



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

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1959 · 50 · 2009

FIRST SECTION

**CASE OF BAKHMUTSKIY v. RUSSIA**

*(Application no. 36932/02)*

JUDGMENT

STRASBOURG

25 June 2009

**FINAL**

***25/09/2009***

*This judgment may be subject to editorial revision.*



**In the case of Bakhmutskiy v. Russia,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 June 2009,

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

## PROCEDURE

1. The case originated in an application (no. 36932/02) 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 Aleksandr Ivanovich Bakhmutskiy (“the applicant”), on 9 September 2002.

2. The applicant was represented by Mr A.V. Kiryanov, a lawyer practising in Taganrog. 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 24 October 2007 the President of the First Section decided to give notice of the application to the Government. It was decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention). The President also made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

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 1969 and is currently serving a prison sentence in a correctional colony in the Rostov Region.

#### **A. Applicant's arrest, ensuing detention and conviction**

6. On 26 February 1998 the prosecutor opened a criminal investigation against the applicant.

7. On 3 March 1998 the applicant was arrested and detained in custody on suspicion of kidnapping and fraud. On 13 March 1998 he was released on bail. However, the applicant fled from the investigative authorities and re-offended.

8. On 5 May 1999 the applicant was again arrested. Shortly afterwards, on 18 May 1999 he was detained on remand.

9. On 22 May 1999 the applicant was charged under Articles 139 § 3, 126 § 3 and 163 § 3 of the Criminal Code with unlawful entry into a home, kidnapping and extortion. He was subsequently charged under Articles 127 § 3, 158 § 3, 159 § 3, 161 § 3, 162 § 3, 325 § 2 and 327 § 1 of the Criminal Code with illegal deprivation of liberty, theft, fraud, robbery, stealing and forgery of official documents.

10. On 14 July, 7 September, 16 September and 30 November 1999 the Prosecutor of the Rostov Region extended the applicant's detention until 24 September, 15 November, 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.

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

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

13. On 13 June 2000 the Rostov Regional Court convicted the applicant and sentenced him to twelve years' imprisonment. On 2 November 2000, however, the Supreme Court of the Russian Federation 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".

14. On 1 December 2000 the Rostov Regional Court scheduled the new trial hearing and ordered that the preventive measure "should remain unchanged".

15. On 14 May 2001 the Rostov Regional Court convicted the applicant and sentenced him to sixteen years' imprisonment, but on 16 January 2002 the Supreme Court 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".

16. 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".

17. 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 15 May 1999, ... .

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."

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

19. 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.

20. 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.

21. 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.

22. On 10 March 2005, that is after the applicant's conviction by the Regional Court (see paragraph 24 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.

23. As regards the trial proceedings in the period from 27 February 2002 to 25 February 2004, the case was adjourned on over fifty occasions: at the request of the applicant and his co-defendants, who wished to study the case file or the records of the hearings; at the requests of 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; due to the illness of the representatives and their failure to appear before the court, and due to the illness of the applicant and co-defendants or following their complaints concerning their health. On one occasion the hearing was adjourned due to the failure of the authorities to transport the defendants to the courtroom.

24. On 17 May 2004 the Regional Court, composed of presiding judge Mr Zh. and lay judges Ms S. and Ms M., found the applicant guilty of multiple counts of fraud, multiple counts of kidnapping and illegal deprivation of liberty, extortion, theft and burglary and sentenced him to thirteen years' imprisonment.

25. The applicant lodged an appeal. He claimed, *inter alia*, that the lay judges had unlawfully sat on the bench. The law had been changed and after 1 January 2004 the lay judges were no longer permitted to take part in the administration of justice.

26. On 10 March 2005 the Supreme Court of Russia comprising three judges upheld the judgment on appeal. One of the judges of the Supreme Court had previously examined the applicant's case on appeal on 2 November 2000 (see paragraph 13 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 19-20 above). One other judge had previously examined the applicant's case on appeal on 16 January 2002 (see paragraph 15 above). As to the applicant's allegation about the allegedly unlawful composition of the tribunal, the court found that the trial had begun before 1 January 2004 and that the participation of two lay judges in the determination of the criminal charge against him had been in accordance with the principle of continuity of the trial.

## **B. Conditions of the applicant's detention**

27. From 7 July 1999 to 23 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 thirteen different cells.

*1. The Government's account*

28. According to the Government's observations of 31 January 2008, the cells where the applicant was held measured from 6.6 square metres (the punishment cell) to 54.5 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.

29. Windows in the cells were covered with metal screens (*жалюзийные решетки*), which were removed in December 2002. The cells were illuminated with 60-75 watt filament lamps (from two to four lamps per cell depending on the size of the cell), which were on from 6 a.m. to 10 p.m. At night time the cells were lit by 60-75 watt security lights with tinted glass shades.

30. All cells were ventilated by a system of exhaust ventilation. Natural ventilation through windows was also available. 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.

31. The cells were equipped with wash basins, cold and hot 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.

32. The cells were equipped with potable water tanks. The quality of the drinking water was regularly checked by the facility's medical staff.

33. 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) and towels.

34. The cells were also equipped with dining tables and benches corresponding to the number of detainees, as well as shelves and bedside tables for storage of personal items and foodstuffs.

35. The applicant could take a shower at least once a week.

36. He was given food three times a day on the basis of the established legal norms. The quality of the food was monitored on a regular basis by the medical staff of the detention facility.

37. The applicant was allowed a daily one-and-a-half hour outside walk.

38. The authorities ensured that regular disinfections and disinfestations were carried out in the detention facility.

39. In support of their observations the Government provided several certificates issued by the director of IZ-61/1 on 17 and 18 December 2007, statements by wardens (although not dated), 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*

40. The applicant claimed that the number of detainees considerably exceeded the design capacity of the cells and that the detainees had to sleep in shifts.

41. The cells were dimly lit by two filament lamps. Access to daylight was restricted by metal screens and the arrangement of the bunks in two or three tiers.

42. The windows were not equipped with fresh-air shutters, and, therefore, the cells could not be aerated and the air was heavy with smoke.

43. The metal screens were not removed until April 2003, and the window panes started to be removed for better access to fresh air in summertime.

44. The lavatory in the corner of the cell was elevated above the floor and separated by a 1.1-metre partition from the wash basin, but not from the living area. There was no screen at the entrance to the toilet. The applicant thus had to use the toilet in the presence of other inmates and be present while the toilet was being used by his cellmates.

45. The applicant was never provided with any toiletries.

46. The cells swarmed with cockroaches, bedbugs and lice and were never treated by the administration.

47. In support of his statements the applicant produced written depositions by three former cellmates. They stated, in particular, that in 2002-2003 they had been detained together with the applicant in cell no. 48. The cell designed to accommodate ten persons housed up to fifty detainees at any one time. They also testified that they and the other detainees had slept in shifts.

## **C. Conditions of the applicant's imprisonment**

48. On 23 April 2005 the applicant was transferred to correctional colony Uch-398/5 of Konstantinovsk, the Rostov Region (*ФГУ Уч-398/5 ГУФСИН России*), to serve his sentence.

### *1. The Government's account*

49. Relying on the certificate issued by the director of Uch-398/5 on 25 December 2007 the Government submitted that the applicant is held in dormitory no. 5 measuring 334 square meters and equipped with 144 bunk beds. In 2005 the dormitory housed 135 convicts, in 2006, 132 convicts, and accommodates 144 convicts at the present time.

50. All convicts are provided with bedding and toiletries.

51. The premises of the dormitory have a sanitary unit separated from the main area and equipped with lavatory pans, cold and hot water taps and wash basins.

52. The dormitory is equipped with sealed-up window frames allowing to a sufficient extent access to natural light and fresh air when the frames are opened. The premises of the dormitory are ventilated on a regular basis.

53. In the daytime the dormitory is lit by thirty-seven 75 watt filament lamps and at night by four 60-75 watt security lights with tinted glass shades.

54. The applicant receives food three times a day on the basis of the established legal norms. The quality of the food is regularly monitored by the facility's medical staff.

55. No persons infected with tuberculosis are kept in the correctional colony.

## *2. The applicant's account*

56. The applicant alleged that the living areas are overcrowded, and that the sanitary conditions, ventilation and lighting are inadequate. He further submitted that he has to share living space with detainees suffering from tuberculosis.

## II. RELEVANT DOMESTIC LAW

57. 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**

58. "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**

59. 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**

60. 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).

61. 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*

62. 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”*

63. 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).

64. 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).

65. 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.

66. 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”*

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

68. 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.

69. The new CCrP establishes that the term of detention “during the trial” is calculated from the date the court received the file 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”*

70. 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 77 below) (Article 331 *in fine*).

71. 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*

72. 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).

73. 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).

74. 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 77 below).

## F. Time-limits for trial

75. 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.

76. The duration of the trial is not limited.

77. 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

78. 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).

79. 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).

80. 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**

81. 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**

82. 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 m<sup>2</sup>. 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

83. The applicant complained about the allegedly appalling conditions of his detention in pre-trial detention facility IZ-61/1 of Rostov-on-Don and his imprisonment in correctional colony Uch-398/5 of Konstantinovsk, the Rostov Region. He relied on Article 3 of the Convention, which reads as follows:

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

The applicant 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**

84. Relying on their description of the above facilities, the Government asserted that the conditions in them 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.

85. The applicant challenged the Government’s descriptions of the conditions of his detention and imprisonment as factually inaccurate. He insisted that the cells had at all times been severely overcrowded.

### **B. The Court’s assessment**

#### *1. Admissibility*

86. In so far as the applicant’s complaints under Articles 3 and 13 of the Convention concern the conditions of his detention in IZ-61/1 of Rostov-on-Don and the alleged non-availability of a remedy in this respect, the Court notes that they 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.

87. As regards the applicant’s complaints in respect of the conditions of his imprisonment in the correctional colony Uch-398/5 of Konstantinovsk, the Court notes that they are very vague and unsubstantiated. In particular, the allegation of overcrowding of the living areas is not supported by, at the very least, an indication of the actual living space or number of convicts. It appears therefore that the applicant was allocated at least 2.3 square meters of personal space in the sleeping area and that he was at all times provided with an individual bunk bed. The Court observes that this figure conforms to the domestic standard of 2.0 sq. m for male convicts in correctional colonies. Furthermore, it reiterates that the personal space in the dormitory must be viewed in the context of the wide freedom of movement enjoyed by detainees in correctional colonies during the daytime, which ensures that they have unobstructed access to natural light and air (see *Solovyev v. Russia* (dec.), no.76114/01, 27 September 2007; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004; and *Valašinas v. Lithuania*,

no. 44558/98, §§ 103 and 107, ECHR 2001-VIII). Although it has been alleged that the lighting, ventilation and sanitary conditions in the dormitory were inadequate, no further details were provided. Finally, the allegation about the presence of inmates infected with tuberculosis is not accompanied by any examples of such detainees being placed in the applicant's dormitory, or by mention of any incidents, known to him, of other inmates contracting tuberculosis in Uch-398/5. In view of the applicant's failure to substantiate his allegations concerning conditions in the correctional colony, the Court considers the applicant's complaint manifestly ill-founded. Furthermore, as regards the complaint under Article 13, in this respect the Court reiterates that the applicant has no arguable claim and that therefore the requirement of a remedy does not materialise. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

## 2. Merits

### (a) Article 3 of the Convention

88. The Court reiterates that Article 3 of the Convention 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 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*, cited above, §§ 100-101). 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 v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The duration of detention is also a relevant factor.

89. 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.

90. The Court observes that the parties have disagreed both on the size of the cells and the number of detainees who shared them with the applicant. While the Government insisted that the applicant had always had between three and four sq. m 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.

91. 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).

92. 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 with the names of the inmates detained together with the applicant in the relevant period. The director's certificates issued in December 2007 are therefore of little evidential value for the Court's analyses.

93. Having regard to the principles indicated in paragraph 88 above, together with the fact that the Government did not submit any convincing relevant information, the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

94. 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 40 and 47 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 over five years and nine months the applicant was confined to his cell day and night, save for one hour of daily outdoor exercise when it was available.

95. 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 v. Russia*, no. 106/02, §§ 33 et seq., 10 May 2007; *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).

96. 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 six 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.

97. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 7 July 1999 to 23 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.

**(b) Article 13 of the Convention**

98. 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, *Kudla*, cited above, § 157). 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.

99. 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; *Dvoynykh v. Ukraine*, no. 72277/01, § 72, 12 October 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 112, 13 September 2005)."

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

101. The Court concludes, therefore, 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 general conditions of his detention in IZ-61/1 of Rostov-on-Don.

## 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 Government submitted that the application of a custodial measure to the applicant and its extensions had been carried out in accordance with the domestic law and had, therefore, complied with the requirement of "lawfulness" provided by Article 5 § 1 (c) of the Convention.

104. The applicant maintained his complaint.

### 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 three separate terms: (1) from 5 May 1999 when the applicant was arrested to his conviction on 13 June 2000; (2) from 2 November 2000 when the applicant’s conviction was quashed on appeal until his subsequent conviction on 14 May 2001; and (3) from 16 January 2002 when the above conviction was quashed on appeal until the subsequent conviction on 17 May 2004. Within the third period the applicant’s detention was maintained by the Rostov Regional Court on 12 February 2002, and, starting from 1 July 2002, it was extended every three months.

107. The Court further observes that the applicant introduced his application on 9 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 72 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 69 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 78 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 79 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 applicant's continued detention was justified by the very high risk that he would abscond. The Government stressed that the applicant had been released on bail at the early stages of the preliminary investigation. However, he had escaped from the authorities and re-offended. Besides, the domestic authorities had strong grounds to believe that, if released, the applicant might obstruct the administration of justice. The Government referred to the testimonies of six witnesses who testified that the applicant and his co-defendants had applied physical violence against some of them and their family members, and otherwise put pressure on them.

129. The applicant argued that, relying for years on the gravity of the charges against him and the risk of his absconding, the domestic court had never supported its position by reference to any specific circumstances.

### B. The Court's assessment

#### 1. Admissibility

130. 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

##### (a) Period to be taken into consideration

131. 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).

132. 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).

133. Accordingly, in the present case the period to be taken into consideration consisted of three separate terms: (1) from 5 May 1999 when the applicant was arrested to his conviction on 13 June 2000; (2) from 2 November 2000 when the applicant's conviction was quashed on appeal until his subsequent conviction on 14 May 2001; and (3) from 16 January 2002 when the above conviction was quashed on appeal until the subsequent conviction on 17 May 2004.

134. 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 three years eleven months and ten days.

**(b) The reasonableness of the length of detention**

135. 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).

136. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, § 30, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, § 4, 27 June 1968, Series A no. 8).

137. Turning to the circumstances of the present case, 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.

138. The Court observes that in the period from March 2000, when the trial commenced, to July 2002 the domestic court kept the applicant in detention without citing any particular reason (see paragraphs 12, 14 and 16

above). 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 his detention was the fact that he was charged with serious and particularly serious criminal offences (see, in particular, paragraphs 17, 19 and 21 above).

139. 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*, cited above, § 101; *Panchenko*, cited above, § 102; *Khudoyorov*, cited above, § 180; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

140. The Court notes the Government's argument that when extending the applicant's detention the domestic courts also gave consideration to the risk of his absconding and obstructing justice by putting pressure on witnesses. However, in the absence of any references to the above circumstances in the extension orders the Court finds that the existence of such risks was not established.

141. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify the extension of the applicant's detention. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable-time" requirement in respect of each individual member of the group (see *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).

142. The Court finds, therefore, that by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities prolonged the applicant's 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".

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

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

144. The applicant complained that he had been denied the right to an effective judicial review of his complaint against the order to extend his detention of 19 February 2004. He relied on Article 5 § 4 of the Convention, which provides 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. Admissibility

145. 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.

##### B. Merits

146. The Government acknowledged that the discontinuation of the examination of the applicant’s appeal against the extension order of 19 February 2004 amounted to a violation of the applicant’s right under Article 5 § 4 of the Convention.

147. The applicant took note of the Government’s admission.

148. In the circumstances of the present case the Court finds no reason to hold otherwise. It therefore concludes that there has been a violation of Article 5 § 4 of the Convention.

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

149. 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**

150. The Government submitted, first of all, that the period under consideration began on 5 May 1999 and ended on 17 May 2004. They further submitted that the present case was rather complex given the number and the nature of the charges against the applicant. On many occasions the court hearings were adjourned because the applicant requested to study the minutes of the court hearings, because he was allegedly sick or because his representative was either sick or absent. Quite a number of adjournments were caused by the conduct of the applicant's co-defendants and their representatives, who were obviously aiming to disrupt the normal course of the proceedings. The Government concluded that the length of the proceedings in the present case did not breach the "reasonable time" requirement set out in Article 6 § 1 of the Convention. As to the 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.

151. The applicant submitted that the period to be considered started on 5 May 1999 and ended on 10 March 2005 when the Supreme Court upheld his final conviction on appeal. It therefore lasted five years and ten months for two levels of jurisdiction. During this time the domestic court passed three sentences, two of them having been found unlawful and quashed on appeal. His taking full advantage of the resources afforded by law in his defence cannot be held against him. The applicant further maintained his complaint under Article 13.

### **B. The Court's assessment**

#### *1. Admissibility*

152. 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**

153. 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 v. Russia*, no. 54071/00, § 81, 7 April 2005). The “charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see *Deweert v. Belgium*, 27 February 1980, § 46, Series A no. 35).

154. The period to be taken into consideration in the present case began from the date of the applicant’s arrest on 3 March 1998 when the applicant was first affected by the “charges” against him. However, the Convention only entered into force in respect to Russia on 5 May 1998. Therefore, in the circumstances of the present case the date of 5 May 1998 should be taken as the starting point. The period in question ended on 10 March 2005, when the applicant’s conviction became final. It follows that the period to be taken into consideration lasted six years, ten months and seven 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**

155. 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; *Nakhmanovich*, cited above, § 95; and *Rokhlina*, cited above, § 86).

156. The Court accepts that the number and the seriousness of the charges against the applicant 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).

157. Regarding the applicant’s conduct, the Court notes that the case was adjourned on several occasions at the applicant’s requests (see § 23 above). However, the Court does not agree with the Government that the applicant should be held responsible for the adjournments which were necessary for him to study the case-file and records of the hearings. The applicant was free to take full advantage of the resources afforded by national law in his defence (see *Rokhlina*, cited above, § 88, and *Kalashnikov*, cited above, § 129). Furthermore, the Court considers that the delays resulting from the applicant’s requests for adjournments on health grounds and the delays

caused by the absence of his representative from two hearings were negligible compared to the overall length of proceedings.

158. 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.

159. 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.

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

161. 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, §§ 100-101). In particular, the Government did not explain how the 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.

162. 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 upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

163. The applicant further alleged a violation of his right to pursue his application before the Court. In particular, the applicant complained that after his application had been communicated to the Government, he had been subjected to disciplinary penalties on two occasions. He invoked Article 34 of the Convention, which provides as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

#### **A. Submissions by the parties**

164. The applicant submitted that shortly after communication of his application to the Government the administration of the correctional colony Uch-398/5 of Konstantinovsk where he is serving his sentence had subjected him to disciplinary penalties twice: on 26 January 2008 he was punished with confinement in a punishment cell (*помещение камерного тупа*), and on 31 January 2008 – with confinement in an isolation cell (*штрафной изолятор*). In the applicant’s view, the above penalties were aimed at forcing him to refrain from pursuing his application before the Strasbourg Court.

165. The Government contested that the applicant had been subjected to any pressure in response to lodging an application with the Court. They denied any connection between the disciplinary penalties applied to the applicant and the case pending before the Court. The Government claimed that the applicant’s transfer to the punishment cell, and subsequently to the isolation cell, were a result of disciplinary offences committed by him. In particular, on 26 January 2008 the applicant was subjected to two months’ confinement in a punishment cell for having been found wandering around near the food unit at 00.40 a.m., for ignoring the order to go back to bed, objecting to a body search, pushing the prison officer away, complaining about his sentence regime and addressing a prison officer in obscene language. On 31 January 2008 the applicant was subjected to fifteen days’ confinement in an isolation cell for having disobeyed an order to leave the punishment cell. The Government supported their submissions by the relevant copies of the prison records.

#### **B. The Court’s assessment**

166. The Court recalls that it is of the utmost importance for the effective operation of the system of individual application instituted by Article 34 that applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy. The issue of whether or not a disputed measure taken by authorities amounts to unacceptable practices

from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV; *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI; and *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III).

167. The Court notes from the parties' submissions that on two occasions after communication of the present application to the Government the applicant was subjected to disciplinary penalties for various breaches of the colony regulations. The Government presented the official records pertaining to both occasions on which the applicant was subjected to sanctions. In the Court's view, the disciplinary penalties in question do not reveal any arbitrariness which could in itself amount to a form of pressure contrary to Article 34 of the Convention. The applicant's allegation that there was a connection between his application to the Court and the imposition of the penalties at issue is unsubstantiated. The Court thus finds that there is an insufficient factual basis to enable it to conclude that the authorities of the respondent State have interfered with the exercise of the applicant's right of individual petition after he had lodged his case (see, for similar reasoning, *Poleshchuk v. Russia*, no. 60776/00, §§ 29-33, 7 October 2004).

168. In the light of the above facts and considerations, the Court finds that the alleged violation of Article 34 of the Convention has not been established. It follows that this part of application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

## VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

169. The applicant complained under Article 3 of the Convention that he had been ill-treated in police custody upon his arrest; under Article 6 that he had not been informed of the charges against him and had not been presumed innocent in that he was held in custody merely on the ground of the seriousness of the charges against him; that the tribunal which convicted him on 17 May 2004 had been unlawful; that two members of the Supreme Court had on several occasions participated in the review of his pre-trial detention and conviction at second instance and, therefore, could not have been impartial in their decisions. He further complained that the Supreme Court had not read out the full text of the appeal decision of 10 March 2005. Lastly, the applicant complained under Article 13 about the lack of an effective domestic remedy with regard to the alleged violations.

170. 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.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

171. 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

172. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary and pecuniary damage, which represented his loss of earnings during the detention period and the amount spent on food parcels while in the detention facility.

173. The Government submitted that there had been no causal link between the alleged violations and the pecuniary damage claimed by the applicant. They further submitted that the claim in respect of non-pecuniary damage was excessive and that the finding of a violation would in itself constitute sufficient just satisfaction.

174. The Court notes that it has found a combination of serious violations in the present case. The applicant spent almost six 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 that amount.

### B. Costs and expenses

175. The applicant also claimed 105,000 Russian roubles (RUB) for legal fees incurred in the domestic proceedings. He further claimed RUB 3,792 in photocopying expenses and RUB 4,454 in postal expenses, which he had incurred pursuing his application before the Court.

176. The Government made no comments as regards the applicant’s claims for costs and expenses.

177. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,600 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

### C. Default interest

178. 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

1. *Declares* admissible unanimously
  - (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 pre-trial 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* unanimously 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* unanimously 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 pre-trial detention;

4. *Holds* unanimously 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* unanimously 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* unanimously that there has been a violation of Article 5 § 3 of the Convention;
7. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention;
8. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings against the applicant;
9. *Holds* unanimously 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* by five votes to two
  - (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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
    - (i) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
    - (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
11. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President