CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FIRST SECTION

## PARTIAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 3522/04
by Saipudi SALMANOV
against Russia

The European Court of Human Rights (First Section), sitting on 19 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 2 December 2003,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Saipudi Zeindinovich Salmanov, is a Russian national who was born in 1955 and is now detained in Moscow. He is represented before the Court by Mr S. Ibragimov, a lawyer practising in the Moscow Region.

## A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

### *1. The applicant's arrest and detention on remand*

On 20 January 1998 the applicant was placed into custody. A search was carried out in his flat and office. On 23 January 1998 the Yaroslavl regional prosecutor authorised his detention on remand. On 16 April 1998 the Frunzenskiy District Court upheld that detention order.

On 30 January 1998 the applicant was charged with a number of offences, including conspiracy to commit murder.

On 11 May 1998 the applicant was transferred from Yaroslavl to Moscow where he was placed into remand centre no. 77/1, also known as "Matrosskaya Tishina". On two occasions an HIV-positive inmate was placed in the same cell. The applicant did not receive a response to his complaints about that situation.

In July 1998 the Prosecutor General authorised an extension of the applicant's detention on remand till 18 January 1999. On 2 October 1998 the Preobrazhenskiy District Court of Moscow upheld the extension order.

On 29 September 2000 the Moscow City Court ordered further detention on remand.

It appears that the City Court subsequently issued further extension orders, copies of which were not submitted to the Court.

On 3 July 2002 the Moscow City Court issued a new extension order covering the period from 1 July to 1 October 2002. By way of justification, it referred to the fact that the applicant and other co-accused were charged with particularly serious criminal offences. The applicant and his counsel lodged an appeal against that decision which was examined on 2 April 2003 (see below).

On 30 September 2002 the prosecution asked the City Court for a further extension until 1 January 2003. Defence counsel objected to the request. The applicant and a co-defendant petitioned for their release on an undertaking not to leave the town or for imposition of any other preventive measure. The court noted that all defendants were charged with particularly serious criminal offences and, without giving further reasons, granted the prosecution's request. On 7 October 2002 the applicant's counsel lodged an appeal against that decision which was examined on 12 February 2003 (see below).

On 18 December 2002 the prosecution asked the City Court to extend the defendants' detention until 1 April 2003. The applicant and his lawyer, among others, objected to that request. The City Court granted the request, finding that the defendants were charged with particularly serious criminal offences. No other grounds were invoked. On 24 December 2002 the

applicant's counsel lodged an appeal against the decision which was examined on 16 October 2003 (see below).

On 12 February 2003 the Supreme Court of the Russian Federation examined the appeal against the decision of 30 September 2002 in the applicant's absence and dismissed it in the following terms:

> "It follows from the case-file that the defendants are charged with particularly serious criminal offences. The court, at the request of the prosecution... extended their period of detention. There were no breaches of the rules of criminal procedure that could entail quashing or amendment of the decision... The arguments in the statements of appeal for an amendment of the preventive measure are not to be taken into account because the defendants are charged with particularly serious criminal offences."

On 24 March 2003 the prosecution asked for a new extension for three months, until 1 July 2003. The court granted the request, noting, as before, that the defendants were charged with particularly serious criminal offences. The applicant's counsel lodged an appeal against the decision which was examined on 16 October 2003 (see below).

On 2 April 2003 the Supreme Court of the Russian Federation dismissed the applicant's appeal against the decision of 3 July 2002, finding that the trial court had authorised the extension in compliance with the applicable rules of criminal procedure and that the defendants could not be released from custody because they were charged with particularly serious criminal offences.

On 30 June 2003 the prosecution introduced a new request for a three-month extension until 1 October 2003. The Moscow City Court granted the extension for the sole reason that the defendants were charged with particularly serious criminal offences. The applicant's counsel lodged an appeal against the decision which was examined on 16 October 2003.

On 16 October 2003 the Supreme Court of the Russian Federation considered the appeals against the extension orders and upheld the decisions of the Moscow City Court of 18 December 2002, 24 March and 30 June 2003. It stated, as before, that there were no violations of the rules of criminal procedure warranting amending or quashing the contested decisions and that the defendants could not be released because they were charged with particularly serious criminal offences.

On 30 September 2003 the Moscow City Court, at the prosecution's request, extended the defendants' detention until 1 January 2004, referring solely to the gravity of the charges against them. The applicant's counsel lodged an appeal against the decision which was examined on 22 April 2004 (see below).

On 30 December 2003 the Moscow City Court, on a request by the prosecution, extended the defendants' detention on remand until 1 April 2004, noting that "the defendants [were] charged with particularly serious criminal offences, they [could] abscond or obstruct justice". The applicant's

counsel lodged an appeal against the decision which was examined on 22 April 2004 (see below).

On 30 March 2004 the Moscow City Court, on the prosecution's request, extended the defendants' detention on remand until 1 July 2004, indicating that:

> "...[the defendants] are charged with several counts of serious and particularly serious criminal offences committed by an organised gang in conspiracy with unidentified persons, against whom separate criminal proceedings are pending, and with another person, against whom criminal proceedings were disjoined because his whereabouts are not known; if released, [they] can abscond or obstruct justice".

The applicant's counsel lodged an appeal against the decision of 30 March 2004 which was examined on 22 July 2004 (see below).

On 22 April 2004 the Supreme Court considered the appeals against the extension of the detention on remand and upheld the decisions of the Moscow City Court of 30 September and 30 December 2003. It reiterated that there were no violations of the rules of criminal procedure warranting amending or quashing the contested decisions and that the defendants could not be released because they were charged with particularly serious criminal offences.

On 1 July 2004 the Moscow City Court, on the prosecution's request, extended the defendants' detention on remand until 1 October 2004, reproducing verbatim the reasoning of its decision of 30 March 2004. The applicant's counsel lodged an appeal.

On 22 July 2004 the Supreme Court dismissed the appeal against the extension order of 30 March 2004, endorsing the grounds invoked by the Moscow City Court.

On 12 October 2005 the applicant complained to the Court that from 1 October to 10 November 2004 he had been detained without a judicial order.

*2. Trial*

In July 1999 the case was referred for trial to the Moscow City Court. On 5 August 1999 the City Court, noting that a majority of the defendants had opted to exercise their constitutional right to a trial by jury but there were no juries available in the City Court, asked the Supreme Court to determine where the case should be tried.

On 20 January 2000 the Supreme Court referred the case to the Moscow Regional Court where juries had been formed. The case was then stayed because the jurisdiction issue had been referred to the Constitutional Court.

On 13 April 2000 the Constitutional Court held that the decision on the change of venue had not been compatible with the Russian Constitution. The case was returned to the Moscow City Court.

On 29 September 2000 the Moscow City Court decided that the case was ready for trial and listed the first hearing for 13 October 2000.

On 13 October 2000 the hearing was adjourned for unspecified reasons.

On 28 February 2001 the trial was opened. The court scheduled 13 hearings in 2001 and 25 hearings in 2002. All of them were adjourned on various grounds, mainly owing to the presiding judge's involvement in other proceedings. Several times the case was re-assigned to other judges; this happened on 25 November and 24 December 2001, 16 January, 4 February, 8 April and 5 May 2002. Each re-assignment resulted in a further adjournment.

It appears that consideration of the merits began in March 2003.

On 27 October 2004 the Moscow City Court found the applicant guilty of multiple counts including conspiracy to commit murder and sentenced him to ten years' imprisonment. On 10 November 2004 the judgment was pronounced in public.

The applicant, among others, lodged an appeal on the merits. The appeal proceedings are now pending.

*3. Conditions of the applicant's transport to, and detention at, the courthouse*

From 28 February 2001 to 30 December 2003 the trial was held in the premises of the Moscow City Court. The applicant was transported to the courthouse and back 102 times. On those days he was not given any food before departure. Nor did he receive any meal at the courthouse or in the remand centre upon his return.

The applicant was taken out of his cell at 6 a.m. and placed in an "individual" cell measuring 70 by 70 centimetres, awaiting departure at 9 or 10 a.m. Once in the courthouse, he was placed in a "convoy" cell measuring 1.2 by 2 metres, together with several other detainees. After the hearing he was taken back to that cell where he waited until 6 to 8 p.m. without any food or drink or access to a toilet.

On the way back the prison van never went directly to remand centre no. 77/1, it made a detour to bring detainees to another remand centre where it could stop for four or five hours. Upon arrival at facility no. 77/1, the applicant had to wait for one more hour to be taken to his cell at about midnight.

According to the applicant, on 13 May and 2 October 2003 he complained about inhuman transport conditions to the Ministry of the Interior and the Ministry of Justice. Neither complaint was considered.

On an unspecified date the administration of remand centre no. 77/1 made an entry in his record, to the effect that he presented a significant flight risk. The applicant attempted to contest the entry, but his efforts turned out to be unavailing. On 26 July 2005 the administration of the remand centre informed him that the contested entry had been deleted.

### B. Relevant domestic law

For a summary of domestic law provisions on detention on remand, see *Khudoyorov v. Russia* (no. 6847/02, §§ 76-96, 8 November 2005).

### C. Relevant international instruments

The relevant extracts from the 11th General Report [CPT/Inf (2001) 16] prepared by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the transmissible diseases read as follows:

> "31. The spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/AIDS has become a major public health concern in a number of European countries....
>
> ...[T]he prisoners concerned should not be segregated from the rest of the prison population unless this is strictly necessary on medical or other grounds. In this connection, the CPT wishes to stress in particular that there is no medical justification for the segregation of prisoners solely on the grounds that they are HIV-positive.
>
> In order to dispel misconceptions on these matters, it is incumbent on national authorities to ensure that there is a full educational programme about transmissible diseases for both prisoners and prison staff. Such a programme should address methods of transmission and means of protection as well as the application of adequate preventive measures. More particularly, the risks of HIV or hepatitis B/C infection through sexual contacts and intravenous drug use should be highlighted and the role of body fluids as the carriers of HIV and hepatitis viruses explained..."

## COMPLAINTS

1. The applicant complained under Article 3 of the Convention about inhuman and degrading conditions of his detention on remand, including placement of an HIV-positive inmate in his cell, transport to and from the courthouse and confinement at the courthouse.

2. The applicant complained under Article 5 §§ 1 (c) and 4 of the Convention that his arrest had been unlawful; that he had not been able to obtain review of the lawfulness of his detention on remand in 1998-1999; that there was no judicial decision authorising his detention from 1 to 3 July 2002, and that his detention on remand had been unreasonably long. In his submissions of 12 October 2005 he complained that he had been detained from 30 September to 10 November 2004 in the absence of a court order.

3. The applicant complained under Article 6 of the Convention that he was denied the right to a fair trial.

4. The applicant complained under Articles 6 § 1 and 13 of the Convention about the excessive length of the criminal proceedings.

5. The applicant complained under Article 8 of the Convention about allegedly unlawful searches of his flat and office.

6. The applicant complained under Article 14 of the Convention that the officials of remand centre no. 77/1 made an entry in his detention record to the effect that he presented a serious flight risk.

## THE LAW

1. The applicant alleged a violation of Article 3 of the Convention as regards the conditions of his detention, transport and confinement at the courthouse. Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

(a) The Court notes that the applicant has never complained about the conditions of his detention on remand to any domestic authority and therefore has not afforded them an opportunity to examine conditions of his detention and, if appropriate, to offer redress (see *Metelitsa v. Russia* (dec.), no. 33132/02, 28 April 2005).

It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) In so far as the applicant complained about the placement of an HIV-positive inmate in his cell, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

(c) As to the conditions of the applicant's transport to and from, and confinement at, the courthouse, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

2. The applicant complained under Article 5 §§ 1 (c) and 4 of the Convention about the unlawfulness of his arrest and detention from 1 to 3 July 2002 and from 30 September to 10 November 2004, the authorities' failure to examine his complaints in 1998-1999, and an excessive length of the detention on remand. The relevant parts of Article 5 of the Convention 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;

...

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

4. 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) In so far as the applicant complained about the events and proceedings that had taken place or ended before June 2003, including his arrest, detention from 1 to 3 July 2002 and its review which took place on 2 April 2003 at second instance, the authorities' failure to examine his complaints in 1998-1999, the Court reiterates that it may only deal with the matter within a period of six months from the date on which the final decision was taken or the event occurred. The applicant introduced his application on 2 December 2003.

It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) In so far as the applicant contested the lawfulness of his detention from 1 October to 10 November 2004, the Court notes that the final domestic decision concerning that period was issued on 20 December 2004, whereas he only raised this complaint for the first time on 12 October 2005.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(c) As to the applicant's complaint about an excessive length of his detention on remand, the Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant alleged violations of the fair trial guarantees set out in Article 6 of the Convention.

The Court notes that an appeal against the applicant's conviction is now pending. It is therefore open to the applicant to raise these issues in the appeal proceedings.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

4. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been unreasonably long. The relevant parts of Article 6 read 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 Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

5. The applicant complained under Article 8 of the Convention that his flat and office had been unlawfully searched on 20 January 1998.

The Court reiterates that the Convention entered into force with respect to Russia on 5 May 1998 but the applicant's complaint relates to a period prior to that date.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

6. Finally, the applicant complained under Article 14 of the Convention that he was classified by the administration of remand centre no. 77/1 as posing a flight risk.

The Court reiterates that Article 14 of the Convention has no independent existence and it is tied inexorably to the other substantive rights set out in the Convention (see, among many other authorities, *Petrovic v. Austria*, judgment of 27 March 1998, *Reports of Judgments and Decisions* 1998-II, § 22). The applicant, however, has not shown that the entry concerning his propensity to abscond disclosed a difference of treatment in the exercise of any of his rights under the Convention, a precondition for an issue to arise under Article 14 of the Convention.

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

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicant's complaints concerning the placement of an HIV-positive inmate in the applicant's cell, the conditions of his transport to and from, and confinement at, the courthouse (Article 3 of the Convention), the excessive length of his detention on remand (Article 5 § 3) and that of criminal proceedings against him (Article 6 § 1);

*Declares* the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROSAKIS
President