



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ANANYIN v. RUSSIA

(Application no. 13659/06)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Ananyin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 13659/06) 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 Oleg Konstantinovich Ananyin (“the applicant”), on 14 February 2006.

2. The applicant was represented by Mr V. Apalkov, a lawyer practising in Volgograd. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged in particular that he had been detained in inhuman conditions and that his detention had been excessively long and had not been attended by appropriate procedural guarantees.

4. On 4 February 2008 the President of the First Section decided to communicate the above complaints to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

5. 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

6. The applicant was born in 1973 and lives in Volgograd.

A. Criminal proceedings against the applicant

1. Theft charge

7. On 20 September 2002 the applicant was arrested and charged with several counts of theft.

8. On 9 February 2004 the Gorodishchenskiy District Court convicted the applicant as charged and sentenced him to one year and eight months' imprisonment starting from 20 September 2002.

9. On 20 May 2004 the applicant completed his sentence.

2. Charges of membership of an armed criminal gang, robbery, extortion, kidnapping, infliction of serious injuries and murder

10. On 29 April 2003 the Tsentralniy District Court of Volgograd remanded the applicant in custody on suspicion of infliction of serious injuries. It referred to the gravity of the charge.

11. On an unspecified date the applicant was charged with membership of an armed criminal gang, several counts of aggravated robbery, extortion, kidnapping, infliction of serious injuries and murder.

12. On 19 June 2003 the Tsentralniy District Court extended the applicant's detention until 10 September 2003, referring to the gravity of the charge and the risk of his absconding or reoffending. Counsel for the applicant was absent from the hearing.

13. On 8 September 2003 the Tsentralniy District Court extended the applicant's detention until 10 December 2003, referring to the gravity of the charges and the need for an additional investigation. The applicant was represented by court-appointed counsel.

14. On 5 December 2003 the Tsentralniy District Court extended the applicant's detention until 10 April 2004, referring to the gravity of the charges and the risk of his absconding or reoffending. Counsel for the applicant was absent from the hearing.

15. On 12 April 2004 the investigation was completed and six defendants, including the applicant, were committed for trial before the Volgograd Regional Court.

16. The defendants asked for trial by jury.

17. On 20 April 2004 the Volgograd Regional Court fixed a preliminary hearing for 27 April 2004 to examine the request. It further held that the defendants should meanwhile remain in custody.

18. On 27 April 2004 the Volgograd Regional Court held a preliminary hearing, ordered that the defendants be tried by jury and that they remain in custody pending trial.

19. On 13 October 2004 the Volgograd Regional Court extended the defendants' detention until 12 January 2005, referring to the gravity of the charges.

20. On 12 January 2005 the Volgograd Regional Court extended the defendants' detention, referring to the gravity of the charges and the risk that they might put pressure on witnesses and jurors.

21. On 7 April 2005 the Volgograd Regional Court extended the defendants' detention until 12 July 2005. The Regional Court found that, in view of the gravity of the charges, it was "opportune" to keep the defendants in custody. It rejected their requests to release them under an undertaking not to leave the town, since it could not exclude the risk that they would put pressure on witnesses or jurors.

22. In his grounds of appeal of 14 April 2005 the applicant complained that the Regional Court's conclusion that he might interfere with the proceedings had been suppositional and had not been supported by facts. He further submitted that he had three minor children, an unemployed spouse and an elderly mother and that he was the only breadwinner of the family. He had a permanent place of residence and employment.

23. On 8 June 2005 the Supreme Court of the Russian Federation upheld the extension order on appeal, finding that it had been lawful and justified. The appeal hearing took place in the presence of the prosecutor who made oral submissions. The applicant and his counsel were absent.

24. On 29 June 2005 the Volgograd Regional Court extended the defendants' detention until 12 October 2005. It found that the defendants might interfere with the proceedings, as they were charged with serious criminal offences, including the charge of being members of an armed criminal gang.

25. The applicant appealed, repeating his arguments set out in the grounds of appeal of 14 April 2005. On 7 September 2005 the Supreme Court upheld the extension order on appeal, finding that the applicant had been charged with serious and particularly serious criminal offences and that his arguments were not sufficient to warrant the quashing of the extension order.

26. On 4 October 2005 the Volgograd Regional Court extended the defendants' detention until 12 January 2006 for the same reasons as before.

27. The applicant appealed, repeating his arguments set out in the grounds of appeal of 14 April 2005. He further complained that he had been refused access to the materials submitted by the prosecution in support of

their request for extension. On 8 December 2005 the Supreme Court upheld the detention order on appeal, finding that it had been lawful and justified.

28. On 22 December 2005 the Volgograd Regional Court extended the defendants' detention until 12 April 2006 for the same reasons as before.

29. On 10 April and 5 July 2006 the Volgograd Regional Court extended the defendants' detention for the same reasons as before.

30. On 2 October 2006 the Volgograd Regional Court extended the defendants' detention until 12 January 2007, referring to the gravity of the charges and the defendants' "characters". The court also indicated that the purpose of the detention was to eliminate any risk of the defendants' absconding, reoffending or hampering the court proceedings.

31. The applicant appealed, claiming that the Regional Court's conclusions that he might abscond, reoffend or interfere with the proceedings were not supported by relevant facts. He referred to his family situation, permanent place of residence and employment. The Regional Court had already heard all the prosecution witnesses and examined the evidence submitted by the prosecutor, therefore he could no longer put pressure on witnesses or interfere with the proceedings in any other way. He also complained that his detention had exceeded a reasonable length.

32. On 28 December 2006 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified. The defendants were charged with serious criminal offences, and they might therefore abscond, reoffend or obstruct the proceedings. The allegedly excessive length of their detention, their poor health, minor children, elderly parents or permanent place of residence were not sufficient reasons to warrant release.

33. On 27 December 2006 the Volgograd Regional Court extended the defendants' detention until 12 April 2007 for the same reasons as before.

34. On 10 April 2007 the Volgograd Regional Court extended the defendants' detention until 12 July 2007 for the same reasons as before.

35. On 9 July 2007 the Volgograd Regional Court extended the defendants' detention until 12 October 2007, finding that there was no reason to vary the preventive measure.

36. On 11 October 2007 the Volgograd Regional Court extended the defendants' detention until 12 January 2008, referring to the gravity of the charges and the risk of absconding or intimidating the witnesses or jurors.

37. On 9 January 2008 the Volgograd Regional Court extended the defendants' detention until 12 April 2008 for the same reasons as before.

38. On 8 April 2008 the Volgograd Regional Court rejected the applicant's request to be released under an undertaking not to leave his place of residence and extended the defendants' detention until 12 July 2008. The decision reads as follows:

"As the trial has not yet been completed, it is necessary to extend the defendants' detention.

The court considers that the gravity of the charges justifies applying to the defendants a preventive measure in the form of detention.

However, in addition to the gravity of the charges - namely the organisation of an armed gang ... and commission of assaults on citizens and murders - carrying a sentence of up to twenty years' imprisonment for each of the defendants, the court also takes other factors into account.

Thus, the court is entitled to believe that ... application to the defendants of an undertaking not to leave the town or other preventive measures will not exclude the possibility of their absconding or exercising pressure on participants to the proceedings and jurors.

The defendants' argument that their detention has been excessively long is not in itself sufficient to warrant release.

The defendants have not produced any material showing the existence of factors making impossible [*sic*] their stay in detention facility conditions.

The court is not convinced by the defendants' argument that they have not been granted access to the materials submitted by the prosecution in support of their requests for extension. The court has at its disposal only the materials from the criminal case file, which had been studied by the defendants.

The court considers that the grounds for the detention of the defendants, who are charged with serious and particularly serious criminal offences, are relevant and sufficient. Their detention serves the interest of society, as it prevents the commission of similar criminal offences and ensures high-quality and effective examination of the present criminal case.

The criminal case file contains sufficient evidence against each defendant justifying an extension of their detention..."

39. On 7 July 2008 the Volgograd Regional Court extended the defendants' detention until 12 October 2008, repeating verbatim the decision of 8 April 2008.

40. On 10 October 2008 the Volgograd Regional Court extended the defendant's detention until 12 January 2009, repeating verbatim the decision of 8 April 2008.

41. The proceedings are still pending before the trial court. The applicant remains in custody.

B. Conditions of the applicant's detention

42. The applicant is detained in detention facility SIZO no. 1 (IZ-34/1) in Volgograd.

43. The applicant stated that the cells were overcrowded. There were not sufficient bunks for the inmates and they had to take turns to sleep. There was no lavatory bowl; instead there was a hole in the floor which inmates used to relieve themselves. The eighty-centimetre partition separating the

toilet facilities from the living area did not offer sufficient privacy and the person using the toilet was in view of the other inmates and the wardens. The dining table was very close to the toilet. Only four persons could sit at it, and the other inmates ate sitting on the floor or on the bunks. There was not much food. Inmates were not provided with adequate medical care. As a result, the applicant's health deteriorated.

44. According to a certificate of 2 April 2008 issued by the facility administration and submitted by the Government, from 30 September 2002 to 23 December 2003 the applicant was held in cells no. 7, 19, 53, 181 and 189, measuring 17.1 sq. m, 19.2 sq. m, 20.6 sq. m, 55.8 sq. m and 22.4 sq. m respectively. It was not possible to establish the number of inmates in each cell, as the detention facility registers for that period had been destroyed on expiry of the statutory storage time-limit.

45. Since 26 December 2003 the applicant has been held in seventeen different cells. They were described as follows:

- cell no. 189 where the applicant was held from 26 December 2003 to 4 July 2004 and from 26 July to 6 November 2004 measured 22.4 sq. m and housed five to twelve inmates;
- cell no. 13 where the applicant was held from 4 to 26 July 2004 measured 16.4 sq. m and housed seven to eleven inmates;
- punishment cell no. 6 where the applicant was held alone from 6 to 8 November 2004 measured 8.41 sq. m;
- punishment cell no. 9 where the applicant was held alone from 19 to 22 November 2004 measured 8.41 sq. m;
- cell no. 181 where the applicant was held from 22 November 2004 to 11 July 2005 measured 44.8 sq. m and housed seven to twenty inmates;
- cell no. 200 where the applicant was held from 11 July 2005 to 1 March 2006 measured 22 sq. m and housed seven to twelve inmates;
- cells nos. 193 and 201 where the applicant was held alone or together with another inmate from 1 to 17 March 2006 measured 5 sq. m;
- cell no. 186 where the applicant was held from 17 March to 7 April 2006 measured 22.4 sq. m and housed nine to twelve inmates;
- cell no. 86 where the applicant was held from 7 April to 30 October 2006 measured 19.7 sq. m and housed nine to fourteen inmates;
- cell no. 103 where the applicant was held from 30 October to 30 November 2006 measured 8.2 sq. m and housed five to seven inmates;
- cell no. 30 where the applicant was held from 30 November 2006 to 27 March 2007 and from 30 March to 2 April 2007 measured 18.04 sq. m and housed eight to nineteen inmates;
- cell no. 220 where the applicant was held from 27 to 30 March 2007 measured 27.2 sq. m and housed two to three inmates;
- cell no. 153 where the applicant was held from 2 April to 8 May 2007 measured 15.7 sq. m and housed two to four inmates;

- cell no. 36 where the applicant was held from 8 May to 6 November 2007 measured 33.05 sq. m and housed seventeen to nineteen inmates;
- cell no. 123 where the applicant was held from 6 to 9 November 2007 and from 12 November 2007 to 22 January 2008 measured 17.1 sq. m and housed two to six inmates;
- cell no. 122 where the applicant was held from 9 to 12 November 2007 and from 22 January to 2 April 2008 measures 16.7 sq. m and housed one to four inmates.

46. On several occasions the applicant was transferred for short periods of several days to other detention facilities.

47. Relying on certificates of 2 April 2008 from the facility administration, the Government further submitted that the applicant had at all times had a separate bunk and had been provided with bedding. The cells had natural light and were ventilated through the windows and were also equipped with fans. The average temperature inside was 18 to 20° C in winter and 24 to 26° C in summer. Inmates had an hour's exercise daily.

48. It follows from the same certificates that all cells were equipped with a lavatory bowl. This was separated from the living area by a partition of 1.5 metres in height. The dining table was situated at least two metres away from the toilet bowl. There were no insects or rodents in the detention facility, as all the cells were disinfected every month. The inmates were allowed to take a shower once a week and were provided at that time with clean bedding and towels. Finally, the Government submitted that inmates were provided with food three times a day. Boiled drinking water was distributed daily.

49. Finally, the Government submitted that the detention facility housed a medical unit which was open twenty-four hours a day and had all the necessary equipment and medication for high-standard medical assistance.

II. RELEVANT DOMESTIC LAW

50. Since 1 July 2002 criminal law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

51. “Preventive measures” or “measures of restraint” (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

52. When deciding on a preventive measure, the competent authority is required to consider whether there are “sufficient grounds to believe” that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). 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 99).

53. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

54. After arrest the suspect is placed in custody "during the investigation". The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention "during the investigation" is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

55. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial"). The period of detention "during the trial" is calculated up to the date the judgment is given. It 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).

56. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide on the appeal within three days of its receipt (Article 108 § 10).

57. The appeal court must examine the criminal case within a month of the receipt of the case file (Article 374).

58. 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 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

59. The applicant complained that the conditions of his detention in detention facility no. IZ-34/1 in Volgograd had been in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

60. The Government argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not sought compensation for non-pecuniary damage before a court. To prove the effectiveness of that remedy, they referred to two judgments awarding Mr S. and Mr D. monetary compensation for inadequate conditions of detention. It had been also open for the applicant to complain to a prosecutor, such a complaint being, in the Government’s opinion, an effective remedy. They referred to improvements in the conditions of detention which had been made in response to complaints lodged with the prosecutor’s office by Mr D., Mr Sh. and Mr Z. (a medical unit had been created, medicines purchased and maintenance works carried out). They stated that 13% of complaints about the allegedly inadequate conditions of detention had been considered well-founded in 2007, while in the first half of 2006 the prosecutors had recognised 18% of such complaints as well-founded.

61. The Government further submitted that the Court had competence to examine the conditions of the applicant’s detention only during the six months preceding the submission of his application form. They argued that the applicant’s detention was not a continuing situation, as he had been repeatedly transferred from one cell to another and the conditions of his detention had varied in different cells. Moreover, if detainees were allowed to complain about long periods of detention, this would impose a disproportionate burden on the authorities to store detention facility registers indefinitely. Accordingly, the Government invited the Court to reject the applicant’s complaints relating to the period prior to 14 February 2006 (sic.) for non-compliance with the six-month rule.

62. The Court observes that in the cases of *Mamedova v. Russia* (no. 7064/05, § 57, 1 June 2006) and *Benediktov v. Russia* (no. 106/02, §§ 29-30, 10 May 2007), in comparable circumstances, it found that the Government had failed to demonstrate what redress could have been afforded to the applicant by a prosecutor or a court, taking into account that the problems arising from the conditions of the applicant’s detention had apparently been of a structural nature and had not concerned the applicant’s personal situation alone. In the case at hand, the Government submitted no evidence to enable the Court to depart from these findings with regard to the existence of an effective domestic remedy for the structural problem of overcrowding in Russian detention facilities. Although they referred to several judicial and prosecutor’s decisions which had allegedly provided redress for inadequate conditions of detention, they did not produce copies

of those decisions. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

63. As regards the Government's argument about non-compliance with the six-month rule, the Court notes that the applicant has been detained in the same detention facility since 30 September 2002. The continuous nature of his detention, his identical descriptions of the general conditions of detention in all the cells in the detention facility and the allegation of severe overcrowding as the main characteristic of his detention conditions in all cells in which he was held warrant the examination of the applicant's detention as a whole, without dividing it into separate periods (see, for similar reasoning, *Guliyev v. Russia*, no. 24650/02, §§ 31 to 33, 19 June 2008, and *Benediktov*, cited above, § 31). The Court does not lose sight of the Government's argument that certain aspects of the conditions of the applicant's detention varied in different cells. However, it does not consider that those differences are sufficient to allow it to distinguish between the conditions of the applicant's detention or for his detention to be separated into several periods depending on the cell in which he was kept. The Court therefore dismisses the Government's objection as to non-compliance with the six-month rule.

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

B. Merits

65. The Government conceded that certain cells had been overcrowded and that the conditions of the applicant's detention had not therefore complied with the requirements of Article 3. In total, the applicant had been held in overcrowded cells for about one year and a half. They however submitted that all other aspects of the applicant's conditions of detention had been satisfactory. He had been provided with an individual bunk and bedding at all times. He had been able to exercise daily. Sanitary and hygienic norms had been met. The applicant had received adequate medical treatment on request.

66. The applicant maintained his claims.

67. The parties disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-34/1 in Volgograd. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the respondent Government, for the following reasons.

68. The parties agreed about the cell measurements and the number of inmates in the cells. For a substantial part of his detention, which has lasted

more than six years, the applicant has been afforded less than 2 sq. m of personal space. On occasions, he had less than 1.5 sq. m of personal space, while in cell no. 30 his personal space was at times reduced to less than 1 sq. m. The applicant was confined to his cell day and night, save for one hour of daily outdoor exercise. The Court reiterates in this connection that in previous cases where the applicants disposed of less than 3 sq. m of personal space, it found that the overcrowding was so severe as to justify, in its own right, a finding of a violation of Article 3 of the Convention. Accordingly, it was not necessary to assess other aspects of physical conditions of detention (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

69. Having regard to its case-law on the subject, the material submitted by the parties, and the Government's acknowledgment of a violation of Article 3, the Court reaches the same conclusion in the present case. That the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates 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.

70. The Court concludes that by keeping the applicant in overcrowded cells, the domestic authorities subjected him to inhuman and degrading treatment. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. IZ-34/1.

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

71. The applicant complained of a violation of his right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

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

A. Admissibility

72. The Government argued that the Court had competence to examine the applicant's detention only from 14 August 2005 to 12 January 2007. The applicant had failed to exhaust domestic remedies in respect of the

remaining periods, as he had not appealed against the extension orders issued at that time. Moreover, in their opinion the Court's competence was limited to the six months preceding the submission of the application form.

73. The Court first notes that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following his placement in custody on 29 April 2003 the applicant has continuously remained in detention. The Court therefore dismisses the Government's objection as to non-compliance with the six-month rule. For the same reasons, it will make a global assessment of the entire period of the applicant's detention in order to determine whether he exhausted domestic remedies.

74. Under the terms of Article 35 § 1 of the Convention the Court can only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The application of that rule must, however, make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to establish. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Estrikh v. Latvia*, no. 73819/01, §§ 92 and 94, 18 January 2007, with further references).

75. Although the applicant did not lodge appeals against the extension orders issued before April 2005, he appealed to the Supreme Court against the detention orders of 7 April, 29 June and 4 October 2005, and 2 October 2006. He thereby gave an opportunity to the Supreme Court to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Supreme Court had to assess the necessity of further extensions in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody.

76. As regards the subsequent period, the Court notes that after the applicant had appealed to the Supreme Court against four extension orders, arguing that they had been founded on insufficient reasons, and all of them had been rejected, it is understandable that in such circumstances doubts could arise in the applicant's mind as to the effectiveness of further appeals. Although mere doubts as to the prospects of success of national remedies do

not absolve an applicant from the obligation to exhaust those remedies, in a situation where he had repeatedly and unsuccessfully used a remedy, his failure to have further recourse to it on assumption that it would offer little if any prospects of success cannot be said to have been unreasonable. The Court notes that in his appeal submissions against the extension order of 2 October 2006 the applicant argued that the risk of interference with the proceedings no longer existed, as all the witnesses for the prosecution had already been questioned by the trial court and the prosecution had finished submitting their evidence (see paragraph 31 above). Nothing in the case file indicates that the applicant's circumstances materially changed after the Supreme Court dismissed that appeal on 28 December 2006, or that any new factors emerged subsequently that could have altered the position of the Supreme Court. The Court finds that, having regard to the practical realities of the applicant's position, it could not be said that an appeal to the Supreme Court against the subsequent extension orders, which were based on the same reasons as the extension order of 2 October 2006, had any reasonable prospects of success.

77. The Court concludes, in light of the above, that the application cannot be rejected for failure to exhaust domestic remedies. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

78. The Government argued that the applicant had been charged with many particularly serious criminal offences. He was moreover suspected of being an active member of an armed criminal gang committing crimes on a regular basis and presenting an increased danger to society. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V), they submitted that his membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. It had been necessary to hold the applicant in custody during the investigation and trial to prevent his interfering with witnesses and jurors who lived in the same area and were not segregated from society. The domestic courts had justified the extensions of his detention by reference to the absence of a permanent place of residence, employment or dependants, and the defence's failure to produce material showing that the applicant could not remain in the detention facility conditions. The Government considered that the applicant's detention had been founded on "relevant and sufficient" reasons.

79. The applicant maintained his claims.

2. *The Court's assessment*

(a) General principles

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

81. 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. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

82. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish

such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

(i) Period to be taken into consideration

83. The Court observes that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c) with which it forms a whole. It ceases to apply on the day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Solmaz*, cited above, §§ 24 to 26, and *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175).

84. The applicant was remanded in custody on 29 April 2003 on charges of membership of an armed criminal gang, robbery, extortion, kidnapping, infliction of serious injuries and murder. He has been held in detention pending trial ever since. During part of that period, from 9 February to 20 May 2004, he was concurrently serving a sentence after a conviction for theft in an unrelated criminal case. The Court must verify which subparagraph of Article 5 § 1 was applicable during that period with a view to determining whether it should be taken into consideration for the purposes of Article 5 § 3.

85. The Court reiterates in this connection that 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 subparagraph of that provision (see, among many others, *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). In particular, in the case of *Eriksen v. Norway*, the Court considered that the applicant's detention was justified under both subparagraphs (a) and (c) of Article 5 § 1 and found that Article 5 § 3 was applicable (see *Eriksen v. Norway*, 27 May 1997, § 92, *Reports of Judgments and Decisions* 1997-III).

86. In the present case, on 9 February 2004 the applicant was convicted of theft and sentenced to a term of imprisonment which he completed on 20 May 2004. During that period he was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a). At the same time, he was held in custody in connection with an unrelated set of criminal proceedings for the purpose of bringing him before the competent legal

authority on suspicion of being a member of an armed criminal gang and having committed robbery, extortion, kidnapping, infliction of serious injuries and murder, a situation envisaged in Article 5 § 1 (c). It accordingly follows that, from 9 February to 20 May 2004, the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1. Taking into account that the applicant was detained on the basis of Article 5 § 1 (c), and notwithstanding the fact that his detention was also grounded on Article 5 § 1 (a), the Court considers that this period should be taken into consideration for the purposes of Article 5 § 3. Therefore, the applicant has been continuously detained pending trial on charges of membership of an armed criminal gang, robbery, extortion, kidnapping, infliction of serious injuries and murder, since his placement in custody on 29 April 2003, that is for more than six years and two months.

(ii) Reasonableness of the length of the period in issue

87. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of his membership of an armed criminal gang and his involvement in the commission of robbery, extortion, kidnapping, infliction of serious injuries and murder. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify his continued detention and whether they displayed "special diligence" in the conduct of the proceedings. The inordinate length of the applicant's detention is a matter of grave concern for the Court. In these circumstances, the Russian authorities should have put forward very weighty reasons for keeping the applicant in detention for more than six years.

88. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or interfering with witnesses or jurors. In this respect they referred to the gravity of the charges, with particular emphasis on the charge of membership of an armed criminal gang.

89. The gravity of the charges was the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. Thus, in the appeal decision 28 December 2006 the Supreme Court found that the gravity of the charges outweighed the specific facts militating in favour of the applicant's release, such as the considerable length of his detention pending trial, his permanent place of residence and family situation (see paragraph 32 above). The courts assumed that the gravity of the charge carried such a preponderant weight that no other circumstances could have obtained the applicant's release. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk that an accused might abscond or reoffend, 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 *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81).

90. Another ground for the applicant's detention was his presumed membership of an organised criminal group. The Court accepts that in cases concerning organised crime the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). Taking into account that the applicant was suspected of being an active member of an organised criminal group, the Court accepts that the authorities could justifiably consider that the risk of pressure on witnesses and jurors was initially present. However, the Court is not persuaded that that ground could in itself justify the entire six-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of hampering the proceedings in a summary fashion without pointing to any aspect of the applicant's character or behaviour in support of their conclusion that he was likely to resort to intimidation. In the Court's view, such a generally formulated risk may not serve as justification for the applicant's detention for a period of more than six years. The domestic courts failed to consider the fact that that ground inevitably became less and less relevant with the passage of time. The courts' reasoning did not evolve to reflect the developing situation or to verify whether at the advanced stage of the proceedings that ground retained its sufficiency. The Court is not therefore convinced that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or jurors or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

91. No other grounds have been relied on by the domestic courts. The Government referred in their observations to the absence of a permanent place of residence, employment or dependants. The Court reiterates that it is not its task to assume the role of the national authorities who ruled on the applicant's detention or to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). Those arguments were advanced for the first time in the proceedings before the Court and the domestic courts never referred to them in their decisions. In any event, the applicant mentioned in his appeal submissions that he had a permanent place of residence and employment, three minor children, an unemployed wife and

an elderly mother (see paragraph 22 above). Those facts were never contested by the investigator or prosecutor.

92. The Court does not lose sight of the fact that during the period from 9 February to 20 May 2004 the applicant was serving a sentence in an unrelated criminal case. Although it is true that the extension orders issued during that period did not affect the applicant's situation in practical terms, as he was in any event being held after conviction by a competent court, this fact is not decisive for the Court's assessment. The existence of a violation is conceivable even in the absence of prejudice or damage; the question whether an applicant has actually been placed in an unfavourable position or sustained damage becomes relevant only in the context of Article 41 (see, among many authorities, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 67, 31 July 2008; *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A; and *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31).

93. The Court observes that all decisions extending the applicant's detention were stereotypically worded and in summary form. They did not describe in detail the applicant's personal situation. Although in one of the extension orders the Regional Court stated that it had taken into account "the defendants' characters", this statement was not accompanied by any description of the applicant's character or an explanation as to why it made his detention necessary (see paragraph 30 above). The domestic authorities' reluctance to devote proper attention to discussion of the applicant's personal situation is particularly manifest in the Regional Court's decisions of 20 and 27 April 2004, which gave no grounds whatsoever for the applicant's continued detention. The Regional Court only noted that "the defendants should remain in custody" (see paragraphs 17 and 18 above). It is even more striking that by that time the applicant had already spent a year in custody, the investigation had been completed and the case referred for trial.

94. After the case had been submitted for trial in April 2004 the trial court issued collective detention orders using the same summary formula to extend the detention of six persons. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee is incompatible in itself with Article 5 § 3 of the Convention (see *Shcheglyuk*, cited above, § 45; *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.

95. Lastly, the Court notes that the domestic authorities explicitly refused to consider whether the length of the applicant's detention had exceeded a "reasonable time" (see paragraphs 32 and 38 above). Such an analysis should have been particularly prominent in the domestic decisions

after the applicant had spent several years in custody; however the reasonable time test has never been applied.

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

97. Having regard to the above, the Court considers that by failing to address his specific situation or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration of more than six years. In these circumstances it will not be necessary to examine whether the proceedings were conducted with "special diligence". However, the Court will address the Government's argument that the complexity of the applicant's case accounted for the length of the applicant's detention. It accepts that in cases concerning organised crime and involving numerous defendants the process of gathering and hearing evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-suspects (see, *mutadis mutandis*, *Łaskiewicz v. Poland*, no. 28481/03, §§ 59 and 61, 15 January 2008). However, it has already found, in similar circumstances, that the complexity of the case, the number or the conduct of the defendants could not justify more than five years' detention pending investigation and trial (see *Erdem v. Germany*, no. 38321/97, § 46, ECHR 2001-VII).

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

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

99. The applicant further complained that he had been refused access to the materials submitted by the prosecution in support of their requests for an extension of his detention and that his appeal of 14 April 2005 had never been examined by the Supreme Court. The Court considers that those complaints fall to be examined under Article 5 § 4, which provides:

“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

1. *The alleged refusal of access to the materials*

100. The Government submitted that the prosecutor’s requests for extension had been based exclusively on the materials from the criminal case-file. During the investigation the applicant had received copies of all materials added to the file, he had studied the entire file after the investigation had been completed and during the trial it had been open to him to request additional access to the file. However, no such requests were submitted by the applicant or his counsel.

101. The applicant maintained his claims.

102. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine “not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention”. A court examining the lawfulness of detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client’s detention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151). While national law may satisfy the requirement of “equality of arms” in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

103. The applicant in the present case did not allege that he had not received copies of the prosecutor’s requests for extension. Nor did he claim that he had been denied an opportunity to comment on them. The thrust of his complain was directed against the domestic court’s alleged refusal to grant him access to the materials which formed the basis for the prosecutor’s requests for extension. The Court is, however, not convinced by the applicant’s allegation. It was examined and rejected by the Regional Court which noted that it had at its disposal only the materials from the

criminal case file and that that file had been studied by the applicant (see paragraph 38 above). The applicant did not submit any evidence to the contrary. There is no indication that the prosecutor relied on any documents which were not included in the criminal case file or that at any stage of the proceedings the applicant was denied access to the file. The Court is satisfied that the applicant was able to consult the documents in the criminal file and to comment on the prosecutor's requests for extension (see, by contrast, *Nikolova*, cited above, § 63, and *Garcia Alva*, cited above, §§ 40 to 43). Accordingly, he had an effective opportunity to challenge the reasons for his detention.

104. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The alleged failure to examine the appeal of 14 April 2005

105. The Government submitted that the appeal had been examined on 8 June 2005, while the applicant had lodged his application on 14 February 2006. Therefore, the Government invited the Court to reject this complaint for non-compliance with the six-month rule.

106. The Court reiterates that, according to Article 35 § 1 of the Convention, it “may only deal with [a] matter ... within a period of six months from the date on which the final decision was taken”. The Commission and the Court consistently interpreted this rule to the effect that the six-month period begins to run from the moment when the applicant has learned or should have learned of the final domestic decision or, if no remedy is available, of the act of which he complains (see *Sutyazhnik v. Russia* (dec.), no. 8269/02, 2 March 2006, and *Hilton v. the United Kingdom* (dec.), no. 12015/86, 6 July 1988).

107. The Court notes that the Government did not produce any evidence showing that the applicant or his counsel had been notified about the date of the appeal hearing or that a copy of the appeal decision of 8 June 2005 had ever been made available to the applicant or his counsel. It appears that the applicant had not learned about the appeal decision of 8 June 2005 until he received the Government's observations. Accordingly, the complaint cannot be rejected for non-compliance with the six-month rule. The Government's objection is therefore dismissed.

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

B. Merits

109. The Government submitted that the appeal of 14 April 2005 had been examined by the Supreme Court within the time-limit established by Article 374 of the Code of Criminal Procedure (see paragraph 57 above).

110. The applicant maintained his complaint.

111. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to persons detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, as the defendant should benefit fully from the principle of the presumption of innocence (see *Ilowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

112. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), Article 5 § 4 requires that a hearing is held. The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B). Although Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from 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 *Ilijkov*, cited above, § 103, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224).

113. The applicant lodged his appeal against the extension order on 14 April 2005. It was examined and dismissed by the Supreme Court on 8 June 2005, that is fifty-five days later. The Court considers that this period cannot be considered compatible with the “speediness” requirement of Article 5 § 4 (see, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where the review proceedings which lasted twenty-three days were not “speedy”).

114. Further, the applicant and his counsel were absent from the appeal hearing of 8 June 2005, whereas the prosecutor was present. The Court is of the view that to ensure equality of arms it was necessary to give the applicant the opportunity to appear, either in person or through some form of representation, at the same time as the prosecutor so that he could reply to the latter’s arguments (compare *Kampanis*, cited above, § 58). Given that counsel was not notified of the date of the appeal hearing and that the applicant, who was in custody, was not brought to the courtroom, the examination of the applicant’s appeal on 8 June 2005 did not meet the “equality of arms” requirement of Article 5 § 4.

115. Finally, the Court notes that neither the applicant nor his counsel was informed about the outcome of the appeal proceedings or served with a copy of the decision of 8 June 2005. As a result, the applicant was left in uncertainty as to the fate of his appeal for many months and was deprived of an effective control of the lawfulness of his detention.

116. Having regard to the above, the Court concludes that the examination of the applicant's appeal of 14 April 2005 did not satisfy the requirements of Article 5 § 4 of the Convention. Accordingly, there has been a violation of that Article.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

117. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant claimed compensation in respect of loss of earnings calculated at the rate of the statutory minimum wage for each month of his detention. He also claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

120. The Government submitted that the applicant was unemployed at the time of his arrest, therefore his claim for compensation for the loss of earnings had no basis in law. The claim for non-pecuniary damage was excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

121. The Court observes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. There was no causal link between the violations found and the alleged loss of earnings (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). The Court therefore rejects the claim for pecuniary damage.

122. The Court further notes that it has found a combination of grievous violations in the present case. The applicant has spent more than six years in custody, in inhuman and degrading conditions. His detention has not been based on sufficient grounds. He was deprived of an effective review of the

lawfulness of his continued detention. 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 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

123. The applicant also claimed reimbursement of his legal fees, without specifying the amount.

124. The Government submitted that the applicant had not produced any documents showing that expenses had been actually incurred.

125. The Court notes that the applicant did not specify the amount of legal fees, nor did he submit any receipts or other vouchers on the basis of which such amount could be established. Accordingly, the Court does not make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the inhuman conditions and excessive length of the applicant's detention and the alleged failure to examine speedily the appeal of 14 April 2005 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President