's rights.

164. The Court notes, firstly, that the applicant was granted EUR 701 in legal aid for his representation by Mr Kuznetsov. Having regard to the material in its possession, the Court finds that the applicant did not justify having incurred any expenses exceeding that amount. Accordingly, it makes no award in respect of costs and expenses.

D. Default interest

165. 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. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Matrosskaya Tishina remand centre;
2. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy for the applicant to complain about the conditions of his detention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions in which the applicant was transported to and from court;
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 an excessive length of proceedings in both criminal cases against the applicant;
6. *Holds* that there has been a violation of Article 8 of the Convention on account of unjustified restrictions on family visits;
7. *Holds* that there has been a violation of Article 8 of the Convention on account of unjustified restrictions on correspondence and exchange of documents;
8. *Holds* that there has been a violation of Article 13 of the Convention on account on the lack of an effective remedy for the applicant's complaints about restrictions on family visits and correspondence;
9. *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 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President