

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

FIRST SECTION

CASE OF ZUYEV v. RUSSIA

(Application no. 16262/05)

JUDGMENT

STRASBOURG

19 February 2013

FINAL

19/05/2013

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



In the case of Zuyev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 16262/05) 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 Roman Igorevich Zuyev ("the applicant"), on 25 April 2005.

2. The applicant was represented by Mr M. Ovchinnikov, Mr A. Mikhaylov and Mr F. Bagryanskiy, lawyers practising in Vladimir. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unlawfully detained in the appalling conditions of a temporary detention facility, that he had not been promptly notified of the charges against him, and that the courts had denied him a speedy and effective review of the reasons for his detention.

4. On 6 February 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lived until his arrest in Vladimir.

A. Criminal proceedings against the applicant

6. On 23 October 2004 an investigator of the Vladimir prosecutor's office instituted criminal proceedings against the applicant on suspicion of aggravated rape.

1. Arrest and detention

7. The applicant was arrested at approximately 10 p.m. on 25 October 2004. The record did not indicate the grounds for the arrest, save for a reference to Article 91 § 2 of the Code of Criminal Procedure. The applicant signed the arrest record, noting that he had been informed of his constitutional rights as an accused, including the right to remain silent and to be assisted by counsel. He also made a handwritten statement refusing legal assistance "at the time of the arrest". It appears that the investigator made a handwritten note in the arrest record, stating that the applicant had not been searched.

8. On the following day the investigator began questioning the applicant in the presence of his counsel, Mr Ovchinnikov. A record shows that the questioning started at 12 noon. The record bears the applicant's signature after the paragraph stating that he was informed of the nature of the accusations against him, in particular, that he was suspected of having participated in a gang rape on 23 October 2004. The applicant made a handwritten entry in the record, noting that he had decided to make use of his constitutional rights and would remain silent.

(a) Authorisation of the pre-trial detention: detention order of 27 October 2004

9. On 27 October 2004 the Leninskiy District Court of Vladimir authorised the applicant's pre-trial detention, holding as follows:

> "[The applicant] is employed [and] has a permanent place of residence.
>
> However, he has a previous conviction for a criminal offence against an individual, and his criminal record has not expired by virtue of a court order. It follows that, if released, [the applicant] might continue his criminal activities; [he] might also hinder the investigation, in particular as regards the uncovering of evidence in the case – a mobile phone which had been stolen from the victim. [The applicant] is suspected of having committed a serious offence against an individual; [the offence] is punishable by imprisonment. The victim identified [the applicant] as a perpetrator of the criminal offence against her. It follows that, if released, Mr ... [*the name of the applicant's co-defendant was crossed out and the applicant's last name written by hand*] might influence the victim during the pre-trial and judicial investigation; therefore, the victim, at her request, took part in the identification parade in conditions whereby [the applicant] was prevented from seeing [her].

> Consequently, the court considers that a measure of restraint in the form of pre-trial detention is lawful and well-founded and [it] accepts the motion of the senior investigator of the Vladimir prosecutor's office ... to place [the applicant] in custody."

10. Several days later the applicant's lawyer appealed, arguing that the applicant had not been properly and promptly informed of the reasons for his arrest and that his detention was unlawful. He requested the applicant's release on bail or the application of an alternative, more lenient, measure of restraint. Relying on Article 3 of the Convention, the lawyer urged the Regional Court to take into account the appalling conditions of detention to which the applicant would be subjected.

11. On 9 November 2004 the Vladimir Regional Court upheld the detention order, endorsing the reasons given by the District Court. It noted, in particular, the gravity of the charges against the applicant and his previous conviction. As regards the lawyer's argument concerning the conditions of the applicant's detention, the Regional Court noted that it was not the courts' task to deal with the matter in that set of proceedings.

(b) Extension of the detention: order of 22 December 2004

12. On 22 December 2004 the Leninskiy District Court extended the applicant's detention to 11 January 2005 inclusive, noting the applicant's "personality", the gravity of the charges against him and the likelihood that he would abscond, re-offend and pervert the course of justice.

13. The applicant's lawyer appealed, arguing that the detention was unlawful and excessively long. The lawyer also reiterated the arguments that he had put forward in his statement of appeal against the detention order of 27 October 2004.

14. On 1 February 2005 the Vladimir Regional Court upheld the decision of 22 December 2004, holding as follows:

> "Having examined the materials presented in the appeal statements, the court decides as follows.
>
> While examining whether it was necessary to extend [the applicant's] detention, the judge correctly took into account the gravity of the charges [and] the information on the accused's character.
>
> It follows from the materials presented that [the applicant] was held liable for criminal offences, including a particularly serious offence; and that in 2004 [he] was held administratively liable.
>
> The judge's conclusion that [the applicant] is likely to abscond from the pre-trial investigation and judicial proceedings, to continue his criminal activities and to pervert the course of justice is corroborated by the record of an interrogation of the victim, from which it appears that the victim has been receiving insulting phone calls which frighten her and which she considers a way of applying mental pressure on her for having instituted the criminal proceedings.

> The extension of [the applicant's] detention is also connected to the necessity of carrying out investigative measures with a view to closing the pre-trial investigation.
>
> The judge examined the possibility of applying another, more lenient, measure of restraint to [the applicant], as reflected in the decision, which states that applying a different measure of restraint to the accused cannot be justified.
>
> ...
>
> By virtue of the requirements of the Russian Code of Criminal Procedure, when a judge examines an extension of detention issue, [he] does not have to take into account the conditions of [the applicant's] detention, as raised by the lawyer in his appeal statement."

(c) Request for release: decision of 15 February 2005

15. On 9 December 2004 the applicant's counsel, Mr Ovchinnikiov, submitted a request for the applicant's release to the Leninskiy District Court, arguing that his arrest and subsequent detention had been unlawful.

16. According to the Government, three hearings scheduled for 13, 20 and 28 January 2005 were postponed owing to the absence of the applicant's lawyer.

17. On 15 February 2005 the Leninskiy District Court dismissed the request for release on the grounds that the applicant had been committed to stand trial before the Frunzenskiy District Court and that the trial judge had exclusive jurisdiction over the detention issue.

18. On 31 March 2005 the Vladimir Regional Court quashed the decision of 15 February 2005 and discontinued the proceedings, reasoning as follows:

> "The merits of the lawyer's ... complaint concerning [the applicant's] allegedly unlawful detention was examined by the judge by virtue of Article 125 of the Code of Criminal Procedure, while the criminal case against [the applicant] on charges of aggravated rape, aggravated sexual assault, aggravated robbery and death threats had already been sent for examination to the Frunzenskiy District Court of Vladimir; thus [the Leninskiy District Court] violated the requirements of paragraph 3 of Article 29 of the Criminal Code, according to which the court has competence to examine such a complaint only in the proceedings before the [applicant was committed to stand] trial."

(d) Detention from 12 January to 13 October 2005

i. Decision of 25 January 2005

19. In the meantime, on 12 January 2005 the period of the applicant's detention authorised by the decision of 22 December 2004 expired. On the following day the applicant, having been served with the final version of the bill of indictment for charges of aggravated robbery, sexual assault and death threats in addition to aggravated rape, was committed to stand trial

before the Frunzenskiy District Court. The court received the case file on 17 January 2005.

20. At the preliminary hearing on 25 January 2005 the Frunzenskiy District Court, having noted that the applicant and his co-defendant were charged with a serious criminal offence, that the applicant had been held administratively and criminally liable and that there were reasons to believe that, if released, he and his co-defendant would abscond, threaten the victim and pervert the course of justice, concluded that there were no grounds for changing the measure of restraint.

21. On 16 March 2005 the Vladimir Regional Court upheld the decision of 25 January 2005, finding that the lawyers' arguments that the defendants had permanent places of work and residence in Vladimir and that they had no intention of absconding did not suffice to conclude that the District Court's decision had been incorrect. The Regional Court also noted that there were no grounds for releasing the defendants after 11 January 2005 because they were considered to be detained "pending judicial proceedings". In the Regional Court's opinion, after the District Court had received the criminal case file, it had six months to examine the issue of the applicant's detention.

ii. Remittal for further investigation and request for release: decision of 27 April 2005

22. In April 2005 a lawyer for the applicant's co-defendant, Mr G., asked the Frunzenskiy District Court to remit the case to the prosecutor's office for further investigation because the investigators had committed various procedural violations and had breached the applicant's defence rights. At the same time, the applicant's counsel sought his release.

23. On 27 April 2005 the District Court remitted the case for further investigation and noted that the measure of restraint applied to the applicant and his co-defendant "should remain unchanged", as the circumstances which had served as the grounds for their arrest were still present and there were no reasons to authorise a change.

24. On 28 June 2005 the Vladimir Regional Court upheld the decision, noting that it was well-founded. The Regional Court also found that the co-defendants' detention was within the six-month period authorised by the provisions of the Code of Criminal Procedure.

(e) Extension of the detention until 13 October 2005: order of 7 July 2005

25. On 7 July 2005 the Frunzenskiy District Court authorised the extension of the applicant's and his co-defendant's detention for an additional three months, until 13 October 2005. The District Court stated that the authorised period of the applicant's detention would expire on 13 July 2005 because the District Court had received the case file on 13 January 2005. It concluded that the defendants had been charged with

serous criminal offences and were likely to abscond, pervert the course of justice and threaten the victim.

26. On 11 August 2005 the Vladimir Regional Court upheld the decision, reasoning as follows:

> "Having discussed the arguments put forward in the appeal statement, the court considers that the decision [of 7 July 2005] is lawful and well-founded.
>
> When the [District] court was taking the decision, [it] took into account the gravity of the three criminal offences which are punishable by more than ten years' imprisonment and which are considered serious, posing a particular danger to society. The arguments laid down in the appeal statement were examined by the court and the respective findings were made. [It] was found that there were no grounds for changing the measure of restraint. The above-mentioned findings are reasoned and the reasoning should be considered convincing.
>
> The courts of the first and second instances examined the complaints that the arrest on 25 October 2004 had been unlawful and that after 11 January 2005 [the applicant and his co-defendant] had been detained unlawfully, and found them to be unsubstantiated."

(f) Extension of the detention until 13 January 2006: order of 13 October 2005

27. On 13 October 2005 the Frunzenskiy District Court extended the applicant's and his co-defendant's detention until 13 January 2006. The wording of the decision was identical to that issued on 7 July 2005.

28. On 23 November 2005 the Vladimir Regional Court upheld the decision, endorsing the reasons given by the District Court.

(g) Extension of the detention until 13 April 2006: order of 11 January 2006

29. On 11 January 2006 the Frunzenskiy District Court, in a decision identical to the ones issued on 7 July and 13 October 2005, extended the applicant's and his co-defendant's detention until 13 April 2006.

30. On 7 March 2006 the Vladimir Regional Court dismissed an appeal lodged by the applicant, concluding that the District Court's findings were lawful and well-reasoned.

2. Conviction

31. On 10 April 2006 the Frunzenskiy District Court found the applicant guilty as charged and sentenced him to five years' imprisonment and a fine. The judgment was not appealed against and became final.

B. Conditions of detention

32. On 2 November 2004 the applicant was placed in detention facility no. IZ-33/1 in Vladimir. During the entire period of his detention, until August 2006, he was kept in eight different cells: nos. 33, 50, 51, 52, 55, 60,

63 and 66. The parties did not indicate the dates on which the applicant had been detained in each cell.

33. Relying on certificates issued by the head of the detention facility in May 2009 and barely legible extracts from prison population logs for four days in 2004 and eight days in 2005, the Government submitted that the three smallest cells – nos. 60, 63 and 66 – measured approximately 14 square metres and housed between two and four inmates. Cell no. 55 measured 51.48 square metres and accommodated from eight to sixteen persons. Two cells – nos. 51 and 52 – measured 32.5 and 39.5 square metres and held from six to eight and from six to ten inmates, respectively. Cell no. 33 measured approximately 26 square metres and housed between four and six persons. The largest cell, no. 50, measured slightly over 77 square metres and housed between ten and twenty-two detainees. To the extent that it was possible for the Court to decipher the extracts from the prison population logs, the number of detainees housed in the cells on the relevant days corresponded to the highest number indicated by the Government for each cell. The Government also submitted that the applicant had always had an individual sleeping place. According to a certificate issued by the head of the detention facility, neither of the cells where the applicant had been detained had contained three-tier bunks.

34. The Government further maintained that the smaller cells had one window and the bigger ones had two windows. Each window measured approximately one square metre. From 6 a.m. to 10 p.m. the cell was lit by one or two 80 watt bulbs. At night a 40 watt bulb lit the cell. Each cell had a properly functioning air conditioning system and a heater installed below the window. In addition, inmates were allowed to open a casing in the windows to give them access to fresh air. According to the Government, each cell was equipped with a tap and a lavatory pan, which were installed in a corner, more than 3 metres from a table. The lavatory pan was separated from the living area by a 1.9 metre-high partition. Inmates were allowed to take a shower once every seven days, for which they were afforded between fifteen and thirty minutes. The facility's shower room was equipped with twelve shower heads. The Government supported their submission with a copy of the "shower days" schedules for certain cells of the facility on 5 October and 7 December 2005, 15 February, 15 March, 18 April, 3 May and 6 June 2006. The schedules showed that the entire cell population, save for the largest cells, had been afforded no more than 20 minutes to take a shower. The majority of the schedules provided by the Government contained no information about the eight cells where the applicant had been detained. One schedule showed that on 5 October 2005 six inmates from cell no. 33, twenty-eight from cell no. 50, twenty-three from cell no. 51 and ten from cell no. 52 had taken a shower. On 7 December 2005 six inmates from cell no. 33, twenty-six from cell no. 50, seven from cell no. 51, ten from cell no. 52 and twenty-five from cell no. 55 had been allowed to take a

shower. On 15 March 2006 four inmates from cell no. 33, thirty-five from cell no. 50, eleven from cell no. 51 and fourteen from cell no. 52 had been allowed to take a shower.

35. Lastly, the Government stated that the sanitary conditions in the facility had complied with the existing legal requirements. The applicant had received an adequate quantity of food of proper quality. Medical assistance had been provided to him whenever necessary and free of charge.

36. Having provided different measurements of certain cells, the applicant mainly disputed the number of inmates which the cells had accommodated. In particular, he argued that cell no. 55 had thirty sleeping places and usually housed forty to sixty detainees. The same number of inmates usually stayed in cell no. 50. Cell no. 52 was equipped with twenty sleeping places and accommodated between twenty-five and thirty inmates. Cells nos. 60 and 66 had four and six sleeping bunks, and housed four to nine and five to eleven inmates, respectively. Four to five persons had to share four sleeping places in cell no. 60. Cell no. 51 equipped with twenty bunks accommodated twenty-five to thirty inmates. Cell no. 33, which had eight sleeping places, housed between eight and twelve detainees. The applicant insisted that owing to severe overcrowding, he had not had an individual bunk. Inmates had had to take turns to sleep. He further pointed out that detainees had been kept in extremely cramped conditions. Part of the cell floor space was taken up by metal bunks serving as beds for the occupants. The rest of the space was taken up by a wooden table, a bench, shelves, a tap and a lavatory pan. That arrangement left inmates with literally no free space where they could move. There was a lavatory pan in the corner of the cell, just a few metres away from the wooden table and bunk beds, separated from the living area by a partition no more than 90 cm-high. A curtain which inmates hung to obtain some privacy was always removed by the wardens. Furthermore, the facility administration did not provide inmates with cleaning fluids. The lavatory pan was always dirty and it did not have a lid, allowing unpleasant odours to permeate the cell.

37. The applicant further stated that the cells had not had an air conditioning system. They had been damp, stuffy and dark inside. Inmates had been allowed to smoke in the cells, which had been unbearable for the applicant, who did not smoke. Detainees had also had washed their clothes in the cells, creating excessive humidity. The cell windows had been too small and had not allowed sufficient light to enter the cells as they had been covered by metal netting. The fluorescent lighting had been constantly on. The cells had been infected with bed-bugs, lice and cockroaches, but the administration had not provided any insecticides. Inmates had not been provided with toiletries. They had been allowed to take a shower once every seven days. Fifteen minutes had been afforded to fifteen to twenty inmates, while only four to five shower heads had worked. Food had been very scarce and of low quality. Inmates had been allowed to have an outdoor

walk for an hour a day in the facility courtyards. The largest courtyard had measured 60 square metres and the smallest one 18 square metres. Eight to forty inmates had been placed in a courtyard at the same time. The courtyards had been covered by metal roofs, with merely a metre of empty space between the walls and the roof.

38. The applicant supported his submissions with statements by two inmates: Mr Y. and Mr V. Between 30 January 2004 and 1 July 2005, Mr Y. had been detained together with the applicant in cells nos. 55 and 66. Although Mr V., the applicant's co-defendant, had never shared a cell with the applicant, he had been housed in the facility at the same time as the applicant. Mr V. had also been kept in cells nos. 50 and 52. Both detainees' descriptions of the detention conditions were very similar to that given by the applicant.

39. The applicant also submitted four colour photographs of cell no. 52, which his co-defendant, Mr V., had taken. The photographs showed from eight to ten inmates in a very small and sombre room with a row of three-tier bunks installed along a wall. A long table with two benches was placed between the bunks and another wall. The remaining floor space of the cell not taken up by the furniture was only sufficient to allow the entire cell population to stand shoulder to shoulder. The bunks were not separated from each other. The inmates had hung linen and clothes on the bunks to get some privacy. There was dirty and worn-out bedding on the bunks, which were installed in such a way that they blocked the window. The window was covered with two rows of metal bars. The photographs also showed a heavily scratched floor and walls with peeling paint. The furniture was in a very dilapidated state. The bunks were rusty, and clothes had been hung on a rope below the ceiling.

40. In addition, the applicant provided the Court with a copy of order no. 7 issued on 31 January 2005 by the Federal Service for the Execution of Sentences. The order dealt with the renovation programme of temporary detention facilities in Russia for 2006. It contained a list of temporary detention facilities and the conditions of detention therein, which raised particularly serious concerns. Detention facility no. IZ-33/1 in Vladimir was among them. The order indicated that, with 1,009 detainees, the facility was housing twice its maximum capacity (507 places). It also indicated that inmates in that facility had less than 2.5 square metres of personal space.

41. Lastly, the applicant presented copies of letters to the Vladimir regional prosecutor from the same head of facility no. IZ-33/1 on whose certificates the Government had relied in their submission to the Court. The letters concerned an inmate, Mr N., who had been detained in the facility from 13 April 2004 to 27 June 2006. Mr N. had also stayed in cells nos. 50 and 51. In his letters to the prosecutor, the head of the facility indicated that cell no. 50 measured 47.35 square metres, had thirty-three bunks and housed twenty-four to thirty-three inmates. Although he indicated the same size of

cell no. 51 as in the certificate that he submitted to the Government, the head of the facility noted that that cell had twenty-four sleeping places and sixteen to twenty-three persons had been detained there together with Mr N.

42. The applicant lodged a number of complaints before various domestic authorities, including the courts, alleging that he had been detained in appalling conditions. The complaints were to no avail.

II. RELEVANT DOMESTIC LAW

43. The Russian legal regulations for detention are explained in the judgment of *Isayev v. Russia* (no. 20756/04, §§ 67-80, 22 October 2009) and *Pyatkov v. Russia* (no. 61767/08, § 59, 13 November 2012).

44. The relevant provisions of domestic and international law on conditions of detention are set out, for instance, in the Court's judgment in the case of *Gladkiy v. Russia* (no. 3242/03, §§ 36, 38 and 50, 21 December 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that the conditions of his detention in facility no. IZ-33/1 in Vladimir from 2 November 2004 until August 2006 had breached 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

46. In their first line of argument, the Government submitted that the applicant had failed to exhaust domestic remedies. In particular, he could have lodged a complaint with a competent court about the conditions of his detention. The Government argued that there existed an effective judicial practice of tort actions in the Russian Federation, by which detainees were able to obtain compensation for damage resulting from their detention in unsatisfactory conditions. They cited the case of a Mr D., who had been awarded 25,000 Russian roubles (RUB) against the Federal Service for the Execution of Sentences in compensation for damage following his being infected with scabies in a remand prison. They also noted that another detainee, Mr R., had been awarded RUB 30,000 for his unlawful detention

for more than fifty-six days and his not being provided with food during five days of his detention.

47. In the alternative, the Government submitted that the conditions of the applicant's detention fully complied with the domestic legal requirements and corresponded to the standards guaranteed by Article 3 of the Convention. They urged the Court to dismiss the applicant's complaint as being manifestly ill-founded. In their additional observations to the Court, they also stressed that the evidence provided by them, including the certificates issued by the head of the detention facility, were valid, having been signed by a State official who could have been held liable if the information provided by him had not been true. At the same time, they questioned the evidence presented by the applicant in support of his claims. In particular, the Government found it doubtful that two inmates, who had been detained in the facility between 2004 and 2006, and whose statements the applicant had obtained, could have remembered the exact number of bunks or inmates in each cell.

48. Relying on the written statements of his fellow inmates, the order from the Federal Service for the Execution of Sentences, and letters from the head of facility no. IZ-33/1 to the Vladimir regional prosecutor, the applicant insisted that the conditions of his detention had been inhuman and degrading. He maintained his description of the detention conditions, alleging severe overcrowding, poor sanitary conditions, insufficient lighting and inadequate food.

B. The Court's assessment

1. Admissibility

49. As to the Government's objection concerning the applicant's alleged failure to exhaust domestic remedies, the Court has already rejected identical objections by the Russian Government in a number of cases regarding conditions of detention, having found that neither a complaint to the administration of a detention facility (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007, with further references) nor a tort action (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009; *Artyomov v. Russia*, no. 14146/02, § 112, 27 May 2010; *Arefyev v. Russia*, no. 29464/03, § 54, 4 November 2010; and *Gladkiy v. Russia*, no. 3242/03, § 55, 21 December 2010) could be regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention. Moreover, in the case of *Nazarov v. Russia* (no. 13591/05, § 77, 26 November 2009) the Court dealt with the Government's argument on the basis of the reference to the awards that had been made by the Russian courts in favour of a Mr D. and a Mr R. The Court noted that the problems arising from the conditions of the applicant's detention had apparently been

of a structural nature, for which no effective domestic remedy had been shown to exist, and that the cases to which the Government had referred did not concern detention in overcrowded cells but rather a detainee's infection with scabies and the authorities' failure to provide a detainee with food (see, for similar reasoning, *Nedayborshch v. Russia*, no. 42255/04, § 21, 1 July 2010; *Arefyev v. Russia*, no. 29464/03, § 54, 4 November 2010; and *Geld v. Russia*, no. 1900/04, § 21, 27 March 2012). Lastly, in the case of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 100-19, 10 January 2012), having found a violation of Article 13 of the Convention, the Court concluded that, for the time being, the Russian legal system did not dispose of an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention.

50. The Court sees no reason to depart from its previous findings in the present case. Accordingly, it dismisses the Government's objection as to non-exhaustion of domestic remedies.

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

2. Merits

52. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-33/1 in Vladimir. 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 failed to refute.

53. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The applicant claimed that the number of detainees in the cells had considerably exceeded their design capacity. The Government argued that the applicant had had between 3.21 and 7.7 square metres of personal space and an individual sleeping place at all times.

54. The Court notes that the Government relied on certificates issued by the head of the detention facility almost three years after the applicant's detention in that facility had come to an end. At the same time they did not refer to any original source of information on the basis of which their assertion could be verified, save for extracts from the prison population logs for twelve days out of the entire period of the applicant's detention. In this connection, the Court notes that on several previous occasions when the Government have failed to submit original records, it 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 those considerations hold true in the present case. The certificates prepared by the authorities three years after the events in question cannot be regarded as sufficiently reliable sources of data. The twelve extracts from the logs do not alter that conclusion, as they do not have any representative character.

55. Moreover, a further element undermining the reliability of those certificates is the fact that the information provided by the head of the facility to the Government contradicts, at least in part, the information which the same official provided to the Vladimir regional prosecutor. The discrepancy between the letters to the prosecutor and the information prepared for the Government was not only in the number of inmates but also in the size of the cells (see paragraph 41 above). For instance, in the letter to the prosecutor, the head of the facility stated that cell no. 50 measured 47.35 square metres and housed between twenty-four and thirty-three inmates, whereas in the certificate to the Government he stated that that cell measured 77.35 square metres and accommodated ten to twenty-two inmates. The Court finds this behaviour by a State official, as the Government correctly pointed out, unexplainable and troublesome. Furthermore, the Court observes that there is other evidence disproving the information provided by the Government. In particular, it appears from the order of the Federal Service for the Execution of Sentences that in 2004-2005, the number of detainees in facility no. IZ-33/1 was twice the maximum capacity of that facility, leaving them with less than 2.5 square metres of personal space (see paragraph 40 above). The Court also notes that the shower-day schedules provided by the Government indicated a far higher number of detainees in certain cells than that mentioned in the certificates issued by the head of the facility (see paragraph 34 above). The photographs of cell no. 52 and the written statements by the two inmates are additional evidence corroborating the Court's conclusion that the information contained in the certificates issued by the head of the detention facility and cited by the Government is not reliable. In particular, the Court finds it striking that while the head of the detention facility informed the Government that the cells where the applicant had been detained had not been equipped with three-tier bunks, the photographs submitted by the applicant, the authenticity of which the Government did not dispute, clearly showed that detainees had shared three-tier bunks. The Government did not provide any explanation for that clear discrepancy.

56. Accordingly, having regard to the evidence submitted by the applicant, as well as the Government's failure to submit any convincing relevant information, the Court finds it established that the cells in facility no. IZ-33/1 were overcrowded. The Court also accepts the applicant's

submissions that, owing to the overpopulation in the cells and the resulting lack of sleeping places, he had to take turns with other inmates to rest. The Court observes that it has previously examined four cases concerning the conditions of detention in facility no. IZ-33/1, three of which concerned applicants who had been detained there at the same time as the applicant in the present case. In those four cases the Court found the conditions of detention in that facility to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding (see *Mamedova* v. Russia, no. 7064/05, §§ 61-67, 1 June 2006 (detention from 23 July 2004 to 19 May 2005); *Sukhovoy v. Russia*, no. 63955/00, §§ 20-34, 27 March 2008 (detention from 8 January to 2 August 2000); *Nazarov v. Russia*, no. 13591/05, §§ 80-83, 26 November 2009 (detention from April 2004 to summer 2006); and *Veliyev v. Russia*, no. 24202/05, §§ 126-30, 24 June 2010 (detention from March 2004 to August 2007).

57. The Court fully supports those findings in the present case. It further observes that, irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise its prison 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).

58. The applicant's situation was further exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day, leaving him with twenty-three hours per day of detention in the facility without any freedom of movement. The Court also does not overlook the applicant's argument, as supported by the written statements of his fellow inmates and the colour photographs of the cell, that he had limited access to natural light and fresh air. Although the photographs provided by the applicant showed that there were no blinds or shutters on the windows, the rows of three-tier bunks were installed in such a way that they significantly reduced the amount of daylight that could penetrate the cells. Two rows of metal bars installed on the windows served as an additional barrier to daylight. The Court therefore finds it established that the window arrangements allowed little access to natural light. Given those window arrangements, it follows that the circulation of fresh air was equally limited. It therefore appears that the applicant had to spend a considerable part of each day in a cramped cell with no window in the proper sense of the word (compare *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III). Furthermore, the Court notes that the fact that the applicant had access to a shower for no more than fifteen minutes once a week raises serious concerns as to the conditions of hygiene and sanitation in the facility, given the acutely overcrowded accommodation in which he found himself (see, for similar reasoning, *Melnik v. Ukraine*, no. 72286/01, § 107, 28 March 2006). Lastly, the Court notes the applicant's submission that it was unbearable to him that inmates had been allowed to smoke in the cells (see paragraph 37 above). In the Court's opinion the detention of the applicant, a non-smoker, for almost two years

with smokers could have caused him considerable distress in the absence of adequate ventilation (see *Gultyayeva v. Russia*, no. 67413/01, § 160, 1 April 2010).

59. The Court takes note of the photographs showing the interior of one of the cells where the applicant was detained. The cell was evidently in a deplorable state of repair and cleanliness. The concrete walls, the ceiling and the floor were damaged. The metal beds were rusty and dilapidated, while the bedding was worn out and dirty. The bunks were installed in such a way that the sleeping places were not separated even by a minimal distance. The photographs attest to the inmates' attempts to obtain at least some privacy by barricading their bunks with uniforms or bedding. The Court considers that such conditions can only be described as degrading and unfit for human habitation (see, for similar reasoning, *Zakharkin v. Russia*, no. 12555/04, § 126, 10 June 2010).

60. To sum up, 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-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers*, cited above, §§ 69 et seq.).

61. Having regard to its case-law on the subject and the material submitted by the parties, 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that he was obliged to live, sleep and use the toilet in the same cell as so many other inmates for almost two years 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.

62. 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 facility no. IZ-33/1 in Vladimir from 2 November 2004 until August 2006.

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

63. The applicant complained under Article 5 § 1 (c) that his detention from 12 January to 13 July 2005 had been unlawful, as it had not been based on any legal order. The relevant parts of Article 5 provide:

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

...

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

A. Submissions by the parties

64. The Government argued that the applicant's detention had been lawful, complying with the requirements of Article 5 § 1 (c) of the Convention. They submitted that the period of the applicant's detention authorised by the Leninskiy District Court on 22 December 2004 had expired on 12 January 2005. Five days later, on 17 January 2005, the case was sent to the Frunzenskiy District Court of Vladimir for trial. During a preliminary hearing on 25 January 2005 the District Court ruled on the issue of the applicant's and his co-defendant's detention, having noted that the measure of restraint should remain unchanged. Having issued that decision, the District Court took into account that the applicant had been charged with particularly serious crimes, that he had been held administratively and criminally liable before and that he might abscond and pervert the course of justice. The Vladimir Regional Court, which examined an appeal against that decision, considered it to be reasonable and lawful. The applicant's detention continued within the six-month time-limit established by the Code of Criminal Procedure, as interpreted by the courts at the time.

65. The applicant submitted that his detention had lacked any legal basis. He argued that the only reason for his continuous detention had been the fact that the case had been sent for trial to the Frunzenskiy District Court. Thus in the absence of a court decision, he had been held on the basis of a legal norm.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

67. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. It is not concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4. The Court also points out that paragraph 1 of Article 5 makes it clear that the guarantees it contains apply to "everyone". Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds.

68. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012).

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

69. The Court reiterates that on 12 January 2005 the period of the applicant's detention authorised by the order of the Leninskiy District Court on 22 December 2004 expired. A further decision on his detention was taken on 25 January 2005, when the Frunzenskiy District Court held the preliminary hearing and found no grounds for releasing the applicant. The appeal decision issued by the Vladimir Regional Court shows that the extension of the applicant's detention after 11 January 2005 was the result of the courts' interpretation of the Russian law on criminal procedure, which permitted the detention of an accused for six months after his or her case had been remitted to the trial court for examination on the merits (see paragraphs 19-21 above). The applicant's detention was further extended on

7 July 2005, when the District Court authorised his detention from 13 July to 13 October 2005.

70. According to the applicant, his detention between 12 January and 13 July 2005 had been unlawful, having merely been based on the judicial interpretation of "detention pending judicial proceedings". The Government argued that the applicant's detention during that period had been based on the District Court's decision of 25 January 2005 and the fact that on 13 January 2005 the applicant's case had been transferred to the trial court.

71. The Court notes that after the authorised period of the applicant's detention on 12 January 2005, it was not until 25 January 2005 that the Frunzenskiy District Court issued an order authorising his further detention. The Government did not refer to any court order authorising the applicant's detention for the period between 12 and 25 January 2005. They merely stressed that during that period the applicant had been kept in detention on the basis that the criminal case against him had been referred to the court competent to deal with it.

72. The Court has already examined and found a violation of Article 5 § 1 in a number of cases concerning the practice of holding defendants in custody solely on the basis that a bill of indictment has been lodged with the court competent to try the case (see *Baranowski*, cited above, §§ 53-58, and *Ječius*, cited above, §§ 60-64). It has held that such practice is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (ibid.). The Court has repeated this finding in a number of cases against Russia concerning a similar set of facts (see, for example, *Khudoyorov v. Russia*, no. 6847/02, §§ 147-151, ECHR 2005-X (extracts), and *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006).

73. The Court sees no reason to depart from those findings in the present case. It is also not prepared to interpret the detention order of 25 January 2005 as the one authorising the applicant's detention retrospectively, in respect of the preceding period between 12 and 25 January 2005. It has always been the Court's position that any *ex post facto* authorisation of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness. Permitting a prisoner to languish in detention on remand without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, 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 *Khudoyorov*, cited above, § 142).

74. At the same time, the Court observes that the applicant's detention after 25 January 2005 and until 13 July 2005 was based on the detention order issued by the Frunzenskiy District Court at the preliminary hearing. The District Court provided certain grounds for its decision. While noting a

certain ambiguity in the wording used by the District Court, the Court is convinced that it was obvious to the applicant and his lawyers that the authorised period of detention could not exceed six months. It can therefore accept that the District Court implicitly set the time-limit for the applicant's detention. Furthermore, it has never been alleged by the applicant that the District Court acted in excess of its jurisdiction, or that there were any flaws in the relevant detention order amounting to "a gross and obvious irregularity" so as to render the underlying period of detention in breach of Article 5 § 1 of the Convention (see *Mooren v. Germany* [GC], no. 11364/03, § 84, 9 July 2009).

75. To sum up, the Court finds that there was a violation of Article 5 § 1 of the Convention with regard to the applicant's detention from 12 to 25 January 2005 and no violation of Article 5 § 1 of the Convention with regard to the detention order of 25 January 2005, which served as the basis for the applicant's detention between 25 January and 13 July 2005.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

76. The applicant further complained that he had not been promptly informed of the charges against him. He relied on Article 5 § 2 of the Convention, which reads as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.".

A. Submissions by the parties

77. The Government submitted that immediately after the applicant's arrest at 10.30 p.m. on 25 October 2004, a record had been drawn up, citing Article 91 § 2 of the Code of Criminal Procedure as the ground for his arrest. The Government explained that that legal provision lists the grounds for arresting an individual reasonably suspected of having committed a criminal offence. In particular, by virtue of that provision, a suspect may be arrested if he or she has attempted to abscond, if he or she does not have a place of permanent residence, if it is impossible to identify the suspect, or if a prosecutor or an investigator, acting upon the prosecutor's order, has filed a request with a court seeking the suspect's placement in custody. The Government further noted that on 25 October 2004 a request for the applicant's placement in custody was filed with the Leninskiy District Court by the acting deputy prosecutor of Vladimir.

78. The Government noted that, at the time of his arrest, the applicant had been notified of his procedural rights listed in Article 46 of the Code of Criminal Procedure, including the rights to remain silent and to have legal

representation. At the same time, the applicant had waived the latter right without providing any explanation for his decision. He had not made any objections or comments at the time of his arrest. In the Government's view, the authorities had fully complied with the procedure laid down by Article 91 of the Code of Criminal Procedure.

79. Lastly, the Government noted that on 26 October 2004, less than twenty-four hours after the arrest, an investigator carried out the first interview of the applicant with the assistance of his lawyer. The applicant had once again been informed of his procedural rights and had been notified that he had been suspected of having committed aggravated rape. The applicant had invoked his right to remain silent and had refused to testify. The Government concluded that the applicant had therefore been properly informed of the reasons for his arrest.

80. The applicant argued that it was not until the first interview on the day following his arrest that he had learned about the reasons for his deprivation of liberty, in particular, that he had been suspected of having taken part in a gang rape. He further pointed out that he had not been served with the indictment record explaining in detail the charges against him until eight days later. He stressed that there had been no reasonable grounds for delaying the provision of information about the charges against him.

B. The Court's assessment

1. Admissibility

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

2. Merits

82. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty (see *Čonka v. Belgium*, no. 51564/99, § 50, ECHR 2002-I). This provision is a minimum safeguard against arbitrary treatment and an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 of Article 5 of the Convention. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed

were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182).

83. For instance, in the case of *Murray v. the United Kingdom* (28 October 1994, § 78, Series A no. 300-A), where the applicant was arrested at her home at 7 a.m. and questioned from 8.20 a.m. to 9.35 a.m. on the same day, the Court considered the notification to be sufficiently prompt. At the same time the Court has stated in a number of cases that no more than a few hours should elapse, save in exceptional circumstances, such as the serious incapacity of the arrested person to comprehend the reasons that might have been given. Thus, where an applicant was merely told that he was being arrested under a particular provision and was not questioned until the next day, the Court found that the alleged practical problems in assembling an interview team late at night were not sufficient where the fundamental importance of the right to liberty was at stake (see, for example, *James Clinton and Others v. the United Kingdom*, nos. 12690/87, 12731/87, 12823/87, 12900/87, 13032/87, 13033/87, 13246/87, 13231/87, 13232/87, 13233/87, 13310/87, 13553/88 and 13555/88, Commission's report of 14 October 1991, Decisions and Reports (DR) 95, § 46).

84. Turning to the facts of the present case, the Court observes – and it was not disputed by the parties – that at approximately 10.30 p.m. on 25 October 2004, when the record of the applicant's arrest was drawn up, he was merely told that he was being arrested under a particular provision of the Code of Criminal Procedure. As the Government explained, that provision listed procedural grounds for deprivation of liberty, such as the fear that the suspect might abscond. There is no evidence that the applicant was informed of the charges against him at the time of his arrest. The factual grounds for his arrest were made clear to him during the first interrogation at 12.00 p.m. on 26 October 2004, when he was informed that he was suspected of having participated in a gang rape. Thus, approximately fourteen hours elapsed between his arrest and the notification of the charges against him. During that period he was left in a state of uncertainty and confusion as to why he had been deprived of his liberty (see, for similar reasoning, *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 210, 21 April 2011). Given the Government's failure to indicate any exceptional circumstances which could have explained the delay in notifying the applicant, the Court considers that an interval of approximately fourteen hours must be deemed incompatible with the constraints of time imposed by the notion of promptness in Article 5 § 2 of the Convention.

85. Accordingly, the Court considers that there has been a violation of Article 5 § 2 of the Convention in the present case.

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

86. In his application the applicant complained of a violation of his right to trial within a reasonable time and alleged that insufficient reasons had been provided for ordering his detention. He relied on Article 5 § 3 of the Convention, which provides:

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

87. The Government submitted that the courts had authorised the applicant's arrest because they had sufficient reasons to believe that he had committed aggravated rape. The fact that the applicant already had a criminal record which had not yet been expunged had served as an additional ground for concluding that he had been likely to reoffend and pervert the course of justice. In particular, he might have hindered the investigators' search for the victim's mobile phone. The Government further submitted that the applicant had been charged with a particularly grave criminal offence and that the victim had identified him as a perpetrator. They considered that the reasons for the applicant's detention for slightly over seventeen months had been relevant and sufficient. The Government further stressed that the case had been complex; the authorities had needed time to investigate and examine the case thoroughly; they had carried out a large number of procedural measures, summoned expert opinions, collected evidence and dealt with numerous motions from the defence team. Furthermore, the proceedings had been delayed as a result of the unavailability of the lawyers, who had been ill, busy with other trials or had taken leave.

88. In his observations to the Court, the applicant requested the withdrawal of his complaint.

89. Taking into account the applicant's request and finding no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the present complaint under Article 5 § 3 of the Convention, the Court considers, in accordance with Article 37 § 1 (a) of the Convention, that this part of the application shall be struck out.

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

90. The applicant further complained that his requests for release on 9 December 2004 and in April 2005, as well as his appeals against the detention orders of 27 October and 22 December 2004, 25 January, 7 July and 13 October 2005 and 11 January 2006 had not been speedily examined by the courts. He further argued that the courts had never considered the

merits of his request for release submitted on 9 December 2004. He relied on Article 5 § 4 of the Convention, which reads 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. Submissions by the parties

91. The Government argued that the domestic courts had fully complied with their responsibility to examine speedily the applicant's complaints against the detention orders. Referring to the examination of the proceedings in which the courts had dealt with the applicant's request for release submitted on 9 December 2004, they stressed that, having examined the request for release, the courts had correctly dismissed it as the applicant and his defence team had not taken the proper avenue for ventilating that complaint. Under the rules of the criminal procedural law, they should have submitted the request to the District Court at the place where the investigation was taking place. The Government further explained that the delay in dealing with the request of 9 December 2004 had resulted from the absence of the applicant's lawyer at the hearings on 13, 20 and 28 January 2005.

92. The applicant submitted that it had usually taken the courts between thirty and fifty days to deal with the detention issue. In his view, the length was excessive and was entirely attributable to the ineffective actions of the courts. He maintained that the domestic courts had unlawfully refused to examine his request for release, which had been submitted prior to the case having been transferred for trial. The Leninskiy District Court had had full competence to examine the release request, but having delayed the proceedings, had refused to do so, citing territorial jurisdiction.

B. The Court's assessment

1. Admissibility

93. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and that they must therefore be declared admissible.

2. Merits

(a) General principles

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

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

i. Appeal against the detention order of 27 October 2004

95. The Leninskiy District Court authorised the applicant's placement in custody on 27 October 2004. The applicant appealed against that decision and his appeal was examined by the Vladimir Regional Court on 9 November 2004 (see paragraphs 9-11 above). Accordingly, the proceedings lasted for approximately a week. Their length does not appear excessive.

96. In these circumstances, the Court finds that there was no violation of Article 5 § 4 of the Convention as regards the "speediness" of the review of the applicant's placement in custody carried out by the domestic courts.

ii. Remaining proceedings in which the detention issue was decided

97. The Court notes that it took the courts a varying number of days to examine the appeals lodged by the applicant against the remaining detention orders and his requests for release. These proceedings ranged from thirty-four to one hundred days. In particular, it took the courts approximately forty days to examine the applicant's appeal against the detention order of 22 December 2004 (see paragraphs 12 and 14 above, with the appeal

decision having been issued on 1 February 2005), hundred days to deal with the request for release lodged by the applicant's counsel on 9 December 2004 (see paragraphs 15-17 above, with the final decision having been issued on 31 March 2005); more than a month and a half to examine the appeal against the decision of 25 January 2005 (see paragraphs 19 and 20 above, with the appeal decision having been taken on 16 March 2005); more than two months to consider the request for release in April 2005 (see paragraphs 22-24, with the final decision having been taken on 28 June 2005); thirty-four days to dismiss the appeal against the order of 7 July 2005 (see paragraphs 25-26 above, given that the appeal decision was taken on 11 August 2005); and more than forty days each time to deal with the appeals against the orders of 13 October 2005 and 11 January 2006 (see paragraphs 27-30 above, noting that the appeal decisions were taken on 23 November 2005 and 7 March 2006, respectively).

98. The Court reiterates the Government's argument in respect of the delay allegedly caused by the absence of the applicant's lawyer from the proceedings in which the courts considered the request for release submitted on 9 December 2004. The Court observes that a delay of under two weeks does not explain the total length of the proceedings, which lasted for approximately one hundred days (see paragraphs 15-18 above).

99. The Court further observes that the Government did not argue that the applicant had caused delays in the remaining sets of proceedings in which the lawfulness of his detention was being reviewed. They did not indicate any particular instance where the applicant might have applied for a stay of those proceedings or might in any other way have caused their delay. The Court thus concludes that the periods in question cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially given that their duration was entirely attributable to the authorities (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Khudoyorov*, cited above, §§ 198 and 203; and *Rehbock v. Slovenia,* no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were not deemed "speedy").

100. There has therefore been a violation of Article 5 § 4 of the Convention on account of the authorities' failure to comply with their obligation to afford the applicant a speedy review of the lawfulness of his detention in the remaining sets of the proceedings.

iii. Request for release of 9 December 2004

101. The Court further reiterates the applicant's complaint concerning the courts' failure to examine the merits of a request for release which his counsel submitted on 9 December 2004, a month before the applicant was committed to stand trial before the Frunzenskiy District Court. In this respect, the Court observes that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and

substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Grauslys v. Lithuania*, no. 36743/97, § 53, 10 October 2000). In order to satisfy the requirements of Article 5 § 4 of the Convention, a "review of the lawfulness of the applicant's detention" must comply with both the substantive and procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5, namely to protect the individual against arbitrariness (see *Keus v. the Netherlands*, 25 October 1990, § 24, Series A no. 185-C).

102. The Court notes that the request for release was lodged on 9 December 2004 with the Leninskiy District Court, which had previously ruled on the issues of his detention. On 15 February 2005 the Leninskiy District Court discontinued the proceedings, having noted that the matter had to be dealt with by the Frunzenskiy District Court judge. That decision was quashed on appeal with the Regional Court deciding to discontinue the proceedings in view of the lack of jurisdiction to deal with it. The Government did not dispute that the lawyer had submitted the request to the Leninskiy District Court in full compliance with the procedural requirements. However, the District Court's failure to respond promptly to the release request created confusion with the jurisdictional boundaries, which stripped the applicant of the possibility to have his detention reviewed. The Court therefore considers that, in the circumstances of the case, the authorities' failure to review without delay the lawfulness of the applicant's detention upon his request for release on 9 December 2004 (see the Court's findings to that effect in paragraph 99 above) deprived him of a review of the requisite effectiveness (see *Eminbeyli v. Russia*, no. 42443/02, § 68, 26 February 2009, with further references).

103. In such circumstances, having regard to the domestic courts' express refusals to examine the issue of the applicant's continued detention and to take cognisance of any arguments concerning the lawfulness of his detention, the Court considers that those decisions did not constitute an adequate judicial response for the purposes of Article 5 § 4 and that they infringed the applicant's right to take proceedings by which the lawfulness of his detention would be decided.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

104. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and

freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government argued that the applicant had not submitted any evidence in support of his claim.

108. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he has sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further notes that it has found a number of violations of the Convention provisions in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration, caused by the inhuman conditions of his detention, cannot be compensated for by a mere finding of a violation. However, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

B. Costs and expenses

109. The applicant also claimed EUR 7,000 for the legal costs incurred before the domestic courts and the Court. He asked that the award be paid to his representatives' bank account.

110. The Government stressed that although the applicant had provided the Court with a copy of the agreement for legal assistance, he had not submitted any evidence showing that the payment had actually been made.

111. 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, the applicant provided the Court with a copy of a contract for legal representation setting up a fee of EUR 7,000 to be paid to his three lawyers, irrespective of the outcome of the proceedings

before the Court. The Government did not argue that the contract was not enforceable or that it did not impose a legally binding obligation on the applicant to pay the stipulated fee for legal services to his defence team. It is clear from the length and detail of the pleadings submitted by the applicant that a great deal of work was carried out on his behalf. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that those rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicant's complaints were either declared inadmissible or no violation was found. In this connection, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 5,000, together with any tax that may be chargeable to him on that amount, to be paid, as requested, into his representatives' bank account as identified by the applicant.

C. Default interest

112. The Court considers it appropriate that the default interest rate 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. *Decides* to strike out the complaint under Article 5 § 3 of the Convention;

2. *Declares* the complaints concerning the conditions of detention in a temporary detention facility, the unlawfulness of detention between 12 January and 13 July 2005, the belated notification of the charges after the arrest and the lack of speedy and effective review of the detention matters admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention between 12 and 25 January 2005;

5. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention between 25 January and 13 July 2005;

6. *Holds* that there has been a violation of Article 5 § 2 of the Convention;

7. *Holds* that there has been no violation of Article 5 § 4 of the Convention as regards the "speediness" of the review by the domestic courts of the appeal against the detention order of 27 October 2004;

8. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the "speediness" of the review by the domestic courts of the remaining detention orders or requests for release;

9. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the courts' failure to consider the substance of the applicant's request for release lodged on 9 December 2004;

10. *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 7,500 (seven thousand and five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of costs and expenses, to be paid into the representatives' bank account;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President