



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

FIRST SECTION

CASE OF PAVLENKO v. RUSSIA

(Application no. 42371/02)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

04/10/2010

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Pavlenko 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 11 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 42371/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Aleksandr Ivanovich Pavlenko (“the applicant”), on 6 November 2002.

2. The applicant, who had been granted legal aid, was represented by N. Prokopyev, a lawyer practising in Barnaul. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 May 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and is serving a sentence of imprisonment in the Irkutsk Region.

A. Criminal proceedings against the applicant

6. In November 1999, July 2000 and September 2000 criminal inquiries were opened following discoveries of the dismembered bodies of women (victims K., Ok. and A., Os.).

1. The applicant's arrest and interrogations

(a) Interrogation in 2000

7. On 22 August 2000 the applicant was questioned in the presence of counsel in relation to an accusation of rape by victim G. On 15 September 2000 the case was discontinued for lack of a *corpus delicti*, in view of the apparently consensual nature of the relations.

(b) Interrogation on 3 February 2001

8. Thereafter, on 3 February 2001 a Ms F. accused the applicant of rape and unlawful deprivation of liberty. It appears that on 3 February 2001 the applicant either came to the Barnaul police or was arrested with regard to that complaint. The applicant explained that he had consumed alcohol with the victim at his home on the previous evening, but denied any sexual assault. It appears that, having been apprised of his procedural rights, including the right to legal assistance, he waived this latter right. He was then questioned but apparently made no further statement. The investigator ordered his placement in custody and asked the administration of the temporary detention centre to ensure that the applicant, then a State official (a driver in a sobering-up centre), be kept separately from other detainees (see also paragraphs 43 and 44 below). According to the applicant, on the same date he was refused permission to contact his family in order to retain counsel. The case against the applicant was entrusted to four investigators in view of the case's "complexity and the large amount of work to be done". On the same day, the investigator heard a Ms S. in relation to the accusations against the applicant.

9. In addition to the investigators, on 4 February 2001 investigator P. of the Altay Regional Prosecutor's Office requested the police department to assign officers for a "series of operational and search measures" to verify whether the applicant had been involved in recent cases concerning the disappearances of female students from a local university (see also paragraphs 14 and 25 below).

10. According to the applicant, after his arrest he asked to be represented by Mr K., an advocate at the local bar association. It appears that the investigator decided that K. could not represent the applicant, given a potential conflict of interest arising from the fact that at the time K. already represented a Mr P. According to the applicant, however, P. retained K. as counsel not earlier than on 19 February 2001.

(c) Further questioning and the applicant's confessions

11. On 6 February 2001 investigator A. listed charges against the applicant in relation to victim F. The applicant was informed of his right to remain silent and his right to legal assistance and admitted his guilt “in part”. He did not want to be represented by the on-duty legal-aid lawyer and thus required adjournment until the following day in order to be represented by (unspecified) counsel retained by his parents.

12. According to the applicant, his mother first learnt about his arrest on 6 February 2001 from his girlfriend, who in turn had learnt about it from a relative, a former law-enforcement officer. When the applicant's mother came to the investigator's office, she was reassured that the applicant did not wish other counsel. She was later told that the applicant was satisfied with the services of counsel D. According to the Government, the applicant's mother first learnt about the applicant's arrest on 4 February 2001.

13. On 7 February 2001 the investigator appointed D. as legal-aid counsel, the applicant's objection notwithstanding. The applicant reiterated his wish to be represented by counsel retained by his parents and remained silent. He was still refused permission to receive visits from them or to contact his family, on the ground that it would adversely affect the conduct of the investigation. As can be seen from the interrogation record, this interview with the investigator was held from 3.15 to 3.20 p.m. However, according to the visitors' logbook, the investigator saw the applicant from 2.44 to 5.06 p.m. on that day.

14. According to the applicant, he was daily questioned in relay for up to twelve hours by investigators and police officers in the temporary detention centre until 2 March 2001. Only the leading officer's name was noted in the visitors' logbook. According to the applicant, he was beaten up by officers who used techniques leaving no traces. In order to obtain confessions, officers also proffered threats against the applicant's next of kin, suggesting, for instance, that they would allow publication of an article in a local newspaper mentioning the names of the applicant's brother and girlfriend; that they would carry out searches in their flats; that they would stage his suicide with the aid of cellmates. On unspecified dates, the applicant was allegedly beaten up by his cellmates, who had been instructed to induce him to make admissions. The applicant subsequently accused the officers of ill-treatment (see paragraph 33 and 42 below).

15. Thus, the following interviews took place:

On 8 February 2001 - by officers, from 4.10 to 5.15 p.m.;

On 9 February 2001 - by officers, from 11.50 a.m. to 1.35 p.m. and from 5.20 to 7.40 pm. On the same date the authorities re-opened the proceedings concerning the alleged rape of G. (see paragraph 7 above).

On 10 February 2001 – by officers, from 11.15 am to 3.20 p.m.;

On 12 February 2001 – by the investigator, from 3 to 4.10 p.m.

16. On 13 February 2001 investigators A. and Sh. had access to the applicant from 10.25 a.m. to 12.25 p.m. and from 3.05 to 7.35 p.m. In his written statement the applicant confessed to a sexual assault against F. and the double murder of A. and Ok. in July 2000. The applicant was questioned from 5.30 to 7.25 p.m. in the presence of counsel D. During that interview, the content of Article 51 of the Constitution was explained to the applicant, and he confirmed that he understood it. He also confirmed he was willing to give testimony and endorsed his earlier confessions on the same day, stating that his admissions had been voluntary and were due to the fact that “he could no longer bear the burden”. According to the applicant, counsel D. was present only from 7.30 to 7.35 p.m.

17. The applicant was questioned by the investigator on 15 February 2001 from 5.27 to 6.57 p.m. According to the Government, at this interview the applicant confirmed his admission in respect of victim F, in the presence of counsel D..

18. On 17 February 2001 the applicant was questioned by officers from 10.20 a.m. to 1 p.m.

19. On 18, 20 and 26 February 2001 the applicant confessed to several offences. According to the applicant, on each occasion he was brought to the principal investigator after questioning by officers, and signed the record. The events during the relevant period can be described as follows:

On 18 February 2001 investigator A. visited the applicant from 12.30 to 2.10 p.m. The applicant was questioned in the presence of counsel D. from 12.30 to 12.50 p.m. about the double murder. In reply to the investigator's question, the applicant stated that he had not committed any other murders.

On 19 February 2001 the applicant was questioned by officers from 2.35 to 4.13 p.m.

On 20 February 2001 the applicant was questioned by police officers from 10 a.m. to 3.30 p.m. The applicant made a written statement concerning the murder of K., indicating that “the confession was voluntary without physical or psychological duress”.

20. Subsequent interviews (without the presence of counsel) were as follows:

On 21 February 2001 the applicant was questioned by the investigator from noon to 3.30 and by (an) officer(s), from 3.15 to 5.25 p.m.;

On 22 February 2001 – by (an) officer(s), from 11.40 a.m. to 2.35 p.m.;

On 23 February 2001 – by the investigator, from 11.43 a.m. to 2.35 p.m.;

On 24 February 2001 – by officers, from 12.15 to 1 p.m.;

On 26 February 2001 the applicant was questioned by officer(s) from 9.50 a.m. to noon and by the investigator from 5 to 6.40 p.m. The applicant made a written statement confessing to the murder of victim Os.

21. As transpires from the visitors' register, on 27 February 2001 the investigator saw the applicant from 11.33 a.m. to 1.07 p.m., while police

officer S. saw him from 5.05 to 5.55 p.m. on the same day. The photo identification lasted from 1.10 to 1.15 p.m. in the presence of counsel D.

22. Visits continued thereafter in March and April 2001 (see also paragraph 28 below).

23. According to the applicant, after his mother had read in the local newspaper that he had admitted to serious grave crimes, she realised that she had been misled by investigator A. and retained counsel S. (see below).

(d) Admission of counsel S. and further proceedings

24. On 6 March 2001 the applicant was allowed for the first time to see his privately-retained counsel, Mr S. The applicant retracted and sought exclusion of all previously-collected evidence, including his confessions, as obtained under compulsion and without effective legal advice.

25. On 11 April 2001 police officer S. reported back to investigator P. that, following the order of 4 February 2001, a series of "operative measures" had disclosed the applicant's involvement in the murders of Ok., A., K. and Os. At the same time, no connection was established in relation to the disappearances of female students. The report mentioned that the applicant was still being investigated.

26. On 23 April 2001 the applicant was placed in solitary confinement after an altercation with cellmates.

27. During the preliminary investigation a large number of forensic reports were prepared and more than fifty persons were heard as witnesses; many of them gave oral testimony during the trial. Searches were conducted in the applicant's flat and a number of documents were seized.

28. Counsel S. complained that the applicant continued to be visited by police officers who, in his view, were not authorised to deal with the criminal case. On 31 May 2005 the investigator issued an order stating that only four investigators, including himself, were authorised to have meetings with the applicant. When questioned about their activities, the above officers explained to the investigator that they had been assigned the task of verifying whether there might be a link between the applicant and the disappearances of female students other than those already investigated.

29. Upon counsel's complaint, in June 2001 the investigator ordered an inquiry concerning the injuries to the applicant's face, caused on 23 April 2001, and whether he had complained about any ill-treatment. Investigator P. also informed the applicant that the investigators had not been aware that various officers had had meetings with the applicant in the temporary detention centre or the remand centre.

30. In October 2001 the investigator reported to the trial prosecutors' department that the activities carried out by the assigned officers did not permit the conclusion that the applicant had been involved in other criminal offences.

2. Trial

31. The case against the applicant was scheduled for trial before the Altay Regional Court. The applicant admitted in substance the charges in relation to Ms F. He argued that his intercourse with G. had been consensual; that he had no link to the other four persons (victims K., Ok., Os., A.); and that his pre-trial confessions in that connection had been obtained through ill-treatment and psychological pressure on the part of the police officers. In support of his allegation of duress the applicant provided the trial court with an extract from the visitors' logbook of the temporary detention centre for the period from 4 February to 23 March 2001. During that period the applicant received visits from various officers and investigators.

32. The trial court dealt with the applicant's allegations of ill-treatment, confession under duress and the alleged violation of his right to legal assistance during the preliminary investigation. The court heard investigator A., who confirmed that the applicant could not be represented by counsel "named by him" (possibly meaning Mr K.) because at the time the latter represented Mr P. The investigator also confirmed that the applicant was not allowed to receive visits from his mother, in order to prevent them from tampering with evidence and perverting the course of the investigation. The trial court upheld that argument, referring to the applicant's mother's attempt to hand over a message to the applicant asking him to remain silent and to possibly plead temporary insanity.

33. The trial court rejected the allegation of ill-treatment, relying on medical reports dated 3 and 14 February 2001 and considering that the admissions were thus "truthful". The court heard some of the officers who visited the applicant in detention, and concluded that they had been empowered to question the applicant in relation to the cases for which he was being investigated and also other cases. The court also heard a Mr M., who had been detained with the applicant in March 2001. Mr M. stated that the interrogations of the applicant had spanned the entire day and the applicant had returned to the cell "exhausted"; there had been no traces of violence on him.

34. On 22 November 2001 the Regional Court convicted the applicant of several counts of rape and murder, and sentenced him to twenty-four years' imprisonment.

35. Regarding the applicant's conviction for raping G., the trial court held that "despite the applicant's retraction of his earlier admission, his guilt was proven by the victim's deposition". The court also referred to several witness statements and medical evidence.

36. In finding the applicant guilty of the rape and unlawful deprivation of liberty of victim F., the trial court relied on the applicant's own admissions reiterated at the trial, the victim's deposition, statements by

witnesses who saw the victim escaping from the applicant's flat, and medical expert reports.

37. In finding the applicant guilty of murdering victim K., the court relied on the applicant's pre-trial confession, his interview with the investigator in the presence of counsel D. and the applicant's identification of the victim by a photograph. The trial court considered that the above statements were corroborated by three witness statements as regards the victim's clothes on the day of the murder, the inspection record of the crime scene and the medical expert reports.

38. The trial court convicted the applicant of murdering Ok. and A. on the basis of the applicant's pre-trial admissions, his interview with the investigator in the presence of counsel D. and the applicant's identification of the victim by a photograph. The trial court considered that the above statements were corroborated by the other available evidence.

39. The applicant's conviction for murdering Os. was based on the applicant's pre-trial confession, which the court considered to be "truthful", despite his retraction. The court held that the applicant could not have learnt the details of this crime from another source.

40. Having heard the prosecution and counsel S., on 22 May 2002 the Supreme Court of the Russian Federation upheld the trial judgment. The appeal court considered that there had been no violation of the defence rights since on 3 February 2001 the applicant had been apprised of his rights to remain silent and to legal assistance. The applicant had signed the record and had waived the right to counsel. From 7 February 2001 the applicant had been represented by counsel D. who attended all investigative measures relied up by the trial court. The appeal court noted that the applicant's pre-trial admissions had revealed circumstances which had not been previously known to the investigative authorities. For instance, as regards victim K., the applicant had given descriptions of the victim and her clothes, and had referred to circumstances concerning her character and way of life. The information supplied by the applicant was then confirmed by statements from various persons heard as witnesses at the trial. Thus, as regards victim Ok., her mother confirmed that the hairpin seized at the applicant's flat belonged to her late daughter. The other physical evidence, taken together, also refuted the allegation that the applicant had not been involved in the murders.

B. Other proceedings

41. After the trial, the applicant sought the institution of criminal proceedings against the principal investigator in his criminal case, alleging forgery of evidence. On 27 December 2004 and 17 January 2005 the Regional Prosecutor's Office refused that request. The applicant unsuccessfully challenged this refusal in the courts.

42. The applicant also sought the institution of criminal proceedings against the officers who had interrogated him in February 2001, alleging ill-treatment. On 14 December 2004 the investigator in the Regional Prosecutor's Office refused to prosecute the officers. This decision was upheld by the higher prosecutor on 31 January 2005. On 19 May and 23 June 2005 the Regional Court took final decisions upholding the district courts' decisions declining jurisdiction in relation to the applicant's complaint about the decision of 14 December 2004. In separate proceedings, on 7 July and 13 October 2005 the Regional Court decided in the final instance that the applicant's complaint about the decision of 31 January 2005 was not amenable to court review.

C. Conditions of detention

1. Temporary detention centre

(a) The applicant's account

43. The applicant was kept in the temporary detention centre of the Barnaul Department of the Interior (*ИВС УВД г. Барнаула*) from 3 February to 2 March 2001, and from 13 to 23 March 2001. Together with other four detainees, he was kept in a cell measuring six square metres. The applicant slept on the floor because no bed, mattress or bedding was provided. The cell was not heated; the ventilation and light were poor. The toilet was not separated from the living area. Food was distributed once a day. The applicant remained all the time in his cell since no outdoor activity was allowed. The applicant was refused permission to have visits or other contact with his family.

44. The applicant subsequently indicated that the levels of heating and humidity in the cell had been unacceptable; he had been given a cup of tea and a piece of bread in the morning and, at times, soup and porridge in the afternoon; he had had no access to a shower and no items for personal hygiene.

(b) The Government's account

45. In the temporary detention centre the applicant was kept in cell no. 15, measuring eight square metres, together with another inmate. A toilet was separated from the main area. The applicant, like other detainees, was provided with a bed and a mattress. Although no bedding was provided, detainees were allowed to use their own bedding. The applicant was also given various items for personal hygiene and allowed to have a shower once per week. The cell had adequate lighting, ventilation and heating systems. The applicant was allowed one hour of outdoor exercise per day, was

properly fed and allowed to receive food parcels from his relatives or family. He had access to drinking water. The applicant made no complaints about his detention in the temporary detention centre until December 2004.

2. Barnaul remand centre

(a) The applicant's account

46. The applicant's initial description of the conditions of his detention in Barnaul remand centre no. 22/1 reads as follows. The applicant was placed in a cell situated in the basement of the building. The number of inmates in his cell substantially exceeded the design capacity. The cell had a small window, which was not glazed but was instead covered with metal shutters, barring access to natural air and light. The internal light was poor. The toilet was not separated from the main area. The cell was infested with cockroaches. The applicant slept on the floor. The unheated cell was extremely damp. The quality of food was unsatisfactory. During family visits and outdoor activity the applicant remained handcuffed.

47. The applicant subsequently amended his account, indicating that he had been kept in the remand centre from 3 to 12 March 2001, and between 24 March 2001 and 27 June 2002. In the most recent period of his detention he had been alone in cell no. 122 measuring 4.1 square metres in the basement of the remand centre. During that period, the unheated cell was extremely damp; there was no ventilation. The quality of food was unsatisfactory. No bedding was provided. The cell window was not glazed; it was covered with metal shutters, barring access to natural air and light. The internal light was poor. The toilet was not separated from the main area.

(b) The Government's account

48. According to the Government, the applicant was kept in Barnaul remand centre no. 22/1 from 2 March 2001 to 6 April 2002 and from 7 to 27 June 2002. Between April and June 2002, the applicant was kept in a Chelyabinsk remand centre.

49. The Government explained that the relevant logbooks had been destroyed due to the expiry of the retention period. Thus, with reference to affidavits from Mr M, the remand centre governor, the Government affirmed that from 3 to 23 March 2001 the applicant was kept in cell no. 212, measuring 16.9 square metres; from 24 March to 25 April 2001 – in cell no. 190, measuring 16 square metres; from 26 April 2001 to 6 April 2002 – in cell no. 122, measuring 4.5 square metres; and from 7 to 27 June 2002 – in cell no. 118, measuring 4.3 square metres. The applicant shared cells nos. 190 and 212 with two or three other detainees; upon his request, he was detained alone in cells nos. 122 and 118. The latter cells were situated on the ground floor and had windows measuring 0.36 square

metres. In compliance with the national legislation in force at the time, the windows were covered with metal shutters, which, however, did not bar the normal access of air and light into the cell.

50. Mr M confirmed that as of 24 July 2007 the above cells had proper lighting, ventilation and heating systems, water supply and toilet facilities. The Government supplied photographs showing the interior of the above cells.

3. The applicant's complaints to national authorities

51. In reply to the applicant's complaint, on 30 January 2002 the Prosecutor's Office of the Altay Region admitted that his handcuffing on one occasion had been unlawful.

52. In December 2004 the applicant complained about the conditions of his detention to various public authorities. On 19 January 2005 the Prosecutor's Office acknowledged that the cell windows in Barnaul remand centre had been covered with metal shutters but rejected the other allegations as untrue.

53. On 1 February 2005 the Regional Department of the Interior accepted that some (unspecified) complaints concerning the applicant's detention in the temporary detention centre "had been confirmed". On 14 July 2005 the Tsentralniy district prosecutor's office forwarded the applicant's renewed complaint for examination by the Regional Department of the Interior.

54. The applicant brought proceeding against the Tsentralniy district prosecutor's office on account, *inter alia*, of their alleged failure to examine his complaint and to bring the conditions of detention into compliance with the law. Having examined the matter under Article 125 of the Code of Criminal Procedure (see paragraph 59 below), on 16 January 2006 the Tsentralniy District Court of Barnaul rejected his claim. On 16 March 2006 the Altay Regional Court set aside this decision and remitted the matter to the district court. The court held that the first-instance court should have examined why the applicant had been detained in the temporary detention centre for one month. On 29 March 2006 the District Court decided that the prosecutor had failed to examine the applicant's complaint about his lengthy detention in the temporary detention centre.

55. In the meantime, on 27 February 2006 the Regional Prosecutor's Office informed the applicant that the cells in the temporary detention centre had plank beds, toilet facilities and normally housed four to five persons; no bedding was provided to detainees. It is unclear whether the above reply concerned the year 2006 or the period complained of by the applicant.

56. It appears that, having examined the applicant's complaints about the conditions of his detention, on 5 September 2006 the district prosecutor's

office refused to initiate criminal proceedings under Articles 285 and 286 of the Criminal Code, concerning abuse of power by a public official.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. RSFSR Code of Criminal Procedure

57. Under Article 47 § 1 of the RSFSR Code of Criminal Procedure, in force at the material time, counsel could be admitted to the proceedings from the moment of announcing/listing charges, or – for an arrested or detained suspect – from the moment of giving him or her access to the arrest record or detention order. If a privately-retained counsel did not appear within twenty-four hours, the authority in charge of the case was allowed to suggest that the person retain another counsel, or to appoint counsel (Article 47 § 2). In order to act as counsel in criminal proceedings an advocate had to be in possession of an order issued by the legal office (§ 4). A single counsel could not represent persons with conflicting interests (§ 5). On 27 June 2000 the Constitutional Court declared the limitation period for access to legal assistance contained in Article 47 § 1 unconstitutional. On 25 October 2001 the Constitutional Court indicated that Article 47 § 4 did not require any special permission for meetings with counsel. However, in the same decision the Constitutional Court invalidated one provision of the 1995 Custody Act in so far as the authorities applied it as requiring counsel who wished to see their clients to obtain special leave from the authority in charge of the criminal case.

58. Under Article 96 of the RSFSR Code of Criminal Procedure, the officer or authority in charge of the criminal case was required to inform without delay the next of kin of the arrested or detained suspect or defendant about his or her place of detention.

B. The 2001 Code of Criminal Procedure

59. Articles 123 and 125 of the Code concern judicial supervision over any (in)action on the part of an inquirer, investigator or prosecutor in so far as such (in)action affects a complainant's rights or impedes his or her access to a court. The judge either (i) invalidates the impugned (in)action as unlawful or lacking justification and requires the respondent authority to remedy the violation, or (ii) rejects the complaint.

60. Article 413 of the 2001 Code of Criminal Procedure provides that criminal proceedings may be reopened if the European Court of Human Rights has found a violation of the Convention.

III. RELEVANT INTERNATIONAL DOCUMENTS

61. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) provides that prisoners shall be allowed to inform their families immediately of their imprisonment (Rule 24.8). Upon the admission of a prisoner to prison, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner (Rule 24.9).

62. Pursuant to Rule 44 § 3 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that the conditions of his detention in the temporary detention centre and Barnaul remand centre had been in breach of Article 3 of the Convention, which reads provides:

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

A. Admissibility

1. Submissions by the parties

(a) The Government

64. The Government submitted that the complaint in relation to the temporary detention centre had been submitted out of time. The fact that the applicant raised the matter before the national authorities in 2004 did not affect the calculation of the six-month time-limit but instead indicated that the applicant had not exhausted domestic remedies before raising the

complaint before the Court. Nor had he exhausted domestic remedies in respect of the remand centre. They noted that at the time the applicant had been informed of various domestic remedies.

65. The Government further pleaded that the remedies available to the applicant were effective, which was confirmed by the inquiries carried out following his complaint in 2004 (see paragraphs 52 - 56 above). All complaints from the applicant had been registered and processed in compliance with the applicable legislation. The applicant made no complaint against the remand centre during his stay there. He only raised a complaint in 2004. This complaint was examined and rejected as unfounded. The applicant chose to challenge in the courts the prosecutor's inaction in dealing with his complaint. That challenge was granted and after a fresh inquiry the applicant's complaint was again rejected as unfounded. After the period of detention complained of, the applicant should have brought civil proceedings against the Federal Penitentiary Service and the Ministry of Finance, claiming compensation in respect of any eventual health damage and non-pecuniary damage. Had the applicant brought civil proceedings he would have been able to collect the necessary evidence to prove his allegations "beyond reasonable doubt".

(b) The applicant

66. The applicant considered that he had complied with the six-month time-limit. He raised a complaint about the conditions of detention in the temporary detention centre during the trial, which ended with the appeal decision of 22 May 2002, that is, within the six-month period. The applicant argued that the remedies suggested by the Government were ineffective and were not to be exhausted.

2. The Court's assessment

67. Having examined the parties' submissions and the available materials, the Court considers that the applicant's grievances relate to five periods of detention:

- from 3 February to 2 March 2001 in the temporary detention centre;
- from 2 or 3 March to 12 March 2001 in the remand centre;
- from 13 to 23 March 2001 in the temporary detention centre;
- from 24 March 2001 to 6 April 2002 in the remand centre; and
- from 7 to 27 June 2002 in the remand centre.

68. The Court observes at the outset that the first correspondence to the Court, enclosing the application form dated 25 June 2002, was dispatched by the applicant's representative only on 6 November 2002. The applicant made no submissions on that matter and provided no explanation for the delay. The Court will thus take 6 November 2002 as the date of introduction of the present application, including complaints about the conditions of

detention in two detention facilities and the alleged lack of remedies in that respect.

69. The Court reiterates that the purpose of the six-month rule under Article 35 § 1 of the Convention is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32 and 33, *Reports of Judgments and Decisions* 1997-V). The rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, *Decisions and Reports* (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

70. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy was available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted however in a manner which would require an applicant to bring a complaint before Court before his position in connection with the matter has been finally determined at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to calculate the six-month time-limit from the date when the applicant first became or ought to have become aware of those circumstances (see, among others, *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009).

71. As with the exhaustion rule and the six-month requirement in Article 35 § 1 of the Convention, there is also a close affinity between the requirements of Article 13 of the Convention and the exhaustion rule. The latter's purpose is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13, that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). The only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and are both available and sufficient. The existence of such

remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 142, ECHR 2006-...).

72. In view of the above, the Court will examine whether the applicant's complaints concerning both detention facilities comply with the admissibility criteria under Article 35 § 1 of the Convention.

(a) Temporary detention centre

73. The Court does not find that the applicant's detention in the temporary detention centre and the remand centre from 3 February 2001 to 27 June 2002 constituted a “continuing situation” requiring a global assessment (see *Maltabar and Maltabar v. Russia*, no. 6954/02, § 83, 29 January 2009). Thus, the Court observes that the applicant's detention in the temporary detention centre ended on 23 March 2001, that is, more than six months before the date on which the application was lodged with the Court (6 November 2002).

74. As regards the applicant's suggestion that the appeal decision of 22 May 2002 in his criminal case should be taken as the relevant “final decision” since he had raised the matter of the conditions of detention at the trial, the Court observes that the applicant's grievances at the trial essentially concerned ill-treatment for the purpose of extracting a confession and the allegedly unlawful length of detention in the temporary detention centre. In any event, it does not appear that the trial court, the primary mission of which was the determination of criminal charges against the applicant, was empowered to examine the substance of the applicant's grievance concerning the material conditions of detention, in particular on account of the overpopulation problem, and to afford him redress. The Court reiterates in that connection that where an applicant has tried a remedy that the Court considers inappropriate, the time taken to do so will normally not interrupt the running of the six-month time-limit, which may lead to the application being rejected as out of time (see *Rezgui v. France (dec.)*, no. 49859/99, ECHR 2000-XI, and the *Zenin* decision, cited above). Thus, the Court dismisses the applicant's argument.

75. Nor should the replies of the national authorities to the applicant's complaints since December 2004, that is after the introduction of the present application, be taken as the relevant “final decisions”. None of those authorities (the regional department of the Interior, the regional prosecutor's office or a court under the Code of Criminal Procedure) could at the time be considered as remedies capable of providing an adequate redress in relation to the complaint about the conditions of detention in 2001 (see paragraphs 53 - 56 above; see also, among other authorities, *Aleksandr Makarov v. Russia*, no. 15217/07, § 76 et seq., 12 March 2009). In fact, when lodging his application before the Court in November 2002, the applicant himself did not consider that any such complaint would afford any redress to him.

76. It follows that the relevant date for the calculation of the six-month time-limit is 23 March 2001, while the application was introduced only on 6 November 2002. Thus, the applicant has not complied with the six-month rule in respect of his complaint about the conditions of detention in the temporary detention centre.

(b) Barnaul remand centre

77. The Court reiterates that the applicant was detained in Barnaul remand centre during three periods: from 2 or 3 March to 12 March 2001; from 24 March 2001 to 6 April 2002 and from 7 to 27 June 2002. The Court does not consider that the above periods constituted a continuing situation. Thus, in so far as the first two periods are concerned, the complaint was lodged with the Court more than six months later. For the reasons set out above, the Court finds that the applicant's subsequent attempts to bring his grievances about the material conditions of detention to the attention of the national authorities did not interrupt the running of the six month period (see paragraphs 51 and 8 above). It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention.

78. As regards the remaining period of detention from 7 to 27 June 2002, no issue arises as to the six-month time-limit. However, the Government suggested that after the period of detention complained of, the applicant should have brought civil proceedings against the State, claiming compensation in respect of any eventual health damage and non-pecuniary damage. However, the Government failed to specify the appropriate course of action and to provide any further particulars in relation to their assertion. Thus, the Government's objection should be dismissed. Moreover, the Court does not consider that an action for damages had any prospect of success, in particular as regards the applicant's detention in June 2002, which did not relate to the problem of prison overpopulation but rather concerned the other material conditions, in particular the allegedly insufficient access of natural air and light to the cell in view of the use of shutters on the cell window. It is noted that the presence of such shutters was considered at the time to be lawful (see, in a similar context, *Aleksandr Makarov*, cited above, §§ 76-81 and §§ 86-89). In view of the above, the applicant should be considered as having complied with the exhaustion requirement.

79. The Court considers, in the light of the parties' submissions, that the applicant's complaint concerning the conditions of his detention from 7 to 27 June 2002 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

80. The Court observes that the parties agree in substance that (i) in June 2002 the applicant was kept for some twenty days alone in a cell measuring slightly over 4 square metres; and (ii) the cell window measuring 0.36 square metres was covered with metal shutters (see paragraphs 46 - 49 above). The remaining circumstances are in dispute between the parties.

81. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI). It is noted, however, that instead of the size of the relevant cell, the focus of the applicant's grievance in the admissible part is on the limited access of natural light and air to the cell. The Court accepts that the applicant could have sustained certain inconveniences on account of the small size of the window and the presence of shutters on it. At the same time, the Court was unable to determine whether the apparent lack of natural light affected him in any significant way. Nor is there any evidence that the internal light or ventilation system were deficient. In addition, it is noted that the applicant could participate in the daily outdoor exercise sessions alongside other detainees and communicate with the outside world, including his counsel or family, during that period. Lastly, the Court does not consider on the basis of the available material that the other material conditions referred to by the applicant were such as to amount to a form of degrading or inhuman treatment.

82. Thus, on the basis of the materials before it, the Court considers that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 7 to 27 June 2002.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

83. The applicant also complained that he had no effective remedies for his above grievances about the conditions of his detention in the temporary detention centre and Barnaul remand centre. The Court will examine this complaint under Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

84. The parties' submissions are presented in paragraphs 64 - 66 above.

A. Admissibility

85. The Court points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudla*, cited above, § 157). The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

86. The Court observes that the applicant's complaints concerning the conditions of his detention between 3 February 2001 and 7 June 2002 were declared inadmissible. Thus, the applicant's claim in this part cannot be considered as “arguable” (see, among others, *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 44, 30 September 2008).

87. However, as regards the alleged lack of effective remedies in relation to the conditions of the applicant's detention from 7 to 27 June 2002, the Court concludes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

88. The Court reiterates that after the end of the period of detention complained of the applicant wrote to the regional prosecutor's office about the conditions of his detention in the remand centre. In January 2005 the prosecutor's office examined that complaint, acknowledged that the cell windows in the remand centre had been covered with metal shutters, and rejected the other allegations as untrue. In the Court's view, despite some positive outcome for the applicant, the decisive question in assessing the effectiveness of a remedy concerning a complaint of inhuman and degrading treatment is whether the applicant could have raised that complaint before a prosecutor in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). The Court notes that the Government did not explain how any findings by a prosecutor could have offered the aforementioned preventive or compensatory redress or both for allegations of the conditions of detention (see, for similar reasoning, *Ostrovar v. Moldova* (dec.), no. 35207/03, 22 March 2005). It was not convincingly shown that a complaint to a

prosecutor was capable of providing redress in respect of the applicant's Convention complaint.

89. The Court has previously held that a complaint to a prosecutor in the Russian legal system did not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such a complaint did not therefore constitute an effective remedy within the meaning of Article 35 of the Convention (see *Aleksandr Makarov*, cited above, § 86, and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007).

90. Thus, the foregoing considerations together with the relevant findings in paragraphs 75 and 78 above have led the Court to conclude that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for the applicant to complain about the allegedly insufficient access of natural light and air to the cell of the remand centre in June 2002.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

91. The applicant complained that he had not had a fair trial. He alleged, in particular, that following his arrest he had been refused permission to be represented by a lawyer of his choice; that legal aid counsel D. had been inefficient; that he had been questioned in a coercive environment and had been forced to incriminate himself without the benefit of effective legal advice. He also contended in general terms that the prosecution had not proven his guilt and that the trial court had wrongly assessed the available evidence. Article 6 in the relevant parts reads as follows:

“1. In the determination of... any criminal charge against him, everyone is entitled to a fair....hearing...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;...”

92. In addition, between 2004 and 2007 the applicant raised a number of new complaints relating to the criminal proceedings against him. In particular, he contended that a Ms S. had had no legal advice when she was compelled by police officers to make incriminating statements against him at the pre-trial stage of the proceedings; that the wording of certain pre-trial orders by the investigators violated the presumption of innocence; that between May and July 2001 he could see his privately-retained counsel S. in private but only in the presence of the investigator; and that he had not been afforded adequate time and facilities to study the case file.

A. Admissibility and scope of the case

93. As to the initial complaints concerning the pre-trial stage of the proceedings and the fairness of the trial, the Court considers, in the light of the parties' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

94. As regards the complaints first raised in 2004-2007, the Court considers that they cannot be seen as an elaboration of any previously aired complaint. The Court reiterates that the running of the six-month time-limit for the complaints not included in the initial application is not interrupted until the date when the complaint is first submitted to the Court (see *Majski v. Croatia*, no. 33593/03, § 33, 1 June 2006, citing *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001). It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

95. The applicant submitted that after his arrest he was placed in conditions which ruled out any effective legal advice and compelled him to confess to various offences. The applicant claimed that the investigator had arbitrarily prevented him from retaining K. as counsel. The applicant also argued that his mother had first learnt about his arrest from a third person on 6 February 2001. No meeting with her had been allowed for security reasons in February and March 2001. Investigator A. had misled the applicant's mother by stating that the applicant was satisfied with counsel D. and needed no other counsel. The applicant's objection notwithstanding, D. continued to act as counsel but refused any private consultations with the applicant. The applicant was beaten up and threatened during the "talks" with the police officers who operated on a regular basis in relay. Counsel had not been present at those interviews, and had merely signed the record of the interviews by the investigator(s). Duress was proven by the time-span between the hours when the investigator(s) or officers were present in the temporary detention centre and the interview time in the presence of counsel. Being without any advice and worn out by threats and ill-treatment at the hands of officers, the applicant saw no choice but confess. On each

occasion the applicant was then taken to the investigator, who recorded the confessions. The applicant's inordinate stay in the temporary detention centre was intended to provide the officers with an opportunity to extract confessions. None of the officers was authorised to deal with the case and the only reason for their visits was to put pressure on him.

(b) The Government

96. The Government submitted that on 3 February 2001 the applicant had been informed of his procedural rights, including the right to legal assistance. The applicant voluntarily waived that right. The investigator informed the applicant's mother of her son's arrest on 4 February 2001 but she delayed appointment of counsel until 6 March 2001. The applicant had not been refused a meeting with his mother. The applicant named no particular counsel of his choice. In order to advance the investigation, the investigator appointed legal-aid counsel D. On 13, 20 and 26 February 2001 the applicant admitted to several crimes; his confessions were put in writing by the investigator. No counsel was present since a confession was not considered as an investigative measure requiring legal assistance. In any event, the applicant did not complain to the national authorities that counsel had been prevented from being present on those dates. The applicant confirmed his confessions at interviews on 13, 15, 18, 21 and 27 February 2001 in the presence of counsel D. There was no indication that counsel was inefficient. No injuries were recorded in February 2001. From 6 March 2001 the applicant was represented by privately-retained counsel S. The applicant chose to remain silent. However, on 15 March 2001 the applicant actively participated at the visit to the crime scene and testified in relation to the double murder in the presence of counsel S. On 23 March 2001 the applicant formally refused the services of counsel D. The injuries recorded on 21 April 2001 were unrelated to the confessions made in February 2001, and were caused by cellmates during the period when the applicant already retained counsel. In any event, the applicant refused to make any complaint in relation to that incident. The applicant's allegations of ill-treatment were examined by the trial court and were rejected as unfounded. The trial court took account of the confessions in mitigating the sentence.

2. The Court's assessment

(a) General principles

(i) Legal assistance and privilege against self-incrimination

97. Article 6 § 1 of the Convention requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances

of each case that there are compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008; see also *Dayanan v. Turkey*, no. 7377/03, §§ 29-34, 13 October 2009). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (ibid). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

98. The Court reiterates that a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of one's own choosing (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 99, Series A no. 80, and *Pakelli v. Germany*, 25 April 1983, § 31, Series A no. 64). The national court may override the defendant's wish relating to legal representation when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (see *Croissant v. Germany*, 25 September 1992, §§ 29 and 30, Series A no. 237-B).

99. Assigning counsel does not in itself ensure the effectiveness of the assistance this counsel may provide to his client (see *Czekalla v. Portugal*, no. 38830/97, § 60, ECHR 2002-VIII). Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether appointed under a legal-aid scheme or privately financed. The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (ibid).

100. As regards the privilege against self-incrimination and the right to remain silent, the Court reiterates that these are generally recognised international standards which lie at the heart of a fair procedure. Their aim is to provide an accused person with protection against improper compulsion by the authorities and thus to avoid miscarriages of justice and secure the aims of Article 6 (see *Bykov v. Russia* [GC], no. 4378/02, § 92, with further references). The right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent and presupposes that the prosecution in a criminal case seeks to prove the case against the accused without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In examining whether a procedure has extinguished the very essence of the privilege against self-incrimination, the Court must examine the nature and degree of the compulsion, the existence of any relevant safeguards in the procedures and the use to which any material so obtained is put (ibid.).

101. The Court underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see *Salduz*, cited above, § 54). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-..., and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005). Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination (see, *mutatis mutandis*, *Jalloh*, cited above, § 101).

(ii) Waiver

102. The Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-...). Moreover, before an accused can be said to have impliedly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007, and *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

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

(i) Legal assistance in pre-trial proceedings

103. The Court observes that the main thrust of the applicant's complaint relating to the pre-trial period is threefold:

- the applicant was not afforded an opportunity to retain counsel of his choice (Mr K. or another counsel retained by his family);
- legal-aid counsel D. was inefficient;
- as a result of the above, the applicant confessed without the benefit of effective legal advice.

104. The Court considers that the central issue raised by the applicant's case is his allegation that he was prevailed upon in a coercive environment to incriminate himself without the benefit of effective legal advice.

105. The Court observes at the outset that the relevant facts are in dispute between the parties, especially as to the circumstances of the applicant's admissions to the murder-related charges.

106. First, in the absence of any proof to the contrary, the Court accords weight to the applicant's argument that he was not allowed to contact his next of kin after the arrest. There is no evidence showing that the investigator immediately informed the family of the applicant's arrest or that the applicant asked him not to do so. The Court considers that affording a detainee a possibility to make his family aware of his or her arrest is an important safeguard against arbitrary detention and is intended to facilitate his or her decision concerning the exercise of the right to legal assistance, as well as the privilege against self-incrimination and right to remain silent (see also paragraphs 61 and 62 above). The Court considers that already between 3 and 6 February 2001 the applicant found himself in a vulnerable position.

107. The Government contested that the applicant had expressed any wish to be represented by Mr K. The Court does not need to determine whether the applicant named Mr K. during that period and whether a conflict of interest legitimately prevented K. from representing him (see paragraph 10 above). The fact remains that, as confirmed by the investigator at the trial (see paragraph 32 above), the applicant did not want to ensure his own defence and did assert his right to counsel. It was thus the authorities' obligation to ensure that he be able to exercise that right, for instance, by contacting a lawyer by telephone or by other available means. The applicant made his intention to be assisted by counsel sufficiently clear to make it imperative for the investigating authorities to give him the benefit of legal assistance, unless there existed compelling reasons justifying the denial to the applicant of access to a lawyer (see *Panovits v. Cyprus*, no. 4268/04, § 66, 11 December 2008, and *Pishchalnikov v. Russia*, no. 7025/04, § 73, 24 September 2009).

108. The Court observes in that connection that the applicant was not offered the services of a legal-aid counsel until 6 February 2001, that is, several days after his arrest. The Court accepts that the interests of justice required that the applicant be afforded free legal assistance. Bearing in mind that the Convention is intended to guarantee rights which are practical and effective, the Court has to assess the effectiveness of counsel D.'s assistance. In other words, the Court has to determine whether the assistance by the legal-aid counsel appointed by the investigator was such as to secure the compliance with the guarantees of Article 6 in the circumstances of the case, in particular for preventing any breach of the privilege against self-incrimination and the effective exercise of the right to remain silent.

109. On 6 and 7 February 2001 the applicant declined the services of counsel D., as he was awaiting counsel to be retained by his mother, and apparently because he did not trust D. The applicant chose to remain silent. However, in the circumstances detailed below, on 13, 20 and 26 February 2001 the applicant made confessions in respect of several particularly serious offences. Mr D. was considered as the applicant's counsel and was thus required to sign the record. However, having examined the available material, the Court considers that there are serious grounds to believe that during the relevant period the applicant was questioned on numerous occasions without effective legal advice.

110. Indeed, after the applicant had first made admissions in relation to victim F. the authorities took measures at constituting a group of investigators on account of “the complexity of the case and the large amount of work to be done”. Moreover, the police department assigned several officers to verify through a “series of operational and search measures” whether the applicant was involved in the recent disappearances of female students from a local university. The Court does not exclude that there could have been certain circumstances in F.'s and G.'s cases, for instance a common *modus operandi*, which raised a reasonable suspicion against the applicant beyond the events concerning those victims.

111. As can be seen from the extract from the visitors' logbook produced by the applicant at the trial and before the Court, various police officers visited the applicant in relay on a virtually daily basis in the temporary detention centre. Importantly, no plausible explanation was given for the discrepancies in the timing of the officers' and investigators' visits to the applicant, on one hand, and counsel D.'s presence or absence in the remand centre, on the other. Counsel was present only for the purpose of questioning by the investigator or when certain investigative measures were carried out, for instance a photo identification. There is no indication that the applicant validly waived his right to be assisted by counsel for the purpose of the above “talks” with the officers. The Court was afforded no means for verifying that the “talks” did not concern the crimes which the applicant eventually admitted. In fact, the respondent State did not attempt to clarify the nature of those “talks” so as to dispel any doubts about their inappropriate character (compare *Ebbinge v. the Netherlands* (dec.), no. 47240/99, ECHR 2000-IV, concerning the use of a particular interrogation technique).

112. Despite the complexity of the situation in which the applicant found himself at that stage of the proceedings, the Court found no indication that counsel D. took any measures for his client beyond merely signing the record on several occasions (see, by contrast, *Kuralić v. Croatia*, no. 50700/07, § 48, 15 October 2009). This is particularly worrying against the background of the above-mentioned visits from police officers. The

Court also finds it established that the applicant was not allowed to see next of kin throughout the month of February 2001 (see paragraph 32 above).

113. The fact that the applicant refused the services of counsel D. amounted to a clear indication that the applicant experienced difficulties with legal representation. Being faced with the applicant's rejection of counsel D., the investigators were, however, satisfied that this counsel would properly defend the applicant in the course of the investigation. The investigators' interest in the advancement of the investigation and eventual disclosure of other offences through possible confessions from the applicant did not induce them to keep a close eye on the effectiveness of the defence.

114. The foregoing considerations disclose, in the Court's view, a series of serious shortcomings in relation to the applicant's exercise of his right to legal assistance in the pre-trial proceedings.

(ii) The use of evidence at the trial

115. The Court has also taken note of the concomitant grievances raised by the applicant. They concern in substance the use made of the available evidence against him, including his pre-trial confessions, at the trial. The Court reiterates in that connection that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Jalloh*, cited above, § 94, and *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports 1998-IV*). It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair.

116. Thus, the Court has previously considered that, in determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence have been respected, in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Panovits*, cited above, § 82). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (*ibid.*). Indeed, where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Allan v. the United Kingdom*, no. 48539/99, § 47, *ECHR 2002-IX*).

117. In the present case, in finding the applicant guilty the trial court relied on his pre-trial admissions and certain other evidence, including

various pieces of physical evidence obtained through the use of information provided by the applicant in his statements made in February 2001 (see paragraphs 34 - 39 above). The Court has already discussed the circumstances in which they were obtained, and considers that they were such as to cast doubt on the reliability of the admissions. It also transpires that both the trial and appeal courts dealt with the alleged violation of the applicant's right to legal assistance during the preliminary investigation, as well as his allegations of ill-treatment and confession under duress (see paragraphs 32, 33 and 40 above). It is noted, however, that the applicant made no specific allegations concerning the procedure by which the courts reached their decision concerning the admissibility of the evidence, including his own confessions (cf. *Bykov* [GC], cited above, § 95). Nor did he put forward any specific arguments concerning the admissibility or sufficiency of the other evidence such as expert reports or witness statements.

118. In any event, no further findings are required in that respect in the present case since having found that the pre-trial restriction on the applicant's right to counsel had no justification the Court does not need to consider further what effect that restriction had on the overall fairness of the criminal proceedings against the applicant (see *Pishchalnikov*, cited above, § 81, and *Öngün v. Turkey*, no. 15737/02, §§ 34 and 35, 23 June 2009).

(iii) Conclusion

119. Thus, even though at the trial the applicant had an opportunity to challenge the evidence against him in adversarial proceedings with the benefit of legal advice, the Court reiterates its foregoing findings concerning the legal assistance in the pre-trial proceedings, and concludes that the shortcomings in respect of the legal assistance at that stage seriously undermined the position of the defence at the trial.

120. There has accordingly been a violation of Article 6 § 1 of the Convention in conjunction with its paragraph 3 (c).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. The applicant also complained under Article 3 of the Convention that he had been beaten up several times by interrogators and cellmates. Lastly, the applicant complained that his prolonged detention in the temporary detention centre and the search and seizure in his flat had been in breach of Articles 3, 5 and 8 of the Convention.

122. The Court has examined the remaining complaints as submitted by the applicant. Having regard to all the material in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this

part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government contested that claim as excessive.

126. Having regard to the nature of the violations found and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

127. As regards the findings under Article 6 §§ 1 and 3 (c) of the Convention, the Court also reiterates that when an applicant has been convicted despite an infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the relevant proceedings if requested (see *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV, and *Bocos-Cuesta v. the Netherlands*, no. 54789/00, § 82, 10 November 2005). The Court notes in this connection that Article 413 of the Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court has found a violation of the Convention.

B. Costs and expenses

128. The applicant also claimed EUR 51,930 for the costs and expenses incurred before the domestic courts, including counsel S.'s fees in the criminal proceedings, and EUR 1,105 for those incurred before the Court, including the fee paid by the applicant's mother for Mr Prokopyev's work, as well as postal, photocopying and translation costs.

129. The Government contested the claims as unreasonable or having no connection to the respective proceedings.

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

that these have been actually and necessarily incurred and were reasonable as to quantum. Regard being had to the information in its possession, the above criteria and the fact that a sum of EUR 850 was already paid by way of the legal aid under Rule 92 of the Rules of Court, the Court considers it reasonable to award the sum of EUR 1,600 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

131. 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 concerning the alleged violations at the pre-trial stage of the criminal proceedings; the conditions of the applicant's detention from 7 to 27 June 2002, and the alleged lack of effective remedies admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, both sums to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following concurring opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
A.M.W.

CONCURRING OPINION OF JUDGE MALINVERNI

(Translation)

In paragraph 127 the judgment states that “as regards the findings under Article 6 §§ 1 and 3 (c) of the Convention, the Court ... reiterates that when an applicant has been convicted despite an infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of the provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the relevant proceedings if requested”.

For reasons I have explained on many occasions, either alone or together with other judges, in particular Judge Spielmann,¹ I would very much have liked this principle, on account of its importance, to have been reflected in the operative part of the judgment.

¹ See my joint concurring opinions with Judge Spielmann appended to the following judgments: *Vladimir Romanov v. Russia* (no. 41461/02, 24 July 2008); *Ilatovskiy v. Russia* (no. 6945/04, 9 July 2009); *Fakiridou and Schina v. Greece* (no. 6789/06, 14 November 2008); *Lesjak v. Croatia* (no. 25904/06, 18 February 2010); and *Prežec v. Croatia* (no. 48185/07, 15 October 2009). See also my concurring opinion joined by Judges Casadevall, Cabral Barreto, Zagrebelsky and Popović in the case of *Cudak v. Lithuania* ([GC], no. 15869/02, 23 March 2010), as well as the concurring opinion of Judges Rozakis, Spielmann, Ziemele and Lazarova Trajkovska in *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008-...).