CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF POPOV AND VOROBYEV v. RUSSIA

(Application no. 1606/02)

JUDGMENT

STRASBOURG

23 April 2009

FINAL

23/07/2009

This judgment may be subject to editorial revision.

In the case of Popov and Vorobyev 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 2 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 1606/02) 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 two Russian nationals, Mr Sergey Yuryevich Popov and Mr Vadim Gennadyevich Vorobyev ("the applicants"), on 11 July 2001.

2. The applicants, who had been granted legal aid, were represented by lawyers of the Centre of Assistance to International Protection practising in Moscow and Mrs T. Zolotar, a lawyer practising in Vladivostok, Russia. 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 applicants alleged under Article 3 that the conditions of their detention in the Vladivostok pre-trial detention centre IZ-25/1 had been inadequate. Under Article 5 § 3, they complained that the length of their pre-trial detention had not been justified and under Article 5 § 4 that they had been deprived of judicial review.

4. On 2 March 2006 the Court declared the application partially inadmissible and decided to communicate the applicants' complaints under Article 3, Article 5 § 3 and Article 5 § 4 to the respondent Government.

5. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1964 and 1963 respectively and live in Vladivostok, Russia. At the material time the first applicant, a police officer, and the second applicant, a former police officer, were the chairman and the deputy chairman of a local police trade union.

A. The applicants' detention in IZ-25/1 and their requests for release

7. On 28 October 1999, in connection with the discovery of two explosive devices and cartridges at the home of a third person, K., the department of the interior of the Primorskiy region and the Federal Security Service of Russia ("the FSB") initiated criminal proceedings under Article 222 § 1 of the Criminal Code of Russia ("unlawful acquisition, transfer, sale, storage, transportation and carrying of firearms, basic parts of firearms, ammunition, explosives and explosive devices").

8. On 14 January 2000 the applicants were arrested. On 17 January 2000 the prosecutor's office of the Primorskiy region extended the applicants' detention, referring to the gravity of the charges against them and the risk of their absconding from the authorities or obstructing the course of justice.

9. On 24 January 2000 the applicants were transferred to detention centre IZ-25/1 ("the detention centre" – in some of the documents submitted also referred to as IZ-20/1) in Vladivostok.

10. On 13 March 2000 the prosecutor's office of the Primorskiy region extended the applicants' detention until 10 April 2000, referring to the same reasons, namely the risk of their absconding from the authorities or obstructing the course of justice.

11. On 3 April 2000 the prosecutor's office of the Primorskiy region extended the applicants' detention until 10 May 2000. The first applicant's lawyer appealed against the extension order. On 28 April 2000 the Leninskiy District Court of Vladivostok dismissed the appeal and stated that the applicant had the right to appeal against that decision to the Primorskiy Regional Court. The first applicant did not appeal to the second-instance court.

12. On 27 April 2000 the prosecutor's office of the Primorskiy region extended the applicants' detention until 10 July 2000, referring to the gravity of the charges against them and the risk of their absconding from the authorities or obstructing the course of justice.

13. On 10 July 2000 the investigation forwarded the criminal case against the applicants to the Primorskiy Regional Court for the determination of the jurisdiction for the trial. On 13 July 2000 the Regional

Court decided that the case should be examined by the Frunzenskiy District Court of Vladivostok ("the District Court") and forwarded the case file to the District Court.

14. On 8 August 2000 the District Court held a directions hearing and decided to examine the criminal case on 11 October 2000. The court also decided to extend the applicants' detention on remand, using a summary formula in respect of both applicants and stating that "the preventive measure in respect of [the applicants] should remain the same – detention on remand". No reasons for the extension of the applicants' detention on remand were provided.

15. On 11 October 2000, during the examination of the applicants' case, the court allowed an application by them for an additional expert assessment of fingerprints. The court forwarded the case file to Moscow for the expert assessment and adjourned the hearing of the criminal case. During the hearing the applicants complained under Article 276 of the Code of Criminal Procedure (lodging applications before the court) to the District Court about the length of their detention on remand and requested to be released pending trial. The applicants stated that they had permanent places of residence; that they had the necessary communication equipment to ensure constant contact with the authorities; that they had always been given positive assessments; that they had received State military awards; that they had minor children; and that they both had kidney diseases, treatment for which was not available at the detention centre. Their complaint was included in the case file (pages 497-499), but was not examined by the court.

16. On 29 October 2000 the first applicant complained to the District Court, stating, among other things, that he had spent more than ten months in detention and requesting release pending trial. This complaint was not examined by the court.

17. On 30 October 2000 the second applicant complained to the District Court and requested to be released pending trial. He stated that he had two minor children, that he had never been prosecuted, that he had a permanent place of residence and that he had no intention of absconding from the authorities. This complaint was not examined by the court.

18. On 10 November 2000 the first applicant complained to the Prosecutor General. In his letter he stated, among other things, that he had been detained for more than ten months and that his requests for release pending trial had not been examined. This complaint was not examined by the authorities.

19. On 16 November 2000 and 12 December 2000 the second applicant complained to the District Court that his detention was unlawful and requested to be released pending trial. In his letter he pointed out that he had problems with his teeth and that adequate dental treatment was not available in the detention centre; that he had a permanent place of residence; that he

had two children and an elderly mother to take care of; and that he had no intention of absconding from the authorities. These complaints were not examined by the court.

20. On 3 January 2001 the first applicant complained to the District Court, requesting it to examine the lawfulness of his detention on remand. Referring to the poor conditions of his detention, the general deterioration of his health and the lack of medical assistance in the centre, the applicant requested to be released pending trial. In his complaint the applicant stated that he had family and a child to take care of; that he had a permanent place of residence; that he had been working as a police officer for 15 years; that he had been given positive assessments; and that he had no intention of absconding from the authorities. This complaint was not examined by the court.

21. On 3 January 2001 the second applicant complained to the District Court that his detention on remand was unlawful and requested to be released pending trial. In his letter he pointed out that he had lost several teeth and had other problems with his health, and that no medical assistance had been provided to him in the detention centre.

22. On 12 January 2001 the District Court responded to the second applicant. The letter was very brief and did not contain any judicial decisions. It stated: "Today the court sees no reasons for changing the preventive measure".

23. On 23 January 2001 and 20 February 2001 the second applicant complained to the District Court that his detention on remand was unlawful and requested to be released pending trial. In his letters he stated, among other things, that he had lost eight teeth; that he had problems with his kidneys; that no treatment was available in the detention centre; that he had a permanent place of residence; that he had two children and an elderly mother to take care of; and that he had no intention of absconding from the authorities. These complaints were not examined by the court.

24. On 31 January 2001, upon completion of the expert assessment, the case file was returned to the District Court and the hearing of the case was scheduled for 20 February 2001.

25. On 20 February 2001 the District Court resumed the hearing of the criminal case. It completed its examination on 2 March 2001, imposing suspended sentences on the applicants and ordering their immediate release.

B. Conditions of the applicants' detention in IZ-25/1

1. The applicants' submissions as to the facts

26. From 24 January 2000 until their release on 2 March 2001 the applicants were detained in cells no. 41, 58, 79, 82 and 105 in the detention centre.

27. All the cells in which the applicants were detained were of identical size, measuring 7.5 sq. m by 2.6 sq. m with four bunks. Both applicants shared their cells with four to six other detainees; therefore, they had to take turns to sleep and were allowed to sleep only between 10 p.m. and 6 a.m. The applicants and their cellmates were not provided with bedding or linen; they had to acquire these items from their relatives and wash and dry them in the cells.

28. The cells were damp; there was mould on the walls and the ceiling. The air was stale and musty. As there was no air ventilation, the cells were hot in summer and cold in winter; the temperature in the cells depended on the season and varied from +10ºC to +35ºC. The windows of the cells were covered with metal grilles supplemented with "eyelashes", that is, metal strips covering the grille, which let no daylight in. The size of the air vents above the doors was 0.06 sq. m; therefore they could not provide fresh air. The cells were constantly lit with a single 60-watt bulb. Unprotected electric wiring hung from the ceiling and along the walls. The cells were overrun with cockroaches, blood-sucking insects and mice, but the authorities made no attempt to exterminate them, refusing even to give the inmates chloride for disinfection. The cells were not equipped with a source of drinking water. The inmates had to drink water from the tap above the toilet, which was supposed to be used only for flushing.

29. The cells were equipped with toilets which were located 0.5 m away from the dining table and were not isolated from the living area as the centre's administration forbade putting up curtains.

30. Despite numerous requests by the applicants, they were never provided with bedding, crockery or kitchenware. They were also denied any toiletries, such as soap, toothbrushes, a shaving set or toilet paper, to maintain personal hygiene. In the applicants' submission, they were able to have a shower only once every 10 to 40 days for up to 12 minutes, and to take a walk of about 50 minutes per day. The duration of walks was sometimes reduced to 20 to 30 minutes. On several occasions, the warders made the applicants choose between having a bath and taking a walk. If the applicants were in a meeting with their lawyers or in court, then they did not get to take the walk. The scarce meals were of very poor quality.

31. The applicants, who suffered from toothache and urolithiasis, were denied proper medical treatment, reference being made to "the absence of specialists and necessary medicine". In response to the first applicant's complaints of renal colic, a medical officer supplied him with medicine which was unfit for use, as its shelf life had expired three years earlier. With regard to the second applicant's complaint of acute colic, the medical officer refused to give him an injection with the medicine and syringes that had been delivered earlier by the applicant's family. The officer stated that he only used syringes for treatment of seriously ill patients, but he could see no such patients at the moment. The available dental care was provided by a

doctor who saw patients only once a week. In response to the applicants' complaints of acute toothache he suggested that the teeth be extracted without an anaesthetic owing to the lack of medication and necessary equipment for the treatment of cavities.

32. The applicants supported their submission with a number of documents, including eight responses by the administration of detention centre IZ-25/1 to their requests for information lodged in 2006: five responses dated 19 April 2006 (two responses concerning the ventilation of the cells, one response concerning the metal bars on the cells' windows, one response concerning the control over the sanitary conditions in the cells and one response concerning the absence of the licence to practice medicine by the medical unit of the detention centre at the material time), one response dated 26 July 2006 (the refusal to provide the information concerning the provision of the applicants with individual toiletry kits owing to the absence of the archives), one response dated 18 August 2006 (the refusal to provide information concerning the daily number of inmates in cell no. 79 and their transfers to other cells) and one response dated 22 August 2006 (the refusal to provide information concerning the daily number of inmates in cell no. 41 and their transfers to other cells); the Recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning its visit to the detention facility from 2 to 17 December 2001; three witness statements concerning the conditions of the applicants' detention in the detention centre provided by Mr A.V. on 7 August 2006, Mr O.L. on 2 August 2006 and Mr E.K. on 3 August 2006; and six statements describing the conditions of detention and the lack of medical assistance in IZ-25/1, drawn up by the applicants and their cellmates, dated 6 and 7 November 2000, 4, 5 and 23 December 2000 and 2 February 2001. The applicants did not submit any medical documents concerning their respective conditions, whether produced during their detention in IZ-25/1 or after their release.

2. The Government's submissions as to the facts

33. Referring to the information provided by the Prosecutor General's Office, the Government submitted that the applicants had been detained in cells used for the detention of former employees of law-enforcement agencies.

34. Referring to the information provided by the Russian Federal Service for Execution of Sentences, the Government submitted that the first applicant had been detained in cell no. 41, and the second applicant in cells nos. 79, 82 and 105 at the detention centre.

35. The surface area and the height of the ceilings in all the cells were identical and amounted to 8 sq. m and 2.8 m respectively. Each cell was equipped with four bunks. The applicants shared their cells with only three other persons. At the same time, in the same submission the Government

further stated that in 2000 to 2001 the detention centre had been overcrowded owing to the high level of criminal activity in the area and the limited capacity of the centre. For these reasons the number of persons detained with the applicants had exceeded the required standard. In spite of these difficulties, each detainee in the applicants' cells had been provided with a sleeping berth. However, the Government did not specify the exact number of persons detained with the applicants and the nature of the sleeping berth.

36. The size of the windows was in accordance with the relevant regulations and comprised one-eighth of the cells' floor space, providing the applicants with the possibility of reading and working under natural light. Each window was equipped with an air vent for additional ventilation; another source of ventilation was installed above the door. The temperature in the cells varied from +18ºC to +24ºC. The window air vents and doors were opened for ventilation when the inmates were taken for a walk. All cells were equipped with running water. The levels of temperature and the humidity in the cells, as well as the quality of water, complied with the relevant hygiene and sanitary regulations. No outbreaks of infectious or parasitogenic diseases were registered at the centre at the material time.

37. Each cell in the centre was equipped with bulbs for daytime and night lighting. The night lighting was on from 10 p.m. to 6 a.m. The toilet was separated from the living area by a curtain, which ensured privacy. There were no rodents or insects in the cells as the administration conducted a monthly disinfection; in addition, the staff of the medical centre regularly inspected the cells for insects and rodents.

38. The applicants and other inmates of the detention centre were allowed to take a shower once every seven days; their bed linen was changed at the same time. The applicants were provided with individual bunks, bed linen, crockery and cutlery. They were given individual toiletry kits (containing soap, a toothbrush, a shaving kit and toilet paper). Additional toiletry items could have been provided to the applicants had they submitted a written request, but they had failed to do so.

39. Open-air walks were permitted for one hour a day and there had been no instances of substituting a walk for a bath.

40. The Government submitted that the applicants had been provided with medical assistance in accordance with the relevant regulations, although at the material time the medical unit had not had a licence to practise medicine. The applicants had undergone an initial medical examination on the date of their entry to the detention centre; as a result it had been established that they had been healthy. The medical unit of the detention centre had been supplied with the necessary equipment and medicine. Referring to a number of documents, the Government stated that during the entire period of their detention at the centre, the applicants had

neither sought medical help nor complained to the administration about the failure of the medical services to provide them with requested treatment.

41. In support of their position the Government submitted, among others, a number of information statements issued by the administration of IZ-25/1, witness statements of the personnel of the medical unit in IZ-25/1, records concerning the number of inmates in the cells; and copies of some documents from the investigation file.

II. RELEVANT DOMESTIC LAW

A. Placement in custody and detention pending trial

42. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (Law of 27 October 1960 – "the old CCrP").

1. Preventive measures

43. "Preventive measures" or "measures of restraint" (*меры пресечения*) included an undertaking not to leave a town or region, personal security, bail and detention on remand (Article 89 of the old CCrP).

2. Authorities ordering detention on remand

44. The Russian Constitution of 12 December 1993 established that a judicial decision was required before a defendant could be detained or his or her detention extended (Article 22). Under the old CCrP, a decision ordering detention on remand could be taken by a prosecutor or a court (Articles 11, 89 and 96).

3. Grounds for ordering detention on remand

45. When deciding whether to remand an accused in custody, the competent authority was required to consider whether there were "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP). Before 14 March 2001, detention on remand was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were "exceptional circumstances" in the case (Article 96).

4. Time-limits for detention on remand

Two types of detention on remand

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

(i) Time-limits for detention "during the investigation"

47. After arrest the suspect was placed in custody "during the investigation". The maximum permitted period of detention "during the investigation" was two months but it could be extended for up to eighteen months in "exceptional circumstances". Extensions were authorised by prosecutors of ascending hierarchical levels. No extension of detention "during the investigation" beyond eighteen months was possible (Article 97 of the old CCrP).

(ii) Time-limits for detention "before the court"/"during the judicial proceedings"

48. From the date the prosecutor forwarded the case to the trial court, the defendant's detention was "before the court" (or "during the judicial proceedings"). Before 14 March 2001 the old CCrP set no time-limit for detention "during the trial".

5. Proceedings to examine the lawfulness of detention

(a) Detention "during the investigation"

49. Under the old CCrP, the detainee or his or her counsel or representative could challenge before a court a detention order issued by a prosecutor, and any subsequent extension order. The judge was required to review the lawfulness of and justification for a detention or extension order no later than three days after receipt of the relevant papers. The review was to be conducted in camera in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the detainee's release (Article 220-1). An appeal to a higher court lay against the judge's decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (Article 331 *in fine*).

(b) Detention during the trial

50. Upon receipt of the case-file, the judge was to determine, in particular, whether the defendant should remain in custody or be released pending trial (Article 222 § 5 and Article 230 of the old CCrP) and to rule on any application by the defendant for release (Article 223 of the old CCrP). If the application was refused, a fresh application could be made once the trial had commenced (Article 223 of the old CCrP).

51. At any time during the trial the court could order, vary or revoke any preventive measure, including detention on remand (Article 260 of the old CCrP). An appeal against such a decision lay to a higher court. It was to be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP).

6. Time-limits for trial

52. Under the old CCrP, the duration of the trial was not limited in time.

B. Medical assistance

53. The 1995 Law on the conditions of detention of suspects and accused (*закон «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»*) provided that inmates were entitled to medical assistance (section 17). If an inmate's health deteriorated, the medical officers of the detention facility were obliged to conduct an immediate medical examination and inform him of its results in writing. If the inmate requested to be examined by staff of other medical institutions, the administration of the detention facility was to organise such an examination. If the administration refused, the refusal could be appealed against to a prosecutor or court. If an inmate suffered from a serious disease, the administration of the detention facility was obliged immediately to inform the prosecutor, who could carry out an inquiry into this matter (section 24).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicants complained that the conditions of detention in detention centre no. IZ-25/1 and the lack of medical assistance had amounted to inhuman and degrading treatment. They relied on Article 3 of the Convention, which reads as follows:

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

A. General conditions of detention

1. Submissions by the parties

55. The applicants claimed that the conditions of their detention in overcrowded cells, with a lack of space and poor heating and ventilation, had caused them mental and physical suffering and amounted to ill-treatment.

56. The Government contended that the conditions of the applicants' detention in detention centre IZ-25/1 had been compatible with the requirements of Article 3. The Government acknowledged that at the material time the detention centre had been overcrowded, but pointed out that the State authorities had had no intention of subjecting the applicants to ill- treatment.

2. The Court's assessment

(a) Admissibility

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

(b) Merits

58. The Court observes that detention centre no. IZ-25/1 was severely overcrowded during the entire period of the applicants' detention. Each cell where the applicants had been placed during their detention was of the same size, with a height of 2.6 m and a surface area of 7.5 sq. m according to the applicants, and a height of 2.8 m and a surface area of 8 sq. m according to the Government. Given the number of bunk beds, they were designed for four persons, according to the Government (see paragraph 35 above). According to the applicants, the cells actually held from four up to seven inmates (see paragraph 27 above). The Government acknowledged that at the material time the detention centre had been overcrowded owing to the high level of crime and the centre's low capacity and that the number of persons detained together with the applicants had therefore exceeded the required standard (see paragraph 35 above). The above numbers suggest that at any given time there was less then 2 sq. m of space per inmate in the applicants' cells and that they did not always have a separate bed. Save for 30 to 40 minutes of daily outdoor walks, according to the applicants, or one

hour, according to the Government, the applicants were confined to their cells all the time.

59. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand prisons has been found to be so extreme as to justify, in its own right, a finding of a violation of Article 3 of the Convention. In those cases applicants had usually had less than 3 sq. m. of personal space (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev 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).

60. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. For more than thirteen months the applicants were obliged to live, sleep and use the toilet in such crammed conditions that the lack of space itself was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of the applicants' detention amounted to inhuman and degrading treatment.

61. As to the Government's argument that the authorities had no intention of making the applicant suffer, the Court reiterates that although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot preclude a finding of violation of Article 3 (see *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

62. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicants' detention in detention centre IZ-25/1.

B. Alleged lack of medical assistance

1. Submissions by the parties

63. The applicants submitted that while in detention in IZ-25/1 they had been deprived of medical assistance. In particular, they submitted that their complaints about dental and kidney problems had either been disregarded by the medical staff of the detention centre or they had been provided with inadequate medical assistance.

64. The Government pointed out that the applicants had failed to exhaust domestic remedies as they had never complained about the lack of medical assistance to the administration of the detention centre. The Government contended furthermore that the applicants' allegations about the lack of medical assistance were unsubstantiated as IZ-25/1 was fully supplied with

the necessary medicines and the applicants had never applied for any medical assistance during their detention. Further the Government stated that even though at the material time the medical unit of the detention centre did not have the licence to practice medicine, if the applicants would have applied for medical assistance, they would have been either assisted by the medical staff and provided with necessary treatment and medicines or they could have been referred to other hospitals in Vladivostok.

2. The Court's assessment

Admissibility

65. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. The rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24). At the same time, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

66. The Court notes that according to the applicants' submission, they applied for medical assistance at the detention centre but their requests were either rejected by the staff of the medical unit or they were provided with inadequate treatment (see paragraph 31). However, it does not transpire from the submitted materials that in spite of this alleged lack of medical care the applicants ever complained about it to the administration of IZ-25/1. In addition, the Court notes that the information concerning the absence of the medical licence at the medical unit was obtained by the applicants in April 2006 that is more than five years after the applicants were released from the detention centre (see paragraph 32) and that this fact was never brought by the applicants to the attention of competent domestic authorities. The Court further observes that the applicants raised the issue of the alleged lack of medical assistance only in the context of their requests for release pending trial and only as one of the grounds for their release, but not as a separate complaint to this effect (see paragraphs 15, 19-21 and 23 above). According to the Government, if the applicants had complained

about the lack of medical assistance to the administration of the detention centre, the latter would have either provided such care or arranged it for the applicants in other hospitals in Vladivostok. In support of their position the Government furnished the Court with a number of information statements and witness statements by the medical personnel of IZ-25/1 and the applicants' medical records certifying that they had not applied for medical assistance while in detention in IZ-25/1.

67. The Court reiterates that where the applicant's complaint stems not from a known structural problem, such as general conditions of detention, in particular overcrowding, but from an alleged specific act or omission by the authorities, the applicant must be required, as a rule, to exhaust domestic remedies in respect of such complaints. The Court has already established that applicants complaining of a lack of medical assistance should raise their complaints with the competent domestic authorities, including the administration of the detention facility (see *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007, and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005). In connection with this, the Court notes that the domestic legislation at the material time provided that an inmate had the right to request that his or her medical examination be conducted by medical officers of other medical institutions and, if the administration of the detention facility refused to arrange such an examination, to appeal against that decision to the prosecutor or the court (see paragraph 53). However, in the present case, the applicants failed to resort to this remedy and to raise the issue of the alleged lack of medical assistance or its inadequate quality with the administration of the detention centre, the prosecutor's office or the court. There is no indication that such a remedy would have been ineffective in the circumstances of the applicants' case. Therefore, the Court does not find any grounds for absolving the applicants from the requirement of exhaustion of domestic remedies as regards the alleged lack of medical care.

68. In these circumstances the Court sees no reason not to allow the Government's objection to the admissibility of the applicants' complaint about their alleged lack of medical assistance in IZ-25/1. It follows that this part of the applicants' complaint under Article 3 must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

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

69. The applicants complained that the length of their detention on remand had been excessive. They referred to Article 5 § 3 of the Convention, which provides as follows:

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

(a) Admissibility

70. The Government contended that the applicants had failed to exhaust domestic remedies as they had not appealed against any of the decisions extending their detention on remand. They further stated that the applicants had lodged their requests for release pending trial only after the transfer of the criminal case from the investigators to the District Court – that is, after 29 October 2000. These requests could have been examined by the court only during the hearing of the criminal case. However, the examination of the case had been adjourned from 11 October 2000 to 20 February 2001 owing to the need to conduct an additional expert assessment. Therefore, the applicants' complaints lodged between 29 October 2000 and 20 February 2001 had not been examined by the District Court. The Government also pointed out that the applicants had failed to lodge requests for release pending trial during the hearing of their criminal case on 11 October 2000 and the hearings conducted from 20 February 2001 to 2 March 2001.

71. The Court considers that if a person alleges a violation of Article 5 § 3 of the Convention on account of the length of his detention in circumstances such as those in the present case, he complains of a continuing situation, which should be considered as a whole and not divided into separate periods (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-...). The Court observes that following their arrest on 14 January 2000 the applicants continuously remained in custody until their release on 2 March 2001. It is not disputed that they did not lodge appeals against the orders extending their detention on remand during the investigation and the court order of 8 August 2000 extending it for the duration of the trial. However, on the first day of the trial – that is, on 11 October 2000 – the applicants lodged a request for release (see paragraph 15 above). Neither this request nor any other subsequent requests for release were examined by the trial court as the proceedings were adjourned for an expert assessment. By lodging a number of requests for release from 11 October 2000 to 20 February 2001 the applicants made the court sufficiently aware of their situation and gave it an opportunity to consider whether their detention was compatible with their Convention right to a trial within a reasonable time or release pending trial. The Government did not show what other remedies the applicants could have used in their situation to request a change in the preventive measure applied to them after the commencement of their trial. The Court therefore finds that this complaint cannot be rejected for failure to exhaust domestic remedies. In these circumstances the Government's objection of non-exhaustion of domestic remedies must be dismissed.

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

(b) Merits

1. Arguments by the parties

73. The Government submitted that the period of the applicants' detention on remand was not unreasonable, it was in accordance with the national legislation and its duration of 13 months and 17 days was not excessive. They pointed out that under the domestic legislation at the material time, no time-limits were envisaged for detention pending trial. The Government further contended that the applicants' detention on remand had been justified by the gravity of the charges against them and by the concern that, being a police officer and a former police officer, they could have obstructed the course of justice or absconded from the authorities.

74. The applicants submitted that the criminal case against them was not complex and that it had been unnecessary to keep them in detention for an extensive period of time, as there was no indication that they were trying to obstruct the course of justice, abscond or influence the witnesses. They further contended that the authorities' references to the gravity of the charges against them and the need to conduct additional investigative measures had not provided sufficient reasons to justify their detention. In particular, they pointed out that the court's decision of 8 August 2000 had failed to provide sufficient individual details for the extension of their detention.

2. The Court's assessment

75. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

76. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*,

no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8).

77. It is incumbent on the domestic authorities to establish the existence of concrete 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 *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his or her appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

78. The applicants were arrested on 14 January 2000 and remained in custody until 2 March 2001. The period to be taken into consideration was therefore 13 months and 17 days.

79. The Court accepts that the applicants' detention could have initially been warranted by a reasonable suspicion of their involvement in the commission of a criminal offence. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicants' continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

80. The judicial authorities relied, in addition to the gravity of the charges against the applicants, on the risk of their absconding or influencing the witnesses.

81. The Court observes that the gravity of the charge was the main factor for the assessment of the applicants' potential to abscond. The domestic authorities assumed that the gravity of the charge carried such a preponderant weight that no other circumstances could have obtained the applicants' release. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused 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 seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, § 51, Series A no. 207; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov,* cited above, § 81).

82. The domestic authorities also referred to the fact that the applicants could have obstructed the course of justice by influencing the witnesses. Although such factors could justify a relatively longer period of detention, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with criminal conspiracy is not in itself sufficient to justify long periods of detention; the accused's personal circumstances and behaviour must always be taken into account. There is no indication in the present case that the applicants had made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any other way. In such circumstances the Court has difficulty accepting that there was a risk of interference with the administration of justice at the later stages of the proceedings. The Court is not therefore persuaded that, throughout the entire period of the applicants' detention, there were compelling reasons to fear that they might interfere with witnesses or otherwise hamper the investigation of the case, certainly not to such an extent as to outweigh the applicants' right to trial within a reasonable time or release pending trial.

83. The Court further observes that after the case had been submitted for trial, on 8 August 2000 the trial court used a summary formula to extend the detention of both applicants, without describing their personal situation in any detail or providing any reasons for their continued detention (see paragraph 22 above). The Court has already found that the practice of issuing collective detention orders without assessment of the grounds for detention in respect of each detainee is incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the detention of both applicants simultaneously on the basis of a summary formula and providing no reasons whatsoever for its decision, the trial court failed to examine their individual circumstances.

84. Further, the Court notes that the above-mentioned decision of the trial court did not set time-limits for the applicants' continued detention and that the relevant legislation at the time did not lay down any time-limits for detention pending trial either. This situation left the applicants in a state of uncertainty as to the possible length of their detention pending trial.

85. Finally, the Court notes that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3

to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja*, cited above, § 64 *in fine*, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case the authorities never considered the possibility of ensuring the applicants' attendance by the use of a more lenient preventive measure.

86. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-XII; *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova*, cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 172 et seq., ECHR 2005-X; *Rokhlina*, cited above, §§ 63 et seq.; *Panchenko* , cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX).

87. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicants' detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration. In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

89. The applicants complained under Article 5 § 4 that they had not been able to obtain a judicial review of the lawfulness of their detention, in breach of Article 5 § 4, which provides 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. Submissions by the parties

90. The applicants submitted that their complaints and requests for release pending trial lodged with the District Court had not been examined by the authorities.

91. The Government submitted that the applicants' complaints and requests for release pending trial had not been examined by the courts because from 11 October 2000 to 20 February 2001 the examination of the applicants' case had been adjourned owing to the need to obtain additional evidence. They further contended that the applicants had not lodged any requests for release during the hearing of 11 October 2000 and the hearings conducted between 20 February and 2 March 2001.

B. The Court's assessment

(a) Admissibility

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

(b) Merits

93. The Court reiterates that Article 5 § 4, in guaranteeing to persons who have been arrested or detained a right to take 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 that detention and ordering its termination if it proves unlawful (see *Rokhlina*, cited above, § 74).

94. It is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded "the fundamental guarantees of procedure applied in matters of deprivation of liberty" (see *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33, and *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 51, Series A no. 107).

95. Whilst Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in the detainee's submissions, the judge examining remand appeals must take into account concrete facts which are referred to by the detainee and are capable of casting doubt on the existence of those conditions essential for the "lawfulness", for Convention purposes, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

96. The Court will first examine the Government's contention that the applicants failed to lodge requests for release pending trial during the hearing of their case on 11 October 2000 and the hearings conducted from 20 February 2001 to 2 March 2001.

97. The Court observes that on 11 October 2000 during the court's hearing both applicants lodged a request for release pending trial and this

complaint was included in the criminal case file (see paragraph 15 above). The Court also notes that the second applicant lodged an application for release pending trial on 20 February 2001 (see paragraph 23 above). Although the Government denied that the applicants had lodged these complaints on the above dates, in their submissions to the Court they did not question either the origins or the authenticity of these documents. Therefore, the Court accepts that both applicants lodged a request for release pending trial on 11 October 2000 and that the second applicant lodged an application for release on 20 February 2001, but these requests went unanswered by the District Court.

98. The Court further observes that from 29 October 2000 to 20 February 2001 the applicants lodged a number of detailed requests for release pending trial: the first applicant lodged two complaints (see paragraphs 16 and 20 above) and the second applicant lodged six complaints (see paragraphs 17, 19, 21, 23 above). Only one of these complaints, lodged by the second applicant on 3 January 2000, received a response from the District Court (see paragraph 22 above). This response did not provide any information as to whether any judicial examination of the request had been conducted; it simply acknowledged receipt of the complaint and stated, without providing any reasons or addressing the specific arguments advanced by the applicant, that there were no grounds for changing the preventive measure in respect of him. The rest of the applicants' complaints lodged between 29 October 2000 and 20 February 2001 remained unanswered by the District Court, which failed to carry out a judicial review of the applicants' detention.

99. It follows that the applicants were denied the right to a judicial decision concerning the lawfulness of their detention pending trial.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

1. Pecuniary damage

(a) The first applicant

102. The first applicant claimed 25,000 Russian roubles (RUB – 694 euros (EUR)) for his dental and kidney treatment in 2001 after his release from detention; RUB 4,500 (EUR 125) paid in tuition fees for a legal course which he had to take in 2006 as a result of the allegedly poor quality of legal representation in the domestic proceedings in 2000 to 2001; and RUB 966,000 (EUR 26,833) for the loss of his earnings as a police officer. The total amount of the first applicant's claim comprised RUB 995,500 (EUR 27,652).

103. The Government contested the claim. They noted that the expenses relating to the applicant's dental treatment had been incurred after the applicant's release from detention; that the applicant's expenses concerning kidney treatment were unsubstantiated; that the educational expenses were unnecessary; and that his claims for lost income were unsubstantiated.

104. The Court notes that there is no causal link between the violations found and the alleged loss of earnings or the need to obtain legal education. Likewise, the Court does not find it established that the expenses relating to the dental and kidney treatment were occasioned by the conditions of detention which led the Court to find a violation of Article 3. In the light of the above, the Court dismisses the applicant's claim for pecuniary damage.

(b) The second applicant

105. The second applicant claimed RUB 34,731 (EUR 964) for his dental treatment in 2001 after his release from detention.

106. The Government contested the claim. They noted that the expenses relating to the dental treatment had been incurred after the applicant's release from detention.

107. The Court does not find it established that the applicant's dental treatment was occasioned by the conditions of detention which led it to find a violation of Article 3. In the light of the above, the Court dismisses the applicant's claim for pecuniary damage.

2. Non-pecuniary damage

108. Each of the applicants claimed RUB 288,000 (EUR 8,000) for the mental and physical suffering endured during their detention in IZ-25/1.

109. The Government contested the amounts claimed as unfounded.

110. The Court accepts that the applicants suffered humiliation and distress because of the inhuman and degrading conditions of their detention

in IZ-25/1, the length of this detention and the failure of the authorities to review its lawfulness. Making its assessment on an equitable basis, having regard to its case-law on the subject, the Court awards each of the applicants EUR 8,000 as claimed in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

111. The applicants claimed RUB 2,978 (EUR 83) for postal and photocopying expenses, 500 United States dollars each for legal fees in the domestic proceedings in 2000 to 2001 and EUR 4,610 for 76 hours of legal work by the lawyers Mr M. Rachkovskiy, Ms E. Krutikova and Ms V. Bokareva from the Centre of Assistance to International Protection.

112. The Government contended that the applicants had failed to submit any documents substantiating the lawyers' fees.

113. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Stašaitis v. Lithuania*, no. 47679/99, §§ 102-103, 21 March 2002).

114. The Court notes the applicants did not submit any documents substantiating the fees paid in the domestic proceedings. The Court further notes that the lawyers from the Centre of Assistance to International Protection represented the applicants from March 2006 and that they submitted detailed descriptions of their work on the applicants' case. Regard being had to the information in its possession and the overall amount of work done by the applicants' lawyers, the Court awards the applicants jointly EUR 2,000 in respect of legal costs, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3, in so far as they concern the conditions of the applicants' detention in detention centre IZ-25/1, Article 5 § 3 and Article 5 § 4 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicants' detention in IZ-25/1;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 8,000 (eight thousand euros) to each applicant in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
      (ii) EUR 1,150 (one thousand one hundred and fifty euros) to the applicants jointly in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;
      (iii) any tax that may be chargeable to the applicants on the above amounts;
   (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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President