



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ISAYEV v. RUSSIA

(Application no. 20756/04)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

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

In the case of Isayev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 20756/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Sergey Viktorovich Isayev (“the applicant”), on 19 April 2004.

2. The applicant was represented by lawyers of the Human Rights Centre Memorial. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to torture by the police, that the prosecution authorities had not carried out an effective investigation into the incident, that his detention on remand had been unlawful and excessively long and that his applications for release had not been examined speedily.

4. On 21 November 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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 1955 and lived until his arrest in the town of Astrakhan.

A. Arrest and alleged ill-treatment by the police

7. On 2 March 2003 the office of the Chernoyarskiy District Prosecutor of Astrakhan opened a criminal investigation into the murder of Ms P.

1. Events between 6 and 15 March 2003

8. On 6 March 2003 the applicant was arrested and taken to the Chernoyarskiy District Police Department. According to the applicant, police officers severely beat him up to ferret out information and elicit a confession to the murder. Being unable to bear the beatings, on 8 March 2003 he wrote a statement confessing to having fired his rifle at a window of Ms P's house. He claimed that he had not intended to kill anyone.

9. On 8 March 2003 an investigator drew up a report restating the applicant's confession. The applicant signed the report and filed a written request for provision of assistance by a lawyer, Mr C. He noted that he had confessed under duress and that the investigator had not informed him of his rights as an accused, in violation of Article 51 of the Russian Constitution.

10. On the same day a deputy Chernoyarskiy District Prosecutor filed an application with the Chernoyarskiy District Court, seeking authorisation of the applicant's detention for an additional forty-eight hours. The applicant's lawyer, Mr C., disputed the necessity to detain the applicant. In addition, he drew the District Court's attention to the applicant's appearance, arguing that the police officers had maltreated the applicant to force him to confess to the murder. While accepting the deputy prosecutor's request, the District Court held, *inter alia*, that the applicant had left the crime scene and had hidden the crime weapon and that therefore he was liable to abscond and pervert the course of justice.

11. On 11 March 2003 the Chernoyarskiy District Court authorised the applicant's further detention on remand, holding as follows:

“At the same time the court considers that the materials presented by the investigating authorities - records of investigative actions and operative measures - make it sufficiently clear that the arrest of [the applicant], that is the person who may have taken part in the above-mentioned criminal offence, was well-founded and taking into account the particular dangerousness of that criminal offence committed in grave circumstances, belonging to the category of particularly serious criminal

offences, the court concludes that it is impossible to apply another, more lenient, preventive measure to [the applicant].”

The applicant and his lawyer, Mr C., attended the hearing. The decision was upheld on appeal on 20 March 2003.

12. As shown by an extract from the registration log drawn up in the detention unit of the Chernoyarskiy District Police Department and presented by the Government, on 9 March 2003, at approximately 7.25 p.m., an ambulance was called to the applicant, who was complaining about a headache. The ambulance was called again at 11.55 a.m. and 9.30 p.m. on 12 March 2003. In response to the morning call an emergency doctor noted in the registration log that the applicant was suffering from neurasthenia syndrome and high blood pressure. On the latter occasion, a doctor made an entry in the registration log, noting that the applicant had refused a medical examination and assistance. According to the applicant, an emergency doctor did not want to record his head injury out of fear of reprisal.

13. On 13 March 2003 a police officer working in the detention unit of the Chernoyarskiy District Police Department reported to the head of the police department as follows:

“... during my duty in the detention unit of the Chernoyarskiy District Police Department from 6.00 p.m. on 12 March 2003 to 9.00 a.m. on 13 March 2003 [the applicant] was in cell no. 1; [he] started hitting his head against a wall; [he] did not respond to orders [prompting him] to stop his actions. I reported to the officer on duty in the [police department] about [the applicant's] actions; after that [the applicant] was transferred to a cell for administrative arrestees. On 13 March 2003, at 8.50 a.m., during the replacement of duty officers, [the applicant] started hitting his head against the metal bar in the cell for administrative arrestees, thus causing a head injury.

I, together with a staff sergeant, police officer, Mr L., and police officer, Mr M., stopped his actions and applied special means, handcuffs. [The applicant] was provided with first aid. After that an ambulance was called.”

14. On the same day an escorting police officer, Mr M., wrote a report addressed to the head of the Chernoyarskiy District Police Department. The report read as follows:

“[I] hereby inform you that on 13 March 2003, after the transfer, at approximately 8.50 a.m., an arrestee, [the applicant], was in a cell for administrative arrestees. [He] started hitting his head against a metal bar, thus causing injuries to himself. After that special means, handcuffs, were applied to [the applicant] and first aid was provided.”

Another escorting officer, Mr Po., submitted an identically worded report.

15. An officer on duty made an entry in the registration log, stating that an ambulance was called to the applicant on 13 March 2003, at 9.40 a.m., in response to “a fit of hysteria, injuries to the scalp, brain concussion”.

16. According to the applicant, his brother, who is a resuscitation specialist, visited him on 14 March 2003 in the detention unit and saw his

numerous injuries. The applicant complained to his brother that police officers had repeatedly hit him on the head with a small plastic bottle filled with water. On the same day the applicant was taken to the Chernoyarskiy District Central Hospital. His state of health was considered to be critical. On the following day he was transferred to the resuscitation unit of the neurosurgery department of Astrakhan Regional Hospital no. 2. The applicant was in a coma of the second degree. The relevant part of an extract from medical history no. 1069/298 drawn up in the neurosurgery department read as follows:

“A patient [the applicant], was undergoing in-patient treatment from 15 March to 10 April 2003. When admitted [to the hospital], he did not make any complaints because of his grave condition. According to the escorting persons, a week before his admission [to the hospital], while under arrest, the patient had hit his head against bars... During the treatment the patient stated that he had been beaten up by police officers.

Objectively: The general condition is grave... Locally: [there are] vast bruises, measuring from 3 to 5 centimetres, on the skin of the frontoparietal sphere; [the bruises] are covered with brown scab. There are subcutaneous yellow haematomas, measuring 4 centimetres [in width] and 5 centimetres [in length], in the middle one-third of the right forearm; in the middle one-third of the left shoulder there is a subcutaneous yellow haematoma, measuring 2 centimetres [in width] and 2 centimetres [in length]. [There is] a subcutaneous haematoma, measuring 4 centimetres [in width] and 5 centimetres [in length], on the chest (with hemosiderin). [The patient] does not control the functions of his pelvic organs, he urinates uncontrollably...

Diagnosis: A brain injury of medium severity. A subarachnoid haematoma. Injuries, bruises to the head and extremities.”

On 19 April 2003 the applicant was transferred from the hospital back to the detention unit.

17. In the meantime, on 15 March 2003 the head of the duty shift of the duty unit in the Chernoyarskiy District Police Department issued a report which read as follows:

“[I] hereby inform you that on 15 March 2003 information was received from the duty unit of the Chernoyarskiy District Police Department that [the applicant] had been arrested on suspicion of having committed a criminal offence proscribed by Article 105 of the Russian Criminal Code; [he], in the detention unit of the police department, had injured himself, having hit his head against the walls; after that [he] had been admitted to Chernoyarskiy District Central Hospital, from which, within a day, he had been transferred to a medical institution in Astrakhan – hospital no. 2; [he had been escorted] by two armed police officers... [The applicant's] preliminary diagnosis is a craniocerebral injury”.

18. On the same day an investigator of the Chernoyarskiy District Prosecutor's office, in the presence of two attesting witnesses and an expert criminologist, examined the premises of the detention unit of the Chernoyarskiy District Police Department. The examination record

contained a lengthy description of the corridors, duty offices and cells. The relevant part of the record read as follows:

“...the entrance to [the cell for administrative detainees] is through a metal lattice door which is built from metal reinforcement bars welded together. The cell is a room with concrete walls... During the examination of the cell entrance door a fallow stain, looking like blood [and] measuring 0.7 centimetre, was discovered on the door at a height of 1.30 metre from the floor, 0.85 metre from the upper part of the door and 1.15 metre from the right wall. During the examination of the metal bars of that cell a fallow stain, looking like blood and measuring 2 centimetres in width and 2.5 centimetres in length, was discovered at a height of 1.30 metre from the floor and 1.15 metre from the adjacent right wall. ... blood was collected from the scene and bagged.

...

During the examination of cell no. 1, fallow stains looking like blood and measuring 1 centimetre to 1 centimetre, 3 centimetres to 3 centimetres were discovered in the far right corner of the cell, on the right wall, 2.5 centimetres from the wall, facing the entrance, and 25 centimetres from the wooden bunk. Those stains are located 5 centimetres from each other. That substance was collected from the scene and bagged.”

2. Investigation into complaints of ill-treatment

19. On 8 March 2003 the applicant's lawyer, Mr C., filed a complaint with the prosecution authorities, alleging that the applicant had been severely beaten up in the police station after his arrest and asking for the identification of the police officers who had participated in the beatings.

(a) Decision of 17 March 2003 and subsequent court proceedings

20. On 17 March 2003 an investigator of the Chernoyarskiy District prosecutor's office dismissed the complaint about the beatings as unsubstantiated. The investigator based his decision on the following evidence:

- Statements by the police officers who had claimed that on 12 March 2003 the applicant, who had been detained in cell no. 1, had begun hitting his head against a wall. He had ignored policemen's orders to discontinue the unlawful behaviour and had been transferred to a special cell for administrative detainees, so that the police officers could observe him and prevent him from hurting himself. In the cell for administrative detainees the applicant had once again begun hitting his head against metal bars. Handcuffs had been applied to him and he had been provided with medical assistance.

- Testimony by the applicant's fellow inmate, Mr I., who testified that on 12 March 2003 he had been detained in cell no. 1 together with the applicant. At approximately 10 p.m. the applicant had begun hitting his head against a wall. Mr I. had called the officer on duty and the applicant

had been transferred to another cell. Mr I. noted that he had not seen or heard whether the policemen had beaten the applicant up.

- Testimony by an emergency doctor, Mr B., who stated that on 12 March 2003, at approximately 10.20 p.m., he had arrived at the Chernoyarskiy District Police Department. The officer on duty had asked him and his colleagues to provide the applicant with medical assistance. According to the officer on duty, the applicant had not felt well. Mr B. had attempted to examine the applicant, but the latter had refused any examination. During the visual examination of the applicant's head, Mr B. had not noticed any injuries. The applicant had been very agitated.

- Statements by an emergency doctor, Ms K., who stated that on 13 March 2003, at approximately 9.30 a.m., she had received a call from the Chernoyarskiy District Police Department. She had been informed that a detainee had hit his head against a wall. When she had arrived at the police department, she had seen the applicant sitting on a chair with his hands handcuffed behind his back and with his head on a pillow. The applicant had been very nervous and had tried to break away. She had examined him and discovered three parallel injuries in the fibrous part of his head. She had made a bandage and given him an injection of relanium. The applicant had been diagnosed with a fit of hysteria and prescribed an examination by a surgeon and a neuropathologist.

- The record of the examination of the detention unit, including the cells where the applicant had been detained, performed on 15 March 2003.

- An expert report, according to which stains discovered during the examination of the cells in the detention unit on 15 March 2003 consisted of the blood of a person, "not excluding the applicant".

21. The applicant only learned about the decision of 17 March 2003 in July 2003 and on 18 August 2003 his lawyer appealed against that decision to a court.

22. On 22 August 2003 the Chernoyarskiy District Court annulled the decision of 17 March 2003, noting procedural defects in the investigator's decision, and ordered an additional investigation into the applicant's ill-treatment complaints.

(b) Decision of 12 September 2003

23. On 12 September 2003, following an additional investigation into the applicant's allegations of ill-treatment, an investigator of the Chernoyarskiy District Prosecutor's office refused to institute criminal proceedings against the police officers, finding no case to be answered. In addition to the witnesses' statements which had served as the basis for the decision of 17 March 2003, the investigator relied on the following evidence:

- Additional statements by an emergency doctor, Mr B., who stressed that the applicant had not had any visible injuries, including on the

head, when Mr B. had seen him on 12 March 2003, at approximately 10.20 p.m..

- Statements by Mr S., who testified that he had been detained in cell no. 1 with the applicant and Mr I. On a date which Mr S. had been unable to recall, the applicant, lying on the bunk, had begun hitting his head against a wall. He had hit his head three or four times and had broken the skin on the head. Mr S. and Mr I. had called an officer on duty and asked to transfer the applicant to another cell. Their request had been satisfied. No force had been used against the applicant.

- Additional testimony by Mr I., who confirmed statements given by Mr S..

- Statements by a psychiatrist, Ms E., who submitted that on 14 March 2003 she had examined the applicant who had acted normally and answered her questions. He had complained about pain in a hip. She had examined him but had found no injuries on his hip. The applicant had had an injury on the fibrous part of his head. The injury had been medically treated.

- Statements by an escorting officer, Mr La., who noted that on 13 March 2003, at approximately 10.20 p.m., he had noticed that the applicant, who had been lying on the bunk, had started hitting his head against the wall. The applicant had been transferred to a cell for administrative arrestees. On 14 March 2003, at approximately 8.00 a.m., the applicant had grabbed the metal bars with his hands and had begun hitting his head against the bars. A police officer, Mr Lu., had stuck his hands between the bars to stop the applicant from hurting himself. At the same time, the applicant, trying to overcome Mr Lu.'s resistance, began throwing himself against the metal bars. Mr La. with the assistance from officers M. and Po. had dragged the applicant from the metal bars and had started holding him. The applicant had tried to resist the officers, attempting to hit his head against the bars. Mr Po. had run to the duty unit to call an ambulance. Mr La. had taken a towel and had attempted to stop the bleeding. Doctors had arrived at 9.20 p.m. They had unbound the injury and had applied on a bandage. After the doctors had left, soft items had been placed around the applicant and a pillow had been put under his head.

- Similar statements given by the police officer, Mr Po.

24. On 25 September 2003 the Chernoyarskiy District Prosecutor annulled the decision of 12 September 2003 and ordered that an expert medical examination be performed and that an expert answer questions as to how the applicant had received the injuries, how grave the injuries had been and whether they could have resulted from his own actions.

(c) Decision of 30 September 2003

25. On 30 September 2003 an investigator of the Chernoyarskiy District Prosecutor's office once again dismissed the applicant's request for

institution of criminal proceedings. The investigator based his decision on the statements by the witnesses which had appeared in the decisions of 17 March and 12 September 2003 and on an expert medical opinion.

26. According to the expert report of 29 September 2003, the applicant had had the following injuries: a closed craniocerebral injury with a brain injury of medium severity, a subarachnoid haematoma in the right occipital region of the head, bruises on the frontoparietal sphere, an injury in the middle one-third of the right forearm and an injury in the middle one-third of the left shoulder. The head injuries had been caused by a firm blunt object (objects), as a result of the applicant's falling on a surface or owing to "free concussion of the head by a blunt object". The expert concluded that the most probable cause of the closed craniocerebral injury had been the applicant's own actions, without any "external action". As regards the remaining injuries, the expert considered that they had also been caused by the application of a firm blunt object (or objects) and that it had been impossible to establish the exact date when they had been caused. The expert did not exclude the possibility that the applicant could also have self-inflicted those injuries.

27. The applicant's lawyers appealed against the decision of 30 September 2003 to the Chernoyarskiy District Court, arguing that no steps had been taken to investigate the applicant's allegations that he had been beaten between 6 and 8 March 2003, although that issue had already been raised before the prosecution authorities by the applicant's lawyer, Mr C., on 8 March 2003. They pointed to the fact that the investigators had never interviewed the applicant about the events in March 2003.

28. On 25 November 2003 the Chernoyarskiy District Court held that the decision of 30 September 2003 had been lawful and substantiated. However, it noted that the investigator had not questioned the applicant in connection with his complaints about the confession under duress, neither had he questioned two police officers who had been present during the applicant's confession. The District Court concluded that the investigator should perform an additional investigation.

29. On 10 December 2003 the prosecutor of the Chernoyarskiy District, relying on the court's decision of 25 November 2003, annulled the decision of 30 September 2003 and ordered an additional investigation into the applicant's complaints about beatings.

30. On 22 January 2004 the Astrakhan Regional Court quashed the District Court's decision of 25 November 2003 and remitted the matter for a fresh examination. The Regional Court held that on 25 November 2003 the District Court had failed to substantiate its conclusions concerning the lawfulness of the investigator's decision of 30 September 2003. The Regional Court also pointed out that the District Court had made contradictory findings.

31. On 18 February 2004 the Chernoyarskiy District Court re-examined the decision of 30 September 2003 and considered it to be lawful and well-founded.

32. On 22 July 2004 the Astrakhan Regional Court upheld the decision of 18 February 2004. The Regional Court held that the District Court had taken into consideration and assessed all the circumstances of the applicant's case which could have influenced the District Court's conclusions.

(d) Decision of 15 December 2003

33. On 15 December 2003, following an additional investigation into the applicant's allegations of ill-treatment, an assistant Chernoyarskiy District Prosecutor dismissed the applicant's ill-treatment allegations. The assistant concluded that "no injuries had been caused to [the applicant] by the police officers in the period from 6 to 8 March 2003" and that the injuries which had been discovered on the applicant's body on 13 March 2003 had resulted from his own actions. The assistant based his decision on the same evidence as the decisions of 17 March, 12 and 30 September 2003. In addition, he had questioned the applicant, police officers who had witnessed the applicant confessing on 8 March 2003, the emergency doctor, Mr B., and an expert who had examined the applicant on 9 March 2003. Those statements were as follows:

- The applicant testified that between 6 and 8 March 2003 police officers had severely beaten him up in the police station in an attempt to extract a confession from him. On 8 March 2003, after the first meeting with his lawyer, Mr C., he had complained about the beatings to a prosecutor. On 9 March 2003 he had been examined by a medical expert. He had complained to the expert about pain in the head, neck, chest and right hip; however, the expert had only examined his head. On the same day he had again been beaten up by a police officer, Mr Po. According to the applicant, several days later two police officers had lifted him up and had thrown him against metal bars in a cell for administrative arrestees. The applicant had lost consciousness. When he had regained consciousness, he had discovered that he had been handcuffed to a metal bar. He had fainted again and had only regained consciousness in the hospital.

- Mr B., the emergency doctor, supplemented his previous statement. He noted that on 9 March 2003, at approximately 7.20 p.m., he had been called to the Chernoyarskiy District Police Department to assist the applicant who had been complaining about a headache. He had examined the applicant and had not discovered any injuries on his body and head. On 12 March 2003, at approximately 10.20 p.m., he had again been called to the Police Department to treat the applicant. The latter had not had any injuries.

- The expert stated that on 9 March 2003 an investigator and police officers had brought the applicant for a medical examination. In their

presence he had examined the applicant, who had complained about the pain in the head and right hip. The applicant had refused to explain the nature and cause of the pain. The expert had examined the applicant's chest, stomach, back, legs, hands, head and neck and had not discovered any injuries.

34. The decision of 15 December 2003 was not served on the applicant or his lawyer. On 29 and 30 December 2003 the lawyer unsuccessfully asked the prosecutor to issue him with a copy of the decision of 15 December 2003.

35. On 7 October 2004, upon the applicant's complaint, the Chernoyarskiy District Court examined the decision of 15 December 2003 and considered it lawful. The District Court held as follows:

“Having heard the parties and studied the case-file, the court decides to dismiss the complaint. The court is taking this decision on the basis of the materials in the case-file submitted and examined at the court hearing.

On 10 December 2003 the Chernoyarskiy District Prosecutor decided to annul the decision of 30 September 2003 and to perform an additional investigation into the events concerning the infliction of injuries on [the applicant]. An assistant prosecutor, Ms S., was entrusted with the performance of the investigation. In the course of the investigation certain violations of the law, which had occurred during the investigation,... [leading] to the decision of 30 September 2003, were remedied. Thus [the investigator] questioned [the applicant], the police officers, the emergency doctors and other persons who had been present in the cell of the temporary detention unit of the Chernoyarskiy District Police Department during the infliction of injuries by [the applicant].

Assessing the foregoing, the court does not doubt the impartiality of the investigator Ms S. who performed the investigation... The statements by the police officers, the emergency doctors and staff of the temporary detention unit of the Chernoyarskiy District Police Department, as well as by the detainees Mr S. and Mr I., do not contradict each other and draw a full picture of the events leading to the self-infliction of the injuries by [the applicant]...”

36. On 2 December 2004 the Astrakhan Regional Court quashed the decision of 7 October and remitted the matter for a fresh examination.

37. On 11 February 2005 the Chernoyarskiy District Court again dismissed the applicant's complaint about the decision of 15 December 2003. The relevant part of the decision reads as follows:

“Having examined the arguments of the defence, as stated in their complaint, having heard the submissions of the Chernoyarskiy District Prosecutor, and having studied the material in the case-file, the court draws the following conclusion.

On 6 March 2003 [the applicant] was arrested on suspicion of having committed a criminal offence, as provided for by paragraph 2 of Article 105 of the Criminal Code of the Russian Federation. On 8 March 2003 he wrote a confession statement. The lawyer in his complaint argues that [the applicant] made this confession under duress inflicted by the police officers. However, this fact was not proven by the documents included with the material of the investigation. Upon the lawyer's request, a forensic

medical examination was ordered; as shown by [the expert] report of 9 March 2003, at the time of his examination, [the applicant] did not have any injuries... Moreover, that expert examination fully excluded the possibility of [the applicant's] severe systematic beatings, torture and psychological pressure by the policemen in order to force him to confess to the murder of Ms P.

As shown by the material of the investigation examined by the court, [the applicant] received injuries on 13-14 March 2003; that is confirmed by the emergency doctor Ms K., the police officers Mr M., Mr Lu., Mr Sm., and by the forensic medical expert report of 29 September 2003. The determination of the means of infliction of injuries lies within the competence of the expert... The expert report can only be assessed in the course of the [applicant's] trial. The fact that [the applicant] caused the injuries to himself on 13-14 March 2003 is confirmed by the statements of Mr S. and Mr I. who had been detained together with [the applicant] in cell no. 1 in the temporary detention unit of the Chernoyarskiy District Police Department; [Mr S. and Mr I.] stated that [the applicant] had begun hitting his head against a wall without any apparent reason.

Moreover, the defence did not provide any reason for inflicting injuries on [the applicant] on 13-14 March 2003, that is after he had confessed to having murdered Ms P. (the confession statement was made on 8 March 2003), the defence did not substantiate what was the aim of torturing [the applicant] in the [later] period.

In such circumstances, the court is of the opinion that the defence's arguments about the unlawfulness and unreasonableness of the decision of 15 December 2003 of the assistant prosecutor Ms S. ... were not corroborated and the complaint is to be dismissed."

B. Detention on remand

1. Detention from April to 6 November 2003

38. On 23 April 2003 the Chernoyarskiy District Court refused to release the applicant. While finding that the applicant had been charged with a particularly serious criminal offence and that there was a risk of his absconding and perverting the course of justice, having regard to his previous behaviour, the District Court also noted that the applicant had to undergo a forensic psychiatric examination. It thus concluded that he should remain in detention pending such an examination. During the hearing the applicant's lawyer argued that the applicant lived in a local village and could promptly arrive at the prosecutor's office when summoned. He was also in need of lengthy rehabilitation treatment in a neurosurgery department. Such treatment was not available in the temporary detention unit. The prosecutor's office provided the District Court with assurances that necessary medical assistance, including assistance by neurosurgeons, was available to the applicant in the local prison hospital.

39. On 30 April 2003 the District Court extended the applicant's detention until 6 June 2003. It held that the applicant had been charged with

a serious criminal offence, had fled the crime scene and had hidden the crime weapon. The District Court concluded that the materials presented by the prosecution and the results of investigative measures sufficiently corroborated the conclusion that the applicant was liable to abscond, influence witnesses and obstruct justice. It stressed that the investigating authorities had to perform a number of investigative actions with which the applicant could interfere if released. Moreover, the District Court once again noted that the applicant had to remain in detention pending the forensic psychiatric examination.

40. On 3 June, 1 August and 1 September 2003 the Chernoyarskiy District Court, by decisions similarly worded to the one issued on 30 April 2003, extended the applicant's detention until 6 August, 6 September and 6 November 2003, respectively. Neither the applicant nor his lawyer appealed against those detention orders.

2. Examination of an application for release

41. On 15 October 2003 the Chernoyarskiy District Court dismissed the applicant's application for release, holding that he had been charged with a particularly serious criminal offence and was liable to obstruct justice and influence witnesses. The District Court also noted that the applicant was undergoing medical treatment in the Regional prison hospital and investigative actions could not be performed in his absence.

42. On 13 November 2003 the Astrakhan Regional Court quashed the decision of 15 October 2003 and remitted the matter for fresh examination. The Regional Court noted that the District Court had not provided any reasoning for its findings and had also failed to examine the actual state of the applicant's health and whether he could be provided with adequate treatment in detention. It also pointed to the District Court's failure to address the possibility of the applicant's release under recognisance offered by local MPs and the Astrakhan Regional Ombudsman.

43. On 24 November 2003 the Chernoyarskiy District Court dismissed the request for release. The relevant part of the decision reads as follows:

“Taking into consideration copies of the material in the criminal case file examined at the hearing - records of investigative actions and decisions of the pre-trial investigation organs and a court - the court notes that [the applicant] has been charged with a particularly serious criminal offence, which presents great public danger; as can be seen from the decision of 11 March 2003, when determining the issue of the preventive measure [to be imposed on the applicant], the pre-trial investigation bodies had provided the court with the material from the investigative actions which contained objective data allowing the conclusion that the accused, if released, could obstruct justice in the case and influence witnesses. During the pre-trial investigation in the case until the present time that information has existed among the material in the case file. The fact that the decision of 11 March 2003 became final confirms that [the applicant's] family situation, his place of residence and personal characteristics were taken into account when determining the possible preventive measure. The court notes that at the present time the family situation and the personal characteristics of

the accused have not changed. [The applicant's] illness cannot serve as the reason for his release, under the provisions of the Code of Criminal Procedure.

Moreover, according to the decision of the Chernoyarskiy District Court of 31 October 2003 [the applicant's] detention on remand was extended until 6 December 2003. That decision was upheld on appeal by the Astrakhan Regional Court on 10 November 2003. Those decisions established that [the applicant's] detention had been authorised and extended reasonably and in accordance with the law on criminal procedure ...

The court notes that the fact that the pre-trial investigation ended and that the applicant started reading the case file cannot serve as evidence to show that the grounds for [the applicant's] detention in the present case ceased to exist ...”

44. On 18 December 2003 the Astrakhan Regional Court disallowed the applicant's appeal against the decision of 24 November 2003 because the statement of appeal did not satisfy the requirements of the Code of Criminal Procedure.

3. Extension of the applicant's detention until 6 December 2003 (detention order of 31 October 2003)

45. On 31 October 2003 the Chernoyarskiy District Court extended the applicant's detention until 6 December 2003, holding that the applicant had been charged with an especially serious criminal offence and that there had been grounds, as confirmed by the decision of 11 March 2003, to conclude that, if released, he was liable to obstruct justice and influence witnesses. On 10 November 2003 the Astrakhan Regional Court, endorsing the reasoning of the District Court, upheld the decision of 31 October 2003.

4. Request for release and the decision of 26 November 2003

46. On 26 November 2003 the Chernoyarskiy District Court dismissed the applicant's request for release, relying on similar reasons as had been invoked in the decision of 24 November 2003. The District Court also examined the guarantees provided by nine MPs and the Ombudsman of the Astrakhan Region. Those persons argued that the applicant had not been convicted or charged before, that he had two children and two minor grandchildren, that he was the head of a farm, that he had a permanent place of residence and that he was seriously ill. The MPs and the Ombudsman guaranteed that the applicant would not abscond and would actively participate in the pre-trial investigation and trial. The District Court concluded that the guarantees could not reduce the risk of the applicant's interfering with the course of the judicial proceedings by conniving with witnesses, etc.

47. That decision was upheld by the Astrakhan Regional Court, acting on appeal, on 25 December 2003. The Regional Court reiterated the District Court's reasoning.

5. Extension of detention until 6 January 2004 (detention order of 5 December 2003)

48. On 5 December 2003 the Chernoyarskiy District Court, using the same reasoning as in the previous extension orders, extended the applicant's detention until 6 January 2004. The detention order was upheld on appeal on 17 December 2003.

6. Decision of 9 January 2004 (detention from 6 January to 2 March 2004)

49. The applicant was committed to stand trial before the Chernoyarskiy District Court.

50. On 9 January 2004 the Chernoyarskiy District Court fixed a preliminary trial hearing and, finding that the circumstances warranting the applicant's detention had not changed, held that the applicant should remain in detention.

51. In response to the applicant's lawyer's letter enquiring about the grounds for the applicant's detention from 7 to 9 January 2004, on 21 January 2004 the acting head of the Chernoyarskiy District Police Department sent a letter informing him that after 6 January 2004 the applicant's detention was classified as "during judicial proceedings". A week later the head of the Chernoyarskiy District temporary detention unit informed the applicant that since 7 January 2004 he had been detained on the basis of Article 255 of the Code of Criminal Procedure of the Russian Federation.

52. At the beginning of February 2004 the applicant asked the Chernoyarskiy District Court to extend the time-limit for lodging an appeal against the decision of 9 January 2004 because he had not been promptly served with it. He also sought the quashing of the decision of 9 January 2004 and his release.

53. On 22 April 2004 the Astrakhan Regional Court examined the merits of the applicant's appeal statement and upheld the decision of 9 January 2004. According to the applicant, who supported his claims with a written statement from his lawyer, Ms V., during the hearing the lawyer had raised the issue of the applicant's unlawful detention between 6 and 9 January 2004, pointing to the lack of any legal order. However, the Regional Court had allegedly refused to examine the lawyer's argument, concentrating on the grounds for the applicant's detention after 9 January 2004. The Government disputed the applicant's assertion, stating that the argument of the alleged unlawfulness of the detention between 6 and 9 January 2004 had never been raised before the Regional Court.

*7. Further detention orders (detention from 2 March to 13 July 2004).
The applicant's release on bail*

54. In the meantime, on 9 February 2004, the case was transferred to the Akhtubinsk Town Court for trial. On 2 March 2004 the Town Court fixed a preliminary hearing for 15 March 2004 and noted that the applicant should remain in custody.

55. On 17 March 2004 the Akhtubinsk Town Court dismissed the request for the applicant's release lodged during the hearing on that day. The Town Court noted that the applicant had been detained because he had been charged with a particularly serious criminal offence. His continued detention was ordered with reference to the failure of the applicant and his lawyer to study the case file promptly. The applicant had been charged with the murder of Ms P. and he could have threatened and influenced the victim's relatives and witnesses.

56. On 2 April 2004 the Akhtubinsk Town Court scheduled the first trial hearing and extended the applicant's detention, noting that the reasons for the extension were the same as those listed in the decision of 17 March 2004.

57. By an order of the acting head of the Akhtubinsk Town temporary detention unit the applicant was released on 13 July 2004, as, according to the Government, the maximum six-month period of detention prescribed by Article 255 of the Russian Code of Criminal Procedure had expired on that date. On 21 June 2004 the Town Court ordered that the applicant should pay 30,000 Russian roubles (RUB) in bail as security for his future attendance in court. The applicant did not appeal against the decision of 21 June 2004.

8. Return to custody on 8 October 2004. Subsequent detention orders

58. In the trial hearing on 8 October 2004 a witness, Mr G., while testifying as to the circumstances surrounding the murder of Ms P., complained to the Town Court that the applicant accompanied by two other men, Mr Sh. and Mr D., had arrived at Mr G.'s house and had invited him to take a ride on a boat. After Mr G. had declined the invitation, Mr D. had hit Mr G. in the face and had forced him to board the boat. During the ride, the applicant had urged Mr G. to change his statements given to the investigating authorities, threatening him and his wife with murder if Mr G. did not comply. Mr G. had refused to make false statements and the men had thrown him out of the boat onto the bank. Mr G. insisted that his ear had been injured during the fall and had started bleeding. His wife, standing on the bank, had witnessed the incident. The applicant and the two men had spent the night in Mr G.'s house. Mr G.'s wife had asked the men about the incident on the boat but the latter had feigned surprise in response to the accusation of assaulting Mr G. On the day following the incident, Mr G. and his wife had lodged a complaint with a prosecutor's office, seeking

institution of criminal proceedings against the applicant. Ms G. confirmed her husband's statements in open court.

59. The applicant denied the accusations, stating that he had visited Mr G. a number of times and had spent the night of the alleged incident in his house. During his stay in the house Mr G., who had been heavily drunk, had tried to extort money from the applicant, alleging that he had had valuable information about Ms P.'s murder. However, the applicant had not believed Mr G. knowing that the latter had had a tendency to fabricate information in a state of alcoholic intoxication. The applicant insisted that he had never been informed about the accusations made by Mr G. although he had frequently met the latter in the village.

60. In response to Mr G.'s testimony, a prosecutor asked the Town Court to remand the applicant in custody, fearing that the latter could continue his unlawful behaviour. The applicant's lawyer objected, arguing that there were no grounds for a change in the preventive measure. According to the lawyer, Mr G.'s accusations had not been corroborated by any evidence.

61. On 8 October 2004 the Akhtubinsk Town Court accepted the prosecutor's request, holding as follows:

“Having studied the material presented by the prosecution..., having assessed the statements by witnesses, spouses Mr and Ms G., who had testified that physical force and threats had been used against Mr G., the court finds that the presented evidence confirms the fact that [the applicant] may obstruct the proceedings in the criminal case and that that circumstance is the ground for a change in the preventive measure; at the same time, taking into account the fact that the criminal offence with which [the applicant] is charged under Article 105 § 1 of the Russian Criminal Code belongs to the category of particularly serious offences and relying on the gravity of the charge, [the preventive measure should be changed] to detention on remand.”

62. The Astraskhan Regional Court examined the applicant's lawyers' appeals lodged against the decision of 8 October 2004 and on 2 December 2004 confirmed the lawfulness and well-foundedness of the Town Court's findings. In particular, the Regional Court held:

“In order to substantiate its authorisation of the change in the preventive measure [imposed on the applicant]... [the Town] court relied on the [information] pertaining to [the applicant's] having committed actions which amount to obstruction of the judicial proceedings in the criminal case.

The above-mentioned conclusions of the [Town] court are well-founded as they are confirmed by the statements of the witnesses, Mr and Ms G.”

63. The applicant's detention was further extended on 5 January, 8 April and 8 July 2005. Each time the Akhtubinsk Town Court cited similar grounds for the extension: the gravity of the charges and the applicant's liability to obstruct justice by influencing the victims and witnesses, as established by the decision of 8 October 2004. The applicant did not appeal against any of the detention orders.

64. According to the applicant, on an unspecified date the criminal proceedings against him on the charge of tampering with witnesses had been discontinued.

C. Trial and appeal proceedings on the charges of murder and weapon possession

65. On 29 August 2005 the Akhtubinsk Town Court found the applicant guilty of murder and unlawful possession of a weapon and sentenced him to nine years and six months' imprisonment. It appears that the conviction was based, primarily, on statements by a number of witnesses, including Mr and Ms G., whom the applicant knew well. On 22 December 2005 the Astrakhan Regional Court upheld the judgment on appeal. The applicant was served with a copy of the appeal judgment in February 2006.

II. RELEVANT DOMESTIC LAW

A. Investigation into criminal offences

66. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") establishes that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

B. Detention matters

67. Until 1 July 2002 matters of criminal law were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (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”).

1. Preventive measures

68. “Preventive measures” include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 98 of the new CCrP).

2. Authorities ordering detention

69. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

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).

3. Grounds for remand in custody

70. 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 97 § 1 of the new 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 99 of the new CCrP). A defendant should not be remanded in custody if a less severe preventive measure is available.

4. Time-limits for detention

(a) Two types of remand in custody

71. The Code makes a distinction between two types of remand in custody: the first being “during investigation”, that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being “before the court” (or “during trial proceedings”), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

(b) Time-limits for detention “during investigation”

72. After arrest the suspect is remanded in custody “during investigation”. The maximum permitted period of detention “during investigation” is two months but this can be extended for up to eighteen months in “exceptional circumstances”. Extensions are to be authorised by

judicial decisions, taken by courts at ascending levels. No extension of detention “during investigation” beyond eighteen months is possible (Article 109 § 4 of the new CCrP).

73. The period of detention “during investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9 of the new CCrP).

74. Access to the material in the file is to be granted no later than one month before the expiry of the authorised detention period (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 the detention until such time as the file has been read in full and the case sent for trial (Article 109 § 8 (1) of the new CCrP).

(c) Time-limits for detention “before the court” or “during judicial proceedings”

75. From the date the prosecutor refers the case to the trial court, the defendant's detention is classified as “before the court” (or “during judicial proceedings”).

76. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court received the file up to the date on which the judgment is given. The period of detention “during judicial proceedings” 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).

5. Time-limits for trial proceedings

77. The new CCrP empowers the judge, within fourteen days of receipt of the case file, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

78. The duration of the entire trial proceedings is not limited in time.

79. The new CCrP provides that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

C. Case-law of the Constitutional Court

80. On 22 March 2005 the Constitutional Court examined an application by Mr Biryucheko and Others, who had submitted, in particular, that the practice of holding a defendant in custody without any judicial decision on the basis of the fact that the criminal case against him had been referred to

the court competent to deal with the case was incompatible with the constitutional guarantee against arbitrary detention. The Court found that the provisions of the Code challenged by the claimants complied with the Constitution of the Russian Federation. However, their practical interpretation by the courts might have contradicted their constitutional meaning. In part 2.2 of the ruling the Constitutional Court reiterated the principles established by the European Court of Human Rights in its case-law:

“A practice of keeping a person in detention without a specific legal basis, but because of a lack of clear rules governing the detainee's situation, with the result that a person may be deprived of his liberty for an unlimited period without judicial authorisation, is incompatible with the principles of legal certainty and protection from arbitrariness. The detention of a person for several months on the sole ground that the case has been transmitted to the court cannot be considered 'lawful' within the meaning of Article 5 § 1 of the Convention and is in itself incompatible with the principle of legal certainty, which is one of the common threads of the rule of law (see *Baranowski v. Poland*, no. 28358/95, §§ 54-57, ECHR 2000-III; and *Ječius v. Lithuania*, no. 34578/97, §§ 62 and 63, ECHR 2000-IX).”

In part 3.2. of the ruling the Constitutional Court analysed and interpreted the domestic provisions in the light of the above principles:

“The second part of Article 22 of the Constitution of the Russian Federation provides that ... detention is permitted only on the basis of a court order ... Consequently, if the term of detention as defined in the court order expires, the court must decide on the extension of the detention, otherwise the accused person must be released ...

These rules are common to all stages of criminal proceedings, and also cover the transition from one stage to another. ... The transition of the case to another stage does not automatically put an end to the preventive measure applied at previous stages.

Therefore, when the case is transmitted by the prosecution to the trial court, the preventive measure applied at the pre-trial stage ... may continue to apply until the expiry of the term for which it has been set by the relevant court decision [imposing it] ...

[Under Articles 227 and 228 of the Code of Criminal Procedure] a judge, after having received the criminal case concerning a detained defendant, should, within 14 days, set a hearing and establish 'whether the preventive measure applied should be lifted or changed'. This wording implies that the decision to detain the accused or extend his detention, taken at the pre-trial stage, may stand, after the completion of the pre-trial investigation and transmission of the case to the court, only until the end of the term for which the preventive measure has been set.

The prosecution, in its turn, when approving the bill of indictment and transferring the case file to the court, should check whether the term of detention has not expired and whether it is sufficient to allow the judge to take a decision [on the further detention on remand of the accused]. If by the time of transfer of the case file to the court this term has expired, or if it appears to be insufficient to allow the judge to take

a decision [on detention], the prosecutor, applying Articles 108 and 109 of the Code of Criminal Procedure, [must] ask the court to extend the period of detention.”

THE LAW

I. PRELIMINARY CONSIDERATIONS

81. The Court observes at the outset that in his application lodged with the Court on 19 April 2004 the applicant complained, *inter alia*, about the ill-treatment to which he had allegedly been subjected by police officers during his detention in the Chernoyarskiy District Police Department from 6 to 14 March 2003 and the authorities' failure to investigate effectively his complaints about the events in question. In his observations, lodged with the Court in July 2007, the applicant, while maintaining his ill-treatment complaints, adduced an alternative version of events. In particular, relying on the Court's findings in the case of *Keenan v. the United Kingdom* (no. 27229/95, ECHR 2001-III), he complained that the Russian authorities had failed to safeguard his health in a situation where they had been aware that he had tried to injure himself. The applicant insisted that “no measures [had been] taken to secure him from the repeated attempts to injure [himself]”.

82. In this connection the Court reiterates that the institutions set up under the Convention have jurisdiction to review, in the light of the entirety of the Convention's requirements, the circumstances complained of by an applicant. In the performance of their task, the Convention institutions are free to attribute to the facts of the case, as established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner. Furthermore, they have to take into account not only the original application but also the additional documents intended to complete the latter by eliminating initial omissions or obscurities (see *Ringeisen v. Austria*, 16 July 1971, § 98, Series A no. 13, as compared with § 79 and §§ 96-97 of that judgment).

83. Turning to the present case, the Court observes that the new complaint pertaining to the events in March 2003 was submitted after the notice of the initial application had been given to the Government on 21 November 2006. In the Court's view, the new complaint raised under Article 3 of the Convention is not an elaboration of his original complaints lodged with the Court more than two years earlier, on which the parties have already commented. The Court therefore decides not to examine the new complaint within the framework of the present proceedings (see *Nuray Şen*

v. Turkey (no. 2) judgment of 30 March 2004, no. 25354/94, § 200; *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006; and *Kravchenko v. Russia*, no. 34615/02, §§ 26-28, 2 April 2009).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

84. The applicant complained that during his detention in the Chernoyarskiy District Police Department between 6 and 14 March 2003 the police had subjected him to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation into the incident. The Court will examine this complaint from the standpoint of the State's obligations under Article 3, which reads as follows:

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

A. Submissions by the parties

85. The Government, relying on the findings made by the Russian prosecution authorities in the course of the investigation into the applicant's allegations of ill-treatment, disputed the applicant's version of events, arguing that the injuries had been the result of his own actions when he had repeatedly hit his head against the wall and metal bars and the police officers had tried to put an end to his unruly conduct. The Government further insisted that the prosecution authorities and domestic courts had carried out a complete and thorough investigation into the applicant's allegations, finding no criminal case to be answered.

86. The applicant, relying on statements by various individuals, argued that there was a widespread practice of intimidation and torture at the Chernoyarskiy District Police Department. According to the applicant, police officers frequently resorted to violence, as in his case, to extract confessions from arrestees. He further supported his allegations of ill-treatment with a reference to the statements by his brother who had seen him on 14 March 2003 before his transfer to the hospital. The applicant attributed particular weight to the fact that his brother, being a doctor, had the necessary specialist knowledge to assess the cause of his injuries and their severity. Relying on his brother's expert opinion, the applicant argued that he could not have sustained his injuries in a cell as a result of merely hitting his head or hurling himself against metal bars.

B. The Court's assessment

1. Admissibility

87. 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.

2. Merits

(a) General principles

(i) As to the scope of Article 3

88. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

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

90. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to

physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) *As to the establishment of the facts*

91. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

92. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

(b) Application of the above principles in the present case

(i) *Establishment of facts and application of the rule on the minimum level of severity*

93. Having examined the parties' submissions and all the material presented by them, the Court finds it established that on 6 March 2003 the applicant was arrested and taken to the Chernoyarskiy District Police Department where he was kept in the detention unit until his transfer to the Chernoyarskiy District Central Hospital on 14 March 2003. On 9 March 2003, in response to the applicant's lawyer's complaint to the prosecution authorities alleging ill-treatment in the police department between 6 and

8 March 2003, a medical expert examined the applicant and recorded no injuries on his body (see paragraph 33 above). In the evening of the same day an ambulance was called to the applicant, who complained of a severe headache. An emergency doctor who attended to the applicant did not discover any injury on his head or body (see paragraphs 12 and 33 above).

94. The applicant, on being visited again by an emergency doctor in the morning of 12 March 2003, was diagnosed with a neurasthenia syndrome and hypertension. Once again the doctor did not record any injuries (see paragraphs 12 and 33 above). In the late evening of 12 March 2003 emergency doctors responded to another call from the police department. On their arrival at the detention unit they were asked to assist the applicant. The latter, however, refused medical examination and assistance and an emergency doctor made an entry to that effect in the registration log. The emergency doctor who had seen the applicant did not notice any injury on his head (see paragraphs 12, 20 and 23 above).

95. On the following morning an officer on duty again called an ambulance alleging that the applicant had hit his head (see paragraph 15 above). An emergency doctor recorded three parallel injuries in the fibrous part of the applicant's head (see paragraph 20 above). She also noted that the applicant was extremely nervous and agitated, experiencing a fit of hysteria. On 14 March 2003 the applicant, in a critical condition, was transferred to the hospital. On the following day, being in a state of coma, he was admitted to the resuscitation unit of the neurosurgery department in Astrakhan Regional Hospital, where he remained until 19 April 2003. The applicant was diagnosed with a brain injury of medium severity and a subarachnoid haematoma. The hospital record also indicated that he had a bruised right forearm and left shoulder and a haematoma on the chest (see paragraph 16 above).

96. The Court takes note of the applicant's argument that the medical expert who had examined him in the presence of the police officers on 9 March 2003 had allegedly refused to record his injuries and that the emergency doctor, Mr B., who had seen him on 12 March 2003, had not recorded an injury on his head (see paragraphs 12 and 33 above). In this respect the Court does not lose sight of that fact which, at least partly, supports the applicant's assertion. In particular, the Court finds it peculiar that the emergency doctor, Mr B., did not notice an injury on the applicant's head although the two inmates confirmed that the applicant had broken the skin on the head and that stains of blood, which most probably belonged to the applicant, were discovered in the cell during the examination on 15 March 2003 (see paragraphs 18, 20 and 23 above). At the same time the Court does not need to establish the veracity of the medical records issued before the applicant's admission to the hospital on 14 March 2003. The parties did not dispute the accuracy of the medical history drawn up in the hospital and the Court therefore finds it established that on his admission to

the hospital the applicant had a severe head injury and haematomas on the right forearm, left shoulder and chest.

97. In this connection, the Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports* 1998-VIII). The Court considers that the seriousness of the traumas and the degree of bruising found by the doctors who examined the applicant indicate that the latter's injuries, whether self-inflicted or caused by the police, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, 23 September 1998, § 21, *Reports* 1998-VI, and *Ribitsch*, cited above, §§ 13 and 39). It remains to be considered whether the State should be held responsible under Article 3 in respect of these injuries.

(ii) Alleged ill-treatment by the police

98. In the first place, the Court observes that the Government did not claim that the injuries sustained by the applicant could have dated from a period prior to his being arrested. In response to the findings in the medical reports, the Government put forward one version of events which could have led to the applicant sustaining his injuries. In particular, relying on the prosecution authorities' findings and the expert opinion of 29 September 2003, the Government argued that in the evening of 12 March 2003 the applicant had started hitting his head against a wall. Following his fellow inmates' complaints about his behaviour and on an order from the officer on duty, the applicant had been transferred to a cell for administrative arrestees where he could be closely monitored by warders. In the morning of 13 March 2003, during a change of duty shifts, he had repeatedly hit his head against the metal bars of the cell door. The police officers had intervened to prevent the applicant from further injuring himself. While one of the police officers had stuck his arms through the metal bars in an attempt to cover the applicant's head, the other two had opened the door, entered the cell and tried to restrain him. The latter had actively resisted the police officers, trying to hurl himself against the metal bars. He had been subdued and placed on a bunk. A pillow had been placed under his head and he had been covered by soft items. According to the Government, the force applied by the police officers did not exceed what was reasonable and necessary in the circumstances of the case.

99. The applicant provided a completely different version of events, arguing that he had been repeatedly and severely beaten by the police officers between 6 and 14 March 2003. The Court cannot overlook the inconsistencies that abounded in the various accounts of the events which

the applicant gave in his submissions to the Court and complaints to domestic authorities, as well as his statements made to his brother on 14 March 2003. For instance, during his conversation with his brother on 14 March 2003 the applicant complained that his head injury resulted from the police officers' hitting him a number of times with a small plastic bottle filled with water (see paragraph 16 above). However, when questioned by the assistant prosecutor, the applicant asserted that he had sustained the head injury when the police officers had lifted him up and had thrown him against the metal bars (see paragraph 33 above). Furthermore, at no point in the proceedings before the Court did the applicant give a detailed account of the events, recounting his side of the story day by day. In his application to the Court the applicant merely complained about the beatings in the police department from 6 to 8 March 2003, leading to his confession to the murder of Ms P., and indicated that on 14 March 2003 he had been admitted to a hospital in view of his head trauma. Lastly, the Court notes, in connection with the applicant's inconsistencies, that his observations submitted with the Court in July 2007 he presented a new, all together different, version of events that negated his initial complaints of ill treatment by the police.

100. Having regard to the contradictory and confusing submissions made by the applicant, the Court further observes that the evidence collected in the course of the investigation into the applicant's allegations of ill-treatment and submitted to the Court appears to support the Government's version of events. The Court reiterates that on the applicant's admission to the hospital on 14 March 2003 a number of injuries were discovered on his body in addition to the head injury. As regards the head injury, the Court cannot overlook the findings of the medical expert that this had been self-inflicted and not the result of any "external action" (see paragraph 26 above). In this connection, the Court attributes particular weight to the fact that the applicant did not challenge the impartiality and competence of the medical expert who had been entrusted with the duty of performing the examination. The expert's findings are also supported by the statements of the applicant's fellow inmates, who claimed that they had not seen the police officers hitting the applicant and insisted that the latter had repeatedly hit his head against the wall. The veracity of those statements was also not contested by the applicant. The Court's conclusion that the Government's version of events is the more plausible one is further strengthened by the findings made during the crime-scene examination performed on 15 March 2003. The Court is mindful of the fact that during the examination of the cells bloodstains were discovered on the wall near the bunk in cell no. 1 and on the metal bars and the cell door in the cell for administrative detainees (see paragraph 18 above). That discovery sits ill with the applicant's versions of events, namely, that he had either been hit with a plastic bottle or lifted up and thrown against the wall. It rather supports the Government's account, which is that the applicant, while lying on the bunk, had hit his

head against the wall and that later on, while being detained in the cell for administrative detainees, had grabbed the metal bars and repeatedly hit his head against them.

101. As to the other injuries discovered on the applicant's body during the examination at the neurosurgery department of Astrakhan Regional Hospital, the Court is of the view that they are consistent with a minor physical confrontation, which, according to the Government, occurred between the applicant and the police officers in their attempt to restrain him. The Court also does not lose sight of the fact that some of those injuries could have been self-inflicted while the applicant was hurling himself against the metal bars. This conclusion is partly supported by the findings of the medical expert in his opinion of 29 September 2003 (see paragraph 26 above).

102. In such circumstances the Court does not find it established that the applicant was subjected to treatment contrary to Article 3 of the Convention or that the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour. Accordingly, it finds no violation of Article 3 of the Convention on account of the applicant's allegations of ill-treatment by the police.

(iii) Alleged inadequacy of the investigation

103. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., and *Assenov and Others v. Bulgaria*, cited above, § 102 et seq.).

104. Turning to the circumstances of the present case, the Court considers that the medical evidence, the applicant's allegations of serious ill-treatment, and the fact that the applicant was detained for several days in the detention unit of the police department, together raise a reasonable suspicion that these injuries may have been caused by the police. The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

105. In this connection, the Court notes that the prosecution authorities, who were made aware of the applicant's beating, carried out a preliminary investigation which did not result in criminal prosecution. The applicant's ill-treatment complaints were also a subject of the examination by the domestic courts at the two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

106. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant's lawyer complained of ill-treatment to the prosecution authorities on 8 March 2003 (see paragraph 19 above). The Court is mindful of the fact that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings. On 9 March 2003 the applicant was subjected to a medical examination authorised by the investigating authorities. Further steps were promptly taken in the aftermath of the applicant's admission to the hospital. In particular, on 15 March 2003, the day following the applicant's hospitalisation, the investigator, assisted by the expert criminologist and two attesting witnesses, examined the cells where the applicant had been detained and drew up a detailed report, documenting the evidence collected. In the following few days the authorities took significant investigative measures, including questioning police officers, fellow inmates of the applicant and emergency doctors and obtaining an expert opinion. The Court does not find the fact that the three investigator's decisions were annulled by a higher-ranking prosecutor or court due to certain procedural defects to be evidence of the inefficiency of the investigation, since from the materials in the case it follows that the investigating authorities made diligent efforts to establish the circumstances of the events and to reconcile conflicting versions of events. In particular, they persistently tried to identify and interview additional witnesses who

could have shed light on the events in question. They also further questioned the known witnesses in order to eliminate or explain the discrepancies which had arisen in their previous statements. The Court is also mindful of the fact that the authorities' task was significantly complicated by the applicant's confusing complaints and inconsistent description of the events. In this connection the Court observes that the fact that the investigators had heard the applicant in person with a certain delay did not affect the efficiency of the investigation as the applicant's testimony had not clarified the situation and had not divulged any evidence which could have assisted the authorities in establishing the truth. In addition, the Court does not overlook the fact that the applicant did not complain that he had not been duly informed of the progress of the investigation.

107. Further assessing the course of the investigation, the Court observes a delay in the prosecution's decision to authorise a forensic medical expert examination of the applicant (see paragraph 26 above). While reiterating that proper medical examinations are an essential safeguard against ill-treatment and regretting that such a delay occurred in the present case, the Court is not convinced that, in the circumstances of the instant case, in particular in view of the applicant's admission to the hospital, where his injuries were properly recorded, and the conclusive findings of the medical expert, a delay in requesting an expert opinion led to a loss of opportunities for the collection of evidence and prevented the inquiry from establishing the principal facts of the case. The Court is also of the opinion that from the start of the investigation the authorities thoroughly evaluated medical evidence before them, attempting to draw conclusions from it, without accepting too readily the police officers' version of events. The Court does not therefore find it established that the investigating authorities failed to look for corroborating evidence or exhibited a deferential attitude to the police officers. The Court also finds that the authorities may be regarded as having acted with sufficient promptness and having proceeded with reasonable expedition.

108. Having regard to its findings in paragraphs 106 and 107 above, the Court considers that the domestic investigation was effective for the purposes of Article 3 of the Convention. There has accordingly been no violation of the procedural obligation of Article 3 of the Convention.

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

109. The applicant complained under Article 5 § 1 (c) that his arrest on 6 March 2003, the subsequent detention order of 11 March 2003, the orders issued between April and December 2003 and his detention between 6 and 9 January 2004 had been unlawful. The relevant parts of Article 5 provide:

“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

110. The Government argued that the applicant's detention had been lawful, complying with the requirements of Article 5 § 1 (c) of the Convention. They further submitted that the applicant had only appealed against the detention orders of 31 October and 5 December 2003. The Government stressed that after the investigating authorities had sent the case file to the Chernoyarskiy District Court for trial, the applicant's detention had been governed by paragraph 2 of Article 255 of the Russian Code of Criminal Procedure. The Government, citing the information provided by the office of the Prosecutor General of the Russian Federation, argued that it had been a “well-established law-enforcement practice” of the Russian courts to interpret and apply Article 255 of the Russian Code of Criminal Procedure as had been done in the applicant's case. The Government noted that at that time the Russian courts had considered that Article 255 of the new CCrP had not imposed an obligation on a trial court to issue an order authorising a defendant's detention within six months after the transfer of a case file from the investigating authorities to the trial court. During that time, while awaiting trial, the defendant had been considered to be detained on the basis of the legal provision in question. At the same time the Government stressed that despite the absence of an obligation to authorise a further extension of the applicant's detention, on 9 January 2004 the Chernoyarskiy District Court and then, on 2 March 2004, the Aktyubinsk Town Court had issued orders extending his detention.

111. In the alternative, the Government, relying on the information provided by the Prosecutor General's office, submitted that on 22 March 2005 the Russian Constitutional Court had found that the practice of holding individuals in custody, without any legal order, on the mere ground that a criminal case against them had been referred for trial was contrary to the requirements of Article 5 § 1 of the Convention. The Government, however, observed that even if the applicant's detention from 6 to 9 January 2004 had been arbitrary and, thus, in violation of Article 5 § 1 of the Convention, the Court was still not entitled to examine the merits of the applicant's complaint because the applicant had never challenged the grounds for his

detention during that period before any domestic court. The Government concluded that his complaint should therefore be dismissed for failure to exhaust domestic remedies.

112. The applicant, relying on the Court's findings in the case of *Assanidze v. Georgia* ([GC], no. 71503/01, ECHR 2004-II), submitted that his detention had lacked any basis and had been arbitrary and unlawful. Relying on a written statement by his lawyer, he further stressed that he had challenged the grounds for his detention from 6 to 9 January 2004 before the Astrakhan Regional Court, but that his complaints had gone unanswered.

A. The Court's assessment

1. Admissibility

(a) Six-month issue

113. The Court observes at the outset that the applicant's complaint only refers to particular detention orders issued in 2003 and the period of his detention from 6 to 9 January 2004. The Court further observes that a part of the applicant's complaint refers to a period of pre-trial detention which ended more than six months before he lodged the application with the Court on 19 April 2004. The most recent period of detention which the Court may examine commenced on 6 November 2003 when the three-month period of detention covered by the order of 1 September 2003 expired (see paragraph 40 above). On 31 October 2003 the Chernoyarskiy District Court issued the subsequent decision, meant to cover the period of the applicant's detention for an additional month, from 6 November to 6 December 2003 (see paragraph 45 above). The final decision concerning the lawfulness of that order was given on 10 November 2003, that is, within the six months preceding the lodging of the application (see paragraph 45 above). The Court also notes, and the parties did not dispute the fact, that the decision of 15 October 2003, which was quashed on appeal on 13 November 2003, could not be construed as a formal order authorising the applicant's continued detention during the period between 15 October and 6 November 2003 (see *Matyush v. Russia*, no. 14850/03, § 63, 9 December 2008; *Shukhardin v. Russia*, no. 65734/01, § 81, 28 June 2007; and *Melnikova v. Russia*, no. 24552/02, § 61, 21 June 2007). The Court therefore considers that the part of the applicant's complaints concerning the alleged unlawfulness of his detention before 6 November 2003 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Salmanov v. Russia* (dec.), no. 3522/04, 19 January 2006; *Korchuganova v. Russia*, no. 75039/01, § 44, 8 June 2006; *Pavlik v.*

Slovakia, no. 74827/01, § 89, 30 January 2007; and *Ignatov v. Russia*, no. 27193/02, § 71, 24 May 2007).

(b) Exhaustion issue

114. The Court further notes the Government's submission that the applicant had failed to challenge the grounds for his detention after 6 January 2004. The applicant contested that argument, noting that on 22 April 2004 the Astrakhan Regional Court had examined his appeal against the detention order of 9 January 2004 and had dismissed it, endorsing the reasons given by the District Court. He further insisted that his lawyer had asked the Regional Court to examine the grounds for his detention from 6 to 9 January 2004. However, that request had been futile.

115. Turning to the facts of the case, the Court observes that on 6 January 2004 the detention period authorised by the District Court's order of 5 December 2003 expired (see paragraph 48 above). It was not until 9 January 2004 that the District Court issued the decision authorising the applicant's subsequent detention (see paragraph 50 above). The decision of 9 January 2004 was upheld on appeal on 22 April 2004 by the Astrakhan Regional Court (see paragraph 53 above).

116. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity -, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

117. Under Article 35 of the Convention, normally recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). Article 35 also requires that the complaints made before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a

breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

118. Furthermore, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

119. The Court would emphasise that the application of the rule must 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 set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot*, cited above, § 34). It has further recognised that the rule of exhaustion 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 individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, among other things, that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports* 1996-IV).

120. Turning to the facts of the present case, the Court observes that the parties disputed whether the complaint about the applicant's allegedly unlawful detention from 6 to 9 January 2004 had been raised before the Astrakhan Regional Court. The Court, however, does not find it necessary to resolve the difference of opinion between the applicant and the Government. It reiterates the Government's argument that the applicant's detention during that period was governed by Article 255 of the Russian Code of Criminal Procedure. In the light of the information before it, the Court observes that Article 255 of the Russian Code of Criminal Procedure lays down a set of regulations for detention of a defendant after his case has been referred for trial (see paragraph 76 above). As indicated in the Government's submission, before the ruling of 22 March 2005 of the Russian Constitutional Court, the Russian courts interpreted that provision as dispensing them from an obligation to issue any detention order within six months after the defendant had been committed to stand trial (see

paragraphs 110 and 111 above). The courts' approach was apparently based on the underlying proposition that Article 255 of the new CCrP had introduced time-limits for the detention of defendants "during judicial proceedings" and that, therefore, the judicial authorities were no longer required to issue any formal order authorising detention during that maximum six-month period.

121. In this connection, the Court firstly reiterates its finding made in a number of cases that where there is a practice of non-observance of certain Convention provisions, the remedies prescribed will of necessity be side-stepped or rendered inadequate (see *Donnelly and Others v. the United Kingdom*, no. 5577-5583/72, Commission's report of 5 April 1973, Decisions and Reports (DR) 16, p. 264). Bearing in mind the Government's argument that the situation in which the applicant had found himself from 6 to 9 January 2004 derived from the "well-established law-enforcement practice" of the Russian courts and, having regard to the subject matter of the applicant's complaint, the Court finds it questionable whether, in such a situation the applicant would have been able to argue his case before a court or even state the cause of his complaint such as to pass the admissibility stage. The stance of the Russian courts at the material time made it unreasonable for claimants such as the applicant to expect any form of redress until a change in the existing interpretation of Article 255 of the Russian Code of Criminal Procedure was introduced by the Russian Constitutional Court.

122. Furthermore, the Court notes that the Government did not indicate any domestic legal provision which could have allowed an appeal court to examine the grounds for a defendant's detention in the absence of a formal detention order issued by a trial court. In other words, the Court has strong doubts that the applicant would have had a realistic opportunity to apply effectively to a court. The Court therefore considers that the remedy invoked by the Government offered no prospect of success and could be considered theoretical and illusory rather than adequate and effective in the sense of Article 35 § 1 of the Convention.

123. It follows that the applicant cannot be said to have failed to exhaust domestic remedies in respect of the period of his detention from 6 to 9 January 2004, and that the Government's objection as to the non-exhaustion of domestic remedies should be dismissed.

(c) Conclusion

124. The Court finally observes that, having applied the six-month and exhaustion rules, it has the competence to examine the applicant's complaint related to the period of his detention from 6 November 2003 to 9 January 2004. The Court notes that that complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

125. 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.

126. 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).

(b) Application of the general principles to the present case

(i) *The applicant's detention from 6 November 2003 to 6 January 2004*

127. The Court observes that the applicant's detention during the period from 6 November 2003 to 6 January 2004 was authorised by the Chernoyarskiy District Court on the grounds that the charges against him were serious and that he was liable to pervert the course of justice (see paragraphs 45 and 48 above).

128. 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, had power to make an appropriate order, and had given reasons for its decision to maintain the custodial measure, for which it had also set a time-limit (see *Khudoyorov*, cited above, §§ 152-153; *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006; and *Pshevecherskiy v. Russia*, no. 28957/02, §§ 41-46, 24 May 2007).

129. The District Court acted within its jurisdiction in issuing the detention orders and there is nothing to suggest that the orders were invalid

or unlawful under domestic law in so far as they authorised the applicant's detention for the subsequent period. It has not been claimed that those decisions were otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds relied on being analysed below in the context of compliance with Article 5 § 3 of the Convention.

130. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 November 2003 to 6 January 2004.

(ii) The applicant's detention from 6 to 9 January 2004

131. It was not in dispute between the parties that there had been no judicial decision authorising the applicant's detention from 6 to 9 January 2004. The Government argued that at the time when the applicant's case had been under consideration the domestic courts had interpreted Article 255 § 2 of the Code of Criminal Procedure as permitting detention of an accused without a court order for up to six months from the date of receipt of the case file by a court. A judicial order had been required only if detention “during judicial proceedings” exceeded six months.

132. Firstly, the Court does not lose sight of the Government's submission that the Constitutional Court had subsequently condemned that practice as unconstitutional, finding that it was contrary to Article 5 § 1 of the Convention (see paragraph 80 above). Furthermore, the Court reiterates that it has already examined an identical situation in the case of *Yudayev v. Russia* (no. 40258/03, §§ 59-61, 15 January 2009), in which the applicant had been kept in custody for seventeen days in the absence of any judicial order with a mere reference to Article 255 § 2 of the Russian Code of Criminal Procedure. In particular, the Court held as follows:

“... for the detention to meet the standard of 'lawfulness', it must have a basis in domestic law. The Government, however, did not point to any legal provision which permitted a defendant to continue to be held in custody once the authorised detention period had expired. The Russian Constitution and the rules of criminal procedure vested the power to order or prolong detention on remand in the courts. No exceptions to that rule were permitted or provided for. Even though, as indicated by the Government, the domestic courts interpreted Article 255 § 2 of the Code of Criminal Procedure as permitting a six-month detention “during the trial” without a court order, that interpretation was condemned by the Russian Constitutional Court as incompatible with the Constitution and Article 5 § 1 of the Convention. As noted above, in the period from 5 to 22 January 2004 there was no judicial decision authorising the applicant's detention. In these circumstances the Court finds that the detention was not 'lawful' for Convention purposes” (*ibid*, § 60).

133. The Court sees no reason to reach a different conclusion in the present case. It follows that during the period from 6 to 9 January 2004 there was no “lawful” basis for the applicant's detention. There has therefore been a violation of Article 5 § 1 of the Convention.

3. Summary of the findings

134. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention between 6 November 2003 and 6 January 2004.

135. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 to 9 January 2004.

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

136. The applicant complained that his detention had been excessively long. The Court considers that this complaint falls to be examined under 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...”

A. Submissions by the parties

137. Firstly, the Government stressed that the applicant had failed to exhaust domestic remedies available to him as he had not appealed against a number of the detention orders, including those issued on 5 January, 8 April and 8 July 2005. In the alternative, the Government submitted that the length of the applicant's detention had not been excessive. It had been necessitated by the seriousness of the charge against the applicant and the likelihood that he would try to influence witnesses. The Government further pointed out that the applicant had fled the crime scene and that he had hidden the crime weapon. In their opinion, those two factors served as an additional justification for the applicant's continued detention. The Government insisted that the domestic courts' findings had been amply proven by the applicant's conduct after his release on bail. Two witnesses, Mr and Ms G., had testified in open court about the applicant's unsuccessful attempts, through the use of force and threats, to prompt them to change their statements given to the investigating authorities.

138. The applicant argued that the domestic courts had failed to invoke relevant and sufficient grounds to justify his prolonged detention. He disputed the fact that the courts' finding of his liability to obstruct justice and influence witnesses had been based on any evidence. The applicant attributed particular weight to the fact that the criminal proceedings against him on a witness tampering charge had been dropped owing to a lack of evidence of criminal conduct. He insisted that the domestic courts had not

had regard to his personal and family situation, his state of health, the nature of his work and other particular circumstances of his case.

B. The Court's assessment

139. The Court notes the Government's argument that by failing to lodge appeals against the majority of the detention orders the applicant had denied the domestic authorities an opportunity to consider whether the extensions of his detention (at least during the periods before October 2003, between January and July 2004 and after 5 January 2005) were compatible with his Convention right to trial within a reasonable time or release pending trial. They insisted that the Court should reject the applicant's complaints in respect of that period of his pre-trial detention for failure to exhaust available domestic remedies.

140. In this respect the Court considers that it does not have to address the Government's non-exhaustion argument, because the applicant's complaint, raised under Article 5 § 3 of the Convention, must, in any event, be declared inadmissible for the following reasons.

1. General principles

141. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest that might justify, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these 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 *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

142. The arguments for and against release must not be “general and abstract” (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be

convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

143. 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, but 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 (*Labita*, cited above, § 153).

2. Application of the general principles to the present case

(a) Period to be taken into consideration

144. The Court observes that the applicant's detention on remand consisted of two periods: (a) from his arrest on 6 March 2003 to the release on 13 July 2004 and (b) from 8 October 2004 when he was re-arrested to his conviction on 29 August 2005. Thus, the total length of the applicant's pre-trial detention amounted to approximately two years and three months.

(b) Grounds for continued detention

145. Turning to the circumstances of the present case and assessing the grounds for the applicant's continued detention, the Court notes that the competent judicial authorities advanced three principal reasons for not granting the applicant's release, namely that the applicant remained under a strong suspicion of having committed the crime of which he was accused, the serious nature of that offence and the fact that the applicant would be likely to abscond, pervert the course of justice and influence witnesses if released, given the sentence which he faced if found guilty as charged, and his behaviour in the aftermath of the crime and during his release on bail.

146. The Court accepts that the reasonable suspicion of the applicant having committed the offence with which he had been charged, being based on cogent evidence, persisted throughout the trial leading to his conviction. It also agrees that the alleged offence was of a particularly serious nature.

147. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence might be imposed on the applicant, given the serious nature of the offences at issue. In this connection, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established (see *Ilijkov v.*

Bulgaria, no. 33977/96, §§ 80-81, 26 July 2001). However, the Court reiterates that the possibility of a severe sentence alone is not sufficient after a certain lapse of time to justify continued detention based on the danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175).

148. In this context the Court observes that the danger of absconding must be assessed with reference to a number of other relevant factors. In particular, regard must be had to the character of the person involved, his morals, his assets, etc. (see *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A). Having said that, the Court would emphasise that there is a general rule that the domestic courts, in particular the trial court, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed (see *Bak v. Poland*, no. 7870/04, § 59, ECHR 2007-II (extracts)). In the present case the national courts also relied on other circumstances, including the fact that the applicant had fled the crime scene and had attempted to hide the crime weapon. While the Court doubts whether those circumstances, taken on their own, could have justified the domestic courts' finding about the necessity of the applicant's continued detention, it is satisfied that the totality of those factors combined with other relevant grounds could have provided the domestic courts with an understanding of the pattern of the applicant's behaviour and the persistence of a risk of his absconding.

149. The Court further accepts that by concealing the evidence, the applicant attempted to obstruct the investigation. There was a risk that, if released, he would continue his attempts to interfere with the proceedings. Therefore, the domestic courts could justifiably consider it necessary to keep the applicant in custody (compare with *Yudayev*, cited above, § 70). Moreover, the Court does not lose sight of the fact that the domestic courts' fear of collusion was amply proven when the applicant attempted to take advantage of his regained liberty by harassing and intimidating witnesses to prompt them to change their statements.

150. In this connection, the Court observes that one of the main grounds invoked by the domestic courts in their justification for the applicant's detention was the likelihood of his tampering with witnesses. The Court reiterates that, as regards the risk of pressure being brought to bear on witnesses, at the initial stages of the proceedings the judicial authorities appeared to presume that such a risk existed on the ground that the applicant was closely acquainted with all the witnesses in his case and that the nature of his ties to the witnesses facilitated the task of possible connivance with them. The Court accepts that, in the special circumstances of the case, the risk stemming from the nature of the applicant's relations with witnesses actually existed and justified holding him in custody for the relevant period

(compare with *Raźniak v. Poland*, no. 6767/03, § 31, 7 October 2008, and also see *Contrada v. Italy*, 24 August 1998, § 58, *Reports* 1998-V). In order to demonstrate that a substantial risk of collusion existed and continued to exist, the District Court further referred to the scope of the case and the necessity to perform a number of procedural steps with which the applicant could have interfered, if released (see paragraphs 38 and 39 above). The District Court based a secondary argument on the applicant's behaviour preceding his arrest.

151. The events following the applicant's release in July 2004 showed the fact that the domestic courts' fears about obstruction of the proceedings were well-founded, since two witnesses complained in open court of murder threats and violence used by the applicant and his associates in an attempt to force those witnesses to change their statements. The Court readily understands that in such circumstances the authorities considered it necessary to keep the applicant detained in order to prevent him from disrupting the criminal proceedings. It reiterates that the fear of reprisal, justifiable in the present case, can often be enough for intimidated witnesses to withdraw from the criminal justice process altogether. The Court observes that the domestic courts carefully balanced the safety of the two witnesses who had given statements against the applicant, together with the prospect of other witnesses' willingness to testify, against the applicant's right to liberty.

152. The Court's finding in the previous paragraph is not altered by the fact that, as indicated in the applicant's submissions, the criminal proceedings instituted against him on a witness tampering charge did not result in conviction. In this respect the Court observes that the domestic courts, while examining the issue of witness tampering and authorising the applicant's detention, were not required to establish in a definite manner the existence and nature of the offence in question since that was the purpose of a separate investigation initiated by the prosecution authorities. The Court considers that on the basis of the information in their possession at the time when the detention orders were issued, the domestic courts could have reasonably considered that the danger posed by the applicant's behaviour to the proper administration of justice was real and that it warranted his detention (see, *mutatis mutandis*, *X. v. the United Kingdom*, no. 8083/77, Commission's report of 13 March 1980, DR 19, p. 223).

153. Having regard to the above, the Court considers that the present case is different from many previous Russian cases where a violation of Article 5 § 3 was found because the domestic courts had extended an applicant's detention relying essentially on the gravity of the charges without addressing specific facts or considering alternative preventive measures (see, among many others, *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); and *Mamedova v. Russia*, no. 7064/05,

§§ 72 et seq., 1 June 2006). In the present case, the domestic courts cited specific facts in support of their conclusion that the applicant might interfere with the proceedings. They also considered a possibility of applying alternative measures, such as accepting the guarantees offered by MPs and an Ombudsman, but found them to be inadequate. The Court concludes that the applicant's behaviour as described in the decisions of the domestic courts justified his detention. The applicant's detention was therefore based on "relevant" and "sufficient" grounds.

(c) Conduct of the proceedings

154. It remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

155. The Court takes the view that the applicant's case was of a certain complexity, involving a large number of witnesses and examination of forensic evidence, including a number of expert opinions.

156. As to the conduct of the proceedings, the applicant did not argue, and the Court has no reason to conclude otherwise, that any delay in the proceedings had been attributable to the investigative authorities or the courts. In the present case the investigation was completed within approximately eight months. There is no evidence of any significant periods of inactivity on the part of the prosecution authorities. The materials presented by the parties show that within eight months the prosecution had searched the applicant's house, obtained several expert opinions, questioned the applicant, confronted him with witnesses and drawn up the bill of indictment. It took the applicant several months to study the case file which delayed the committal of the case for trial through no fault of the authorities (see paragraph 43 above). While the court does not lose sight of the fact that it took the trial court approximately a year and a half to examine the applicant's case, it reiterates that the right of an accused in detention to have his case examined with particular expedition must not hinder the efforts of the courts to carry out their tasks with proper care (see among other authorities, *W. v. Switzerland*, 26 January 1993, § 42, Series A no. 254-A). The Court does not observe any delays in the course of the trial proceedings. Hearings were scheduled and held at regular intervals. It appears that the trial court took steps to ensure that the hearings were attended by the parties and other participants to the proceedings, to avoid any unjustified adjournments. The Court is of the opinion that the trial proceedings were conducted with due expedition, having regard to the complexity of the case and the amount of evidence which needed to be thoroughly examined by the trial court. The Court considers that the domestic authorities handled the applicant's case with the requisite diligence.

(d) Overall assessment

157. Having regard to the above, the Court concludes that the complaint under Article 5 § 3 must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

158. The applicant complained that the courts had not examined “speedily” the applications for release he had lodged before 19 April 2004. In his observations of 3 July 2007 he further complained that he had not been provided with an opportunity to present his case effectively in the proceedings concerning his detention from 6 to 9 January 2004, and that the domestic courts, while dealing with his appeals against the detention orders, had not taken into account relevant facts. The Court considers that the applicant's complaints fall to be examined under Article 5 § 4 of the Convention. Article 5 § 4 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. Submissions by the parties

159. The Government submitted that the domestic courts had complied with the time-limits established by the Russian law of criminal procedure and thus they had examined the applicant's applications for release “speedily”.

160. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

161. The Court observes that the applicant's complaints in respect of his requests for release which were examined by the domestic courts in the last instance before October 2003 were introduced out of time, that is more than six months before the applicant lodged his application with the Court on 19 April 2004, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. The same conclusion applies to the applicant's complaints raised in his observations of 3 July 2007, as the applicant's detention on remand ended on 29 August 2005 with the conviction by the Town Court. The Court will therefore only examine the applicant's complaints related to the release applications which were determined in the last instance no earlier than October 2003.

162. 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 and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

163. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given “speedily” is undeniably one such guarantee; while one year per level of jurisdiction may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Howiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

(b) Application of the general principles to the present case

(i) Applications for release lodged in October and November 2003

164. The Court notes that it took the domestic courts sixty-three and twenty-nine days, respectively, to examine the applicant's requests for release lodged in October and November 2003 (see paragraphs 41-44 and 46-47 above). There is nothing to suggest that the applicant caused delays in the examination of his release applications. The Government did not indicate any particular instance where the applicant might have applied for a stay of the proceedings in which the lawfulness of his detention was being reviewed or might have in any other way caused a delay in those proceedings. The Court therefore finds that these two periods cannot be considered compatible with the “speediness” requirement of Article 5 § 4,

especially taking into account that their entire duration was attributable to the authorities (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Khudoyorov v. Russia*, no. 6847/02, §§ 198 and 203; and *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were found not to have been “speedy”).

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

(ii) Application for release lodged on 17 March 2004

166. As indicated in the parties' submissions, the applicant's request for release was received by the Town Court during the hearing on 17 March 2004 (see paragraph 55 above). On the same day the Town Court dismissed the request. There is no indication in the material that the applicant appealed against that decision. Accordingly, the proceedings lasted one day. Their length does not appear excessive.

167. In these circumstances, the Court finds that there was no violation of Article 5 § 4 of the Convention as regards the “speediness” of the review afforded by the domestic courts of this application for release.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

168. 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.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. 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

170. The applicant claimed 20,896.46 euros (EUR) in respect of pecuniary damage, representing capital losses he had sustained as a result of

the institution of the criminal proceedings against him and his lengthy detention. He further claimed EUR 100,000 in respect of non-pecuniary damage.

171. The Government submitted that the applicant's claim in respect of pecuniary damage was manifestly ill-founded and contrary to the Convention principles and the Court's case-law. They further noted that the claim for compensation in respect of non-pecuniary damage was clearly excessive and groundless.

172. The Court shares the Government's view that there has been no causal link between the violations found and the pecuniary damage claimed (see *Stašaitis v. Lithuania*, no. 47679/99, § 96, 21 March 2002, and *Khudoyorov v. Russia*, no. 6847/02, § 221, ECHR 2005-X (extracts)). Consequently, it finds no reason to award the applicant any sum under this head.

173. At the same time, the Court notes that it has found two violations in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

174. The applicant also claimed EUR 10.628,79 for the costs and expenses incurred before the domestic courts, of which EUR 7.902, according to the applicant, had been paid in legal fees and EUR 2,726.79 represented travel expenses of his lawyers. He further claimed EUR 3,424.16 and 848.05 British pounds (GBP) in respect of costs and expenses incurred before the Court, of which EUR 3,300 was for his legal representation, EUR 124.16 in postal expenses, GBP 587.05 for the assistance by Ms Knights, barrister, and GBP 260.55 for translation and administrative services. In particular, the applicant's lawyers from the Human Rights Centre Memorial claimed to have spent sixty-six hours on the case. They submitted an itemised schedule of costs and expenses that included the research and drafting of legal documents submitted to the Court, at a rate of EUR 50 per hour. According to the documents presented, Ms Knights spent 5 hours on the case. Her fee was calculated on the basis of the hourly rate of GBP 100. The applicant also submitted a detailed calculation of translation and administrative services and supported his claim of postal expenses by a copy of an international mail receipt.

175. The Government argued that the applicant's claims were excessive and unreasonable as there was no need to involve several representatives in the presentation of the applicant's case.

176. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 of the Convention (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). As regards the applicant's claim in respect of costs and expenses incurred before the domestic courts, the Court is mindful of the fact that the applicant was represented by counsel in the domestic proceedings, which involved complex issues, *inter alia* the complaint about police brutality, and required qualified legal advice. However, the applicant did not produce any document justifying his claim of costs and expenses related to the domestic proceedings (copies of contracts with the lawyers, invoices, payment certificates, etc.). The Court is unable to determine whether the expenses claimed by the applicant were, in fact, incurred in the amount he claimed and it therefore makes no award under this head.

177. The Court further observes that the lawyers from the Human Rights Centre Memorial represented the applicant in the proceedings before the European Court of Human Rights. It is clear from the length and detail of the pleadings submitted by the applicant that a great deal of work was carried out on his behalf. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that these rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicant's complaints were either declared inadmissible or no violation was found. Having regard to the materials in its possession, the Court awards the applicant EUR 124.16 for his postal expenses, EUR 300 in respect of the translation and administrative fees and EUR 2,000 for the applicant's legal representation before the Court, together with any tax that may be chargeable to the applicant.

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 UNANIMOUSLY

1. *Declares* the complaints alleging the ill-treatment of the applicant by police officers, the ineffectiveness of the investigation into the incident, the unlawfulness of the applicant's detention from 6 November 2003 to 9 January 2004 and the domestic courts' failure to examine speedily his

applications for release between October 2003 and April 2004 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's allegations of ill-treatment by the police;
3. *Holds* that there has been no violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's complaint of ill-treatment;
4. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 November 2003 to 6 January 2004;
5. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 to 9 January 2004;
6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the domestic courts' failure to examine speedily the applicant's applications for release lodged in October and November 2003;
7. *Holds* that there has been no violation of Article 5 § 4 of the Convention as regards the "speediness" of the review by the domestic courts of the application for release lodged on 17 March 2004;
8. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,424.16 (two thousand four hundred and twenty-four euros and sixteen cents) in respect of costs and expenses incurred before the Court;
 - (iii) any tax that may be chargeable to the applicant on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President