



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

FIRST SECTION

CASE OF GOROSHCHENYA v. RUSSIA

(Application no. 38711/03)

JUDGMENT

STRASBOURG

22 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 Goroshchenya 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 Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 38711/03) 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 Arkadiy Yuryevich Goroshchenya (“the applicant”), on 17 November 2003.

2. The applicant was represented by Mr D. Grigoryev, a lawyer practising in Omsk. The Russian Government (“the Government”) were represented Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions, that his detention had been unreasonably long and that the criminal proceedings had not complied with the “reasonable time” requirement.

4. 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lived in St Petersburg until his arrest. He is now serving his sentence in a correctional colony in Omsk.

A. Arrest and detention during the investigation

6. On 4 October 1999 the applicant was arrested on suspicion of fraud. Two days later he was charged with aggravated robbery. On the following day the St Petersburg City Prosecutor authorised his detention, finding that the applicant was liable to reoffend, pervert the course of justice and abscond, as he was charged with a particularly serious criminal offence, had been living unregistered in St Petersburg and in 1995 had been placed on the wanted persons' list owing to his absconding from an investigation into aggravated fraud. The prosecution authorities used the same grounds while further extending on 25 October and 17 December 1999 and 23 June 2000 the detention of the applicant and his eight co-defendants.

7. On 12 May 2000 the applicant was charged with organisation of a criminal enterprise, twelve counts of robbery, unlawful possession of a weapon, theft of a weapon, forgery of documents, fraud, aggravated theft and intentional destruction of property. On 7 September 2000 he was committed to stand trial before the St Petersburg City Court.

B. Judicial proceedings and further extensions of detention.

1. Detention order of 6 October 2000 and trial proceedings

8. On 6 October 2000 the St Petersburg City Court fixed the first trial hearing for 24 October 2001 and, without providing any grounds, held that the applicant should remain in custody. The Government, relying on a letter drafted on 17 July 2007 by the acting first deputy of the St Petersburg City Court President, stressed that it had been impossible to schedule the first trial hearing for an earlier date because the City Court judges had been overburdened with cases. In particular, 502 cases were pending before twenty judges.

9. The first hearing fixed for 24 October 2001, as well as the following one listed for 27 November 2001 had been adjourned because the presiding judge was participating in other unrelated proceedings. The hearing fixed for 10 January 2002 was rescheduled because a co-defendant was ill and two counsel failed to appear. The hearing on 25 January 2002 also did not take place owing to the absence of free courtrooms.

10. Between 29 January and 18 March 2002 the City Court held eighteen hearings. Of four hearings fixed between 18 March and 25 September 2002, two were postponed because the presiding judge was participating in other proceedings and two were rescheduled because two co-defendants and a lawyer were ill.

2. Detention order of 1 July 2002 (extension until 30 September 2002)

11. On 1 July 2002 a new Code of Criminal Procedure became effective. On the same day the St. Petersburg City Court extended the applicant's and his co-defendants' detention until 30 September 2002, holding that they were charged with especially serious criminal offences and were liable to reoffend, pervert the course of justice and abscond. The defendants and their lawyers were not present at the hearing.

12. On 7 October 2002 the Supreme Court of the Russian Federation quashed the decision of 1 July 2002, finding that the City Court had not summoned the defendants and their lawyers.

13. On the following day the City Court re-examined the detention issue and retrospectively extended the applicant's detention for three months, until 30 September 2002. It held that the applicant and his co-defendants were charged with serious criminal offences and that if released they could pervert the course of justice, reoffend or abscond. The City Court did not cite any factual circumstances supporting its conclusion of the defendants' liability to interfere with the proceedings, to commit another offence or escape the trial.

14. The two trial hearings fixed for 23 October and 11 November 2002 were adjourned because counsel was ill. The following hearing was scheduled for 28 November 2002.

15. On 23 December 2002 the Supreme Court quashed the decision of 8 October 2002 in respect of the applicant and ordered a re-examination of the detention issue. It noted that the applicant's lawyer had been summoned to the hearing on 8 October 2002. However, he had been ill and unable to attend. The Supreme Court, reiterating that the City Court had accepted the reason for the lawyer's absence as valid, concluded that in such circumstances it should have adjourned the examination of the detention matter in respect of the applicant.

16. The City Court once again re-examined the detention matter on 24 December 2002 and retrospectively extended the applicant's detention until 30 September 2002, referring to the same grounds as in the previous detention orders.

17. The applicant and his lawyers, including retained counsel, Mr R., appealed against the decision of 24 December 2002.

18. On 11 March 2003 the Supreme Court dismissed the applicant's appeal against the decision of 24 December 2002 because no procedural or substantive violations had been established and refused to examine the statement of appeal submitted by Mr R. because the latter did not attend the appeal hearing.

3. Detention orders of 25 September and 26 December 2002 (extensions until 30 December 2002 and 30 March 2003)

19. In the meantime, on 25 September and 26 December 2002 the St Petersburg City Court, using collective orders, extended the detention of all co-defendants, including the applicant, until 30 December 2002 and 30 March 2003, respectively. The reasons for the extensions were identical to those that had been given in the previous detention orders. Both detention orders were upheld by the Supreme Court on 9 December 2002 and 12 March 2003, respectively. The Supreme Court found no violations of substantive and procedural law.

20. Between 28 November 2002 and 13 March 2003 the City Court scheduled twenty-six hearings, of which six were postponed to obtain attendance of witnesses and victims, seven were adjourned owing to counsel's illness or inability to attend, four were rescheduled because defendants were not brought to the court-house from the detention facility and one was fixed for a later date to allow defendants to study new materials presented by the prosecution.

4. Detention order of 13 March 2003 (extension until 30 June 2003)

21. On 13 March 2003 the St Petersburg City Court extended the applicant's and his co-defendants' detention until 30 June 2003. It noted that the defendants were charged with particularly serious criminal offences, certain "episodes of criminal activity" had not yet been examined in open court and the defendants were still liable to abscond and pervert the course of justice. The trial hearing fixed for 13 March 2003 was rescheduled for 2 April 2003. On 26 May 2003 the Supreme Court examined the grounds of the applicant's appeal against the decision of 13 March 2003 and upheld the decision.

22. Between 2 April and 24 June 2003 the City Court listed twenty-nine hearings, of which two were postponed because the defendants were not transported to the court-house, two hearings were adjourned owing to the prosecutor's or counsel's illness and one was rescheduled because victims and witnesses failed to appear.

5. Detention order of 24 June 2003

23. On 24 June 2003 the St Petersburg City Court extended the applicant's and his co-defendants' detention, holding that they were charged with serious criminal offences and were liable to abscond. It appears that on an unspecified date the detention order was upheld by the Supreme Court.

6. *Conviction*

24. At the hearing on 25 June 2003 the applicant unsuccessfully asked the St. Petersburg City Court to invite his non-marital partner as a “public defender” in the proceedings.

25. Of four hearings fixed between 26 June and 7 July 2003, three were adjourned due to a lawyer's illness.

26. On 7 July 2003 the St Petersburg City Court held that another lawyer should be appointed to replace the frequently ill counsel. The new lawyer was afforded ten days to study the case file.

27. On 14 July 2003 the applicant complained to the City Court that he had been ill-treated in a detention facility. The City Court referred the complaint to the St. Petersburg City Prosecutor, who on 11 December 2003 dismissed it as unsubstantiated and informed the applicant of his right to appeal against that decision to a higher-ranking prosecutor or a court. No appeal followed.

28. According to the applicant, on the day of a court session reveille was at 5 or 6 a.m. Inmates were brought to a small room of 6 square metres where they were kept for several hours. The room was cold in winter. It was dirty and poorly lit. At about 9 a.m. transportation of inmates to the courthouse began. Inmates were placed into an overcrowded van and transported in inhuman conditions for many hours; the van called in on the way at several courthouses until the inmates reached their destination. The inmates received no food for the entire day.

29. On 21 July 2003 the St Petersburg City Court found the applicant guilty of aggravated robbery and fraud and sentenced him to twelve years' imprisonment. The City Court discontinued the proceedings in respect of the remaining charges either because the prosecution had dropped the charges or the limitation period had expired. It based its one hundred and thirty-four-page judgment on statements by numerous witnesses, victims and defendants who had been heard in open court, material evidence and expert opinions. The City Court, with the applicant's consent, read out statements by three witnesses who had not been heard in open court. Those statements were made during the pre-trial investigation. The applicant was represented by retained counsel who had assisted him throughout the criminal proceedings and a court-appointed lawyer.

30. On 15 January 2004 the Supreme Court examined the appeals lodged against the judgment of 21 July 2003. It discontinued the proceedings in respect of the fraud charges because the limitation period had expired and upheld the remaining conviction. The Supreme Court reduced the applicant's sentence to eleven years' imprisonment.

31. On 21 June 2007 the Kuybyshevskiy District Court of Omsk, having established that the applicant “had definitely taken his first steps on the road to improvement”, authorised his release on probation. The management of

the correctional colony supported that finding. The applicant was released on 4 July 2007, after the decision of 21 June 2007 had become final.

C. Conditions of the applicant's detention

32. From 14 October to 10 December 1999 the applicant was detained in facility no. IZ-47/1 in St Petersburg, commonly known as Kresty. On 10 December 1999 he was transferred to facility no. IZ-47/4 in St Petersburg, where he was kept until 3 April 2004.

33. According to the applicant, the general conditions of his detention in those facilities were similar. Relying on written statements by his former fellow inmates, he argued that he had been detained in three different cells in facility no. IZ-47/1 and ten different cells in facility no. IZ-47/4. The cells had six sleeping places and housed from eight to twenty-five inmates. Given the lack of beds, inmates slept in shifts. The sanitary conditions were unsatisfactory. The lavatory pan was not separated from the rest of the cell. At no time did inmates have complete privacy. Anything the applicant happened to be doing – using the toilet, sleeping – was subject to observations by warders or inmates. The cells were infected with bedbugs and lice but the administration did not provide any insecticide. Windows, measuring 0.6 square metres, were covered with thick metal bars that blocked access to natural light and fresh air. The bars were only removed in February 2003. In addition, only four cells had glazed windows. It was extremely cold in winter and was hot, stuffy and excessively damp in summer. There was no artificial ventilation. Inmates had an hour's daily exercise. On his admission to a detention facility he was given a mattress and a thin blanket. The food was of poor quality. Inmates were allowed to take a shower three times a month. The applicant contracted several infectious skin diseases. Medical assistance was not provided as the facilities lacked necessary medicines and encouraged inmates' relatives to bring them.

34. The Government, relying on certificates issued in July 2007 by the directors of the detention facilities, submitted that in facility no. IZ-47/1 the applicant had been detained in three different cells measuring 7.6 square metres and equipped with six sleeping places. In facility no. IZ-47/4 he stayed in nine different cells, measuring from 6.6 to 30.5 sq. m. On days when the applicant was to be transferred to a courthouse for trial hearings he was taken to “gathering cells” which measured 6.6 square metres. The Government did not provide information on a number of sleeping places in the cells in which the applicant had been kept in facility no. IZ-47/4. They also stressed that no information on the number of inmates in the both facilities was available as the documents had been destroyed. However, according to the Government, the applicant had an individual sleeping place at all times.

35. Citing the information provided by the directors of the facilities, the Government further submitted that the cells received natural light and ventilation through windows which had been glazed. Cells in facility no. IZ-47/1 had one window 1 metre wide and 1.1 metre long. The smaller cells in facility no. IZ-47/4 were equipped with one window and the bigger cells had two windows of the same size of 0.88 square metres. At the inmates' request window glass was removed in summertime and put back in when the temperature outside decreased. The windows were covered by thick bars with "eyelashes", that is, slanted plates approximately two centimetres apart welded to a metal screen. In compliance with the recommendations of the Russian Ministry of Justice issued on 25 November 2002, the latter construction was removed from the windows on an unspecified date in 2003. The cells had ventilation shafts. The heating system in the both detention facilities functioned properly. The cells were equipped with lamps which functioned day and night. Each cell was equipped with a lavatory pan, a sink and a tank with potable water. The pan was placed 1.5 metres from a dining table and was separated from the living area by a partition. Inmates were allowed to take a shower once a week. Each inmate was given at least fifteen minutes to take a shower. The cells were disinfected. The Government, relying on the information provided by the director of the facility, further stated that the applicant was given food "in accordance with the established norms" three times a day. As follows from medical documents presented by the Government, since his placement in detention facility no. IZ-47/4 the applicant gained 21 kilograms, weighing 85 kilograms in December 1999 and 106 kilograms in May 2004. According to the Government, detainees including the applicant were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on. In November 1999 the applicant requested medical assistance, complaining of pain in the right elbow. A preliminary diagnosis of osteoarthritis was made. However, further medical examinations and specific tests did not confirm that diagnosis. The Government further insisted that the applicant's allegations that he had contracted skin diseases were false. They supported their submissions with a copy of the applicant's medical record and various medical certificates.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

36. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23

provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Placement in custody and detention

37. Until 1 July 2002 criminal law matters 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

38. “Preventive measures” or “measures of restraint” include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 89 of the old CCrP, Article 98 of the new CCrP).

2. Authorities ordering detention

39. 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).

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

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

3. Grounds for remand in custody

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

41. Before 14 March 2001, remand in custody was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were “exceptional circumstances” in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at

least two years' imprisonment, if they had previously defaulted, had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had allegedly committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

4. Time-limits for detention

(a) Two types of remand in custody

42. The Codes make 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 judicial 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”

43. After arrest the suspect is placed 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”. Under the old CCrP, extensions were authorised by prosecutors of ascending hierarchical levels but they must now be authorised by judicial decisions, taken by courts of ascending levels (under the new CCrP). No extension of detention “during investigation” beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

44. The period of detention “during investigation” is calculated up to the date on which the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

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

46. Under the old CCrP, the trial court was entitled to refer the case back for “additional investigation” if it found procedural defects that could not be remedied at the trial. In such cases the defendant's detention was again

classified as “during investigation” and the relevant time-limit continued to apply. If, however, the case was remitted for additional investigation but the investigators had already used up all the time authorised for detention “during investigation”, a supervising prosecutor could nevertheless extend the detention period for one additional month, starting from the date on which he or she received the case. Subsequent extensions could only be granted if the detention “during investigation” had not exceeded eighteen months (Article 97).

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

47. 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”).

48. Before 15 June 2001 the old CCrP set no time-limit for detention “during judicial proceedings”. On 15 June 2001 a new Article, 239-1, entered into force which established that the period of detention “during judicial proceedings” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or at the request of a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

49. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court receives the file to the date on which 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. *Proceedings to examine the lawfulness of detention*

(a) Detention “during investigation”

50. Under the old CCrP, the detainee or his or her counsel or representative could challenge a detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required to review the lawfulness of and justification for a detention or extension order no later than three days after receipt of the relevant papers. The review was to be conducted in camera in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances, if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the

detainee's release (Article 220-1). An appeal to a higher court lay against the judge's decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (see paragraph 96 below) (Article 331 *in fine*).

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

(b) During judicial proceedings

52. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should be held in custody or released pending the trial hearings (Article 222 § 5 and Article 230 of the old CCrP, Article 228 (3) and Article 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP).

53. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including remand in custody (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

54. An appeal against such a decision lies to a higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

6. Time-limits for trial proceedings

55. Under the old CCrP, within fourteen days after receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to refer the case back for further investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court having jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; 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 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

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

57. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days after it was lodged. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this period could be extended by up to two months (Article 333). No further extensions were possible.

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).

III. RELEVANT INTERNATIONAL DOCUMENTS

General conditions of detention

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

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

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

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

...

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

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

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

on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

59. The applicant complained that the conditions of his detention in detention facilities nos. IZ-47/1 and IZ-47/4 in St Petersburg had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

60. The Government, while alleging manifestly ill-founded character of the applicant's complaint, acknowledged that the domestic sanitary norm of four square metres of personal space per inmate had not been respected in detention facility no. IZ-47/1. As regards facility no. IZ-47/4, the Government stressed that the applicant's claims were not supported by any evidence. They further argued that the domestic authorities were not the only ones liable for the lack of relevant data, showing the number of inmates in the detention facilities. It was also open to the applicant to summon the domestic courts' assistance in obtaining evidence in support of his allegations of poor conditions of detention.

61. The applicant insisted that the conditions of his detention had been inhuman and degrading. He further noted that in the absence of measuring instruments he had been unable to correctly assess the size of the cells in which he had been detained in both detention facilities. He was however prepared to accept that the Government's submissions in respect of that aspect of his detention were accurate. In addition, the applicant argued that his weight gain was the result of the extremely cramped conditions of his detention, in which lack of personal space was coupled with lack of physical exercise and low-quality high-calorie food.

B. The Court's assessment

1. Admissibility

62. The Court notes from the outset that even though the applicant has been detained in two different detention facilities, it will nevertheless examine the issue of the conditions of the applicant's detention from 14 October 1999 to 3 April 2004, without dividing it into separate periods, given the continuous nature of the alleged violation, the identical description of the general conditions of the detention and the allegation of severe overcrowding as the main characteristic of conditions in the both detention facilities (see *Guliyev v. Russia*, no. 24650/02, §§ 31-33, 19 June 2008; *Buzhinayev v. Russia*, no. 17679/03, § 23, 15 October 2009; and, most recently, *Nazarov v. Russia*, no. 13591/05, § 78, 26 November 2009).

63. The Court further notes that this 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

64. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facilities nos. IZ-47/1 and IZ-47/4 in St Petersburg. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of the facts which have been presented to it and which the respondent Government have failed to refute.

65. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facilities. The main characteristic which the parties did agree upon in principle was the size of the cells in which the applicant had been detained. The applicant, supporting his account with the inmates' written statements, claimed that the number of detainees in the cells had considerably exceeded their design capacity. The Government disagreed.

66. The Court notes that the Government, citing destruction of the relevant documents, were unable to indicate the exact number of inmates detained together with the applicant. However, relying on certificates issued by the directors of the two detention facilities more than six and three years respectively after the applicant's detention in those facilities had come to an end, the Government submitted that the applicant had an individual sleeping place at all times. In this connection the Court notes that on several previous occasions when the Government have failed to submit original records the Court has held that documents prepared after a considerable period of time cannot be viewed as sufficiently reliable, given the length of time that has elapsed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs v. Russia*, no. 20075/03, § 91, 7 December 2009). The Court is of the view that these considerations hold true in the present case. The certificates prepared by the Russian authorities more than six and three years respectively after the events in question cannot be regarded as sufficiently reliable sources of data. The Court is therefore not convinced by the Government's submission.

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

68. Having regard to the principles cited above, together with the fact that the Government did not submit any convincing relevant information, the Court accepts the applicant's argument that the cells in facilities nos. IZ-47/1 and IZ-47/4 where he had been detained for four and half years were overcrowded. In this connection, the Court also reiterates the Government's admission that even the domestic standard of a minimum of four square metres per detainee (see paragraph 36 above) was not met in the detention facility no. IZ-47/1, given the size of the cells and the number of sleeping places.

69. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

70. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-...

(extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III). More specifically, the Court reiterates that in a number of cases it has already found a violation of Article 3 on account of detention of applicants in overcrowded conditions in detention facility no. IZ-47/1 (see *Andrey Frolov v. Russia*, no. 205/02, §§ 3-51, 29 March 2007; *Gusev v. Russia*, no. 67542/01, §§ 51-61, 15 May 2008; and *Seleznev v. Russia*, no. 15591/03, §§ 38-48, 26 June 2008).

71. The Court notes that the applicant's situation resulting from insufficient personal space was further exacerbated by the fact that he was not allowed to shower more than once a week during the entire period of his detention. Furthermore, the cells in which the applicant was held had no window in the proper sense of the word. At least until the beginning of 2003 they were covered with a layer of thick bars with so-called "eyelashes". That arrangement cut off fresh air and also significantly reduced the amount of daylight that could penetrate the cells (see, for similar reasoning, *Aleksandr Makarov v. Russia*, no. 15217/07, § 96, 12 March 2009, and, more recently, *Shilbergs*, cited above, § 97).

72. The Court observes that in the present case there is no indication that there was a positive intention to humiliate or debase the applicant. However, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates in these unsatisfactory conditions was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

73. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facilities nos. IZ-47/1 and 47/4 in St Petersburg from 14 October 1999 to 3 April 2004.

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

74. The applicant complained that the length of his pre-trial detention was unreasonable, in breach of Article 5 § 3 of the Convention, which reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial."

A. Submissions by the parties

75. The Government claimed that the length of the applicant's detention had not been excessive. The extensions of the detention had been necessary in the circumstances of the case, in particular taking into account the gravity of the charges against the applicant and the risk of his obstructing the examination of the case and absconding if released. The Government stressed that the investigating and judicial authorities had exhibited particular diligence in conducting the criminal proceedings against the applicant. The criminal case was extremely difficult, involving a large number of defendants, victims and witnesses and requiring a great number of investigative and judicial steps to be taken. Furthermore, the Government drew the Court's attention to the prevailing grounds on which the applicant's detention had been extended, in particular, the absence of a registered residence in St Petersburg and the fact that he had once absconded and had been placed on the wanted persons' list. The placement on the list was warranted by the prosecution authorities' assumption that the applicant had gone into hiding, as he could not be found at his place of residence and it was impossible to establish his whereabouts.

76. The applicant replied that the domestic courts had not provided any evidence showing that he had been genuinely liable to reoffend, abscond or pervert the course of justice. The only reason for his continued detention was the gravity of the charges against him. The applicant further pointed out that he had not known of any criminal charges brought against him in 1995. In fact, he only learned about the 1995 warrant for his arrest when he was arrested in 1999. At the same time, in 1994 he and his family openly moved from Omsk to St. Petersburg. Furthermore, the criminal proceedings instituted in 1995 against him were discontinued in 2000 on "rehabilitating grounds".

B. The Court's assessment

1. Admissibility

77. 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

78. 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 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).

79. 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 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).

80. 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 (see *Labita*, cited above, § 153).

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

81. The Court finds that the period to be examined commenced on 4 October 1999, when the applicant was arrested, and ended on 21 July 2003, the day of his conviction by the St Petersburg City Court on the charges of aggravated robbery and fraud. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of his involvement in the commission of a large-scale fraud. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. The domestic authorities cited the gravity of the charges and the need to prevent the applicant from absconding and obstructing as the grounds for his placement in custody. At that stage of

the proceedings those reasons justified keeping the applicant in custody (see *Khudoyorov v. Russia*, no. 6847/02, § 176, ECHR 2005-X (extracts)). However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita*, cited above, §§ 152 and 153).

82. The Court notes that the authorities extended the applicant's detention on a number of occasions. In their decisions they consistently relied on the gravity of the charges as the main factor and on the applicant's potential to abscond or pervert the course of justice.

83. As regards the authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

84. The other grounds for the applicant's continued detention were the authorities' findings that the applicant might abscond, pervert the course of justice and reoffend. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of concrete facts in support of their conclusions.

85. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that he had been charged with serious criminal offences, and thus faced a severe sentence. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and reoffending or make it appear so

slight that it cannot justify detention pending trial (see *Letellier v. France*, 26 June 1991, § 43, Series A no. 207, and *Panchenko*, cited above, § 106).

86. In the present case, in a number of the detention decisions the domestic authorities cited the lack of a registered place of residence as the ground for the applicant's continued detention. The applicant maintained that he had a permanent place of residence in St Petersburg. However, the Court does not need to determine the applicant's residence situation, as the mere lack of a fixed abode does not give rise to a danger of absconding or reoffending (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007).

87. Another argument employed by the domestic authorities concerned the applicant's placement on the wanted persons' list in 1995. The Court accepts that that factor was relevant in assessing the risk of his absconding. Such a risk, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to escape. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see, *mutatis mutandis*, *Sergey Medvedev v. Russia*, no. 3194/08, § 52, 30 July 2009). In the light of this principle the Court is particularly mindful of the applicant's arguments, which were not disputed by the Government, that in 1994 he had openly moved his family from Omsk to St Petersburg and that it was not until 1999 that he had learned about the criminal charges brought against him in 1995 (see paragraph 76 above). The Government also did not dispute that those charges had been dropped in 2000 on "rehabilitation grounds". In this respect the Court does not lose sight of the fact that the reference to the applicant's placement on the list only appeared in the prosecution decisions extending the applicant's detention before October 2000. The domestic courts which took over the task of authorising the applicant's detention after October 2000 never mentioned his alleged attempt to abscond from criminal prosecution in 1995. The Court is therefore not convinced that in the circumstances, when the applicant was not aware of the criminal charges against him, the mere failure of the investigating authorities to find him at the place of his former residence in Omsk leading to his placement on the list of wanted persons justified the conclusion that he was liable to abscond, particularly so after the charges had been dropped on rehabilitation grounds in 2000.

88. The Court further observes that the domestic authorities did not cite any other concrete facts warranting the applicant's detention. They did not indicate any circumstance to suggest that, if released, the applicant would abscond, reoffend or otherwise upset the course of the trial. The domestic courts merely repeated the same conclusion concerning possible collusion, without citing any reason why, notwithstanding the arguments put forward

by the applicant in support of his requests for release, they considered the risk of interference with witnesses and evidence to exist and be decisive. The Court is therefore not convinced that the domestic authorities' findings that the applicant was likely to pervert the course of justice, reoffend or abscond had sufficient basis in fact.

89. The Court further emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures to ensure his or her appearance at the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other “preventive measures” – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

90. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They paid no regard to the arguments in favour of the applicant's release pending trial. It is also of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula, simultaneously extending the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible in itself with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the “reasonable time” requirement in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

91. Having regard to the above, the Court considers that by failing to address concrete relevant facts or consider alternative “preventive measures” and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as “sufficient”. They thus failed to justify the applicant's continued detention for almost four years. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period, as such a lengthy period cannot in the circumstances be regarded as “reasonable” within the meaning of Article 5 § 3 of the Convention (see *Mishketkul and Others v. Russia*, no. 36911/02, § 59, 24 May 2007, with further references).

92. The Court accordingly finds a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

93. The applicant complained that the length of the criminal proceedings was incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Submissions by the parties

94. The Government considered that the complaint of excessive length of proceedings was inadmissible under Article 35 § 3 of the Convention. They argued that the delays had been caused by objective reasons: the complexity of the case, the victims', witnesses' and lawyers' failure to attend hearings, the defendants' and counsel's illnesses, the judge's enormous workload and his participation in other unrelated proceedings.

95. The applicant contested the Government's submissions.

B. The Court's assessment

1. Admissibility

96. The Court observes that the period to be taken into consideration began on 4 October 1999, when the applicant was arrested. The period in question ended on 15 January 2004 when the Supreme Court of the Russian Federation issued the final judgment. It thus lasted approximately four years and three months before the investigating authorities and the courts at two levels of jurisdiction.

97. 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

98. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

99. The Court accepts that the proceedings at issue were complex. However, the Court cannot accept that the complexity of the case, taken on

its own, was such as to justify the overall length of the proceedings. The Court further reiterates that the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

100. As to the applicant's conduct, the Government argued that the applicant had to bear the responsibility for an adjournment of one hearing, which was due to his illness. In this connection, the Court notes that according to a summary table of court hearings presented by the Government that adjournment resulted in a one-week stay of the proceedings. Having regard to the overall length of the proceedings, the Court therefore considers the delay caused by the applicant to be negligible.

101. As regards the conduct of the authorities, the Court is aware of substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court is mindful of the fact the case was pending for more than two years and ten months before the St Petersburg City Court. In particular, it took the investigating authorities less than a year to prepare the case for examination by the trial court (see paragraph 7 above). However, after the St Petersburg City Court had received the case file on 7 September 2000, it was not until 24 October 2001 that the first trial hearing was to be held (see paragraph 8 above). The following two hearings were rescheduled due to the judge's participation in other unrelated proceedings, causing an additional delay of almost three months (see paragraph 9 above). An additional aggregated delay of more than five months was caused by the lack of available courtrooms and the judge's involvement in other proceedings (see paragraphs 9 and 10 above). The Court reiterates the Government's argument pertaining to the judge's heavy workload. However, Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004). In addition, the Court considers it particularly striking that six hearings were adjourned due to the authorities' failure to transport the defendants from the detention facilities to the court-house (see paragraphs 20 and 22 above).

102. The Court furthermore notes that the conduct of the victims and witnesses was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend at least seven hearings and the City Court's failure to discipline them is attributable to the State (see *Kuśmerek v. Poland*, no. 10675/02, § 65, 21 September 2004, and *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007). Furthermore, the Court notes that a number of adjournments in the

proceedings occurred owing to the lawyer's illness. The Court is mindful that it was not until two weeks before the conviction that the City Court replaced the counsel. The resulting delay could have been avoided had the City Court taken a more active approach and dismissed the counsel earlier. Finally, the Court does not lose sight of the fact that the proceedings were pending for almost six months before the Supreme Court of the Russian Federation. The Court finds it striking that during that period the Supreme Court only scheduled and held one hearing, on 15 January 2004, the same day as the judgment was issued.

103. Having examined all the material before it and taking into account the overall length of the proceedings, what was at stake for the applicant and the fact that the proceedings were mostly pending before the trial court without apparent progress, the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

104. Lastly, the applicant complained of ill-treatment in a detention facility, about the conditions of his transport to and from the court-house, various procedural defects which had allegedly been committed by the investigating authorities and domestic courts in the course of the criminal proceedings against him, and interference with his correspondence with the relatives.

105. Having regard to all the material in its possession, the Court finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant claimed 51,500 euros (EUR) in respect of pecuniary damage, representing the cost of property allegedly confiscated in the

course of the criminal proceedings. In addition, he claimed EUR 100,000 in compensation for non-pecuniary damage.

108. The Government submitted that the applicant's claim in respect of pecuniary damage was not supported by any evidence. They further stressed that the claim for compensation for non-pecuniary damage was also manifestly ill-founded and should not be granted.

109. The Court observes that there is no causal link between the violations found and the pecuniary damage claimed (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). Furthermore, the applicant did not submit documents confirming expenses which he allegedly accrued. Consequently the Court finds no reason to award the applicant any sum under this head.

110. As to non-pecuniary damage, the Court observes that it has found a combination of violations in the present case. The Court accepts that the applicant suffered humiliation and distress because of the appalling conditions of his detention for more than four years, the excessive length of his detention and the criminal proceedings against him. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, and taking into account in particular the length of the applicant's detention, it awards the applicant 20,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

111. The applicant also claimed EUR 200 for the costs and expenses incurred before the Court.

112. The Government noted that the applicant's claim was unsubstantiated.

113. 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). The Court observes that the applicant did not provide receipts or vouchers to substantiate his expenses. The Court is therefore 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.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention in detention facilities nos. IZ-47/1 and IZ-47/4 in St Petersburg, the excessive length of his detention on remand and of the criminal proceedings against him admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President