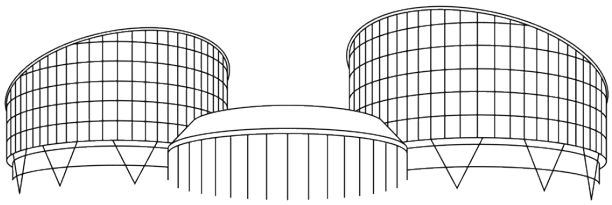

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CHUMAKOV v. RUSSIA

(Application no. 41794/04)

JUDGMENT

STRASBOURG

24 April 2012

FINAL

24/09/2012

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

In the case of Chumakov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 41794/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Aleksandrovich Chumakov ("the applicant"), on 19 September 2004.

2. The applicant was represented by Ms K. Kostromina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that he had been ill-treated by the police, that his detention on remand had been unlawful and lengthy, that the criminal proceedings against him had been unfair and that there had been no effective remedies in respect of the alleged violations of his rights. He referred to Articles 2, 3, 5, 6, 7, 8 and 13 of the Convention.

4. On 24 October 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Pyatigorsk, the Stavropol Region.

A. Administrative proceedings against the applicant and his alleged ill-treatment

6. On 29 September 2002 a certain Ms Sh. was murdered. On the next day the police initiated criminal proceedings in that connection.

7. On the same day a certain Mr M., who had been arrested for the administrative offence of public drunkenness, complained to the police that the day before the applicant had allegedly sworn at him and attempted to start a fight.

8. On 2 October 2002 an administrative offence record was drawn up in respect of the applicant by police officers K. and B. The applicant denied Mr M.'s allegations.

9. On 3 October 2002 he was found guilty of disorderly conduct and sentenced to five days' administrative detention by the Justice of the Peace of the 1st Circuit of the Kirovskiy District of the Stavropol Region.

10. On 3 October 2002, pursuant to the aforementioned judgment of the same date, the applicant was placed in the temporary holding facility of the Kirovskiy District Police Department of the Stavropol Region ("the district police department").

11. According to the applicant, between 3 and 6 October 2002 police officers forced him to confess to the murder of Ms Sh. by beating him up and threatening him with rape with a rubber truncheon.

12. On 6 October 2002 the applicant signed a confession to the murder of Ms Sh. He stated, in particular, that he had strangled her with a TV power cable.

13. On 7 October 2002 the investigator in charge recorded the applicant's arrest on suspicion of murder.

14. The investigator also ordered a forensic medical examination of the applicant, which was carried out on 7 October 2002 by a medical expert with ten years' experience, who certified that he had no injures (certificate no. 181).

B. The applicant's pre-trial detention

15. On 8 October 2002 the Kirovskiy District Court of the Stavropol Region ("the District Court") ordered the applicant's placement in custody as a preventive measure, stating that he was suspected of having committed a particularly serious criminal offence, might abscond from justice and had been given negative character references at the place of his residence. The applicant was then transferred to the remand centre "SIZO-26/2" of Pyatigorsk.

16. On 9 October 2002 the applicant was formally charged with murder.

17. On 6 December 2002 the District Court extended the term of the applicant's pre-trial detention until 7 January 2003. The applicant's counsel argued that there were no grounds to believe that the applicant might abscond, that he had a permanent place of residence and permanent work and had confessed to the crime. The fact that he was accused of a serious criminal offence could not, as such, be the basis for his continued pre-trial detention. The court decision read as follows:

> "Bearing in mind that it is impossible to complete the pre-trial investigation within two months ... there are no grounds to change or quash the preventive measure [with regard to the applicant], considering that [the applicant] is charged with a particularly serious crime associated with a high risk to society, which does not exclude the possibility of him absconding from the investigating bodies and the court, the judge finds it necessary to grant the investigator's request for the extension of the term of detention ..."

The applicant did not appeal against that decision.

18. On 27 December 2002 the applicant requested the investigator to exclude his self-incriminating statements of 6 October 2002 from the body of evidence, alleging that he had confessed to the murder under physical and psychological pressure by the police officers during his administrative detention. The applicant alleged that every night they had taken him out of his cell to their office and had psychologically pressurised him to confess.

19. On 30 December 2002 the District Court examined the investigator's application for the extension of the applicant's detention. The applicant stated that he had no intention of absconding or influencing witnesses and asked to be released. The court extended the term of his pre-trial detention until 7 February 2003 for the following reasons:

> "Bearing in mind that it is impossible to complete the pre-trial investigation within two months ... there are no grounds to change or quash the measure of restraint [with regard to the applicant], considering that [the applicant] is charged with a particularly serious crime, and might impede a thorough, comprehensive and objective investigation or abscond from the investigating bodies, the judge finds it necessary to grant the investigator's request for the extension of the term of detention ..."

It does not appear that the applicant appealed against this decision.

20. On 31 January 2003 the applicant was served with a copy of the bill of indictment for the murder.

21. On 6 February 2003 the case was sent to the District Court for trial.

C. Court proceedings and the applicant's detention pending trial

1. First round of court proceedings

22. Upon receipt of the case file, on 6 February 2003 the District Court scheduled a preliminary hearing for 17 February 2003. It also ordered that the preventive measure of detention should remain unchanged. It does not appear that the applicant appealed against this decision.

23. On 19 May 2003 the District Court found the applicant guilty of murder and sentenced him to nine years' imprisonment. It relied, in particular, on his self-incriminating statements. It took into account statements by the police officers, who denied ill-treating the applicant, and the medical expert report, according to which the applicant's examination on 7 October 2002 had not revealed any injuries on him, and dismissed the applicant's allegations of ill-treatment as unsubstantiated.

24. On 20 July 2003 the applicant's counsel obtained written statements from a certain Mr I. Sh. who stated that he had been detained in the same cell as the applicant in the temporary holding facility of the district police department from 3 to 5 October 2002. He stated that the applicant had been taken out of his cell in the night. After his return the applicant had told him that the police officers had beaten him up and that they had threatened him with rape with a rubber truncheon.

25. On 31 July 2003 the Regional Court examined the applicant's appeal against his conviction. It found that the evidence on which the judgment was based contained a number of discrepancies which had not been resolved by the trial court and that the failure to summon witnesses for the applicant properly had undermined the adversarial nature of the trial. It also held that the applicant's allegations that his self-incriminating statements had been obtained under duress had not been thoroughly examined; that the police officers' statements did not constitute sufficient evidence of their proper conduct; and that the applicant's counsel's complaint to the prosecutor's office of the Kirovskiy District ("the district prosecutor's office") about the unlawful acts of the police had been left unanswered and no inquiry in that connection had been conducted. The Regional Court thus quashed the judgment and remitted the case for a fresh examination by the first-instance court. It also ordered that the applicant remain in custody.

2. Second round of court proceedings

26. On 11 August 2003 the case file arrived at the District Court.

27. On 12 August 2003 the District Court extended the term of the applicant's detention until 6 November 2003, stating that the applicant was

charged with a particularly serious criminal offence and that, if released, he might impede the criminal proceedings or evade trial. It also noted that the case had been before the courts for more than six months; that the initial term of the applicant's detention established in Article 255 § 2 of the Russian Code of Criminal Procedure had expired and that it should be extended for the next three months. The applicant, who was neither present nor represented at the hearing, did not appeal against this decision.

28. On 12 September 2003 the applicant's lawyer obtained further written statements from Mr I. Sh., who stated that he had been detained in the same cell as the applicant in the temporary holding facility of the district police department in October 2002. The applicant had been taken out of his cell in the night. After his return the applicant had told him that the police officers had beaten him in the area of the kidneys and liver. Mr I. Sh. further stated that he had seen fresh scratches on the applicant's left shoulder and elbow and that the applicant's lower lip had been hurt.

29. On 6 November 2003 the District Court rejected the applicant's request for release under an undertaking not to leave a specified place and, with reference to Article 255 § 3 of the Russian Code of Criminal Procedure, extended his detention for three months until 6 February 2004 on the same grounds as those given in its decision of 12 August 2003. The applicant's lawyers referred to the length of detention, the applicant's innocence and the deterioration of his health. The applicant appealed against the decision, arguing, in particular, that it was insufficiently reasoned.

30. On 10 December 2003 the Regional Court quashed the decision of 6 November 2003, referring to the absence of a transcript of that hearing in the materials of the case, and remitted the matter to the same court for a fresh examination.

31. On 8 January 2004 the District Court ordered, under Article 255 § 3 of the Russian Code of Criminal Procedure, that the term of the applicant's detention be extended until 6 February 2004. It relied on the same reasons as those which were set out in the decision of 12 August 2003. The applicant's lawyers referred to the absence of reasons for the applicant's continued detention, in particular the lack of grounds for the risk of him absconding, his permanent place of residence and work, positive references and the length of his detention. The court stated that at that stage it could not take into account the argument concerning the applicant's innocence. It did not address any other arguments put forward by the applicant's lawyers. The applicant did not appeal against that decision.

32. On 5 February 2004 the District Court again examined the question of the preventive measure applied to the applicant. The applicant asked to be released, referring to the deterioration of his health and stomach complaints. His lawyers referred to the excessive length of his detention, the absence of reasons to believe that he might abscond or otherwise impede the proceedings and the fact that he had received positive character references.

The court dismissed their request for release and extended, on the basis of Article 255 § 3 of the Russian Code of Criminal Procedure, the applicant's detention for a further three months, until 6 May 2004, for reasons identical to those cited in its previous decisions. It did not address the applicant's lawyers' arguments. It does not appear that the applicant appealed against that decision.

33. On 22 March 2004 the applicant's father's flat was searched. The applicant's father's complaints about the unlawfulness of the search were dismissed by the district prosecutor's office on 13 April 2004 and by the District Court on 14 May 2004.

34. On 26 April 2004 the District Court convicted the applicant as charged and sentenced him to nine years' imprisonment. It examined, in particular, witness I. Sh. (see paragraphs 24 and 28 above) who stated before the court that the applicant had not complained about any ill-treatment by the police officers and that he had not seen any injures on the applicant. According to Mr I. Sh., his previous statements to the contrary had been false and had been given at the request of the applicant's parents and defence counsel in order to help the applicant. Two other witnesses, Mr R. and Mr S., who had also been held in the applicant's cell at some point in October 2002, also stated that they had neither heard from the applicant about any pressure by the police nor seen any injures on him.

35. On appeal, on 3 August 2004 the Regional Court found that the trial court had failed to assess the arguments put forward by the defence properly and that the applicant's right to defend himself had been violated. It quashed the judgment of 26 April 2004 and remitted the case to the District Court for a fresh examination. The Regional Court also ordered that the applicant's detention on remand as a preventive measure remain unchanged.

3. Third round of court proceedings

36. On 18 August 2004 the case file arrived at the District Court.

37. On 23 August 2004 the District Court scheduled a preliminary hearing in the case for 1 September 2004. It also ordered that the preventive measure applied to the applicant in the form of detention on remand remain unchanged. It does not appear that the applicant appealed against that decision.

38. On 1 September 2004 the District Court extended, with reference to Article 255 § 3 of the Russian Code of Criminal Procedure, the term of the applicant's detention for three months, to be calculated from 13 August 2004 until 13 November 2004. The court noted that the term of the applicant's detention, as previously extended on 5 February 2004 (see paragraph 32 above), had expired on 13 August 2004, and that it had received the case file from the Regional Court only on 18 August 2004. The applicant requested the court to release him, referring to the deterioration of his state of health and his stomach ulcer. The court held as follows:

> "... the accused ... is charged with a particularly serious crime; the circumstances of the case were not ... established in detail ... in the course of the trial, the evidence which could have determined [his] guilt [or innocence] was not examined ...
>
> The positive character references of the accused ... do not constitute sufficient grounds to release him ... because, if released, he might abscond ... and hinder the establishment of the truth in the case.
>
> The court cannot take into account ... the claim that the accused is ill and needs medical treatment as he has not submitted any relevant documents.
>
> The court has not established any procedural violations in respect of his detention on remand."

39. The applicant and his counsel appealed against the decision of 1 September 2004, arguing that the previously authorised term of the applicant's detention had expired on 13 August 2004 and had not been extended by the court. According to them, the applicant had therefore been detained unlawfully for 18 days from 13 August to 1 September 2004.

40. On 17 September 2004 the Regional Court upheld the decision of 1 September 2004 on appeal. It stated that the fact that the applicant was accused of a particularly serious criminal offence had rightly been taken into account by the first-instance court; that the applicant's state of health did not preclude his being kept in custody and that there had, therefore, been sufficient reasons for extending his detention.

41. On 1 November 2004 and 26 January 2005 the District Court further extended the term of the applicant's detention on remand until 13 February and 13 May 2005 respectively. In its similar decisions the court relied on the same reasons to justify the applicant's continued detention as those set out in the decision of 1 September 2004. The applicant did not appeal against either of those two decisions.

42. On 25 April 2005 the District Court convicted the applicant of murder and sentenced him to nine years' imprisonment. During the hearing witness I. Sh. (see paragraphs 24, 28 and 34 above) stated that the applicant had sometimes been taken out of his cell for interrogation after 10 p.m., that he had seen a scratch on the applicant's lip and that the applicant had told him that he had been beaten up. According to Mr I. Sh., he did not remember whether there had been other injuries on the applicant. Mr I. Sh. also stated that he had lived at the applicant's parents' home for several days and had done some work for them and that the applicant's family had supported him when he had been detained in the context of another criminal case.

43. On 22 September 2005 the Regional Court quashed the judgment and remitted the case to the District Court for a fresh examination. It found, in particular, that the first-instance judgment was based on conflicting evidence. It also held that the preventive measure should remain in place as there were no grounds to release the applicant.

4. Fourth round of court proceedings

44. On 11 October 2005 the case file arrived at the District Court.

45. On 26 October 2005 the District Court held a preliminary hearing in the case for the purpose of taking a decision on the preventive measure to be applied in respect of the applicant. The applicant requested the court to replace his detention with any preventive measure other than deprivation of liberty. His counsel requested that the preventive measure be changed to an undertaking not to leave a specified place and an undertaking of good behaviour, since the applicant had been held in custody for more than three years, had positive character references and did not intend to evade the trial. The prosecutor asked for the preventive measure to remain the same.

46. The District Court noted that the applicant's criminal case had been pending before the court since 6 February 2003, and that from that date onwards his detention had been regulated by Article 255 § 3 of the Russian Code of Criminal Procedure, which allowed it to be extended beyond the initial six-month period for further periods of three months. It further noted that the term of the applicant's detention had been extended on numerous occasions, and that the last time, on 26 January 2005, the District Court had authorised his detention until 13 May 2005. It also noted that before the expiry of that period, on 25 April 2005, the applicant had been convicted by the trial court. The court then noted that the term of the applicant's detention, as extended on 26 January 2005, should be considered as having run out on 9 October 2005, provided that the period between 25 April 2005, the date of the conviction, and 22 September 2005, the date of its quashing on appeal, was excluded from the term of detention on remand, in accordance with paragraph 26 of resolution no. 1 of the Supreme Court of Russia dated 5 March 2004. The court thus held that the term of the applicant's detention had not been extended in accordance with a procedure prescribed by law and that therefore, despite the seriousness of the charge against him, there were no legal grounds for his further detention on remand. It ordered that the preventive measure be changed to an undertaking not to leave a specified place and an undertaking of good behaviour and that the applicant be released immediately.

47. On 3 November 2005 the prosecutor appealed against that decision, arguing that the District Court had erred in its interpretation of paragraph 26 of resolution no. 1 of the Supreme Court of Russia dated 5 March 2004, since it followed from the meaning of Article 255 of the Russian Code of Criminal Procedure that the term of detention should run from the day of a criminal case's arrival at a first-instance court and not from the day of delivery of an appellate court's decision. Therefore, in the prosecutor's opinion, the term of the applicant's detention should have run out on 29 October 2005. The applicant disagreed, pointing out the fact that he was employed, that he did not intend to evade justice and that he simply wanted the trial to be concluded as soon as possible and his good name restored.

48. On 30 November 2005 the Regional Court found that the District Court had violated Article 255 § 3 of the Russian Code of Criminal Procedure, as the term of detention of a person who had committed a serious or particularly serious criminal offence had to be extended by a court decision each time, and such extension could not be authorised for a period longer than three months at any one time. It went on to agree with the prosecutor's submissions and stated that the term of the applicant's detention should have started running on 11 October 2005, the date when the case file had been received by the District Court, and that therefore it should be regarded as having expired on 29 October 2005. The court then held that this procedural breach was grounds for the annulment of the decision of 26 October 2005, and ordered that the case be sent to the District Court for a new examination. According to the applicant, he attended the hearing of 30 November 2005 and was placed in detention immediately after that hearing.

49. On 21 December 2005 the District Court ordered the applicant's release on an undertaking not to leave his place of residence. It stated that the applicant had been held in detention on remand for more than three years, that after his release on 26 October 2005 he had immediately started working and that he had been given positive character references from his employers. The court held that there were no reasons to believe that he would evade the trial or put pressure on witnesses and thus obstruct the establishment of the truth, and therefore there were no grounds to keep him in detention. The applicant was released immediately.

50. On 2 May 2006 the District Court examined the criminal case against the applicant for the fourth time. At the hearing, the applicant insisted that he was innocent and reiterated that he had made his confession at the pre-trial stage because he had been beaten and threatened by the police.

51. The District Court observed that the charge against the applicant had mainly been based on his self-incriminating statements and written confession made during the preliminary investigation, which he had later repudiated as having been made under duress. It further noted, as regards the applicant's medical examination on 7 October 2002, which had not revealed any injuries on him, that the applicant had not been apprised of the investigator's order to carry out that examination until it had been over. Therefore, in the District Court's opinion, a note on the resulting expert report to the effect that the applicant had had no comments or questions for the expert, and had not wished to call into question the expert's authority, was devoid of any legal meaning.

52. The court further stated that on 6 February 2006 the decision of 27 January 2003, by which the district prosecutor's office refused to institute criminal proceedings in respect of the applicant's allegations of ill-treatment during his administrative detention in October 2002, had been

quashed, and that on 15 February 2006 the district prosecutor's office had again refused to institute criminal proceedings owing to the absence of the constituent elements of a criminal offence in the police officers' actions. In the District Court's opinion, however, the applicant's allegation that he had made self-incriminating statements and had signed his confession as a result of coercion by the police was corroborated by the evidence in the case.

53. In particular, the court examined the register of detainees of the temporary holding facility where the applicant had been held and noted that the applicant had been taken out of his cell on 3 October 2002, from 7.30 p.m. to 8.30 p.m., and on 4 October 2002 from 6.25 p.m. to 6.50 p.m. and from 9.40 p.m. to 9.55 p.m. The court further observed that, according to the applicant's written confession, it had been given on 6 October 2002 in office no. 36 of the temporary holding facility and not in his cell. However, the register did not contain any records confirming that he had been taken out of his cell on that day. Therefore, the District Court doubted the reliability of the official records. It found that the applicant's confession could not be regarded as having been given voluntarily and was therefore inadmissible as evidence.

54. The District Court also noted that, when the applicant had been interviewed as a suspect on 7 and 9 October 2002, he had not been warned that his statements could be used as evidence, in breach of the domestic law. Having examined the body of evidence in the case, the District Court further stated that it had been contradictory in a number of aspects. In particular, a report on the medical forensic examination of Ms Sh.'s body had attested to the presence of numerous internal injuries. The investigating authorities, however, had never attempted to establish the circumstances in which the victim had sustained those injuries, and the applicant had never admitted inflicting any such injuries on the victim, simply having confessed to having strangled her (see paragraph 12 above). In this respect the District Court noted that, as was clear from the materials of the case, at the time when the applicant had made his self-incriminating statements and signed his confession, the aforementioned expert examination had not yet been carried out and the investigating authorities had not known of the existence of those injuries.

55. The court further listed a number of other shortcomings in the preliminary investigation and discrepancies in the adduced evidence. It found it unproven that the applicant had committed the imputed offence. The court thus acquitted the applicant and acknowledged his right to rehabilitation.

56. On 4 July 2006 the Regional Court upheld the judgment on appeal. It agreed with the trial court's finding that the confession had been signed as a result of coercion by the police officers. The court noted in this respect that the very fact that the applicant had been taken out of his cell in breach of relevant regulations had been the proof of coercion, and therefore the

arguments of the prosecuting party in the appeal submissions to the effect that the trial court had failed in its judgment to specify the methods of that coercion and to identify those responsible were unfounded. It also agreed with the trial court that the applicant's self-incriminating statements, which he had later repudiated, had contradicted the other evidence in the case.

D. Investigation into the applicant's allegations of ill-treatment

57. On 24 January 2003 the applicant's counsel lodged a complaint with the district prosecutor's office about the applicant's ill-treatment by the police officers from the district police department. An inquiry was carried out in connection with that complaint. Several police officers were questioned. They all denied the applicant's allegations of ill-treatment.

58. On 27 January 2003 the district prosecutor's office decided, relying on their statements and medical expert certificate no. 181 of 7 October 2002, to dispense with criminal proceedings in respect of the applicant's allegations of ill-treatment owing to the absence of evidence that any crime had been committed. The applicant did not appeal against the decision in court.

59. On 4 December 2003 the district prosecutor's office received a complaint from the applicant's mother about alleged ill-treatment of the applicant by the officers of the district police department.

60. On 5 December 2003 a decision not to prosecute the police officers was taken. The Court has not been furnished with a copy of that decision. It does not appear that the applicant attempted to challenge the decision in question before a court.

61. On 11 August 2005 the district prosecutor's office quashed the decision of 5 December 2003 and ordered an additional inquiry.

62. During that inquiry Mr A., the head of the investigation department, responsible for the investigation of Ms Sh.'s murder at the time of the events in question, and Mr Z., deputy head of the temporary holding facility of the district police department at the material time, were interviewed. They stated that no physical or psychological pressure had ever been exercised on the applicant and that the applicant had voluntarily confessed to the murder and later confirmed his self-incriminating statements during an interview in the presence of his lawyer.

63. On 18 August 2005 the district prosecutor's office, with reference to the aforementioned statements of Mr A. and Mr Z., decided not to institute criminal proceedings in connection with the applicant's allegations owing to the absence of the constituent elements of a criminal offence in the police officers' actions. The applicant did not appeal against that decision in court.

64. On 6 February 2006 the prosecutor's office of the Stavropol Region quashed the decisions of 27 January 2003 and 18 August 2005 as unlawful and unfounded in view of the investigating authorities' failure to establish

all the relevant facts. In particular, it pointed out that the applicant had not been questioned; that the materials of the inquiry lacked an extract from the official records of requests for medical aid in the period from 3 to 6 October 2002; that the register of detainees of the temporary holding facility, where the applicant had been held during the relevant period, had not been examined with a view to establishing when and by whom the applicant had been taken out of his cell(s) for interrogation and to identifying who had been in the cell(s) with him so that they could be questioned in respect of his allegations; that a police officer who had been present when the applicant had signed his confession had not been questioned in that connection; that another police officer who had drawn up the administrative offence record in respect of the applicant had not been questioned in that connection; and that Mr R. and Mr S., who had allegedly shared a cell with the applicant, had not been interviewed either. The district prosecutor's office was thus ordered to eliminate those defects in the course of an additional inquiry.

65. In a decision of 15 February 2006 the district prosecutor's office again refused to institute criminal proceedings against the police officers owing to the absence of the constituent elements of a crime in their actions.

66. According to the decision, when interviewed during an additional inquiry, the applicant had stated that on 2 October 2002 he had been taken from his home to a police station where he had met police officers G. and B. The latter had drawn up, on Mr G.'s instructions, an administrative offence record which stated that that the applicant had used obscene language in public. The applicant had been held at the police station from 4 p.m. to 10 p.m. and then transported to the district police department. On 3 October 2002 he had been placed under administrative arrest for five days and placed in the temporary holding facility of the district police department. Each night the officers of the Kirovskiy district police department, Mr A. and Mr G., had taken him to an office on the third floor in which they had subjected him to psychological pressure. On 6 October 2002, because of that pressure, he had been compelled to make a written confession to the murder of Ms Sh., which had been dictated to him by Mr G.

67. The decision went on to quote police officer A., who had stated that he had been present when his subordinates, Mr P. and Mr G., had interviewed the applicant. No physical or other form of coercion had been used on the applicant, who had voluntarily confessed to the murder and then confirmed his statements in the presence of his counsel.

68. Mr Z., deputy head of the temporary holding facility of the district police department at the material time, had stated that no force had ever been applied to the applicant, who had made no complaints during his detention in that facility. Mr Z. also stated that the applicant, Mr R. and Mr S. had never been held in the same cell at the same time.

69. Mr G. had stated that on 6 October 2002 he had been told that the applicant wished to see him. He had met the applicant at the temporary holding facility. The applicant had told him that he had killed Ms Sh. and had voluntarily written out his confession.

70. Mr B. had stated that on 2 October 2002 Mr M. had complained to him that the applicant had sworn at him. He had drawn up an administrative offence record and sent it to the court.

71. Mr R., who had been detained in the temporary holding facility from 1 to 6 October 2002 for committing an administrative offence, had confirmed that he had shared a cell with the applicant and stated that the applicant had not made any complaints concerning the police officers who had questioned him. Mr S., another detainee during the relevant period, had also been interviewed but had not given any relevant information regarding the applicant's allegations.

72. The decision then indicated that, according to the temporary holding facility records concerning medical aid, the applicant had never applied for medical assistance. Nor had he made any complaints concerning his health.

73. The decision further stated that, according to the temporary holding facility register of detainees, the applicant had been taken out of his cell on 4 October 2002 at 6.45 p.m. by Mr G. and brought back at 6.50 p.m.; on the same day he had been taken away at 9.40 p.m. by Mr P. and brought back at 9.55 p.m. On 7 October 2002 the applicant had been taken out of his cell from 9 a.m. until 6.15 p.m. for the examination of his statements on the scene of the crime. For the rest of the time the applicant had stayed in his cell.

74. The decision thus concluded that during the inquiry the applicant's allegations of ill-treatment had proved unfounded. The applicant did not appeal against that decision in court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

75. Since 1 July 2002, criminal-law matters have been governed by the Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001, "the Code").

1. Preventive measures

76. "Preventive measures" include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond

during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99). In exceptional circumstances, and when there exist grounds provided for by Article 97, a preventive measure may be applied to a suspect, taking into account the circumstances listed in Article 99 (Article 100). If necessary, the suspect or accused may be asked to give an undertaking to appear in court (Article 112).

2. Limits on the duration of detention

(a) Two types of custody

77. The Code makes a distinction between two types of custody: the first being "pending investigation", that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being "before the court" (or "pending trial"), at the judicial stage.

(b) Limits on the duration of detention "pending investigation"

78. A custodial measure may only be ordered by a judicial decision in respect of a person who is suspected of, or charged with, a criminal offence punishable by more than two years' imprisonment (Article 108). The maximum length of detention pending investigation is two months (Article 109). A judge may extend that period up to six months (Article 109 § 2). Further extensions may only be granted by a judge if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

(c) Limits on the duration of detention "pending trial"

79. From the time the prosecutor sends the case to the trial court, the defendant's detention falls under the category "before the court" (or "pending trial"). The period of detention pending trial is calculated up to the date on which the first-instance judgment is given. It may not normally exceed six months from the moment the case file arrives at the court, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

B. Court practice

80. In its resolution no. 1 of 5 March 2004 "On the Application by Courts of the Russian Code of Criminal Procedure", as in force at the

relevant time, the Supreme Court of Russia noted with regard to the provisions of Article 255 § 3 of the Code, that, when deciding whether to extend a defendant's detention pending trial, the court should indicate the grounds justifying the extension and its maximum duration (paragraph 16).

81. It also stated that, within the meaning of Article 255 § 2 of the Code, the period after conviction by the first-instance court until such conviction became final, being upheld on appeal, could not be taken into account for the purpose of calculating the six-month period of an individual's detention pending trial (paragraph 26).

THE LAW

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

82. The applicant complained that he had been ill-treated by the police in the period between 3 and 6 October 2002 and that there had been no adequate investigation into the matter. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

A. Submissions by the parties

83. The applicant maintained that he had been subjected to inhuman and degrading treatment, in breach of Article 3 of the Convention, during his detention in the temporary holding facility of the Kirovskiy District Police Department of the Stavropol Region. As regards the medical expert examination carried out on 7 October 2002, which had not established any injuries on him, the applicant referred to the findings of the District Court in its judgment of 2 May 2006, where it had established that the applicant and his lawyer had not been notified of the investigator's order that such an examination be carried out until after it had been conducted, and therefore a

note on the relevant expert report that the applicant had no comments, questions or objections regarding the experts had been devoid of any legal meaning.

84. He also argued that in its judgment of 2 May 2006 the District Court had rejected his confession as inadmissible evidence, having stated that the applicant's allegation that this confessions had been written under pressure by the police had been confirmed by the absence in the register of the temporary holding facility of a record to the effect that on the date when he had signed that confession he had been taken from his cell, whereas the confession, as had been established by the court, had been written in an office of the district police department. Therefore, according to the applicant, in its judgment of 2 May 2006 the District Court had acknowledged the fact that the police officers had exercised pressure on him.

85. The applicant further contended that the authorities had failed to investigate his allegations of ill-treatment adequately, and therefore he had been deprived of effective remedies in breach of Article 13 of the Convention.

86. The Government argued that the applicant had had effective domestic remedies in respect of his complaint of ill-treatment under Article 3 of the Convention, as required by its Article 13, but he had not availed himself of those remedies. In particular, they argued that under Article 125 of the Russian Code of Criminal procedure the applicant could have appealed in court against the decisions of the district prosecutor's office to dispense with criminal proceeding into his allegations, but he had never used that remedy. The Government argued therefore that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 3 of the Convention.

87. As to the merits of the applicant's complaint, the Government insisted that the applicant's allegations of ill-treatment had been duly investigated by the district prosecutor's office and had proved unsubstantiated. They pointed out that the medical expert examination carried out 7 October 2002, that is, immediately after the period during which the applicant had allegedly been ill-treated, had not established any injuries on him. The Government further referred to the statements the police officers against whom the applicant's allegations had been directed had made during the inquiry into those allegations, as well as their written statements they submitted to the Court, in which they denied ill-treating the applicant.

88. The Government furnished the Court with statements by officers of the temporary holding facility in which the applicant had been detained, as well as three detainees, Mr R., Mr S. and Mr M., who at various times had shared a cell with him, all of them denying seeing any injuries on the applicant.

89. The Government also contended that the fact that, during the fourth round of court proceedings, the trial court had dismissed the applicant's confession as inadmissible evidence did not prove that the applicant's allegations of ill-treatment were reliable, as the trial court had merely referred to the absence in the register of the temporary holding facility for the relevant period of a record that on the date when he had made his confession the applicant had been taken out of his cell.

B. The Court's assessment

1. Admissibility

90. The Government argued that the applicant had failed to appeal to a court, under Article 125 of the Russian Code of Criminal Procedure, against procedural decisions by which the district prosecutor's office had refused to institute criminal proceedings into his allegations of ill-treatment.

91. In this respect, the Court reiterates that, in principle, an appeal against a decision to discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul such a decision and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has strong doubts that this remedy would have been effective in the present case. It observes that the district prosecutor's office's decisions to dispense with criminal proceedings in connection with the applicant's allegations of ill-treatment were quashed on at least two occasions by supervising prosecutors, who instructed the investigating authorities to carry out an additional inquiry (see paragraphs 61 and 64 above). That inquiry also resulted in decisions not to institute criminal proceedings (see paragraphs 63 and 65 above). In these circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, would have offered the applicant any redress. It considers, therefore, that such an appeal in the particular circumstances of the present case would be devoid of any purpose. The Court finds that the applicant was not obliged to pursue that remedy and holds that the Government's objection should therefore be dismissed (see *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008, or *Esmukhambetov and Others v. Russia*, no. 23445/03, § 128, 29 March 2011).

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

2. Merits

(a) Alleged ill-treatment of the applicant

(i) General principles

93. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI).

94. In order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it (see, for instance, *Aksoy*, cited above, § 64; *Egmez v. Cyprus*, no. 30873/96, § 78, ECHR 2000-XII; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004), as well as its context, such as an atmosphere of heightened tension and emotions (see, for instance, *Selmouni v. France* [GC], no. 25803/94, § 104, ECHR 1999-V).

95. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV, and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 118, ECHR 2006-IX). Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience (see, *inter alia*, *Keenan v. the United Kingdom*, no. 27229/95, § 110, ECHR 2001-III, and *Jalloh*, cited above, § 68).

96. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, § 161). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

97. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence

before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, among other authorities, *Vladimir Romanov v. Russia*, no. 41461/02, § 59, 24 July 2008).

(ii) Application of the above principles in the present case

98. In the present case, the parties agreed that in the period from 3 to 6 October 2002 the applicant had been detained in a temporary holding facility of the district police department in the context of administrative proceedings brought against him. The applicant alleged that throughout this period police officers had beaten him and threatened him with sexual abuse in an attempt to force him to confess to Ms Sh.'s murder. The Government denied those allegations with reference to medical expert report no. 181 of 7 October 2002 (see paragraph 14 above), according to which no injuries had been established on the applicant, as well as to the findings of the internal inquiry into the matter.

99. The Court observes that on 7 October 2002, that is, immediately after the period during which the applicant was allegedly ill-treated by the police, he indeed underwent a medical examination which established that he had no injuries. It further observes that in its judgment of 2 May 2006 the District Court noted certain procedural shortcomings as regards that examination, in particular, the fact that the applicant and his lawyer had not been apprised of the investigator's decision to order such an examination until after it had been over, with the result that the applicant was apparently unable to effectively make any objections regarding the expert appointed, ask any questions or make any comments concerning the examination (see paragraph 51 above). The domestic court, however, did not specify whether those shortcomings should be regarded as serious enough to cast doubt on the authenticity of the said report, or the validity of its conclusion regarding the absence of any injuries on the applicant. In such circumstances, the Court has no reason to consider the findings of the report of 7 October 2002 unreliable, as was suggested by the applicant.

100. It further notes that in the proceedings before the national courts the applicant and his lawyers referred to statements by witness I. Sh., who had shared a cell with the applicant at some point between 3 and 6 October 2002 and who had allegedly seen injuries on the applicant and heard him complaining about beatings by the police. In this respect, the Court notes that throughout the trial Mr I. Sh. repeatedly changed his statements concerning the applicant's allegations of ill-treatment (see paragraphs 24, 28, 34 and 42 above), which cannot but undermine their credibility.

Moreover, the impartiality of that witness is also open to doubts given his statement to the effect that he had connections to the applicant's family (see paragraph 42 above). Two other witnesses, Mr R. and Mr S., who shared cells with the applicant at various times during the relevant period, consistently stated both before the domestic authorities and in written statements adduced by the Government and submitted to the Court that they had not seen any injuries on the applicant or heard him complaining about beatings or any other pressure exercised on him by the police (see paragraphs 34, 71 and 88 above).

101. Against this background the Court is unable to conclude that the applicant was, indeed, beaten by the police as he alleged.

102. The Court does not overlook the applicant's assertion that the police officers also subjected him to psychological pressure – a type of treatment which, for obvious reasons, does not leave any visible traces. He alleged, in particular, that he was threatened with rape with a rubber truncheon. The Court reiterates in this respect that a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, threatening an individual with torture may constitute inhuman treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 91, ECHR 2010).

103. In the present case, the District Court in its judgment of 2 May 2006 accepted as well-founded the applicant's allegation that he had confessed to Ms Sh.'s murder as a result of coercion by the police and thus rejected the applicant's statement of confession made at the pre-trial stage as inadmissible evidence (see paragraphs 51-53 above). As can be ascertained from the aforementioned judgment, the trial court based its relevant finding on the conflict between the fact that the applicant's confession had been written on 6 October 2002 in the investigator's office and the absence of any record in the register of detainees of the temporary holding facility that the applicant had been taken out of his cell on that date. The domestic courts in the present case did not, however, consider it necessary to elaborate on that issue any further and, in particular, to establish what particular methods of coercion had been applied to the applicant (see, by contrast, *Gäfgen,* cited above, §§ 94-5). Indeed, when upholding the judgment of 2 May 2006 on appeal, in its decision of 4 July 2006 the Regional Court rejected the prosecuting party's argument to that effect, stating that the very fact that the applicant had been taken out of his cell in breach of relevant regulations had been the proof of coercion (see paragraph 56 above). In the Court's opinion, such form of coercion, however, cannot be said to have attained "a minimum level of severity" to fall within the scope of Article 3. In the absence of any other findings by the domestic courts in this respect, the Court is unable to assess whether the pressure put on the applicant by the police, as established by the domestic courts, constituted treatment in breach of Article 3 of the Convention.

104. In the light of the foregoing, the Court finds that it has little evidence to enable it to conclude "beyond reasonable doubt" that the applicant was subjected to any form of treatment prohibited by Article 3 of the Convention, as alleged by him. Accordingly, the Court finds that there has been no violation of Article 3 of the Convention in its substantive aspect.

(b) Alleged ineffectiveness of the investigation

105. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many other authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII).

106. Turning to the circumstances of the present case, the Court observes that in his complaint of 27 December 2002, the applicant presented a description of ill-treatment to which he alleged to have been subjected during his administrative detention between 3 and 6 October 2002 (see paragraph 18 above). He then consistently maintained his allegations throughout the domestic proceedings, which were found to be not without foundation by the domestic courts in their decisions of 2 May and 4 July 2006 (see paragraphs 52, 53 and 56 above). The Court sees no reason to depart from these findings by the domestic courts and considers that the applicant's complaint of ill-treatment was "arguable" for the purpose of Article 3, in its procedural aspect, and the domestic authorities were therefore under an obligation to carry out a thorough and effective

investigation capable of leading to the identification and punishment of those responsible.

107. The Court further observes that the authorities carried out an internal inquiry into the applicant's allegations. It is not convinced, however, that the inquiry was sufficiently thorough and effective to meet the requirements of Article 3 of the Convention.

108. In this connection, the Court notes, first of all, that although the authorities started the inquiry in question promptly, during the first three years it appears to have been formalistic and superficial. It is clear from the facts of the case that the inquiry commenced in connection with the complaint of the applicant's lawyer dated 24 January 2003 was terminated on 27 January 2003, that is, three days later (see paragraphs 57 and 58 above). Another inquiry commenced in respect of the complaint of the applicant's mother of 4 December 2003 was terminated the next day, on 5 December 2003 (see paragraphs 59 and 60 above). The Court has strong doubts that any meaningful investigative actions could have been or were undertaken during such short periods.

109. It further notes that from 2003 to 2005 the inquiry in question was limited to interviewing the police officers against whom the applicant had made his allegations. It comes as no surprise that these officials denied the applicant's allegations of ill-treatment. Following a supervising prosecutor's decision of 6 February 2006, which listed a number of shortcomings and ordered that they be eliminated, a more thorough inquiry was obviously conducted. In particular, it appears that for the first time, apart from the aforementioned officials, several other people, including the applicant and those detainees who had shared cells with him during the relevant period, were interviewed. Also, some documentary evidence was examined, in particular, medical records and a register of detainees of the temporary holding facility where the applicant had been held. However, even that inquiry can hardly be said to have been adequate, given, in particular, that, as the applicant pointed out, its findings were subsequently not accepted by the domestic courts as reliable.

110. The Court also notes that during that latter inquiry a number of essential steps were not taken. In particular, the medical expert who examined the applicant on 7 October 2002 was never interviewed, nor was the applicant given an opportunity, in the course of that inquiry, to question that expert concerning his medical examination. This step would appear the more appropriate, since, as was noted by the District Court, the medical examination had been tainted with certain shortcomings affecting the applicant's procedural rights (see paragraph 51 above).

111. Moreover, as the Court has already mentioned above, in its judgment of 2 May 2006 the District Court made a number of findings which enabled it to conclude that the applicant's allegations were not without foundation. It established, in particular, discrepancies between the

fact that the applicant had signed his confession in the investigator's office and the absence of any record in the register of detainees to the effect that the applicant had been taken out of his cell on that date. Also, the court referred to a contradiction between the description of Ms Sh.'s murder the applicant provided in his written confession and subsequent evidence obtained as a result of a medical examination of the victim's body carried out after the applicant had confessed (see paragraph 54 above). The Court notes that all those discrepancies went unnoticed by the investigating authorities, whereas the District Court, on the basis of the same materials, was able to detect them. In the Court's opinion, this suggests that the authorities did not, in fact, attempt to investigate the applicant's allegations diligently and thoroughly.

112. In these circumstances, the Court concludes that the inquiry into the applicant's allegations of ill-treatment was inadequate and ineffective.

113. Accordingly, there has been a violation of Article 3 of the Convention on that account.

(c) Alleged lack of effective domestic remedies

114. The Court observes that, when alleging the absence of domestic remedies under Article 13, the applicant complained, in essence, that the investigation into his allegations of ill-treatment was ineffective. In view of its finding in paragraph 113 above, the Court does not consider it necessary to examine this complaint as it raises no separate issue in the circumstances of the present case.

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

115. The applicant complained that several periods of his detention on remand were not duly authorised, and therefore his detention during those periods was unlawful. In particular, he complained about the court order of 6 February 2003, which had merely stated that the preventive measure applied to him should remain unchanged, and about the court order of 12 August 2003, by which his continued detention had been authorised in his and his lawyer's absence. The applicant further complained that on 3 August 2004 a domestic court had ordered that he remain in custody, without giving reasons or specifying for how long. He also complained that on 1 September 2004 a court had ordered his continued detention for three months, to be calculated from 13 August 2004, thus authorising his detention from 13 August to 1 September 2004 retroactively. Lastly, the applicant appears to have alleged that his detention from 13 November 2004 until 25 April 2005 was unlawful. These complaints fall to be examined under Article 5 § 1 (c) of the Convention which, in so far as relevant, reads as follows:

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

...

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

..."

A. Submissions by the parties

116. The applicant stated that his detention between 3 and 13 August 2004 had not been in accordance with a procedure established by law. In particular, when ordering, in its decision of 3 August 2004, that the preventive measure should remain unchanged, the Regional Court had failed to indicate any grounds for his continued detention. He argued that the quashing on appeal of a conviction did not entail by default application of a preventive measure in the form of a deprivation of liberty, and that when ordering that he remain in custody in its decision of 3 August 2004 the Regional Court should have provided relevant reasons based on concrete facts.

117. He also insisted that the period of his detention from 3 to 13 August 2004 could not have been covered by the court order of 5 February 2004, as this latter order had only authorised his detention from 6 February until 6 May 2004. It had had no legal force after 26 April 2004, when he had been convicted by the first-instance court, and, in any event, after 6 May 2004, when the period of detention authorised therein had expired.

118. The applicant further argued that neither of the decisions of 3 and 23 August 2004 could be regarded as a sufficient legal basis for his detention in the period from 13 August to 1 September 2004, given the absence of any reasons to justify it in any of those two decisions. Moreover, the court order of 1 September 2004 could not be regarded as a legal basis for it either, as it had authorised the applicant's detention pending trial during the aforementioned period retroactively, which had not been provided for in national law.

119. The Government insisted that throughout the entire period from 8 October 2002, when the applicant's placement in custody had been ordered, until 26 October 2005, when he had been released, his detention on remand had been duly authorised, and had been in accordance with a procedure established by law, as required by Article 5 § 1 of the Convention.

120. In particular, the Government argued that the applicant's detention pending trial from 3 to 13 August 2004 had been lawful, as it was based on a decision of 3 August 2004 by which the Stavropol Regional Court had ordered that the preventive measure should remain unchanged. They also argued that the applicant could have challenged the decision of 3 August 2004 through a supervisory review procedure, but had failed to do so, and had therefore failed to exhaust domestic remedies in this respect. The Government further relied on a court order of 5 February 2004 by which the term of the applicant's detention had been extended until 6 May 2004; they indicated that the applicant had been convicted by the first-instance court on 26 April 2004, that is, ten days before the expiry of the period of detention pending trial authorised by the order of 5 February 2004. The Government insisted, with reference to the resolution of the Supreme Court of 5 March 2004 (see paragraph 81 above), that that ten day period had continued running from 3 August 2004, after the judgment of 26 April 2004 had been quashed on appeal. Therefore, in the Government's submission, the period of the applicant's detention between 3 and 13 August 2004 had been covered by the court order of 5 February 2004 and that of 3 August 2004.

121. In so far as the period between 13 August and 1 September 2004 was concerned, the Government further referred to the decision of 23 August 2004 by which the District Court had scheduled a hearing in the applicant's case and had ordered that the preventive measure remain in place, and to the decision of 1 September 2004 by which the District Court, in accordance with Article 255 § 3 of the Russian Code of Criminal Procedure, had extended the term of the applicant's detention for three months, to be calculated from 13 September 2004.

122. Lastly, the Government submitted that during the period from 13 November 2004 to 25 April 2005 the applicant had been detained pursuant to court orders of 1 November 2004 and 26 January 2005.

B. The Court's assessment

1. The applicant's detention in 2003

123. In so far as the applicant complained that his detention pursuant to court orders of 6 February 2003 and 12 August 2003 was unlawful, the Government submitted that he had not appealed against the latter detention order. The Court does not consider it necessary to address this argument as it notes that the period of the applicant's detention authorised by the court order of 6 February 2003 ended on 19 May 2003, when the applicant was convicted in the first instance (see paragraphs 22 and 23 above), and the period of the applicant's detention authorised by the court order of 12 August 2003 ran out on 6 November 2003, when another court order extending the applicant's detention pending trial had been taken (see

paragraphs 27 and 29 above). The present application was lodged on 19 September 2004, that is, more than six months after the expiry of the periods of detention complained of.

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

2. The applicant's detention between 3 August and 1 September 2004

(a) Admissibility

125. The Government argued that the applicant had not appealed by way of supervisory review against the decision of 3 August 2004, and therefore had failed to exhaust available domestic remedies. The Court reiterates that, according to its established case-law, an application for a supervisory review in the context of criminal proceedings in Russia has so far not been considered as a remedy to be exhausted under Article 35 § 1 (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR, 17 September 2003). It therefore rejects the Government's argument.

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

(b) Merits

127. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely, to protect individuals from arbitrariness (see, as a recent authority, *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010). It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law may entail a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006, and *Shteyn (Stein) v. Russia*, no. 23691/06, §§ 89 and 94, 18 June 2009).

128. The Court must, moreover, ascertain whether domestic law itself is in conformity with the Convention, including the general principles

expressed or implied therein. On this last point, the Court has stressed that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among recent authorities, *Savenkova v. Russia*, no. 30930/02, § 65, 4 March 2010).

129. In the present case, the Government argued that the applicant's detention on remand during the period under examination had been duly authorised by the Stavropol Regional Court in its decision of 3 August 2004. In this respect, the Court observes that on 3 August 2004 the Stavropol Regional Court quashed the first-instance judgment of 26 April 2004 by which the applicant was convicted, remitted the case for a new consideration by the trial court and ordered that the applicant remain in detention. It gave no reasons for its decision to keep the applicant in custody, nor did it set a maximum time period for his continued detention.

130. The Court has already found violations of Article 5 § 1 (c) of the Convention in a number of cases against Russia concerning a similar set of facts (see, for example, *Solovyev v. Russia*, no. 2708/02, §§ 95-100, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 65-70, 28 June 2007; and *Belov v. Russia*, no. 22053/02, §§ 79-82, 3 July 2008). In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1. Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific limit on the duration of that detention 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 also *Avdeyev and Veryayev v. Russia*, no. 2737/04, §§ 45-47, 9 July 2009; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 112-14, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-14, 23 April 2009; *Ignatov v. Russia*, no. 27193/02, §§ 79-81, 24 May 2007; and *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X (extracts)).

131. The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 3 August 2004 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, and therefore that the applicant's detention pursuant to that

decision was not "lawful" for the purposes of Article 5 § 1 of the Convention (see, among others, *Savenkova*, cited above, § 68).

132. The Government further argued that the period of the applicant's detention from 3 to 13 August 2004 had also been covered by a court order of 5 February 2004, which had authorised the applicant's detention from 6 February until 6 May 2004; they pointed out that the applicant was convicted by a judgment of 26 April 2004, that is, ten days before the expiry of that detention order, and argued that under resolution no. 1 of the Supreme Court of Russia of 5 March 2004 the remaining ten-day period had continued running from 3 August 2004, when the judgment of 26 April 2004 had been set aside on appeal.

133. The Court does not accept this argument. It observes that the resolution of the Supreme Court of Russia of 5 March 2004 relied on by the domestic courts and by the Government merely stated in its paragraph 26 that the period between an individual's conviction by a first-instance court and an appellate court's decision concerning that conviction was to be excluded from the six-month period provided for an individual's detention "pending trial" under Article 255 § 2 of the Russian Code of Criminal Procedure (see paragraph 81 above). The resolution in question said nothing as to whether, in a situation such as the one in the present case where an individual was convicted by a trial court before the expiry of an authorised period of his detention, that "remaining" authorised period should automatically be applied to authorise an individual's detention after the quashing of his conviction on appeal. No provision to that effect can be found in domestic law either. The Court is therefore of the opinion that the practice adopted by the domestic court was based on an unforeseeable application of domestic law, which was arbitrary. It thus cannot be said to have met the standard of "lawfulness" set by the Convention (see paragraph 128 above).

134. With this in mind, the Court finds that the court order of 5 February 2004 cannot be regarded as a proper legal basis for the applicant's detention between 3 and 13 August 2004 and cannot therefore enable it to conclude that this detention was "lawful" and "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention.

135. As regards the period of the applicant's detention from 13 August to 1 September 2004, the Government referred to a decision of 1 September 2004 by which the Kirovskiy District Court had authorised the applicant's detention pending trial from 13 August to 13 November 2004. The Court notes that the said court order thus authorised the period of the applicant's detention between 13 August and 1 September 2004 retroactively. The Government did not indicate any domestic legal provision that permitted a decision to be taken authorising a period of detention retroactively. It follows that the applicant's detention, in so far as it had been authorised by a judicial decision issued in respect of the preceding period, was not

"lawful" under domestic law. Furthermore, the Court reiterates 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 (see *Khudoyorov*, cited above, § 142, and *Solovyev*, cited above, § 99).

136. Lastly, in so far as the Government relied on a decision of 23 August 2004 as authorising the applicant's detention at least for a part of the period under examination, the Court observes that the said decision did not provide any grounds, or fix a maximum duration for the applicant's continued detention (see paragraph 37 above). The Court therefore considers that the said decision did not comply with the requirements of Article 5 § 1 of the Convention for the same reasons as stated in paragraphs 129-131 above.

137. In the light of the foregoing, the Court concludes that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 3 August to 1 September 2004.

3. The applicant's detention between 13 November 2004 and 25 April 2005

138. As regards the alleged unlawfulness of the applicant's detention between 13 November 2004 and 25 April 2005, the Court observes that in its decisions of 1 November 2004 and 26 January 2005 the Kirovskiy District Court extended the term of the applicant's detention until 13 February and 13 May 2005 respectively. It also provided certain grounds for those decisions, their sufficiency and relevance being analysed below in the context of compliance with Article 5 § 3 of the Convention. 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 orders amounting to "a gross and obvious irregularity" so as to render the underlying periods of detention in breach of Article 5 § 1 of the Convention (see *Mooren v. Germany* [GC], no. 11364/03, § 84, 9 July 2009).

139. The Court is therefore satisfied that the period of the applicant's detention from 13 November 2004 until 25 April 2005, when he was convicted by the trial court, was lawful within the meaning of Article 5 § 1. It finds that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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

140. The applicant complained that there had been no reasonable grounds for his continued pre-trial detention, which had been excessively long. He relied on Article 5 § 3 of the Convention, which provides as follows:

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

A. Submissions by the parties

141. The applicant submitted that he had not appealed against a number of court orders extending his detention on remand, because he had been kept in custody and because, in this respect, he had counted on his lawyer who had represented him in the domestic proceedings.

142. He further maintained that the domestic courts had extended his detention using repetitive arguments, namely, that the applicant had been charged with a serious criminal offence and that he might abscond and obstruct the establishment of the truth in his case. He argued that they had not based their conclusions on any factual findings or evidence. According to the applicant, he and his defence counsel had stated before the domestic courts during the examination of a question concerning the extension of his detention on remand that the applicant had had no prior criminal record, that he had had positive references from work and the place of his residence, had had a permanent address and, prior to his placement in detention, had been employed, and that during the detention his health had deteriorated. However, all those arguments had been ignored by the domestic courts.

143. The applicant also pointed out that, on three occasions, an appellate court had set aside the first-instance judgments by which he had been convicted and sent the case for a new examination. In his opinion, after the first annulment, the courts' argument that he should remain in custody in order not to obstruct the establishment of the truth had already lost its relevance, as all the witnesses had been questioned during the trial and all the evidence had been adduced, and therefore he could not possibly "obstruct the establishment of the truth".

144. The applicant argued, therefore, that there had been no relevant and sufficient grounds for his continued detention, which had lasted too long, in breach of the guarantees of Article 5 § 3 of the Convention.

145. The Government argued that the applicant had failed to exhaust available domestic remedies in respect of his complaint under Article 5 § 3 of the Convention, as he had not appealed against the District Court's decisions of 6 December 2002, 12 August 2003, 8 January and 1 November 2004 and 26 January 2005 to a higher court, and had not challenged the Regional Court's decisions of 31 July 2003 and 3 August 2004 in a supervisory review procedure.

146. They further submitted that every time a decision to extend the applicant's detention on remand had been taken, the District Court had referred to the seriousness of the charge against the applicant and the fact that he might abscond or obstruct the establishment of the truth in the case.

Also, in its decisions of 1 November 2004 and 26 January 2005 the District Court had duly addressed the applicant's arguments concerning the state of his health, and rejected them in the absence of any recommendations by the doctors of the remand centre where was held at the time to release him. The Government thus insisted that there had been no breach of the applicant's rights under Article 5 § 3 of the Convention.

B. The Court's assessment

1. Admissibility

147. As regards the Government's argument concerning the applicant's failure to challenge, by a supervisory review procedure, the decisions of 31 July 2003 and 3 August 2004, the Court has already rejected this argument in paragraph 125 above.

148. As to the Government's argument concerning non-exhaustion of domestic remedies on account of the applicant's failure to appeal against a number of extension orders (see paragraph 145 above), the Court reiterates that the purpose of the rule requiring domestic remedies to be exhausted is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before those allegations are submitted to the Court (see, among many other authorities, *Selmouni*, cited above, § 74). In the context of an alleged violation of Article 5 § 3 of the Convention, this rule requires that the domestic authorities be given an opportunity to consider whether an applicant's right to trial within a reasonable time has been respected and whether there exist relevant and sufficient grounds continuing to justify the deprivation of liberty (see, for instance, *Shcheglyuk v. Russia*, no. 7649/02, § 35, 14 December 2006, or *Pshevecherskiy v. Russia*, no. 28957/02, § 50, 24 May 2007).

149. In the present case, following his placement in pre-trial detention pursuant to a court order of 8 October 2002 the applicant remained in custody until 26 October 2005, when he was released by a decision of the Kirovskiy District Court of the same date. During that period the applicant challenged at least two court orders extending his detention, and, more specifically, he appealed to a higher court against the decision of 6 November 2003 (see paragraph 29 above) and against that of 1 September 2004 (see paragraph 39 above). The Court thus considers that, although the applicant did not lodge appeals against any other extension orders issued before September 2004, by lodging an appeal against the aforementioned two detention orders he gave the Stavropol Regional Court – acting as a court of appeal – the opportunity to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Regional Court had to assess the necessity of further extensions in the light of the entire preceding period of detention,

taking into account how much time the applicant had already spent in custody (see, for similar reasoning, *Lyubimenko v. Russia*, no. 6270/06, § 62, 19 March 2009; *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009; and *Lamazhyk v. Russia*, no. 20571/04, § 80, 30 July 2009).

150. Moreover, the Regional Court also had an opportunity to review, on appeal by a prosecutor, the District Court's decision of 26 October 2005 by which the applicant's release was ordered. Similarly, in those proceedings nothing prevented the Regional Court from assessing the arguments relating to the necessity of extending the applicant's custody, having regard to the overall period of his detention prior to that date. In other words, the Regional Court was given the opportunity to consider whether the applicant's detention prior to 26 October 2005 was compatible with his Convention right to trial within a reasonable time or release pending trial. The Court considers that the fact that the appeal proceedings in respect of the decision of 26 October 2005 were initiated by a prosecutor rather than by the applicant has no bearing on this conclusion.

151. In the light of the foregoing, the Court considers that the applicant cannot be said to have failed to exhaust domestic remedies in respect of his complaint under Article 5 § 3 of the Convention. It therefore rejects the Government's objection.

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

2. Merits

(a) Period to be taken into consideration

153. The Court observes that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c) with which it forms a whole. It ceases to apply on the day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Polonskiy,* cited above, § 141).

154. In the present case, the applicant remained in detention from 8 October 2002, when his placement in custody was ordered by a court, until 26 October 2005, when he was released pending trial. During that period the applicant was convicted by judgments of the Kirovskiy District Court of 19 May 2003, 24 April 2004 and 25 April 2005, which were then quashed on appeal on 31 July 2003, 3 August 2004 and 22 September 2005 respectively. During the periods between the first-instance judgments and the appellate court's decision setting them aside, the applicant was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) of the Convention. These periods therefore cannot be taken into account

for the purposes of Article 5 § 3 of the Convention. The Court further observes that after the court order of 26 October 2005 ordering the applicant's release was quashed by an appellate court on 30 November 2005, the applicant was again detained, and remained so until 21 December 2005, when he was released pursuant to the court order of that date.

155. It follows therefore that the applicant spent a total of two years, two months and twenty-two days in detention on remand to be taken into consideration for the purpose of Article 5 § 3 of the Convention.

(b) Reasonableness of the length of the period under consideration

156. According to the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto.* Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention will be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

157. The Court is prepared to accept that the applicant's detention in the present case could have initially been warranted by a reasonable suspicion that he had been involved in the commission of a criminal offence. In this connection, it reiterates that the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of his or her continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, §§ 152-53).

158. In the present case, the domestic courts authorised the extension of the applicant's detention on remand on eleven occasions, relying mainly on the seriousness of the charge against him and his potential to abscond, or obstruct the course of the criminal proceedings, if at large (see paragraphs 17, 19, 22, 27, 29, 31, 32, 37, 38 and 41above).

159. As regards the courts' reliance on the seriousness of charges as the decisive element, the Court has repeatedly held that this reason cannot by itself serve to justify long periods of detention (see, among other authorities, *Khudoyorov*, cited above, § 180). This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without a judicial review of the issue of whether the evidence collected supported a reasonable suspicion that the applicant had committed the imputed offence (see *Rokhlina v. Russia*, no. 54071/00, § 66, 7 April 2005).

160. It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of concrete facts in support of their conclusions that the applicant could abscond, or obstruct justice. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina,* cited above, § 67, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001).

161. The Court observes that the domestic authorities gauged the applicant's potential to abscond or impede the criminal proceedings on the sole basis of the fact that he had been charged with serious criminal offences, which implied that he was facing a severe sentence. It reiterates in this connection that although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81).

162. In the present case, at no point did the domestic authorities disclose any evidence, or mention any particular facts in the applicant's case warranting his continued detention. The judiciary never specified why, notwithstanding the arguments put forward by the applicant and his lawyers in support of his requests for release, they considered the risk of his absconding or interfering with the course of justice to exist and to be decisive. Moreover, the preliminary investigation in the present case had ended by 6 February 2003, but the applicant remained in detention for more than another two years. The Court reiterates in this connection that whilst at the initial stages of the investigation the risk that an accused person might pervert the course of justice could justify keeping him or her in custody, after the evidence has been collected that ground becomes less strong (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006).

163. The Court further emphasises that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). It does not appear that during the period under consideration the domestic courts once considered the possibility of ensuring the applicant's attendance by the use of other "preventive

measures" – such as a written undertaking not to leave a specified place or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very least, that they sought to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

164. Having regard to the materials in its possession, the Court is not convinced that the domestic courts' decisions were based on an analysis of all the relevant facts. The Court agrees with the applicant that the authorities took no notice of the arguments in favour of his release pending trial, such as, for instance, his permanent place of residence and work and positive references in his respect. While extending the applicant's detention by means of identically or similarly worded detention orders, the domestic authorities had no proper regard to his individual circumstances.

165. Overall, the Court considers that by failing to refer to specific relevant matters or to consider alternative "preventive measures" and by relying essentially on the seriousness of the charge against the applicant, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty. In such circumstances it is therefore not necessary to examine whether the case was complex or whether the proceedings were conducted with "special diligence".

166. In the light of the foregoing consideration, the Court finds that there has been a violation of Article 5 § 3 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

167. The applicant complained under Article 2 of the Convention that during his detention his health had deteriorated. He complained under Article 6 of the Convention alleging overall unfairness of the criminal proceedings against him. The applicant also complained under Article 7 of the Convention that he had been charged with a crime which he had not committed. The applicant further complained under Article 8 of the Convention that the criminal prosecution and, in particular, searches at his father's flat had adversely affected his private life. Lastly, the applicant complained under Article 13 of the Convention alleging ineffectiveness of the Russian legal system in general.

168. The Court has examined the above complaints, as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. 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

170. The applicant claimed 200,000 United States dollars (USD, approximately 150,000 euros, EUR) in respect of non-pecuniary damage.

171. The Government contested that amount, stating that no award should be made to the applicant in the absence of any violations of his Convention rights. They also suggested that should the Court find a violation of the applicant's rights, the finding of a violation would suffice.

172. The Court observes that it has found a violation of Article 3 in its procedural aspect, a violation of Article 5 § 1 (c), on account of the applicant's detention pending trial between 3 August and 1 September 2004, and a violation of Article 5 § 3 of the Convention. The applicant must have suffered anguish and distress on account of those infringements of his rights, which cannot be compensated by a mere finding of a violation. Having regard to these considerations and judging on an equitable basis, the Court finds it reasonable to award the applicant EUR 20,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

173. The applicant did not submit any claim under this head. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Articles 3 and 5 § 1 (c), as regards the period of the applicant's detention from 3 August to 1 September 2004, as well as the complaints under Articles 5 § 3 and 13, in conjunction with Article 3 of the Convention, admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention in its substantive aspect;

3. *Holds* unanimously that there has been a violation of Article 3 of the Convention in its procedural aspect;

4. *Holds* unanimously that there is no need to examine separately the applicant's complaint under Article 13, in conjunction with Article 3 of the Convention;

5. *Holds* unanimously that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 3 August to 1 September 2004;

6. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention;

7. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge A. Kovler is annexed to this judgment.

N.A.V.
S.N.

PARTLY DISSENTING OPINION OF JUDGE KOVLER

I cannot share the Court's conclusion that it had little evidence to enable it to conclude "beyond reasonable doubt" that the applicant was subjected to any form of treatment prohibited by Article 3 of the Convention, as he alleged, and thus that there has been no violation of Article 3 of the Convention in its substantive aspect.

During the final round of the hearings in his case, as during the proceedings as a whole, the applicant had insisted that he was innocent and reiterated that he had made his confession at the pre-trial stage because he had been beaten and threatened by the police (see paragraph 50). The applicant had been taken out of his cell during his administrative detention without the presence of his lawyer for the purpose of obtaining his confession. The fact that the so-called medical examination of the applicant on 7 October 2002 did not reveal any injuries on him is of no relevance in this case. The Court itself recognises that some forms of psychological and physical pressure do not leave any visible traces (see paragraph 102). Unfortunately, the Court has not paid enough attention to this fact. The logic behind my conclusions on this point is different from that of the majority.

First of all, I am more inclined to agree with the applicant's argument that the very fact that he had been taken out of his cell in breach of the relevant regulation was proof of coercion. I am afraid that the applicant was taken out of his cell several times and it was not for a tea-party with investigators.

Secondly, as a result of the fourth round of court proceedings, the Kirovsk District Court judgment of 2 May 2006 stated that Mr Chumakov's submission that he had given self–incriminating evidence and had written a "confession" under pressure from the police officers was confirmed by the register recording when administrative detainees were taken out of their cells. As an administrative detainee, the applicant was, according to the register, taken out of his cell three times on 2 and 4 October, which were the crucial dates of his "confession" to the crime. The District Court thus concluded that the "confession", although written by Mr Chumakov, could not be considered a voluntary statement about the crime in question and consequently could not be considered admissible evidence. For me this is sufficient proof of psychological pressure as prohibited by Article 3 (see Gäfgen v. Germany [G.C.], no. 22978/05, § 91, ECHR 2010). I would point out that the District Court ultimately acquitted the applicant and acknowledged his right to rehabilitation.