



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

FIRST SECTION

CASE OF GUBKIN v. RUSSIA

(Application no. 36941/02)

JUDGMENT

STRASBOURG

23 April 2009

FINAL

23/07/2009

This judgment may be subject to editorial revision.

In the case of Gubkin 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 Hajiyeu,

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. 36941/02) 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 a Russian national, Mr Sergey Aleksandrovich Gubkin (“the applicant”), on 18 September 2002.

2. The applicant, who had been granted legal aid, was represented by Ms L. Rusakova, a lawyer practising in Rostov-on-Don. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and is currently serving a sentence of imprisonment.

A. The applicant's arrest on suspicion of drug trafficking and detention

6. On 10 June 1998 the applicant was arrested on suspicion of drug trafficking.

7. On 11 June 1998 the applicant was charged under Article 228 § 1 of the Criminal Code with the unlawful purchase and possession of 0.26 grams of opium. On the same day the Prosecutor of the Voroshilovskiy District of Rostov-on-Don remanded the applicant in custody. The Prosecutor referred to the applicant's criminal record and the risk of his committing other crimes.

B. Charges of kidnapping, unlawful entry into a home and extortion, ensuing detention and conviction

8. On 6 August 1998 the applicant was also charged under Articles 126 § 2, 139 § 1, and 163 § 3 of the Criminal Code with kidnapping, unlawful entry into a home and extortion. The case was joined to the case concerning drug trafficking.

9. On 10 August, 9 September and 5 November 1998 the applicant's detention was extended until 10 September, 10 November and 10 December 1998 respectively, in accordance with Article 97 of the RSFSR Code of Criminal Procedure. Consideration had been given to the gravity of the charges against the applicant and information about his personality, including his criminal record.

10. On 1 December 1998 the prosecution dropped the charges of kidnapping, unlawful entry into a home and extortion for lack of proof.

C. Conviction for drug trafficking

11. On 10 December 1998 the supervising prosecutor approved the bill of indictment and the case against the applicant was sent to the Voroshilovskiy District Court of Rostov-on-Don for trial.

12. On 10 January 1999 the Voroshilovskiy District Court of Rostov-on-Don convicted the applicant under Article 228 § 1 of the Criminal Code and sentenced him to one year's imprisonment. On an unspecified date the conviction became final. The case file contains no further information as to when the applicant completed his sentence.

D. Renewal of the criminal proceedings on suspicion of kidnapping, unlawful entry into a home and extortion, ensuing detention and conviction

13. On 22 March 1999 the Prosecutor of the Rostov Region quashed the decision of 1 December 1998, and on 24 March 1999 the charges under Articles 126 § 2, 139 § 1, and 163 § 3 of the Criminal Code were again brought against the applicant. The prosecutor, having considered the applicant's criminal record and the gravity of the charges, decided that he should be detained pending trial.

14. On 12 April, 18 June, 21 September and 3 December 1999 the applicant's detention was extended until 18 June, 24 September and 18 December 1999 and 24 March 2000 respectively. Each time, consideration was given to the applicant's criminal record, the gravity of the charges against him and his active role in a gang.

15. On 20 March 2000 the case against the applicant was sent to the Rostov Regional Court for trial.

16. On 29 March 2000 the Rostov Regional Court scheduled the opening date of the trial and ordered that the preventive measure "should remain unchanged" in accordance with Articles 222, 223 and 230 of the RSFSR Code of Criminal Procedure.

17. On 13 June 2000 the Rostov Regional Court convicted the applicant and sentenced him to ten years six months' imprisonment taking into account that he had not fully served a sentence handed down by the judgment of 10 January 1999. On 2 November 2000, however, the Supreme Court of Russia quashed the judgment on appeal and remitted the case for a retrial. The Supreme Court held that the preventive measure applied to the applicant "should remain unchanged".

18. On 1 December 2000 the Rostov Regional Court scheduled the opening date of the trial and ordered that the preventive measure "should remain unchanged".

19. On 14 May 2001 the Rostov Regional Court convicted the applicant and sentenced him to thirteen years' imprisonment, but on 16 January 2002 the Supreme Court of Russia quashed the conviction on appeal and remitted the case for a retrial. The Supreme Court held that the preventive measure applied to the applicant "should remain unchanged".

20. On 12 February 2002 the Rostov Regional Court listed the new trial hearing for 27 February 2002 and ordered that the preventive measure applied to the applicant "should remain unchanged".

21. On 1 July 2002 the Rostov Regional Court extended the applicant's detention until 1 October 2002. It found as follows:

"The defendants [the applicant and four other persons] are charged with kidnapping, illegal deprivation of liberty, burglary and other crimes.

They have been in custody: ..., [the applicant] – since 10 June 1998, ...

The Prosecutor requested that the defendants' detention be extended by 3 months.

Having examined the Prosecutor's request, having heard the parties to the proceedings, the court considers it necessary to extend the defendants' detention by 3 months, that is, until 1 October 2002 inclusive, because they are charged with serious and particularly serious criminal offences.

Under Articles 255, 256 of the Russian Code of Criminal Procedure, the defendants' detention on remand is extended by 3 (three) months, that is, from 1 July 2002 to 1 October 2002."

22. On 6 November 2002 the Supreme Court of Russia upheld the extension order, finding that it was sufficiently justified.

23. On 1 October and 31 December 2002 and 31 March, 26 June, 25 September and 15 December 2003 the Rostov Regional Court extended the applicant's detention until 1 January, 31 March, 30 June, 26 September, 25 December 2003 and 15 March 2004 respectively. The wording of the above decisions was identical to that applied in the decision of 1 July 2002.

24. The applicant appealed against each of the above extension orders to the Supreme Court arguing that the extension orders were not sufficiently reasoned and that the court had not taken into consideration his individual situation. On 12 February, 14 May, 16 July, 16 October and 24 December 2003 and 31 March 2004 respectively, the Supreme Court of Russia upheld the above decisions on appeal.

25. In the meantime, on 19 February 2004 the Rostov Regional Court, composed of presiding judge Mr Zh. and lay judges Ms S. and Ms M., extended the applicant's detention until 19 May 2004. The court used the same stereotyped wording and referred to the seriousness of the charges against the applicant. The applicant again appealed against the extension to the Supreme Court.

26. On 10 March 2005, that is after the applicant's conviction by the Regional Court (see paragraph 31 below), the Supreme Court of Russia discontinued the examination of the applicant's appeal because he had been convicted in the meantime by the Regional Court.

27. In addition to appealing against the detention extension orders the applicant on a number of occasions in 2003-2004 applied to have the preventive measure changed to a written undertaking not to leave the town. Among his arguments were the rather extended period of time he had spent in detention, his family ties (two minor children and a disabled mother) and his poor health.

28. On 17 February, 21 June, 25 December 2003 and 2 February and 5 February 2004 the Rostov Regional Court dismissed the applicant's requests. The court's reasoning was the gravity of the charges against him. The applicant appealed against all of these decisions to the Supreme Court.

29. In one decision of 10 March 2005, that is after the applicant's conviction by the Regional Court (see paragraph 31 below), the Supreme Court of Russia rejected all the appeals as follows:

“The defendants [the applicant and four other persons] are charged with various crimes, including particularly serious crimes.

In the course of the proceedings the court dismissed the above requests.

In their appeals the defendants and lawyers ask for the above decisions to be quashed.

Having examined the material and the arguments put forward in the appeals, the court finds that the appeal proceedings are to be discontinued, since at the present time the examination of the case has been completed by the pronouncement of the sentence ...”

30. As regards the trial proceedings in the period from 27 February 2002 to 25 February 2004, the case was adjourned on forty-two occasions. In particular, five hearings were adjourned at the request of the applicant and his co-defendants, who wished to study the case file or the records of the hearings; fourteen hearings were adjourned due to requests by the applicant and his co-defendants for the replacement of their representatives and the need for the newly appointed representatives to study the case file; fifteen hearings were adjourned due to the illness of the representatives and their failure to appear before the court, and eight hearings were adjourned due to the illness of the co-defendants or following their complaints concerning their health.

31. On 17 May 2004 the Rostov Regional Court, composed of presiding judge Mr Zh. and lay judges Ms S. and Ms M., convicted the applicant of fraud, kidnapping, extortion, robbery, deprivation of liberty, unlawful entry into a home and stealing official documents, and sentenced him to eleven years and six months' imprisonment.

32. On 10 March 2005 the Supreme Court of Russia comprising three judges upheld the judgment on appeal, but reduced the applicant's sentence to eleven years' imprisonment. One of the judges of the Supreme Court had previously examined the applicant's case on appeal on 2 November 2000 (see paragraph 17 above) and had also examined, on 16 October 2003, the appeal against the decision of 26 June 2003 to extend the applicant's detention until 26 September 2003 (see paragraphs 23-24 above). One other judge had previously examined the applicant's case on appeal on 16 January 2002 (see paragraph 19 above).

E. Conditions of the applicant's detention

33. As indicated above the applicant was arrested on 10 June 1998. From 15 June 1998 to 25 April 2005 the applicant was held in detention

facility IZ-61/1 of Rostov-on-Don (*Учреждение ИЗ-61/1 г. Ростова-на-Дону УИИ МЮ РФ*). Throughout this period the applicant was held in twenty-three different cells.

1. The Government's account

34. According to the Government's observations of 12 December 2007, the cells where the applicant was held measured from 6.6 square metres (the punishment cell) to 61.2 square metres, and provided an average space of between three and four square metres per person. The design capacity of the cells was not exceeded.

35. Windows in the cells, measuring 1-1.2 by 1.1-1.3 m., were covered with white-painted metal screens, which were removed in December 2002. The cells were illuminated with 60-75 watt filament lamps.

36. All cells were ventilated by a system of exhaust ventilation. In the summertime the window panes were removed in order to provide better access to fresh air. The cells were equipped with a heating system providing an adequate temperature in line with sanitary norms. The average temperature during the summer was maintained at 22 degrees Celsius, and during winter at 18 degrees Celsius.

37. The cells were equipped with wash basins, hot and cold water taps and lavatory pans elevated 35 cm above the floor and separated from the main area by a two-metre-high brick partition. The arrangement of lavatory pans assured the detainees privacy when using them.

38. The cells were equipped with potable water tanks. The quality of the drinking water was regularly checked by the facility's medical staff. Besides, the detainees were allowed to use electric kettles.

39. In each cell the applicant had an individual bed and was provided with bedding (a mattress, a blanket, a pillow, two bed sheets and a pillow slip).

40. The cells were also equipped with cupboards for food storage, tables and benches.

41. The applicant could take a fifteen-minute shower once a week. After each shower, he received fresh bedding. He was given food three times a day in accordance with the established legal norms. The quality of the food was monitored on a regular basis by the medical staff of the detention facility. On the days when the applicant was taken to court, hot food was delivered to the courthouse.

42. The applicant was allowed a daily one-hour outside walk. The exercise yards were equipped with benches and shelters.

43. The authorities ensured that regular and additional one-off disinfections and disinfestations were carried out in the detention facility.

44. Upon admission to the detention facility the applicant was examined by a general practitioner, psychiatrist and surgeon, who found his health to be satisfactory. During the detention period the applicant made requests for

medical assistance on several occasions, complaining of headaches and general weakness. Following the medical check-ups he always received appropriate treatment. In January 2001 the applicant complained of an earache and was diagnosed with left-side exudative pleurisy. From 23 January to 22 February 2001 he received treatment in the prison hospital.

45. In support of their observations the Government provided several certificates issued by the director of IZ-61/1 on 22 October and 26 October 2007, 26 May and 27 May 2008, an uncertified and undated table on the number of persons detained in different cells at the same time as the applicant in March 2002–April 2005, the results of a laboratory examination of the microclimate of the cells (illumination, temperature, relative air humidity and air circulation), the results of bacteriological tests following water and sanitary inspections of the detention facility conducted in 2001–2005, statements by wardens (although not dated) and persons currently detained in IZ-61/1, a copy of the applicant's prison card stating that he had been provided with bed sheets, cutlery and clothes, as well as a number of certificates concerning the food ration during the relevant period.

2. The applicant's account

46. The applicant did not dispute the size of the cells as submitted by the Government. He claimed, however, that the number of detainees considerably exceeded the design capacity of the cells and that the detainees had to sleep in shifts.

47. The windows in the cells were either heavily barred (cells nos. 44, 48, 43, 42, 50, 76 and 52), or covered with metal screens (cells nos. 39 and 124), or entirely absent (cells nos. 8, 76 and 74). The metal screens were still in place in 2003.

48. The arrangement of the bunks in two or three tiers left the detainees very limited space and access to daylight. The artificial light in the cells was on around the clock, and disturbed the applicant's sleep.

49. The lavatory in the corner of the cell, which had no flush system, was elevated above the floor and separated by a 1.1-metre partition from the wash basin, but not from the living area. The latter two standards had been set by the "Directives on Planning and Constructing Pre-Trial Detention Facilities of the USSR Ministry of the Interior", approved on 25 January 1971.

50. The applicant was never provided with any toiletries.

51. On the days when the applicant was taken to the courthouse he received no food, since he was taken from his cell before breakfast and brought back after dinner. No food (hot meal or dry ration) was served to the applicant in the courthouse. On such days the applicant was also deprived of outside walks and showers.

52. The exercise yard was very small and unequipped for physical exercise. The walls of the yard were covered with "*shuba*", a sort of

abrasive concrete lining designed to prevent detainees from leaning against them.

53. The cells swarmed with cockroaches and bedbugs. Occasionally the detainees were taken to the “blind” cell no. 106 (with no windows, lavatory or water taps) except for two or three of them who stayed behind and treated the cell against bedbugs using a heating lamp or a torch made of newspapers, and against cockroaches using cockroach poison sent to the detainees by their relatives.

54. In support of his statements the applicant produced written depositions by three former cellmates, Mr A.R., Mr Y.T. and Mr Y.R. They stated, in particular, that in 2001-2004 cell no. 41, measuring approximately 30 square meters, had housed 45 to 50 inmates at any one time (Mr A.R.’s deposition), and that in 2002-2004 cell no. 46, measuring approximately 40 square meters, had housed over 30 inmates (Mr Y.T.’s deposition) or as many as 85 (Mr Y.R.’s deposition). They also testified that they and the other detainees had slept in shifts.

55. The Government did not contest that the applicant’s former cellmates were held in the same detention facility as the applicant.

II. RELEVANT DOMESTIC LAW

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

A. Preventive measures

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

B. Authorities ordering detention

58. 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).

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

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

C. Grounds for ordering detention on remand

59. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge, information on the accused’s character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

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

D. Time-limits for detention

1. Two types of detention

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

2. Time-limits for detention “pending the investigation”

62. After arrest the suspect is placed in custody “pending the investigation”. The maximum permitted period of detention “pending the investigation” is two months but can be extended for up to eighteen months in “exceptional circumstances”. Extensions were authorised by prosecutors of ascending hierarchical levels (under the old CCrP) but must now be authorised by judicial decisions taken by courts of ascending levels (under

the new CCrP). No extension of detention “pending the investigation” beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

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

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

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

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

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

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

68. The new CCrP establishes that the term of detention “during the trial” is calculated from the date the court received the file and to the date the judgment is given. The period of detention “during the trial” may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

E. Proceedings to examine the lawfulness of detention

1. During detention “pending the investigation”

69. Under the old CCrP, the detainee or his or her counsel or representative could challenge a detention order issued by a prosecutor, and any subsequent extension order, before a court. 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 (see paragraph 76 below) (Article 331 *in fine*).

70. Under the new CCrP, an appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention on remand. The appeal court must decide the appeal within three days of its receipt (Article 108 § 10).

2. During the trial

71. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 222 § 5 and 230 of the old CCrP, Articles 228 (3) and 231 § 2 (6) of the new CCrP) and 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).

72. At any time during the trial the court may order, vary or revoke any preventive measure, including detention (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberations room and signed by all the judges of the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

73. An appeal against such a decision lies to the higher court. It must 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, Article 255 § 4 of the new CCrP – see paragraph 76 below).

F. Time-limits for trial

74. Under the old CCrP, within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for an additional investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court with jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). The trial must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

75. The duration of the trial is not limited.

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

G. Composition of the court

77. The old CCrP provided that hearings in first-instance courts dealing with criminal cases were, subject to certain exceptions, to be conducted by a single professional judge or by one professional and two lay judges. In their judicial capacity, lay judges enjoyed the same rights as the professional judge (Article 15).

78. The new CCrP does not provide for participation of non-professional judges in administration of justice in criminal matters. It provides that serious crimes should be dealt with by a single professional judge or by three professional judges provided that the accused has submitted such a request prior to the scheduling of a trial hearing (Article 30 § 2 (3)).

It further provides that the composition of the court examining the case should remain unchanged throughout the trial (Article 242 § 1).

79. The Federal Law enacting the new CCrP (Law no. 177-FZ of 18 December 2001) provides as follows:

Section 2.1 provides that the Federal Law on the Lay Judges of the Federal Courts of General Jurisdiction is ineffective as of 1 January 2004.

Section 7 provides that Article 30 § 2 (3) of the Code of Criminal Procedure, in so far as it concerns the examination of serious crimes by three professional judges, is effective as of 1 January 2004. Before that date serious crimes were to be dealt with by a single professional judge or by one

professional and two lay judges if an accused filed such a request prior to the scheduling of a trial hearing.

H. Conditions of detention

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

III. RELEVANT INTERNATIONAL DOCUMENTS

Conditions of detention

81. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

“b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At

the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private 'because they know that all complaints usually pass through the colony's administration'.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

82. The applicant complained that his detention from 15 June 1998 to 25 April 2005 in allegedly appalling conditions was in breach of Article 3 of the Convention, which reads as follows:

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

He also claimed that he did not have at his disposal an effective remedy for the violation of the guarantee against ill-treatment, which is required under Article 13 of the Convention:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

A. Submissions by the parties

83. The Government argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not complained about the conditions of his detention to a court. Relying on their description of the prison, the Government further asserted that the conditions in it were satisfactory. The conditions complied with the hygienic standards of domestic penitentiary law and fell far short of “inhuman treatment”, as developed in the Convention case-law. During the applicant’s stay in the prison the cells were indeed overcrowded, but this overcrowding was not excessive, and in any event, in each cell the applicant was provided with an individual sleeping place. Lastly, the Government argued that when examining the conditions of the applicant’s detention the Court should only have regard to the period starting from 18 March 2002, claiming that the preceding period fell outside the six-month time limit set out in Article 35 § 1 of the Convention.

84. The applicant submitted that he had complained about the conditions of his detention to the Prosecutor’s Office, but had received no reply to his complaint. He had also brought this issue before the trial court. The applicant further challenged the Government’s description of the conditions of his detention as factually inaccurate. He insisted that the cells had at all times been severely overcrowded.

B. The Court’s assessment

1. Admissibility

85. The Government raised the objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant’s complaint that he did not have at his disposal an effective remedy for complaining about the inhuman and degrading conditions of his detention. Thus, the Court finds it necessary to join the Government’s objection to the merits of the applicant’s complaint under Article 13 of the Convention.

86. The Government also objected to the examination of the conditions of the applicant’s detention as a continuous situation. The Court has previously established that the continuous nature of detention, even in two

different detention facilities with similar conditions and, in particular, severe overcrowding as the main characteristic, warranted examination of the detention without dividing it into separate periods (see *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008; and *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008). In the present case the applicant was held in the same detention facility uninterruptedly and his descriptions of the conditions of his detention, including extreme overcrowding, did not substantially vary from cell to cell. Adopting the same line of reasoning as in the above-mentioned cases, the Court considers that the applicant's detention from 15 June 1998 to 25 April 2005 should be examined as a whole without dividing it into separate periods, and that the Government's objection should, therefore, be dismissed.

87. The Court further notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 13 of the Convention

88. 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, *Kudła 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.

89. The Court reiterates that it has already found a violation of Article 13 on account of the absence of an effective remedy for inhuman and degrading conditions of detention, finding as follows (see *Benediktov*, cited above, § 29, and *Vlasov v. Russia*, no. 78146/01, § 87, 12 June 2008):

"[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 (cf. *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)."

90. 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 allegedly inhuman and degrading conditions of his detention or put forward any argument as to its efficiency.

91. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that 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 conditions of his detention.

(b) Article 3 of the Convention

92. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-01, ECHR 2001-VIII). When a person is held in detention, the State must ensure that he is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas*, cited above, § 102 and *Kudla*, cited above, § 94). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (see *Dougoz v. Greece*, 6 March 2001, § 46, *Reports of Judgments and Decisions* 2001-II). The duration of detention is also a relevant factor.

93. The Court notes that in the present case the parties have disputed certain aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every

allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government have failed to refute.

94. Having agreed on the size of the cells, the parties disputed the number of detainees who shared them with the applicant. While the Government insisted that the applicant had always had between three and four square metres of personal space in each cell, the applicant argued that the cell population had considerably exceeded the design capacity of the cells and that the detainees had had to sleep in shifts.

95. In this connection the Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

96. Turning to the facts of the present case, the Court notes that the Government, in their plea concerning the number of detainees, relied on the statements made by the director of facility IZ-61/1. The Court observes that the statements in question were not corroborated by any documents enabling the Court to verify their validity. The Court observes in this respect that it was open to the Government to submit copies of registration logs showing names of inmates detained together with the applicant in the relevant period. The director's certificates issued in October 2007 and May 2008 are therefore of little evidential value for the Court's analyses, as is an uncertified and undated table on the number of inmates detained at the same time as the applicant (see paragraph 45 above). Further, the Court notes that the Government did not comment on the statements made by the applicant's cellmates in support of his allegations concerning the conditions of his detention. Neither did the Government deny that during the relevant period the above persons were held in the same detention facility and the same cells as the applicant.

97. Having regard to the principles indicated in paragraph 92 above, together with the fact that the Government did not submit any convincing relevant information and that they agreed in principle that the cells had been somewhat overcrowded (see paragraph 83 above), the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

98. According to the applicant, the occupants of the cells in IZ-61/1 were afforded less than 1 square metre of personal space (see paragraphs 46 and 54 above). The number of detainees in the cells of IZ-61/1 was greater than the number of available bunks. It follows that the detainees, including

the applicant, had to share the sleeping facilities, taking turns to rest. For approximately six years and ten months the applicant was confined to his cell day and night, save for one hour of daily outdoor exercise when it was available.

99. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Benediktov*, cited above, §§ 31 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

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

101. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 15 June 1998 to 25 April 2005 in the facility IZ-61/1 of Rostov-on-Don, which the Court considers to be inhuman and degrading treatment within the meaning of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

102. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand had not been lawful. The relevant parts of Article 5 read as follows:

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

A. Submissions by the parties

103. The applicant argued that his detention had not been based on domestic law and that it had been arbitrary: namely, on 12 February 2002 the Rostov Regional Court held that the preventive measure imposed on the applicant should remain unchanged, without citing any specific reasons for such decision or determining any time-limits. From 1 July 2002 to 19 May 2004 the Regional Court extended the applicant's detention on the sole ground of the gravity of the charges against him, applying identical wording in eight consecutive decisions concerning five different persons. Besides, the Regional Court (comprising a presiding judge and two lay judges) had no power to extend his detention on 19 February 2004 since starting from 1 January 2004 the domestic law no longer provided for the participation of lay judges in the administration of justice in criminal matters.

104. The Government submitted that the Court should apply the six-month rule and examine only the lawfulness of the applicant's detention "during the trial". They further submitted on the merits that on 12 February 2002 the Rostov Regional Court, in compliance with Articles 222, 223, 230 and 239 of the old CCrP, ordered that the preventive measure chosen in respect of the applicant should remain unchanged. With the entry into force of the new CCrP the applicant's detention was extended regularly, that is, every three months. When extending the applicant's detention the domestic court bore in mind not only the gravity of the charges against the applicant, but also the risk of him influencing the witnesses and victims and thereby obstructing justice. With reference to the domestic law the Government further argued that the applicant's allegation about the unlawful composition of the Regional Court was unfounded. The Government concluded, therefore, that there had been no violation of the applicant's rights under Article 5 § 1 (c) of the Convention.

B. The Court's assessment

1. Admissibility

105. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with the matter within a period of six months from the date on which the final decision was taken. The Court further reiterates that the date of the "final decision" for the purpose of Article 35 § 1 of the Convention in connection with a period of pre-trial detention is the date on which the charge is determined by a court at first instance (see, among other authorities, *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000, and *Popov v. Russia*, no. 26853/04, § 153, 13 July 2006). After that date the applicant's detention no longer falls within the ambit of

Article 5 § 1 (c) of the Convention, but within the scope of Article 5 § 1 (a) of the Convention (see, most recently, *Benediktov*, cited above, § 43).

106. The Court observes, therefore, that the applicant's detention falling within the scope of Article 5 § 1 (c) consisted of four separate terms: (1) from 10 June 1998 when the applicant was arrested to his conviction under Article 228 § 1 of the Criminal Code on 10 January 1999; (2) from 24 March 1999 when the prosecution again brought against the applicant the charges under Articles 126 § 2, 139 § 1, and 163 § 3 of the Criminal Code until his conviction on 13 June 2000; (3) from 2 November 2000 when the applicant's conviction was quashed on appeal until his subsequent conviction on 14 May 2001; and (4) from 16 January 2002 when the above conviction was quashed on appeal until his subsequent conviction on 17 May 2004. Within the fourth period the applicant's detention was maintained by the Supreme Court on 16 January 2002, by the Rostov Regional Court on 12 February 2002, and, starting from 1 July 2002, it was extended by the Regional Court every three months.

107. The Court further observes that the applicant introduced his application on 18 September 2002. It follows that the most recent period of detention that the Court may examine commenced on 12 February 2002. That period of detention represented a continuous situation which ended on 1 July 2002 when the Rostov Regional Court issued the following detention order, that is, within the six months preceding the lodging of the application. The Court therefore considers that the part of the applicant's complaint concerning the detention orders issued before 12 February 2002 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

2. Merits

109. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Khudoyorov*, cited above, § 124, and *Fedotov v. Russia*, no. 5140/02, § 74, 25 October 2005).

110. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles

expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(a) The applicant’s detention from 12 February to 1 July 2002

111. The Court notes that on 12 February 2002 the Rostov Regional Court listed the first trial hearing and held that the preventive measure applied to the applicant “should remain unchanged” (see the relevant domestic law provisions in paragraph 71 above).

112. The Court reiterates that the trial court’s decision to maintain a custodial measure would not breach Article 5 § 1 provided that the trial court “had acted within its jurisdiction ... [and] had the power to make an appropriate order” (see *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006). It is not in dispute that on 12 February 2002 the trial court acted within its powers and there is nothing to suggest that its decision to maintain the applicant’s custodial measure was invalid or unlawful under domestic law at the relevant time. However, the Court observes that on 12 February 2002 the Rostov Regional Court gave no reasons for its decision to remand the applicant in custody. The Regional Court also failed to set a time-limit for the continued detention or for a periodic review of the preventive measure. It follows, therefore, that the applicant remained in a state of uncertainty as to the grounds for his detention from 12 February to 1 July 2002, when the Regional Court re-examined his detention.

113. The question thus arises whether this could be considered to be “an appropriate order”. In this respect the Court has already found a violation of Article 5 § 1 (c) of the Convention in a number of cases concerning a similar set of facts. In particular, it has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Khudoyorov*, cited above, § 134; *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006; and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, 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 *Khudoyorov*, cited above, § 142).

114. The Court sees no reason to reach a different conclusion in the present case. It considers that the order of 12 February 2002 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the “lawfulness” of detention within the meaning of Article 5 § 1.

115. There has therefore been a violation of Article 5 § 1 (c) of the Convention on account of the applicant’s detention from 12 February to 1 July 2002.

(b) The applicant’s detention from 1 July 2002 to 19 February 2004

116. The Court observes that in the period from 1 July 2002 to 19 February 2004 the applicant’s detention was extended by the Regional Court on seven occasions on the ground of the gravity of the charges against him and his co-defendants (see the relevant domestic law provisions in paragraph 68 above).

117. The trial court acted within its powers in making the above decisions, and there is nothing to suggest that they were invalid or unlawful under domestic law, or that they were inappropriate for the purpose of Article 5 § 1 (c) (see, by contrast, paragraphs 113-114 above). The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3.

118. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention orders issued in the period from 1 July 2002 to 19 February 2004.

(c) The applicant’s detention from 19 February to 17 May 2004

119. The Court notes that on 19 February 2004 the Regional Court, comprising a presiding judge and two lay judges, citing the gravity of the charges against the applicant and his co-defendants, extended the applicant’s detention by three months, until 19 May 2004. This period of the applicant’s detention ended on 17 May 2004 when he was convicted.

120. As regards this period of detention, the applicant contested the power of the Regional Court to extend his detention, claiming that as of 1 January 2004 the domestic law no longer provided for the participation of non-professional judges in the administration of criminal justice. The Court’s task is, therefore, to determine whether the applicant’s detention in the relevant period was carried out “in accordance with a procedure prescribed by law”. To this effect the Court will turn to the domestic law (see paragraph 109 above).

121. The Court observes at the outset that the domestic law does not contain an explicit provision stipulating that the questions of application and

extension of a custodial measure are determined by the same bench that examines the criminal case on the merits. The Court notes, however, that in the present case the extension of the applicant's detention on 19 February 2004 was authorised by the same bench which subsequently delivered the judgment in the applicant's case on 17 May 2004.

122. The Court further observes that the trial bench in question was composed under the Code of Criminal Procedure of the RSFSR which provided that serious crimes were to be examined by a professional judge and two lay judges (see paragraph 77 above). While the proceedings were pending before the trial court, the new Code of Criminal Procedure entered into force. Although the new Code abolished the participation of lay judges, it maintained the principle that the trial bench should remain unchanged throughout the trial (see paragraph 78 above).

123. Therefore, the Court concludes that the court which extended the applicant's detention on 19 February 2004 acted within its powers in making the above decision, and there is nothing to suggest that this decision was invalid or otherwise unlawful under domestic law. The question whether the reasons for the decision were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3.

124. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention order issued on 19 February 2004.

(d) Summary of the findings

125. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 12 February to 1 July 2002.

126. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention in the period from 1 July 2002 to 17 May 2004.

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

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

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

A. Submissions by the parties

128. The Government submitted that the Court should apply the six-month rule and only examine the period of the applicant's detention "during the trial". They further submitted that the period of the applicant's detention had not been unreasonable, that it had been in accordance with the national legislation and had been based on relevant and sufficient grounds. The applicant's continuous detention had been indispensable given the number and the seriousness of the charges against him and had been aimed at preventing further criminal activity.

129. The applicant argued that at no stage of the proceedings had the domestic authorities addressed the issue of the reasonableness of his continued detention. Despite his numerous requests the domestic court had never considered the possibility of applying a more lenient preventive measure. Besides, from 1 July 2002 onwards the domestic court had persistently applied the same stereotyped formula to justify the applicant's continued detention: the Regional Court had reproduced the same text – a paragraph long – in eight extension orders successively and in respect of five different persons, including the applicant. The only ground for the applicant's detention had been the gravity of the charges that he had been facing.

B. The Court's assessment

1. Admissibility

130. The Court first reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Klyakhin v. Russia*, no. 46082/99, § 57, 30 November 2004; and *Labita*, cited above, §§ 145 and 147).

131. Furthermore, the Court observes that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Panchenko*, cited above, § 93, and *Kudla*, cited above, § 104).

132. Accordingly, in the present case the period to be taken into consideration consisted of four separate terms: (1) from 10 June 1998 when the applicant was arrested to his conviction under Article 228 § 1 of the

Criminal Code on 10 January 1999; (2) from 24 March 1999 when the prosecution again brought against the applicant the charges under Articles 126 § 2, 139 § 1, and 163 § 3 of the Criminal Code until his conviction on 13 June 2000; (3) from 2 November 2000 when the applicant's conviction was quashed on appeal until his subsequent conviction on 14 May 2001; and (4) from 16 January 2002 when the above conviction was quashed on appeal until his subsequent conviction on 17 May 2004.

133. The Court does not lose sight of the fact that during part of the second term the applicant was concurrently serving his sentence after conviction in an unrelated criminal case (see paragraph 12 above). However, the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and detention may be justified under more than one sub-paragraph of that provision (see *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports 1997-VII*; and, more specifically, *Eriksen v. Norway*, 27 May 1997, § 92, *Reports 1997-III*). The Court finds, therefore, that in the present case the period when the applicant was concurrently serving his sentence was justified under both subparagraphs (a) and (c) of Article 5 § 1, and that the whole period from 24 March 1999 to 13 June 2000 should be taken into consideration for the purposes of Article 5 § 3.

134. The Court considers further that, in the instant case, the multiple, consecutive detention periods should be regarded as a whole, and the six-month period should only start to run from the end of the last period of pre-trial custody, that is from 17 May 2004 (see, as recent authorities, *Mishketkul and Others v. Russia*, no. 36911/02, § 40, 24 May 2007, and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007).

135. Making an overall evaluation of the accumulated periods under Article 5 § 3 of the Convention, the Court therefore concludes that the period to be taken into consideration in the instant case is four years and eight months.

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

2. Merits

137. 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*, cited above, §§ 152 and 153).

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

139. Turning to the circumstances of the present case, the Court observes that the applicant was arrested on 10 June 1998 and was held in custody until his conviction on 17 May 2004, as upheld on appeal on 10 March 2005. The period under consideration lasted four years and eight months (see paragraphs 132-135 above).

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

141. The Court observes that in the period from March 2000 to July 2002 the domestic court maintained the applicant in detention without citing any particular reason. Subsequently, in the period from July 2002 to May 2004 the court extended the applicant’s detention on eight occasions. The only ground invoked for continuing the applicant’s detention was the fact that he was charged with serious and particularly serious criminal offences whose dangerousness alone was considered a sufficient reason for holding him in custody (see, in particular, paragraphs 21, 23 and 25 above). Each time the court used the same summary formula to extend the pre-trial detention of five persons, without describing their personal situation in any detail.

142. As regards the domestic authorities’ reliance on the gravity of the charges as the sole and decisive element, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see

Belevitskiy v. Russia, no. 72967/01, § 101, 1 March 2007; *Panchenko*, cited above, § 102; *Khudoyorov*, cited above, § 180; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

143. In the present case the domestic courts refused to take into account any specific facts put forward by the applicant in his appeals against extensions and applications for release (see, for instance, paragraph 25 above). The courts assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have warranted the applicant's release. The Court reiterates that 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 *Belevitskiy*, cited above, § 102, with further references).

144. The given state of affairs was further aggravated by the fact that the domestic court issued collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee – a practice that the Court has found to be incompatible, in itself, with Article 5 § 3 of the Convention (see *Aleksey Makarov v. Russia*, no. 3223/07, § 53, 12 June 2008; *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 applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

145. Regard being had to the above circumstances, the Court finds that by failing to address the concrete facts of the applicant's individual situation, by failing to consider the possibility of applying an alternative preventive measure and by relying solely on the gravity of the charges, the authorities extended his detention on grounds which cannot be regarded as "sufficient". In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

146. The Court finally observes that, notwithstanding the inordinate overall period of the applicant's detention, at no point in the proceedings did the domestic authorities consider whether the length of his detention had exceeded a "reasonable time" or whether there was any room for applying an alternative measures to ensure his appearance at trial.

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

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

148. The applicant complained that he had been denied the right to an effective judicial review of his complaints against the remand orders of

1 July, 1 October and 31 December 2002, 31 March, 26 June, 25 September and 15 December 2003 and 19 February 2004, and his complaints against the decisions of 17 February, 21 June and 25 December 2003 and 2 February and 5 February 2004 refusing his release, in breach of Article 5 § 4 of the Convention. He further complained that he had not been permitted to take part in the appeal hearings. Article 5 § 4 reads as follows:

“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

149. The Government submitted that the promptness of the examination of the applicant’s appeals against the extension orders of 1 July and 1 October 2002 was undermined by rather time-consuming procedural preparation, including sending out copies of the appeals to all defendants and deciding on the necessity and possibility of escorting the applicant to the Supreme Court. The appeals against the extension orders of 31 December 2002 and 31 March, 26 June, 25 September and 15 December 2003 were examined within the time-limits established in the domestic law. As regards the examination of the appeals filed against the decisions of 17 February, 21 June and 25 December 2003 and 2 February and 5 February 2004 refusing the applicant’s release, as well as the appeal against the extension order of 19 February 2004, the Government submitted that their belated examination by the Supreme Court on 10 March 2005 did not entail any serious consequences for the applicant: the applications for release were submitted right after the examination of the appeals against the extension orders and contained no new arguments. The Government concluded that although there had been a breach of the formal requirements of the domestic law as regards the time-limits for the examination of the applicant’s appeals, this had not amounted to a violation of his rights under Article 5 § 4 of the Convention.

150. The applicant submitted that the absence in the domestic law of any time-limits for sending the case to the appeal court substantially delayed the examination of his appeals. Despite his requests, he had never been granted leave to appear before the appeal court. The “objective reasons” for the delays referred to by the Government were indicative of lack of proper organisation on the part of the domestic court.

B. The Court's assessment

1. Admissibility

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

2. Merits

152. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained the 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 the detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, judgment of 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given “speedily” is undeniably one such guarantee. In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

153. Turning to the circumstances of the present case, the Court notes, first of all, that the examination of the applicant's appeals against the decisions of 17 February, 21 June, 25 December 2003 and 2 February and 5 February 2004 refusing his release and his appeal against the extension order of 19 February 2004 was discontinued by the Supreme Court on 10 March 2005 on the ground that the applicant had in the meantime been convicted (see paragraphs 26 and 28 above). The Court reiterates that it has already concluded that there was a violation of Article 5 § 4 of the Convention against the background of comparable factual circumstances in the case of *Nakhmanovich* (cited above), finding as follows:

“84. In the present case the applicant's complaint about the unlawfulness of his detention was not examined on the ground that the criminal case against him had been submitted for trial in the meantime ... The District Court expressly refused to rule on whether the applicant's detention during that period had been lawful. It follows that the applicant was denied the right to a judicial decision concerning the lawfulness of his detention pending trial. Moreover, the Court observes that no such ground for discontinuing proceedings concerning the lawfulness of detention pending trial was provided for in domestic law.”

154. As regards the examination of the applicant's complaints against the extension orders of 1 July, 1 October and 31 December 2002 and 31 March, 26 June, 25 September and 15 December 2003, the Court notes that the parties did not indicate the dates on which the applicant filed his appeals against the relevant remand orders. In the absence of any indication to the contrary, the Court will assume that the applicant filed the appeals within the statutory time-limit of ten days. Therefore, the Court finds that on each occasion the delays amounted to approximately four months.

155. The Court observes that the Government have not adduced any evidence which would disclose that, having lodged those appeals, the applicant caused any delays in their examination. Thus, the Court finds that the delays in the examination of the appeals against the decisions in question were attributable to the State (compare *Rokhlina v. Russia*, no. 54071/00, § 78, 7 April 2005).

156. The Court considers that such delays cannot be considered compatible with the "speediness" requirement of Article 5 § 4 (see *Starokadomskiy v. Russia*, no. 42239/02, §§ 81-87, 31 July 2008; *Lebedev v. Russia*, no. 4493/04, §§ 102 and 108, 25 October 2007; and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006).

157. The Court further observes that the appeals against the remand orders were examined only after a fresh remand order had been issued by the Regional Court. In such circumstances, the applicant's right under Article 5 § 4 of the Convention was made devoid of any useful purpose.

158. Regard being had to the above, the Court finds that there has been a violation of Article 5 § 4 of the Convention. In the light of this finding, the Court does not need to determine whether the refusal of leave to appear in court also entailed a violation of Article 5 § 4.

V. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

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

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

The applicant further claimed that he had no effective remedy at his disposal for the excessive length of the proceedings. He relied on Article 13 of the Convention.

A. Submissions by the parties

160. The Government submitted that the criminal case against the applicant was rather complex as it involved five co-defendants all facing numerous criminal charges. The Government believed that the applicant had chosen to deliberately delay the proceedings by filing a considerable number of ill-founded applications the examination of which required a lot of time. The applicant's four co-defendants had also filed numerous applications each, and the domestic court had to give them due consideration. In the course of the proceedings the applicant systematically complained about his health and asked for emergency assistance which resulted in the suspension and adjournment of the hearings. Following the medical check-ups the applicant was on each occasion found fit to participate in the hearings. On many occasions the examination was adjourned due to the absence of the applicant's representative. Besides, the applicant sought replacement of his representatives on five occasions, and the proceedings did not resume until the applicant's approval of the newly appointed representative. The Government concluded, therefore, that the length of the proceedings in the present case was mostly attributable to the conduct of the applicant and his co-defendants, and did not breach the "reasonable time" requirement set out in Article 6 § 1 of the Convention. As to the applicant's complaint under Article 13, the Government submitted that the applicant was afforded ample opportunities to bring complaints against the length of the proceedings before the Prosecutor or before the court, and the domestic authorities did not hinder the exercise of the applicant's right in any way.

161. The applicant submitted that the criminal proceedings against him lasted six years and nine months. During this time the domestic court passed three sentences, two of them having been found unlawful and quashed on appeal. The applicant argued that certain delays were also attributable to the failure of the victims and prosecution witnesses to appear before the court. By his third trial the applicant, being detained in appalling conditions, was particularly interested in the prompt examination of his case, and his complaints were mainly directed against the delays. The applicant also maintained his complaint under Article 13.

B. The Court's assessment

1. Admissibility

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

2. *Merits*

(a) Period to be taken into consideration

163. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is “charged” within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see, among many authorities, *Rokhlina*, cited above, § 81).

164. The period to be taken into consideration in the present case began on 24 March 1999 when the charges of kidnapping, unlawful entry into a home and extortion were brought against the applicant and ended on 10 March 2005 when his conviction became final. It follows that the period to be taken into consideration has lasted five years, eleven months and eighteen days. This period spanned the investigation stage and two levels of jurisdiction, the trial court and the court of appeal having examined the case on three occasions.

(b) The reasonableness of the length of proceedings

165. 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. On the latter point, what is at stake for the applicant also has to be taken into consideration (see, among many other authorities, *Korshunov v. Russia*, no. 38971/06, § 70, 25 October 2007; *Rokhlina*, cited above, § 86; and *Nakhmanovich*, cited above, § 95).

166. The Court accepts that the involvement of five co-defendants in the proceedings in itself made the trial sufficiently complex. However, in the Court’s view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings. Moreover, 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*, cited above, § 133, and *Kalashnikov*, cited above, § 132).

167. As regards the applicant’s conduct, the Court notes the Government’s argument that throughout the domestic court proceedings the applicant filed numerous requests in connection with his case, both during his trial and between hearings. It further notes that on many occasions the hearings were adjourned because the applicant sought replacement of the legal-aid counsel assigned to him by the domestic authorities. In this connection, the Court observes that Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities. In particular, applicants cannot be blamed for taking full

advantage of the resources afforded by national law in their defence (see *Rokhlina*, cited above, § 88, and *Kalashnikov*, cited above, § 129). As to the Government's argument about the failure of the applicant's representatives to appear before the trial court, the Court notes that throughout the trial the applicant was represented by legal-aid counsel appointed by the State. He therefore had little influence upon them and could not be held responsible for their absences. The Court accepts that the applicant was accountable for a certain delay resulting from his requests for adjournments in view of his allegedly poor health. However, this delay was negligible in view of the overall length of the proceedings.

168. Turning to the conduct of the domestic authorities, the Court observes that the Government have not submitted any satisfactory explanation for the rather substantial periods of inactivity on the part of the domestic court when it came to the examination of the applicant's convictions of 13 June 2000, 14 May 2001 and 17 May 2004 on appeal. In this connection the Court notes that the periods under consideration amounted to five, eight and ten months respectively, and that their aggregate length delayed the proceedings by almost two years.

169. Having regard to the foregoing, and especially to what was at stake for the applicant, given that he had been held in detention throughout the whole period in which the proceedings were pending, the Court considers that the length of the proceedings in the present case did not satisfy the "reasonable time" requirement.

170. There has accordingly been a breach of Article 6 § 1 of the Convention.

171. In so far as the applicant's complaint about the lack of an effective domestic remedy is concerned, the Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla*, cited above, § 156). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin*, cited above, §§ 100-01). In particular, the Government did not explain how applications to the Prosecutor's Office or the Rostov Regional Court that the applicant could have made in the course of the criminal proceedings could have expedited those proceedings.

172. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling on his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

173. Lastly, the applicant complained under Article 6 of the Convention that he had not been informed of the charges against him, that he had not been presumed innocent because he had been held in custody merely on the ground of the seriousness of the charges against him, that the domestic court was biased, and that two out of three judges of the appeal panel had previously examined his case. He further complained under the same head that the Supreme Court had not read out the full text of the appeal decision of 10 March 2005. The applicant also complained under Article 13 of an absence of effective domestic remedies with regard to these alleged violations.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. The applicant claimed 63,000 euros (EUR) in respect of non-pecuniary damage.

177. The Government considered that this claim was excessive and that the finding of a violation would constitute adequate just satisfaction.

178. The Court notes that it has found a combination of serious violations in the present case. The applicant spent almost seven years in custody, in inhuman and degrading conditions. His detention was not based on sufficient grounds; it was also excessively long and partly unlawful. He was denied the right to an effective review of his continued detention and the right to a trial within a reasonable time. 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 40,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

179. The applicant claimed a total of EUR 1,000 in postal, photocopying, typing and translating expenses.

180. The Government argued that the costs and expenses allegedly incurred by the applicant had not been necessary and reasonable as to quantum.

181. The Court notes, firstly, that the applicant was granted EUR 850 in legal aid for his representation by Ms L. Rusakova. 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.

C. Default interest

182. 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* admissible

- (a) the complaint under Article 3 concerning the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don;
 - (b) the complaint under Article 13 concerning the lack of an effective remedy for the allegedly appalling conditions of the applicant's detention;
 - (c) the complaint under Article 5 § 1 concerning the alleged unlawfulness of the applicant's detention from 12 February 2002 to 17 May 2004;
 - (d) the complaint under Article 5 § 3 concerning the length of the applicant's pre-trial detention;
 - (e) the complaint under Article 5 § 4 concerning the alleged ineffectiveness of the judicial review of the applicant's detention;
 - (f) the complaint under Article 6 § 1 concerning the length of the criminal proceedings against the applicant;
 - (g) the complaint under Article 13 concerning the lack of an effective remedy in respect of the alleged violation of the applicant's right to a trial within a reasonable time;
- and inadmissible the remainder of the application;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don;
3. *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;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 12 February to 1 July 2002;
5. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 1 July 2002 to 17 May 2004;
6. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
7. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
8. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of an excessive length of the proceedings against the applicant;
9. *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 length of the criminal proceedings;
10. *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 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable 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;
11. *Dismisses* the remainder of the applicant's claim 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