



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

FIRST SECTION

CASE OF VLADIMIR KRIVONOSOV v. RUSSIA

(Application no. 7772/04)

JUDGMENT

STRASBOURG

15 July 2010

FINAL

22/11/2010

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

In the case of Vladimir Krivonosov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 7772/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Alekseyevich Krivonosov (“the applicant”), on 3 February 2004.

2. The applicant, who had been granted legal aid, was represented by Ms L. Rusakova, a lawyer practising in Rostov-on-Don. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 September 2008 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Taganrog, the Rostov Region.

A. Applicant's arrest, ensuing detention and conviction

5. On 18 December 1998 the applicant was arrested and allegedly beaten up by the police officers. On the same day he was remanded in custody on suspicion of robbery.

6. On 21 December 1998 the charges were brought against the applicant and he was provided with a legal-aid counsel.

7. On 14 March 2000 the applicant was released on a written undertaking not to leave the town.

8. On 13 June 2000 the Rostov Regional Court convicted the applicant of robbery and imposed a suspended sentence of five years' imprisonment on him. On 2 November 2000, however, the Supreme Court of Russia quashed the judgment on appeal and remitted the case for a retrial.

9. On 14 May 2001 the Rostov Regional Court convicted the applicant of fraud, kidnapping, illegal deprivation of liberty, extortion, burglary and theft and sentenced him to seven years and six months' imprisonment. The applicant was taken straight from the courtroom to the detention unit.

10. On 16 January 2002 the Supreme Court of Russia quashed the judgment of 14 May 2001 on appeal and remitted the case for a retrial. The Supreme Court held that the preventive measure applied to the applicant "should remain unchanged".

11. On 12 February 2002 the Rostov Regional Court listed the new trial hearing for 27 February 2002 and ordered that the preventive measure applied to the applicant "should remain unchanged".

12. On 1 July 2002 the Rostov Regional Court extended the applicant's detention until 1 October 2002.

"The defendants [the applicant and four other persons] are charged with kidnapping, illegal deprivation of liberty, burglary and other crimes.

They have been in custody: ..., [the applicant] – since 18 December 1998, ...

The Prosecutor requested that the defendants' detention be extended by 3 months.

Having examined the Prosecutor's request, and having heard the parties to the proceedings, the court considers it necessary to extend the defendants' detention by 3 months, that is, until 1 October 2002 inclusive, because they are charged with serious and particularly serious criminal offences.

Under Articles 255 and 256 of the Russian Code of Criminal Procedure, the defendants' detention on remand is extended by 3 (three) months, that is, from 1 July 2002 to 1 October 2002."

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

14. On 1 October and 31 December 2002 and 31 March, 26 June, 25 September and 15 December 2003 the Rostov Regional Court extended the applicant's detention until 1 January, 31 March, 30 June, 26 September,

25 December 2003 and 15 March 2004 respectively. The wording of the decisions was identical to that applied in the decision of 1 July 2002.

15. The applicant appealed against each of the above-mentioned extension orders of the Supreme Court arguing that they were not sufficiently reasoned and that the court had not taken into consideration his individual situation. On 12 February, 14 May, 16 July, 16 October and 24 December 2003 and 31 March 2004 respectively, the Supreme Court of Russia upheld the above-mentioned decisions on appeal.

16. In the meantime, on 19 February 2004 the Rostov Regional Court, composed of presiding judge Mr Zh. and lay judges Ms S. and Ms M., extended the applicant's detention until 19 May 2004. The court used the same stereotyped wording and referred to the seriousness of the charges against the applicant. The applicant again appealed against the extension to the Supreme Court.

17. On 10 March 2005, that is, after the applicant's conviction by the Regional Court (see paragraph 19 below), the Supreme Court of Russia discontinued the examination of the applicant's appeal because he had been convicted in the meantime by the Regional Court.

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

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

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

21. On 10 March 2005 the Supreme Court of Russia, sitting as a bench of three judges, reduced the applicant's sentence to five years' imprisonment and upheld the rest of the judgment on appeal. One of the judges of the Supreme Court had previously examined the applicant's case on appeal on 2 November 2000 (see paragraph 8 above) and had also examined, on 16 October 2003, the appeal against the decision of 26 June 2003 to extend the applicant's detention until 26 September 2003 (see paragraphs 14-15 above). One other judge had previously examined the applicant's case on appeal on

16 January 2002 (see paragraph 10 above). As to the applicant's allegation that the composition of the tribunal was unlawful, the court found that the trial had begun before 1 January 2004 and that the participation of two lay judges in the determination of the criminal charge against him had been in accordance with the principle of continuity of the trial.

B. Conditions of the applicant's detention

1. Conditions of detention in IZ-61/1 of Rostov-on-Don

22. From 25 May to 8 December 2001 and from 11 February 2002 to 23 April 2005 the applicant was held in detention facility IZ-61/1 of Rostov-on-Don (*Учреждение ИЗ-61/1 г. Ростова-на-Дону УИИ МЮ РФ*). Throughout this period the applicant was held in the following cells:

- (a) cell no. 21 measuring 54.5 square metres and designed to accommodate 13-16 detainees;
- (b) cell no. 46 measuring 59.6 square metres and designed to accommodate 13-16 detainees;
- (c) cell no. 48 measuring 54.2 square metres and designed to accommodate 10-15 detainees;
- (d) cell no. 57 measuring 68.4 square metres and designed to accommodate 16-18 detainees;
- (e) cell no. 90 measuring 58.2 square metres and designed to accommodate 16-18 detainees;
- (f) cell no. 92 measuring 46.2 square metres and designed to accommodate 12-14 detainees;
- (g) cell no. 109 measuring 54.2 square metres and designed to accommodate 11-14 detainees;
- (h) cell no. 114 measuring 44.5 square metres and designed to accommodate 10-12 detainees; and
- (i) cell no. 84 (punishment cell) measuring 6.6 square metres and designed for one person.

(a) The Government's account

23. The Government were unable to provide any precise information on the number of persons detained together with the applicant, because the relevant documents had been destroyed following the expiration of the time-limit for storing them. They submitted, however, that the design capacity of the cells had not been exceeded.

24. In each cell the applicant had an individual bed and was provided with bedding (two bed sheets, a pillowslip, a blanket, a mattress and a pillow) and tableware (a cup, a spoon and a plate).

25. The dimensions, number and location of the windows in the cells corresponded to the established legal norms and allowed sufficient access of daylight. Until December 2002 the windows were covered with metal screens (*жалюзийные решетки*) installed to prevent communication between cells.

26. The cells were illuminated with 60-75 watt filament lamps (four lamps per regular cell, one lamp per punishment cell), which were on from 6 a.m. to 10 p.m. At night-time the cells were lit by 60-75 watt security lights with tinted glass shades.

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

28. The cells were equipped with potable water tanks, cupboards for storage of foodstuffs, lavatory pans separated from the main area of the cells by partitions, water taps, dining tables and benches corresponding to the number of detainees, radio receivers, electric plugs and ventilation equipment.

29. The food was served three times a day in accordance with the established legal norms. The quality of the food was monitored on a regular basis by the medical staff of the detention facility.

30. The applicant was allowed a daily one-hour outside walk in a specially equipped exercise yard.

31. In support of their observations the Government provided several certificates issued by the director of IZ-61/1 on 7 November 2008 and statements by prison wardens (although not dated). They also submitted documents attesting to the destruction of registration logs in respect of the cells in IZ-61/1 (*журналы покамерного размещения*) for the years 2001-2003 following the expiry of the three-year time-limit for storing them.

(b) The applicant's account

32. The applicant claimed that the number of detainees exceeded the design capacity of the cells by three to five times and that the detainees had to sleep in shifts.

33. Most cells where the applicant was detained were equipped with a small window. Access to daylight was restricted by metal screens and the arrangement of the bunks in two or three tiers.

34. The electric lighting was too dim to enable the inmates to read.

35. The ventilation system did not function most of the time.

36. The bedding was hardly ever changed; no tableware, toilet paper or personal hygiene items were provided to the applicant.

37. The food was scarce and of poor quality. It was always poorly presented.

38. The exercise yards were unequipped and too small to accommodate all the detainees properly.

39. In support of his statements the applicant produced written depositions by four former cellmates who had been detained with him in different cells between 2001 and 2005. In particular, Mr B. stated that he had been detained with the applicant in cell no. 90. The population of the cell had exceeded its design capacity by three to five times. Mr G. stated that he had been detained with the applicant in cell no. 109, which accommodated from 22 to 46 detainees at any one time. Mr F. stated that he had been detained with the applicant in cell no. 109 in a later period. The cell used to accommodate up to 105 detainees. Finally, Mr V. submitted that he had been detained with the applicant in cell no. 114, which accommodated from 25 to 40 detainees. All of the above-mentioned witnesses testified that they and the other detainees had slept in shifts. They further testified to the appalling sanitary conditions in the cells, poor access to daylight, inadequate electric lighting, absence of natural ventilation and malfunctioning of the artificial ventilation system. The applicant further submitted a photograph of cell no. 114, taken on an unspecified date in 2004, in support of the above-mentioned statements.

2. Conditions of confinement in the courthouse

(a) The Government's account

40. The Government submitted that the detention unit (*конвойное помещение*) of the Rostov Regional Court is situated in the semi-basement of the premises. It has eight individual cells measuring 1-1.5 square metres and three collective cells measuring six, ten and twelve square metres and designed for two, six and eight detainees respectively. The detention unit is equipped with two lavatory pans and wash stands (one for detainees and one for those escorting them). All cells are equipped with benches, artificial ventilation and central heating. The cells are illuminated with filament lamps. The detainees are provided with dry rations (*сухой паек*) when taken to the courthouse. They receive hot food in accordance with the schedule before their departure from, and after their return to, the detention facility.

41. The Government supported their submissions with the results of an inspection of the technical equipment of the premises of the Rostov Regional Court of 21 March 2008, a certificate issued by the director of IZ-61/1 on 7 November 2008, the results of an inspection of the detention unit of the Rostov Regional Court of 12 November 2008 and recent photographs of the inspected premises (photocopies).

(b) The applicant's account

42. The applicant submitted that between 2001 and 2004 he had been transported between the Rostov Regional Court and the detention facility on over one hundred and seventy-five occasions.

43. The journey to and from the courthouse took several hours.

44. At the courthouse the applicant was detained in a small windowless cell without ventilation or heating. The cell was not equipped with a lavatory or a wash stand.

45. No food was provided to the applicant at the courthouse.

II. RELEVANT DOMESTIC LAW

46. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the RSFSR (Law of 27 October 1960, “the old CCrP”). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the new CCrP”).

A. Preventive measures

47. “Preventive measures” (*меры пресечения*) include an undertaking not to leave a town or region, personal security, bail and detention (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention

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

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

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

C. Grounds for ordering detention on remand

49. 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).

50. Before 14 March 2001, detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's

imprisonment or if there were “exceptional circumstances” in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment or if they had previously defaulted or had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

D. Time-limits for detention

1. Two types of detention

51. The Codes distinguished between two types of detention: the first being “pending the investigation”, that is, while a competent agency – the police or a prosecutor's office – investigated the case, and the second “before the court” (or “during the trial”), that is, while the case was being tried in court. Although there was no difference in practice between them (the detainee was held in the same detention facility), the calculation of the time-limits was different.

2. Time-limits for detention “pending the investigation”

52. After arrest the suspect is placed in custody “pending the investigation”. The maximum permitted period of detention “pending the investigation” is two months but can be extended for up to eighteen months in “exceptional circumstances”. Extensions were authorised by prosecutors of ascending hierarchical levels (under the old CCrP) but must now be authorised by judicial decisions taken by courts of ascending levels (under the new CCrP). No extension of detention “pending the investigation” beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

53. The period of detention “pending the investigation” is calculated to the day when the prosecutor sent the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

54. Access to the case-file materials is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the

new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

55. Under the old CCrP, the trial court had the right to remit the case for an “additional investigation” if it established that procedural defects existed that could not be remedied at the trial. In such cases the defendant's detention was again classified as “pending the investigation” and the relevant time-limit continued to apply. If, however, the case was remitted for an additional investigation, but the investigators had already used up all the time authorised for detention “pending the investigation”, a supervising prosecutor could nevertheless extend the detention period for one additional month starting from the date he received the case. Subsequent extensions could only be granted if the detention “pending the investigation” had not exceeded eighteen months (Article 97).

3. Time-limits for detention “before the court”/“during the trial”

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

57. Before 14 March 2001 the old CCrP set no time-limit for detention “during the trial”. On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention “during the trial” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or on a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with a particularly serious criminal offence.

58. The new CCrP establishes that the term of detention “during the trial” is calculated from the date the court received the file to the date the judgment is given. The period of detention “during the trial” may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

E. Proceedings to examine the lawfulness of detention

1. During detention “pending the investigation”

59. 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 66 below) (Article 331 *in fine*).

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

2. During the trial

61. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 222 § 5 and 230 of the old CCrP, Articles 228 (3) and 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP). If the application was refused, a fresh application could be made once the trial had commenced (Article 223 of the old CCrP).

62. At any time during the trial the court may order, vary or revoke any preventive measure, including detention (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberations room and signed by all the judges of the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

63. An appeal against such a decision lies to the higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 66 below).

F. Time-limits for trial

64. Under the old CCrP, within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for an additional investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court with jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). The trial must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

65. The duration of the trial is not limited.

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

The new CCrP establishes that the appeal court must start the examination of the appeal no later than one month after its receipt (Article 374).

G. Composition of the court

67. The old CCrP provided that hearings in first-instance courts dealing with criminal cases were, subject to certain exceptions, to be conducted by a single professional judge or by one professional and two lay judges. In their judicial capacity, lay judges enjoyed the same rights as the professional judge (Article 15).

68. The new CCrP does not provide for the participation of lay judges in the administration of justice in criminal matters. It provides that serious crimes should be dealt with by a single professional judge or by three professional judges provided that the accused has submitted such a request prior to the scheduling of a trial hearing (Article 30 § 2 (3)).

It further provides that the composition of the court examining the case should remain unchanged throughout the trial (Article 242 § 1).

69. The Federal Law enacting the new CCrP (Law no. 177-FZ of 18 December 2001) provides as follows:

Section 2.1 provides that the Federal Law on the Lay Judges of the Federal Courts of General Jurisdiction is ineffective as of 1 January 2004.

Section 7 provides that Article 30 § 2 (3) of the Code of Criminal Procedure, in so far as it concerns the examination of serious crimes by three professional judges, is effective as of 1 January 2004. Before that date serious crimes were to be dealt with by a single professional judge or by one professional and two lay judges if an accused filed such a request prior to the scheduling of a trial hearing.

H. Conditions of detention

70. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to the standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate

should have no less than four square metres of personal space in his or her cell.

I. Catering arrangements for detainees

71. On 4 May 2001 the Ministry of Justice adopted the Rules on food supplies for convicts and persons detained in remand centres. According to Annex no. 3 to the Rules, a daily dry ration (bread, tinned beef or fish, sugar, tea and salt) is provided to the following categories of persons: convicts on their way to a prison, a remand centre or colony; persons released from custody on the way to their place of residence; persons for the duration of their stay in patient care institutions; and convicted juveniles. The Rules were amended in 2004 and repealed in 2005.

72. On 4 February 2004 the Ministry of Justice adopted the Rules on supplies of dry rations, according to which persons suspected or accused of criminal offences should be supplied with a dry ration (bread, precooked first and second courses, sugar, tea and tableware) during their presence at a courthouse. Detainees should be supplied with hot water with which to consume the ration.

III. RELEVANT INTERNATIONAL DOCUMENTS

Conditions of detention

73. 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 sq. m. It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

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

...

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

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

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

74. The applicant complained about the allegedly appalling conditions of his detention in pre-trial detention facility IZ-61/1 of Rostov-on-Don and the conditions of his confinement at the Rostov Regional Court. He relied on Article 3 of the Convention, which reads as follows:

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

The applicant also claimed that he did not have at his disposal an effective remedy for the violation of the guarantee against ill-treatment, which is required under Article 13 of the Convention:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

A. Submissions by the parties

75. The Government submitted that the applicant, considering that the conditions of his detention did not comply with the requirements of domestic law, could bring civil proceedings for compensation for pecuniary and non-pecuniary damage allegedly caused to him by the conditions described above. However, the applicant did not employ the domestic remedies and did not give the domestic authorities the possibility to remedy the alleged violations at the domestic level.

76. If, however, the Court were to decide otherwise, the Government asserted that the conditions in detention facility IZ-61/1 of Rostov-on-Don complied with the requirements of domestic penitentiary law and fell far short of “inhuman treatment” as developed in the Convention case-law. So did the conditions of the applicant's confinement at the courthouse.

77. The applicant challenged the Government's descriptions of the conditions of his detention and confinement at the courthouse as factually inaccurate.

B. The Court's assessment

1. Admissibility

78. The Court observes that the applicant was held in detention facility IZ-61/1 of Rostov-on-Don during two periods: from 25 May to 8 December

2001, and from 11 February 2002 to 23 April 2005. As regards the first period, the applicant's complaint was introduced outside the six-month time-limit and must be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention.

79. As regards the remaining period, the Court observes that the Government raised an objection of non-exhaustion of domestic remedies by the applicant. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for complaining about the inhuman and degrading conditions of his detention. Thus, the Court finds it necessary to join the Government's objection to the merits of the applicant's complaint under Article 13 of the Convention.

80. The Court further notes that the applicant's complaints under Articles 3 and 13 of the Convention in so far as they relate to the period from 11 February 2002 to 23 April 2005 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 13 of the Convention

81. 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, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). 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.

82. The Court reiterates that it has already found a violation of Article 13 on account of the absence of an effective remedy for inhuman and degrading conditions of detention, finding as follows (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007, and *Vlasov v. Russia*, no. 78146/01, § 87, 12 June 2008):

“[T]he Government did not demonstrate what redress could have been afforded to the applicant by a prosecutor, a court or other State agencies, taking into account that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not only concern the applicant's personal situation (cf. *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and, most recently, *Mamedova v. Russia*,

no. 7064/05, § 57, 1 June 2006). The Government have failed to submit evidence as to the existence of any domestic remedy by which the applicant could have complained about the general conditions of his detention, in particular with regard to the structural problem of overcrowding in Russian detention facilities, or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or that they could have afforded the applicant appropriate redress (see, to the same effect, *Melnik v. Ukraine*, no. 72286/01, §§ 70-71, 28 March 2006; *Dvoynikh v. Ukraine*, no. 72277/01, § 72, 12 October 2006; and *Ostrovar v. Moldova*, no. 35207/03, § 112, 13 September 2005)."

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

84. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant to complain about the conditions of his detention.

(b) Article 3 of the Convention

85. The Court reiterates that to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention a given form of treatment must attain a minimum level of severity (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of detention, account must be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

(i) Conditions of the applicant's detention in IZ-61/1 of Rostov-on-Don

86. The Court notes that the parties disagreed as to most aspects of the conditions of the applicant's detention in detention facility IZ-61/1. However, there is no need for the Court to establish the truthfulness of each and every allegation, as the case file contains sufficient evidence to confirm the applicant's allegations of severe overcrowding at the detention facility, which is in itself sufficient for finding a violation of his rights set out in Article 3.

87. The Court notes that the applicant challenged the measurements of the cells as provided by the Government and stated that the cells in question had been severely overcrowded throughout the whole period of his stay in IZ-61/1. The applicant submitted, in particular, that the number of detainees had exceeded the design capacity of the cells by several times and that the detainees had had to take turns to rest. The applicant confirmed his account with reference to statements by fellow prisoners who had shared various cells with him throughout his stay in the detention facility (see paragraph 39

above). The Government, relying on certificates issued by the director of IZ-61/1 and information provided by prison wardens (see paragraph 31 above), argued that the design capacity of the cells had not been exceeded. The Government further submitted that the relevant documents indicating the exact number of inmates in the cells had been destroyed after the expiry of the time-limit for storing them (see paragraphs 23 and 31 above).

88. The Court observes that in certain instances the respondent Government alone have access to information capable of firmly corroborating or refuting allegations under Article 3 of the Convention and that 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). Thus, the first issue to be examined is whether on the basis of the facts of the present case the Government's failure to submit copies of the relevant prison documentation has been properly accounted for.

89. In this connection, the Court would note that the destruction of the relevant documents due to the expiry of the time-limit for their storage, albeit regrettable, cannot in itself be regarded as an unsatisfactory explanation for the failure to submit them (see *Novinskiy v. Russia*, no. 11982/02, § 102, 10 February 2009). The Court also has to look at the timing of that act as well as other relevant factual circumstances. In particular, regard should be had to whether the authorities appeared to have been acting with due care in this respect (see *Novinskiy*, cited above, § 102, and *Oleg Nikitin v. Russia*, no. 36410/02, §§ 48-49, 9 October 2008).

90. Turning to the present case, the Court observes that the Government have provided documents attesting to the destruction of registration logs recording the cell population in IZ-61/1 between 2001 and 2003. However, no pertinent information was provided as regards the logbooks for the years 2004 and 2005. In such circumstances, the Court cannot accept that the Government have accounted properly for their failure to submit the original records concerning the number of inmates detained with the applicant.

91. In so far as the Government relied on the certificates issued by the remand prison administration, the Court observes that those documents were prepared more than three and a half years after the time of the applicant's detention in the remand prison. 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 time that has passed (see *Novinskiy*, cited above, § 105, and, more recently, *Bordikov v. Russia*, no. 921/03, § 58, 8 October 2009). The Court opines that these considerations hold true in the present case. The certificates prepared by the Russian authorities more than three and a half years after the events in question cannot qualify as sufficiently reliable sources of data.

92. Accordingly, the Court will examine the issue concerning the alleged overcrowding of the cells on the basis of the applicant's submissions.

93. The Court agrees with the applicant that the cells in the remand prison where he was detained pending trial were constantly overcrowded. The space they afforded did not exceed 2 square metres per person. On certain occasions it was as little as 0.5 square metres. Besides, the number of sleeping places was insufficient and the inmates had to take turns to sleep. The applicant spent over three years in such conditions.

94. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63, and *Benediktov*, cited above, § 37).

95. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Benediktov*, cited above, §§ 33 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI).

96. The Court has also on a number of occasions found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees in detention facility IZ-61/1 of Rostov-on-Don (see *Gubkin v. Russia*, no. 36941/02, §§ 92-101, 23 April 2009; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 88-97, 25 June 2009; and, most recently, *Bordikov*, cited above, §§ 55-64).

97. Having regard to its case-law on the subject and the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

98. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility IZ-61/1 in Rostov-on-Don in the period from 11 February 2002 to 23 April 2005, which the Court considers to be inhuman and degrading within the meaning of Article 3 of the Convention.

(ii) Conditions of the applicant's confinement at the Rostov Regional Court

99. The Court observes that the essence of the applicant's complaint concerned the conditions of his confinement in the detention unit of the courthouse and the fact that he did not receive food while detained there.

100. The Court has previously found a violation of Article 3 of the Convention in many Russian cases on account of applicants' confinement in cramped conditions in detention units of courthouses and lack of proper

nutrition on the days of the hearings (see, among many other authorities, *Starokadomskiy v. Russia*, no. 42239/02, §§ 53-60, 31 July 2008; *Salmanov v. Russia*, no. 3522/04, §§ 60-65, 31 July 2008; *Vlasov v. Russia*, no. 78146/01, §§ 92-99, 12 June 2008; and, more recently, *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, §§ 106-10, 12 February 2009).

101. Turning to the circumstances of the present case, the Court notes that the applicant furnished no detailed information as to the specific cell(s) where he had been detained at the Rostov Regional Court, the number of persons detained there simultaneously with him and the average duration of the confinement on each occasion. The Court further notes that he made no allegation of overcrowding in the cells in the detention unit.

102. In so far as the applicant's allegations concern the alleged inadequacy of the physical conditions in the cells of the detention unit of the Rostov Regional Court, including insufficient lighting, ventilation and heating, as well as the absence of lavatories and wash stands (see paragraph 44 above), the Court observes that they are rather generic and not corroborated by relevant details. On the other hand, the Government's submissions to this effect show that the detention unit was equipped with two lavatory pans and wash stands and that all cells were equipped with benches, artificial ventilation and central heating and illuminated with filament lamps (see paragraphs 40-41 above).

103. As regards the applicant's contention that he was not provided with food at the courthouse, the Court notes that, according to the certificate issued by the director of IZ-61/1 of Rostov-on-Don dated 7 November 2008, on the days he was taken to the court the applicant had been given dry rations. The Government submitted that the applicant could have breakfast before his departure from the detention facility and have dinner after his return from the courthouse. The applicant did not contest the Government's assertion to this effect (see *Bagel v. Russia*, no. 37810/03, §§ 67-71, 15 November 2007, and *Nakhmanovich v. Russia* (dec.), no. 55669/00, 28 October 2004).

104. Having regard to the foregoing considerations, the Court is unable to establish "beyond reasonable doubt", which is the standard of proof applied by the Court in respect of complaints about inhuman and degrading treatment, that the applicant's confinement at the Rostov Regional Court attained a minimum level of severity sufficient to bring the complaint within the scope of Article 3 of the Convention.

105. Accordingly, there has been no violation of Article 3 of the Convention on account of the applicant's conditions of confinement in the detention unit of the Rostov Regional Court.

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

106. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand had not been lawful. He complained, in particular, that his detention from 19 February to 17 May 2004 had not complied with the requirement of lawfulness, because the court that had issued the extension order of 19 February 2004 had been partly composed of lay judges, whereas starting from 1 January 2004 the domestic law excluded lay judges from participation in the administration of justice in criminal matters.

The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

A. Submissions by the parties

107. The Government submitted that in so far as the applicant's complaint concerned the period of his detention from 18 December 1998 to 14 March 2000, it should be dismissed for failure to comply with the six-month time-limit provided by Article 35 § 1 of the Convention. In so far as the complaint concerned the subsequent period, the Government submitted as follows: From 14 May 2001 to 16 May 2002 the applicant was lawfully detained after his conviction by the Rostov Regional Court. From 16 May 2002 to 17 May 2004 the applicant was detained on the basis of the court's orders extending his detention in compliance with a “procedure provided by law”. The applicant's detention from 19 February to 17 May 2004 had complied with the requirement of lawfulness since the participation of lay assessors in examination of the applicant's case after 1 January 2004 was permitted by the principle of the continuity of the proceedings stipulated in the domestic law and was in the best interests of justice and the applicant himself.

108. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

109. The Court observes at the outset that a part of the applicant's complaint concerning the lawfulness of his detention refers to a period of pre-trial detention which ended more than six months before he lodged the application with the Court on 3 February 2004. The most recent period of detention that the Court may examine commenced on 26 June 2003. The Court therefore considers that the part of the applicant's complaint concerning the detention orders issued before 26 June 2003 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Vladimir Solovyev v. Russia*, no. 2708/02, § 83, 24 May 2007, and *Moskovets v. Russia*, no. 14370/03, § 48, 23 April 2009).

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

2. Merits

111. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Khudoyorov*, cited above, § 124, and *Moskovets*, cited above, § 53).

112. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(a) The applicant's detention from 26 June 2003 to 19 February 2004

113. The Court observes that in the period from 26 June 2003 to 19 February 2004 the applicant's detention was extended by the Regional Court on three occasions on the ground of the gravity of the charges against him and his co-defendants (see the relevant domestic law provisions in paragraph 58 above).

114. The trial court acted within its powers in making the above-mentioned decisions, and there is nothing to suggest that they were invalid or unlawful under domestic law, or that they were inappropriate for the purpose of Article 5 § 1 (c). The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3.

115. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention orders issued in the period from 26 June 2003 to 19 February 2004.

(b) The applicant's detention from 19 February to 17 May 2004

116. The Court notes that on 19 February 2004 the Regional Court, comprising a presiding judge and two lay judges, citing the gravity of the charges against the applicant and his co-defendants, extended the applicant's detention by three months, until 19 May 2004. This period of the applicant's detention ended on 17 May 2004, when he was convicted.

117. As regards this period of detention, the applicant contested the power of the Regional Court to extend his detention, claiming that as of 1 January 2004 the domestic law no longer provided for the participation of lay judges in the administration of criminal justice. The Court's task is, therefore, to determine whether the applicant's detention in the relevant period was carried out "in accordance with a procedure prescribed by law". To this effect the Court will turn to the domestic law (see paragraph 111 above).

118. The Court observes at the outset that the domestic law does not contain an explicit provision stipulating that the questions of application and extension of a custodial measure are determined by the same bench that examines the criminal case on the merits. The Court notes, however, that in the present case the extension of the applicant's detention on 19 February 2004 was authorised by the same bench which subsequently delivered the judgment in the applicant's case on 17 May 2004.

119. The Court further observes that the trial bench in question was composed under the Code of Criminal Procedure of the RSFSR, which provided that serious crimes were to be examined by a professional judge and two lay judges (see paragraph 67 above). While the proceedings were pending before the trial court, the new Code of Criminal Procedure entered into force. Although the new Code abolished the participation of lay judges,

it maintained the principle that the trial bench should remain unchanged throughout the trial (see paragraph 68 above).

120. Therefore, the Court concludes that the court which extended the applicant's detention on 19 February 2004 acted within its powers in making that decision, and there is nothing to suggest that the decision was invalid or otherwise unlawful under domestic law. The question whether the reasons for the decision were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3.

121. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention order issued on 19 February 2004.

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

122. The applicant complained under Article 5 § 3 of the Convention that the duration of his pre-trial detention had been in breach of the “reasonable time” requirement. Article 5 § 3 provides as follows:

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

A. Submissions by the parties

123. The Government submitted that the Court should only examine the period of the applicant's detention after 16 May 2002 since the period from 18 December 1998 to 14 March 2000 fell outside the six-month time-limit provided by Article 35 § 1 of the Convention, and the subsequent period from 14 May 2001 to 16 January 2002 was covered by Article 5 § 1 (a) of the Convention. They further submitted that the applicant's continued detention after 16 January 2002 had been made necessary by the risk of his obstructing the administration of justice. The Government referred to the testimonies of six witnesses who testified that the applicant and his co-defendants had applied physical violence against some of them and their family members, and otherwise put pressure on them. Besides, there were grounds to believe that the applicant and his co-defendants had tampered with the text of certain documents contained in the case file.

124. The applicant argued that at no stage of the proceedings had the domestic authorities addressed the issue of the reasonableness of his continued detention. From 1 July 2002 onwards the domestic court had persistently applied the same stereotyped formula to justify the applicant's continued detention: the Regional Court had reproduced the same text – a paragraph long – in eight extension orders successively and in respect of

five different persons, including the applicant. The only ground for the applicant's detention had been the gravity of the charges that he had been facing.

B. The Court's assessment

1. Admissibility

125. The Court first reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Klyakhin v. Russia*, no. 46082/99, § 57, 30 November 2004; and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

126. Furthermore, the Court observes that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see *Panchenko*, cited above, § 93, and *Kudla*, cited above, § 104).

127. Turning to the circumstances of the present case, the Court observes that the applicant was taken into custody for the first time on 18 December 1998 and was released on a written undertaking on 14 March 2000. This period of the applicant's detention, having been interrupted by the applicant's release and having ended more than six months before the introduction of the applicant's complaint on 3 February 2004, should not be taken into account. The applicant was subsequently detained on 14 May 2001 after his conviction by the Rostov Regional Court. He remained detained after the quashing of the conviction by the Supreme Court of Russia on 16 January 2002. It follows that the period from 14 May 2001 to 16 January 2002 was justified under Article 5 § 1 (a) of the Convention and should, therefore, also be excluded from the Court's consideration. Accordingly, the period to be taken into consideration in the present case started to run from 16 January 2002 and ended on 17 May 2004 when the applicant was again convicted. It therefore amounted to two years and four months.

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

2. Merits

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

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

131. Turning to the circumstances of the present case, the Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion of his involvement in the commission of several criminal offences. However, after a certain lapse of time the persistence of a reasonable suspicion by itself no longer sufficed. Accordingly, the domestic authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding him in custody.

132. The Court observes that in the period from January to July 2002 the domestic court kept the applicant in detention without citing any particular reason (see paragraphs 10 and 11 above). Subsequently, in the period from July 2002 to May 2004 the court extended the applicant's detention on eight occasions. The only ground invoked for continuing his detention was the fact that he was charged with “serious” and “particularly serious” criminal offences (see, in particular, paragraphs 12, 14 and 16 above).

133. The Court has repeatedly held that although the severity of the sentence faced is a relevant element in the assessment of the risk of the accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Belevitskiy*, cited above, § 101; *Panchenko*, cited above, § 102; *Khudoyorov*, cited above, § 180; and *Ilykov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

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

135. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify the extension of the applicant's detention. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable time" requirement in respect of each individual member of the group (see *Gubkin*, cited above, § 144; *Bakmutskiy*, cited above, § 141; *Aleksey Makarov v. Russia*, no. 3223/07, § 53, 12 June 2008; *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

136. The Court finds, therefore, that by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

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

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

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

141. The applicant took note of the Government's admission.

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

V. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

143. The applicant complained that the length of the criminal proceedings against him had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which provides, in its relevant part, as follows:

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

The applicant further claimed that he had no effective remedy at his disposal for the excessive length of the proceedings. He relied on Article 13 of the Convention.

A. Submissions by the parties

144. The Government submitted that the present case represented a certain complexity given the nature of the charges against the applicant. On many occasions the hearings were adjourned at the applicant's initiative or through his fault. Quite a number of adjournments were also caused by factors beyond the authorities' control, such as illnesses of the co-defendants, failure of the representatives to appear before the court, the appointment of new representatives by co-defendants, the need for co-defendants and representatives to study the material of the case file, absences of the victims and witnesses, and so on. The Government acknowledged the responsibility of the domestic authorities for the

adjournment of the hearing from 10 January to 12 January 2001 in that they had failed to deliver the defendants to the court, which did not cause any significant delay in the proceedings. They concluded that the length of the proceedings in the present case did not breach the “reasonable time” requirement set out in Article 6 § 1 of the Convention. As to the complaint under Article 13, the Government submitted that the applicant was afforded ample opportunities to bring complaints against the length of the proceedings before the relevant judiciary qualification board, the prosecutor or the court, and the domestic authorities did not hinder the exercise of the applicant's right in any way.

145. The applicant submitted that the criminal proceedings against him had lasted six years and three months: from 18 December 1998 to 10 March 2005. During this time the domestic court passed three sentences, two of which were found unlawful and quashed on appeal. The complexity of the case could not by itself justify the overall length of the proceedings. Victims and witnesses caused considerable delays to the proceedings by failing to appear, and it took the Regional Court some time to take appropriate measures in this respect. The applicant's full use of the resources afforded by law in his defence could not be held against him. In particular, the necessity to replace representatives appointed by the State was caused by the poor quality of their performance. The applicant also maintained his complaint under Article 13. He submitted, in particular, that the Government had not explained how bringing complaints to the judiciary qualification board, the prosecutor or the court could have expedited the proceedings or how he could have obtained adequate redress for the delays that had already occurred.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Period to be taken into consideration

147. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is “charged” within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see, among many

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

148. The period to be taken into consideration in the present case began from the date of the applicant's arrest on 18 December 1998 when he was first affected by the “charges” against him. The period in question ended on 10 March 2005, when the applicant's conviction became final. It follows that the period to be taken into consideration lasted six years, two months and twenty-three days. This period spanned the investigation stage and two levels of jurisdiction, the trial court and the court of appeal having examined the case on three occasions.

(b) The reasonableness of the length of proceedings

149. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant also has to be taken into consideration (see, among many other authorities, *Korshunov v. Russia*, no. 38971/06, § 70, 25 October 2007; *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006; and *Rokhlina*, cited above, § 86).

150. The Court accepts that the nature of the charges against the applicant made the trial somewhat complex. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings. Moreover, the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko*, cited above, § 133, and *Kalashnikov*, cited above, § 132).

151. Regarding the applicant's conduct, the Court notes that the case was adjourned on several occasions at the applicant's requests (see paragraph 18 above). However, the Court does not agree with the Government that the applicant should be held responsible for the adjournments which were necessary for him to study the case file and the records of the hearings and to arrange for the replacement of representatives whose services he considered ineffective. The applicant was free to take full advantage of the resources afforded by national law in his defence (see *Rokhlina*, cited above, § 88, and *Kalashnikov*, cited above, § 129). Furthermore, the Court considers that the delays resulting from the absence of the applicant's

representative from the hearings were negligible compared to the overall length of proceedings.

152. Turning to the conduct of the domestic authorities, the Court observes that the Government have not submitted any satisfactory explanation for the rather substantial periods of inactivity on the part of the domestic court when it came to the examination of the applicant's convictions of 13 June 2000, 14 May 2001 and 17 May 2004 on appeal. In this connection the Court notes that the periods under consideration amounted to five, eight and ten months respectively, and that their aggregate length delayed the proceedings by almost two years.

153. Having regard to the foregoing, and especially to what was at stake for the applicant, given that he had been held in detention throughout the substantial period in which the proceedings were pending, the Court considers that the length of the proceedings in the present case did not satisfy the "reasonable time" requirement.

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

155. In so far as the applicant's complaint about the lack of an effective domestic remedy is concerned, the Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla*, cited above, § 156). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin*, cited above, §§ 100-01). In particular, the Government did not explain how applications to the judiciary qualification board, the prosecutor's office or the Rostov Regional Court that the applicant could have made in the course of the criminal proceedings could have expedited those proceedings.

156. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF ABSENCE OF LEGAL REPRESENTATION AT THE INITIAL STAGES OF THE PROCEEDINGS

157. The applicant complained that he had been denied legal advice at the initial stages of the proceedings. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which read as follows:

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

...

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.”

A. Submissions by the parties

158. The Government submitted that the applicant's complaint should be dismissed as manifestly ill-founded, because he had had the opportunity to seek legal advice from the moment the charges were brought against him on 21 December 1998 and throughout the trial.

159. The applicant submitted that the domestic authorities had been under an obligation to provide him with legal assistance from the very start of the criminal proceedings.

B. The Court's assessment

160. The Court reiterates that Article 6 § 3 (c) of the Convention does not guarantee a free-standing right to legal assistance at the preliminary stage of a police investigation, yet this provision, read in the context of the general guarantees of Article 6 § 1, may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275). The question, in each case, is whether the restriction on the right to benefit from the assistance of a lawyer, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports of Judgments and Decisions* 1996-I; *Brennan v. the United Kingdom*, no. 39846/98, § 45, ECHR 2001-X; and *Magee v. the United Kingdom*, no. 28135/95, § 44, ECHR 2000-VI).

161. The Court further reiterates that the rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police questioning without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008).

162. Turning to the circumstances of the present case, the Court notes that the applicant did not specify which statements exactly, and in respect to which charges, he had made without the benefit of legal advice at the initial stages of the proceedings. Neither did he allege that any such statements had later served as the basis for his conviction, or otherwise explain how the lack of legal assistance for the first several days after his arrest had compromised the overall fairness of the proceedings (see, by contrast, *Salduz*, cited above, §§ 56-62, and *Pishchalnikov v. Russia*, no. 7025/04, §§ 72-92, 24 September 2009).

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

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

164. The applicant complained under Article 3 of the Convention that he had been ill-treated in police custody following his arrest, and that the medical assistance in IZ-61/1 of Rostov-on-Don and the conditions of transport between the detention facility and the courthouse had been inadequate. He complained under Article 5 that his arrest on 18 December 1998 had been unlawful. The applicant complained under Article 6 that the domestic court had used allegedly unreliable evidence, failed to obtain the attendance of several witnesses and victims and failed to presume him innocent by holding him in custody merely on the ground of the seriousness of the charges against him. He further complained under the same head that the tribunal which convicted him on 17 May 2004 had been unlawful and that two members of the Supreme Court had on several occasions participated in the review of his pre-trial detention and conviction at second instance and, therefore, could not have been impartial in their decisions. Lastly, the applicant complained under Article 8 that his continuous detention had prevented him from taking care of his elderly father; under Article 1 of Protocol No. 1 that the domestic authorities had failed to look after his property and belongings while he had been in detention and under Article 13 that there had been no effective domestic remedy with regard to the alleged violations.

165. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. 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

167. The applicant claimed 81,000 euros (EUR) in respect of non-pecuniary damage.

168. The Government submitted that if the Court were to award the applicant compensation for non-pecuniary damage the sum should not exceed EUR 10,000.

169. The Court notes that it has found a combination of serious violations in the present case. The applicant spent over three years in custody, in inhuman and degrading conditions. His detention was not based on sufficient grounds and was excessively long. He was denied the right to an effective review of his continued detention and the right to a trial within a reasonable time. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 22,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

170. The applicant also claimed 15,000 Russian roubles (RUB) in postal, photocopying and translation expenses.

171. The Government argued that the costs and expenses allegedly incurred by the applicant had not been justified in the full amount by relevant receipts. In any event, they had not been necessary and were not reasonable as to quantum.

172. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300 covering costs under all heads for the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

173. 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. *Joins to the merits* the question of exhaustion of domestic remedies in respect of the conditions of the applicant's detention and *rejects* it;
2. *Declares* admissible
 - (a) the complaint under Article 3 concerning the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don from 11 February 2002 to 23 April 2005 and conditions of his confinement at the Rostov Regional Court;
 - (b) the complaint under Article 13 concerning the lack of an effective remedy for the allegedly appalling conditions of the applicant's pre-trial detention;
 - (c) the complaint under Article 5 § 1 concerning the alleged unlawfulness of the applicant's detention from 26 June 2003 to 17 May 2004;
 - (d) the complaint under Article 5 § 3 concerning the length of the applicant's pre-trial detention;
 - (e) the complaint under Article 5 § 4 concerning the alleged ineffectiveness of the judicial review of the applicant's complaint against the detention order of 19 February 2004;
 - (f) the complaint under Article 6 § 1 concerning the length of the criminal proceedings against the applicant;
 - (g) the complaint under Article 13 concerning the lack of an effective remedy in respect of the alleged violation of the applicant's right to a trial within a reasonable time;and inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy for the applicant to complain about the conditions of his detention;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in detention facility IZ-61/1 of Rostov-on-Don from 11 February 2002 to 23 April 2005;

5. *Holds* that there has been no violation of Article 3 of the Convention on account of the conditions of the applicant's confinement at the Rostov Regional Court;
6. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 26 June 2003 to 17 May 2004;
7. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
8. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
9. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings against the applicant;
10. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy for the applicant to complain about the length of the criminal proceedings;
11. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 22,000 (twenty-two thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
12. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President