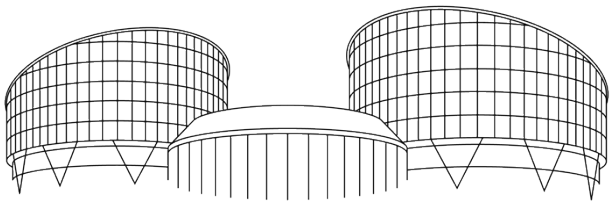

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOLOVYEVY v. RUSSIA

(Application no. 918/02)

JUDGMENT

STRASBOURG

24 April 2012

FINAL

24/07/2012

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

In the case of Solovyevy 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,
Linos-Alexandre Sicilianos,
Erik Møse, *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. 918/02) 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 Russian nationals, Mr Mikhail Viktorovich Solovyev and Mr Vladimir Viktorovich Solovyev ("the applicants"), on 25 November 2000.

2. The applicants were represented by Mr A. Chumakov, a lawyer practising in the town of Tyumen. 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 applicants alleged, in particular, that during the proceedings which resulted in the decision of 17 October 2000 they had not been represented by a lawyer, that the criminal proceedings against them had been too long and that the conditions of the detention on remand of the second applicant had been appalling. They complained that the prison administration had refused to certify their authority forms for the proceedings before this Court, that the criminal proceedings had been unfair and that they had not been able to attend the appeal hearing of 18 July 2001. The first applicant complained in his letter of 14 June 2004 that his detention on remand had been too long and that the courts had charged him for the services of a legal-aid lawyer, which he had allegedly never accepted. The second applicant made a complaint about the length of his detention on remand and also a number of grievances (letter of 1 March 2006) about the conditions of his transportation, the inability to attend some of the appeal hearings and the courts' failure to examine some of his appeals against the detention orders.

4. On 10 May 2006 the President of the First Section decided to communicate 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).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, who are brothers, were born in 1977 and 1957 respectively and at present reside in the town of Yekaterinburg in the Sverdlovsk Region.

A. Institution of criminal proceedings

7. In May 1993 the bodies of three persons were found in a street in Yekaterinburg.

8. On 29 March 1994 the second applicant was charged with two counts of manslaughter and unlawful possession of weapons. Ten days later, a deputy prosecutor of the Ordzhonikidzevskiy District of Yekaterinburg discontinued the criminal proceedings against the second applicant because he was found to have acted in self-defence and the use of force had been justified.

9. On 14 November 1997 the second applicant was charged with having severely injured a Mr M.

10. In February 1998 the Sverdlovsk Regional Prosecutor reopened the criminal proceedings against the second applicant on the charges of manslaughter and arms possession and remitted the case for further investigation. On 17 November 1998 the investigator at the Ordzhonikidzevskiy District prosecutor's office dropped the arms-possession charge.

11. In December 1998 the two sets of criminal proceedings were joined and the second applicant was issued with the bill of indictment. He was charged with one count of manslaughter, causing severe bodily injuries, and unlawful restriction of liberty.

12. On 15 December 1998 the first applicant was also charged with unlawful restriction of liberty.

B. Trial proceedings

1. Committal for trial and the applicants' arrest

13. On 1 February 1999 the prosecution concluded the investigation and transmitted the case for an examination on the merits to the Ordzhonikidzevskiy District Court of Yekaterinburg. On 26 March 1999 the case was assigned to a judge of that court. The applicants were committed for trial and on 1 December 1999 the court listed the first hearing for 17 October 2000.

14. At the hearing of 17 October 2000 the applicants were initially represented by lawyer R. The chamber consisted of two lay assessors and presiding judge B. The applicants challenged the presiding judge, alleging bias. The lay assessors examined and rejected the challenge as unfounded.

15. Thereafter the applicants informed the court that they had dismissed lawyer R. and appointed lawyer Ch. as a replacement. Lawyer Ch. was not present at the hearing.

16. After lawyer R. had been dismissed, the prosecutor made a request for the applicants to be detained pending trial, which the Ordzhonikidzevskiy District Court examined and accepted with the following reasoning:

> "[the applicants are] charged with murder, the intentional infliction of severe injuries ... and unlawful confinement ...
>
> Before the hearing they unsuccessfully sought the removal of the presiding judge and influenced participants in the proceedings, including the victim, Mr M., who asked the court not to examine the case because the defendants had not committed any criminal offence against him. They also appealed against the decision by which the court hearing had been fixed.
>
> [The applicants are] charged with serious and especially serious criminal offences ... When they were under a written undertaking not to leave the town, they attempted to obstruct the thorough and full examination of the case. The prosecutor has lodged a request in that connection; having regard to the above-mentioned considerations, the court finds it to be substantiated and authorises ... [the applicants'] placement in custody."

17. The applicants were taken into custody on 17 October 2000. They appealed against the decision ordering their detention, arguing that their procedural rights had been breached as a result of the absence of their lawyer at the hearing. Among other things, they requested the court to secure their attendance during the appeal hearing.

18. The District Court listed the next hearing for 18 December 2000.

19. The decision of 17 October 2000 was upheld on appeal on 9 November 2000 by the Sverdlovsk Regional Court. The hearing took place with the participation of the prosecutor, the alleged victim and the

applicant's lawyer Ch. The applicants were detained in the remand prison and were not taken to the hearing. Their request for personal attendance remained unanswered.

2. Requests for removal of the bench; detention order of 1 March 2001

20. At the hearing of 18 December 2000 the applicants and their lawyer requested the removal of the entire bench including the presiding judge. The District Court dismissed their requests and adjourned the proceedings until 1 March 2001 because the victim had arrived at the hearing in an inebriated state.

21. On 9 February 2001 the Sverdlovsk Regional Court, in the presence of the applicants' lawyer, upheld that decision. The applicants were neither invited, nor present at the hearing.

22. On 1 March 2001 the presiding judge, in an interlocutory decision, extended the applicants' detention and withdrew from the proceedings because he felt offended by the conduct of the applicant's lawyer. No reasons or time-limit for the extension were given. The judge noted that the decision was not amenable to appeal.

23. According to the Government, the second applicant brought an appeal against that decision. Since it had been lodged too late and the applicant never asked for restoration of the time-limit, the appeal court never examined it.

24. The second applicant disagreed with the Government on that point. He submitted a copy of a letter from the Deputy President of the Sverdlovsk Regional Court dated 26 March 2001 informing the President of the Ordzhonikidzevskiy District Court that the second applicant had requested a copy of the decision of 1 March 2001 and the restoration of the time-limit for appeal.

25. According to the second applicant, he had appealed against the decision of 1 March 2001 once in receipt of a copy of it, and had complied with the time-limit for appeal.

3. Detention order of 17 April 2001

26. On 17 April 2001 a new presiding judge listed a hearing for 7 June 2001 and extended the applicants' detention, without citing any grounds or setting a time-limit.

27. The applicants alleged that they had not received that decision. Nonetheless, they appealed against it on 23 and 28 May 2001. In their appeals they disagreed with the decision to list a hearing for 7 June 2001 and argued that the case ought to be sent for an additional investigation to the prosecutor. The appeals did not contain any complaints concerning the applicants' continued detention.

28. On 18 July 2001 the Sverdlovsk Regional Court upheld the decision, rejecting the applicants' arguments concerning the decision to list a hearing for 7 June 2001. By this time the first applicant had already been released (see paragraph 31 below)

29. The Government submitted that the second applicant and his lawyer had not taken part in the hearing.

4. Interlocutory decisions and the detention order of 7 June 2001

(a) Rejection of a request for additional investigative measures

30. On 4 June 2001 the Ordzhonikidzevskiy District Court dismissed the applicants' request for an additional investigation. The applicants' appeal against that decision was dismissed by the Sverdlovsk Regional Court on 18 July 2001.

(b) Adjournment of the proceedings and detention order of 7 June 2001

31. On 7 June 2001 the first applicant was released on an undertaking not to leave his place of residence.

32. On the same date the applicants asked the District Court to adjourn the proceedings because their lawyer was on holiday. The court acceded to the request, adjourned the proceedings and extended the second applicant's detention on remand; no reasons or time-limit for the extension were given.

33. The second applicant appealed against the decision, claiming that it had not been given by a lawful tribunal.

34. On 20 July 2001 the Sverdlovsk Regional Court dismissed the appeal. The second applicant was not present at the appeal hearing.

5. Detention order of 4 September 2001

(a) Legal representation issues

35. On 3 September 2001 Ms S. was appointed to act as the applicants' counsel.

36. At the hearing held on the following day the second applicant, assisted by Ms S., asked the District Court to release him against a written undertaking not to leave the town and to replace Ms S. with Mr R. and Ms G., representatives of a certain NGO. The Ordzhonikidzevskiy District Court dismissed his application for release on the grounds that he was charged with serious criminal offences and was pleading not guilty. The District Court held that "there were no grounds to change the preventive measure". It refused to accept the appointment of Mr R. and Ms G. because they had not produced any written authority to act.

37. On 5 September 2001 the applicants again asked the court to appoint Mr R. and Ms G. The hearing was postponed to allow the applicants to find new lawyers.

38. According to the second applicant, on 11 September 2001 he submitted a statement of appeal against the decision of 4 September 2001 to the administration of the remand facility where he was being held. On 12 September 2001 he sent a letter by registered mail to the Sverdlovsk Regional Court.

39. In support of his allegations, the second applicant submitted a note (no. 68141-8367) issued by the prison administration of IZ-66/1 dated 28 October 2005 which confirmed that in September 2001 the second applicant had dispatched a complaint dated 7 September 2001 to the Sverdlovsk Regional Court. According to the second applicant, his appeal was left unexamined.

40. The Government submitted that the second applicant had never properly filed an appeal against the decision of 4 September 2001 and that the statement of appeal had only been received by the court after 17 December 2001 as an annex to another document. They conceded that the appeal had been left unexamined.

41. According to the Government, between 28 November 2001 and 27 May 2002 there were repeated delays in the criminal proceedings due to changes of lawyers, their failure to appear and sickness on the part of the parties.

(b) Adjournment of the proceedings until 1 April 2002

42. At the hearing of 17 December 2001 the second applicant successfully requested an adjournment because his lawyer had failed to appear. The hearing was postponed until the following day.

43. On 19 December 2001 the District Court, at the second applicant's request, adjourned the proceedings until 24 December 2001 to enable the applicant and his new lawyer to study the case file together.

44. The subsequent hearings scheduled for 24 and 25 December 2001 were postponed because the lawyer for the first applicant had failed to appear. The proceedings were stayed until 1 April 2002. The applicants claimed that on 31 December 2001 they had appealed against the decisions of 24 and 25 December 2001, but that their appeals had not been examined.

6. Detention order of 1 April 2002

45. At the hearing of 1 April 2002 the second applicant's lawyer asked the Ordzhonikidzevskiy District Court to remit the case for further investigation and release the applicant on bail or on a written undertaking not to leave the town. The District Court refused the requests, on the ground that the applicant was charged with a serious criminal offence and was pleading not guilty.

46. On 4 April 2002 the second applicant appealed against the decision of 1 April 2002, but the appeal was never examined.

47. The Government submitted that on 26 July 2002 the Ordzhonikidzevskiy District Court had extended the time-limit for lodging an appeal against the decision of 1 April 2002. According to them, there was no evidence in the case file that such an appeal was subsequently lodged.

7. Attempt to return the case for further investigation. Detention order of 27 May 2002

48. On 27 May 2002 the Ordzhonikidzevskiy District Court gave interlocutory decisions whereby it dismissed the applicants' request for the bench to stand down, remitted the case for further investigation and extended the second applicant's detention on remand. As regards the grounds for the extension, the District Court noted that the second applicant was charged with a serious criminal offence and that he was pleading not guilty and had threatened the victim.

49. By the same decision the court also charged the first applicant for the services of a legal-aid lawyer whom he had allegedly never accepted as his counsel.

50. On 17 July 2002 the Sverdlovsk Regional Court returned the case file to the District Court for the correction of certain procedural defects. The Regional Court also noted that in the course of the appeal hearing the applicants' lawyer had complained that on 4 April 2002 he had lodged an appeal against the decision of the District Court of 1 April 2002. The lawyer had provided the Regional Court with a copy of his statement of appeal bearing the stamp of the District Court and showing that it had received the statement on 4 April 2002. The Regional Court instructed the District Court to investigate whether that statement had been lodged in accordance with the requirements established by law.

51. On 21 August 2002 the Sverdlovsk Regional Court upheld the decisions of 27 May 2002 concerning the request for the bench to stand down and the extension of the applicant's detention. However, it did not accept the District Court's view that the case should be returned for further investigation, but instructed it to examine the merits of the charges. The applicants' lawyer was not summoned to the hearing.

8. Detention order of 1 July 2002 (period to 1 October 2002)

52. On 1 July 2002 a new Code of Criminal Procedure became effective.

53. On the same day the Ordzhonikidzevskiy District Court extended the applicant's detention until 1 October 2002, holding that the second applicant was charged with a serious criminal offence and that he was pleading not guilty and had threatened the victim. The second applicant and his lawyer

had not been summoned to the hearing. The representative of the prosecution authorities did not attend.

54. The second applicant appealed against the decision of 1 July 2002, also alleging that he had only received a copy of that decision on 4 July 2002. The applicant provided the Court with a copy of his statement of appeal. The document bore the stamp of the District Court indicating that the appeal had been lodged on 12 July 2002.

55. On 21 August 2002 the Sverdlovsk Regional Court refused to examine the second applicant's appeal against the decision of 1 July 2002 and remitted the matter to the District Court. The Regional Court held as follows:

> "In a decision [of 1 July 2002] [the second applicant's] detention on remand was extended until 1 October 2002.
>
> [T]he second applicant] lodged several appeals against that decision; [these] were lodged outside the time-limit established by the law. From the case file it cannot be established when [the second applicant] learned about the decision. Moreover, his lawyer, Mr Kh., ... learned about that decision only while taking part in the hearing and has expressed his wish to appeal against it ...
>
> In view of the foregoing, [the court] decides to stay the appeal proceedings, establish the date when [the second applicant] was issued with the decision [of 1 July 2002], include that notification in the case file, invite him to apply for extension of the time-limit for lodging an appeal against that decision ..., accept an appeal from Mr Kh., and subsequently fix an appeal hearing."

56. Two days later the Regional Court received an application from the second applicant's lawyer seeking an extension of the time-limit for lodging an appeal against the decision of 1 July 2002. According to the Government, there was no indication in the case file that the request was examined.

9. Detention order of 1 October 2002 (period to 1 January 2003)

57. On 1 October 2002 the District Court extended the second applicant's detention for three months, that is, until 1 January 2003. The court cited the same grounds for the extension as those in the detention orders of 27 May and 1 July 2002. Neither the second applicant nor his lawyer was present at the hearing.

58. On 13 November 2002 the Sverdlovsk Regional Court quashed the decision of 1 October 2002 and remitted the matter for fresh examination to the District Court. The Regional Court reasoned that, in breach of the rules of criminal procedure, the District Court had not ensured the presence of the second applicant and his lawyer at the hearing of 1 October 2002. It held that the second applicant's detention "should remain unchanged" in the meantime, because it had not established any ground to release him. The

second applicant was not taken to the appeal hearing, even though he had sought leave to appear. His lawyer attended that hearing.

10. Extension order of 20 November 2002

59. On 20 November 2002 the Ordzhonikidzevskiy District Court listed a hearing for 17 December 2002 and extended the second applicant's detention, without citing any grounds or setting a time-limit. The second applicant and his lawyer were not summoned to the hearing.

60. On 7 March 2003 the Sverdlovsk Regional Court dismissed the second applicant's appeal against the decision of 20 November 2002 because no procedural or substantive violations had been established.

11. Re-examination of the detention order of 1 October 2002 and trial hearings

61. On 15 December 2002 the District Court re-examined the question of the second applicant's detention (which it had previously examined on 1 October 2002) and retrospectively extended his detention for three months, until 1 January 2003. It held that the second applicant was charged with serious criminal offences and that, if released, he could pervert the course of justice. A new lawyer, Mr Ts., and the second applicant attended the hearing.

62. The second applicant and Mr Kh., his other lawyer, appealed against that decision. The second applicant also sought leave to appear before the appeal court.

63. According to the Government, the District Court fixed six trial hearings between 17 and 24 December 2002. They were adjourned because the second applicant's lawyer failed to appear.

64. On 8 January 2003 the Sverdlovsk Regional Court examined the grounds of the second applicant's appeal against the decision of 15 December 2002 and upheld the decision. According to the second applicant, neither he nor his lawyer was summoned to the appeal hearing. According to the Government, the second applicant's lawyer was given notice of the appeal hearing but failed to appear or to notify the Regional Court of the reasons for his absence. The Government provided the Court with a copy of the notice addressed to the prosecutor and to the second applicant's lawyer. The notice did not bear the signature of any court official.

12. Interlocutory orders regarding legal fees and requests for removal

65. On 15 December 2002 the Ordzhonikidzevskiy District Court ordered that the second applicant should pay 258 Roubles (RUB) (less than 10 euros (EUR)) in legal fees. It appears that the second applicant did not appeal against that order.

66. On 25 December 2002 the District Court dismissed requests by the applicants and their co-defendants for the removal of the prosecutor, the presiding judge and one of the applicants' lawyers, Mr S. The applicants alleged that they had not received that decision and, therefore, could not appeal against it.

13. Detention order of 25 December 2002 (period to 1 April 2003) and trial hearings

67. On 25 December 2002 the Ordzhonikidzevskiy District Court extended the second applicant's detention to 1 April 2003. It held that the second applicant was charged with serious criminal offences, the victims and witnesses had not yet been questioned, and that, therefore, the detention should be extended. The second applicant and his lawyer Mr Kh. attended the hearing.

68. From 13 January to 7 February 2003 the District Court fixed five hearings which were adjourned owing to the absence of the second applicant's lawyer. On 18 February 2003, at the second applicant's request, he was assigned new counsel. The proceedings were stayed until 13 March 2003 to allow the new lawyer time to study the case file.

69. The hearings of 13 and 14 March 2003 never took place because the second applicant was ill.

70. On 7 March 2003 the Sverdlovsk Regional Court rejected appeals by the second applicant and his lawyer against the extension order of 25 December 2002 because they had been lodged outside the time-limit. It asked the District Court to determine whether the time-limit could be extended. According to the second applicant, the District Court did not take any action on the matter. The Government did not comment on this.

14. Detention order of 26 March 2003 (period to 1 July 2003)

71. On 26 March 2003 the Ordzhonikidzevskiy District Court extended the second applicant's detention to 1 July 2003. The court noted that he had no criminal record, that he had a permanent place of residence and work, that he was the breadwinner of a family with two minor children and that he suffered from several illnesses. On the other hand, he was charged with serious criminal offences, victims and witnesses had not yet been heard, and the case had been pending for a long time, owing mostly to the second applicant's conduct. The second applicant, if released, might therefore obstruct the proceedings.

72. According to the second applicant, on 3 April 2003 he and his lawyer lodged an appeal against that decision. The appeal was never examined.

73. According to the Government, no appeal was ever lodged.

74. The hearing on the merits was postponed again until 3 April 2003, and then on three further occasions until 8, 9 and 28 April 2003.

15. Detention order of 26 June 2003 (period to 1 October 2003)

75. On 25 June 2003 the applicants sought the removal of the entire bench and the prosecutor. The court dismissed these requests.

76. On 26 June 2003 the Ordzhonikidzevskiy District Court discontinued the criminal proceedings against the first applicant in full as time-barred, and ruled out certain evidence as inadmissible. In the same decision the trial court discontinued the criminal proceedings against the second applicant in respect of the manslaughter charges because the statutory limitation period had expired, and extended his detention to 1 October 2003. The court noted that the second applicant was charged with serious criminal offences and that the trial was pending.

77. The applicants and their lawyer appealed against the decision of 26 June 2003 but subsequently withdrew their appeals.

C. Partial discontinuance of proceedings and conviction

78. On 10 July 2003 the Ordzhonikidzevskiy District Court discontinued the criminal proceedings against the second applicant in respect of the charges of unlawful confinement because the conduct in question could not be classed as a criminal offence.

79. On the same day the District Court found the second applicant guilty of causing bodily injuries and sentenced him to one year's imprisonment. He was released on a written undertaking not to leave the town pending the appeal proceedings.

80. On 15 July and 12 August 2003 the second applicant lodged appeals against the conviction. On an unspecified date his lawyer appealed against the judgment of 10 July 2003.

81. On 24 February 2004 the second applicant and his lawyer withdrew their appeals.

82. On 3 March 2004 the Sverdlovsk Regional Court accepted the withdrawal and discontinued the appeal proceedings. On the same day the applicant's written undertaking not to leave the town was cancelled.

D. Conditions of detention

83. The second applicant submitted that between 17 October 2000 and 10 July 2003 he had been kept in a cell measuring twenty square metres. The number of inmates at times reached thirty and since the number of beds was insufficient the inmates had to take turns to sleep. The cell also had no proper ventilation.

84. The Government responded by producing a certificate (no. 68/I1-5780) issued by the head of prison IZ-66/1 in Yekaterinburg dated 12 July 2006. The certificate confirmed that the second applicant had been detained in that prison on two occasions: between 18 October 2000 and 10 April 2003 and between 18 April and 10 July 2003. During the period from 10 to 18 April 2003 the applicant had been held in correctional facility FGU IK-2 of the Sverdlovk Region.

85. The certificate stated that the second applicant had been detained in the following cells: no. 112 (measuring sixty-nine square metres and containing eleven beds), no. 201 (measuring fifty-one square metres and containing twelve beds), no. 222 (measuring twenty square metres and containing four beds), no. 311 (measuring thirty-one square metres and containing seven beds), and no. 537 (measuring thirty-eight square metres and having nine beds).

86. According to the certificate, all the cells had glazed windows, adequate sleeping arrangements, ventilation and were regularly disinfected. The inmates, including the second applicant, never made any complaints about the conditions of their detention.

87. The Government were unable to provide specific figures concerning the number of inmates in that prison for the year 2000 because the relevant logs had been destroyed after expiry of the time-limit for storage. As to the years 2001-2003, they provided the following data concerning the number of inmates in the cells in question:

Cells/Months	No. 112 (11 beds)	No. 201 (12 beds)	No. 222 (4 beds)	No. 311 (7 beds)	No. 537 (9 beds)
Jan. 2001	n/a	38	22	45	n/a
Feb. 2001	n/a	36	10	32	n/a
Mar. 2001	n/a	25	12	35	n/a
Apr. 2001	n/a	26	41	40	n/a
May 2001	n/a	33	42	42	n/a
June 2001	n/a	26	41	40	n/a
July 2001	n/a	27	n/a	41	n/a
Aug. 2001	n/a	n/a	n/a	n/a	25
Sep. 2001	n/a	n/a	n/a	n/a	25
Oct. 2001	n/a	32	20	18	n/a
Nov. 2001	n/a	n/a	n/a	n/a	8
Dec. 2001	n/a	28	9	5	n/a
Jan. 2002	n/a	n/a	n/a	n/a	n/a
Feb. 2002	n/a	n/a	n/a	n/a	24
Mar. 2002	n/a	24	n/a	24	n/a
Apr. 2002	n/a	n/a	n/a	n/a	26
May 2002	n/a	17	16	25	n/a
June 2002	n/a	n/a	n/a	n/a	32

July 2002	n/a	18	8	1	n/a
Aug. 2002	n/a	n/a	n/a	n/a	32
Sep. 2002	n/a	18	6	6	n/a
Oct. 2002	n/a	n/a	n/a	n/a	13
Nov. 2002	n/a	22	2	24	n/a
Dec. 2002	n/a	n/a	n/a	n/a	7
Jan. 2003	n/a	18	n/a	13	n/a
Jan. 2003	n/a	20	6	30	n/a
Feb. 2003	n/a	19	7	10	n/a
Mar. 2003	n/a	16	12	13	n/a
Apr. 2003	n/a	n/a	n/a	n/a	18
Apr. 2003	13	16	6	5	n/a
May 2003	n/a	17	16	21	n/a
June 2003	n/a	17	14	4	n/a
July 2003	n/a	19	9	5	n/a

88. According to the Government, the second applicant had a shower on a weekly basis for fifteen minutes. The temperature in the cells was no more that twenty degrees in summer and no less than eighteen degrees in winter. All cells had a toilet, separated from the rest of the cell by a partition, and a sink.

89. The second applicant submitted that all the cells in which he was detained had been heavily overcrowded and that the Government's description of the sleeping arrangements and partitioned toilets was false.

90. He submitted a witness statement dated 31 October 2006 by S. K., an inmate in cell no. 201, which confirmed that between 20 January 2003 and 20 June 2003 the cell had contained 35 to 40 inmates.

E. The second applicant's other allegations

91. The second applicant alleged that on 12 April 2001 the prison authorities had refused to certify the authority forms for his lawyer to represent him before the Court, citing its incompetence to perform the requested actions. The case file contains an authority form dated 10 April 2001 signed by the second applicant and an authority form dated 22 April 2001 signed by the first applicant.

92. On 18 December 2000, 1 March and 4 September 2001 the second applicant was conveyed to the court room and back to the remand centre. According to him, the prison vehicle had no heating and he was not provided with any warm clothing. In addition, he had no opportunity to use toilet facilities for three hours while in transit and was given no meals during the whole day at the court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

93. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, "the old CCrP"). On 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

A. Proceedings to examine the lawfulness of detention

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

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

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

B. Time-limits for trial proceedings

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

98. There is no time-limit for the duration of the proceedings as a whole.

99. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days after it was lodged. In exceptional circumstances or complex cases, or in proceedings

before the Supreme Court this time-limit could be extended by up to two months (Article 333). No further extensions were possible.

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

C. Rules on the detention regime in pre-trial detention centres (as approved by Decree no. 148 of the Ministry of Justice of 12 May 2000)

100. Rule 42 provided that all inmates, whether suspects or defendants, had to be given, among other things: a sleeping place; bedding consisting of one mattress, one pillow and one blanket; bed linen consisting of two sheets and a pillowcase; a towel; crockery and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

101. Rule 44 stated that cells in pre-trial detention centres must be equipped with, among other things, a table and benches with enough seating space for the number of inmates, sanitation facilities, tap water, day lamps and night-time lighting.

102. Rule 46 provided that prisoners were to receive food three times a day, with warm meals provided in accordance with the norms laid down by the Government of Russia.

103. Under Rule 47, inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh bed linen after they had taken a shower.

104. Rule 143 provided that an inmate could receive visits from his lawyer, family members or other persons, subject to written permission from an investigator or an investigative body, the number of visits being limited to two per month.

D. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005

105. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with the implementation of the "Pre-trial detention centres 2006" programme.

106. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem.

107. The programme mentions pre-trial detention centre IZ-66/1 in the town of Yekaterinburg as being amongst the ones affected. In particular, the programme states that on 1 July 2004 the detention centre had a capacity of

2,255 inmates but in fact accommodated 3,262 detainees, in other words, 44.6% more than the permitted number.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

108. The relevant extracts from the General Reports of the European Committee for the prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ..."

Extracts from the 7th General Report [CPT/Inf (97) 10]

"13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3,

paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

Extracts from the 11th General Report [CPT/Inf (2001) 16]

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The second applicant complained that the conditions of his detention in remand prison IZ-66/1 of Yekaterinburg as of 17 October 2000 had been deplorable. He also complained that the conditions of his

transportation on 18 December 2000, 1 March and 4 September 2001 had been appalling.

The Court will examine these grievances under Article 3, which provides as follows:

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

A. Submissions of the parties

110. The Government submitted that the second applicant had failed to exhaust available domestic remedies. According to them, he could have applied to the domestic courts with claims for compensation in respect of any non-pecuniary damage allegedly resulting from the conditions of his detention. The Government also considered that the conditions of detention in the prisons concerned had not been incompatible with Article 3 of the Convention.

111. The second applicant disagreed and maintained his complaints. He argued that the data and figures provided by the Government were inaccurate.

B. The Court's assessment

1. Admissibility

112. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because the Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

113. The Court will only examine the second applicant's complaints raised in the application form dated 7 July 2001, that is, those concerning the allegedly appalling conditions of detention in IZ-66/1 of Yekaterinburg. The additional complaints, about the conditions of his transportation during his detention on remand, were submitted on 1 March 2006 (see paragraph 3), that is, more than six months after the second applicant's detention on remand ended on 10 July 2003. It follows that these new complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

114. In as much as the Government claim that the second applicant has not complied with the rule on exhaustion of domestic remedies, the Court finds that the Government have not specified with sufficient clarity what type of action would have been an effective remedy in their view, nor have they provided any further information as to how such an action could have prevented the alleged violation or its continuation, or provided the applicant

with adequate redress. Even if the second applicant, who at the relevant time was still in detention pending trial, had been successful, it is unclear how a claim for damages could have afforded him immediate and effective redress. In the absence of such evidence, and having regard to the relevant principles, the Court finds that the Government have not substantiated their claim that the remedy or remedies the applicant allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). For the reasons outlined above, the Court finds that this part of the application cannot be rejected for non-exhaustion of domestic remedies (see also *Popov v. Russia*, no. 26853/04, §§ 204-06, 13 July 2006; *Mamedova v. Russia*, no. 7064/05, §§ 55-58, 1 June 2006; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

115. The Court accepts the accuracy of the dates of the second applicant's detention as submitted by the Government, and notes the essentially continuous character of his detention from 17 October 2000 to 10 July 2003 in IZ-66/1, which was interrupted by a prison transfer on one occasion only, in April 2003, for an overall period of a mere seven days. It further notes that his grievances about the detention facility in issue all concern the same problem, namely overcrowding and the general lack of living space. In view of this, the Court finds that the said period of detention should be regarded as a "continuing situation" for the purposes of the calculation of the six-month time-limit (see *Aleksandr Matveyev v. Russia*, no. 14797/02, §§ 67-68, 8 July 2010; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Benediktov v. Russia*, no. 106/02, § 12, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 31, 19 June 2008 and compare to *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009). It thus finds that the second applicant lodged his complaints about the conditions of detention during the said period in good time.

116. In the light of the parties' submissions, the Court finds that this part of the case raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established.

2. Merits

117. The Court would note that the parties disagree on many aspects of the second applicant's conditions of detention, including the size of the cells, the number of beds, and the number of detainees in the cells. Most importantly, the Government deny that the cells in question were overcrowded or cramped, and have submitted official certificates to that effect provided by the authorities of the detention centres in question and

partly covering the period in question, whereas the second applicant insists on his initial account of events.

118. Having studied the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreements on all of the aforementioned points as the case file contains sufficient documentary evidence to confirm the second applicant's allegations of severe overcrowding in pre-trial detention facility IZ-66/1 in Yekaterinburg, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

119. The Court would note that the existence of a deplorable state of affairs in that detention facility may be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 105-107 above), which expressly acknowledges the issue of overcrowding in that detention centre in 2004.

120. The Court also observes that it has previously examined the question of the conditions of detention in IZ-66/1 in 2000, 2002 and 2003 in its judgments in the cases of *Mukhutdinov v. Russia*, no. 13173/02, §§ 80-92, 10 June 2010, and *Zakharkin v. Russia*, no. 1555/04, §§ 117 and 120-30, 10 June 2010, and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

121. The Court next notes that the Government did not support their own submissions in respect of the year 2000 with any data at all, whilst their descriptions for the years 2001-2003 rely on incomplete data in respect of some of the cells in which the second applicant was detained on some of the dates. Moreover, the data submitted seems in any event to confirm the second applicant's version of events in that the cells in question were severely overcrowded and the actual number of inmates grossly exceeded their design capacity (see paragraph 87 above). Lastly, a former detainee of that prison, S. K., in his uncontested statement relating to the period between 20 January 2003 and 20 June 2003 (see paragraph 90) also confirmed that IZ-66/1 was severely overpopulated during his stay there.

122. Overall, the Court is prepared to accept the aforementioned indications as sufficient confirmation of the second applicant's point that overcrowding of cells was a problem in that detention facility at the time he was detained there.

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

above, §§ 97; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

124. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the second applicant had to spend two years, eight months and fifteen days in overcrowded cells at IZ-66/1 in Yekaterinburg was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of anguish and inferiority capable of humiliating and debasing him.

125. There has therefore been a violation of Article 3 of the Convention as the Court finds the second applicant's detention to have been inhuman and degrading within the meaning of that provision.

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

126. The applicants complained that they had not been represented by a lawyer during the court proceedings resulting in their detention by the decision of 17 October 2000 and had been unable to attend personally the subsequent appeal hearing of 9 November 2000. The second applicant also complained that he had not been able to attend the appeal hearings of 9 February 2001, 1 July, 1 October, 13 November and 15 December 2002 and 8 January 2003. He was also dissatisfied with the courts' alleged failure to examine his appeals against the detention order of 1 July 2002 and the decisions dated 1 March and 4 September 2001, 1 April 2002 and 26 March 2003.

The Court considers that the present complaints fall to be examined under Article 5 § 4 of the Convention, which reads as follows:

> "... 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ..."

A. Submissions by the parties

127. The Government confirmed the applicants' version of events concerning the hearing of 17 October 2000, but disagreed that their rights had been breached as a result of the absence of their counsel.

128. The applicants disagreed and maintained their complaints. They also maintained that the alleged defects in the detention proceedings of

17 October 2000 had been aggravated by the fact that they had not been able to attend the appeal hearing.

B. The Court's assessment

1. Admissibility

129. The Court notes that the second applicant's grievances about the appeal hearings of 9 February 2001, 1 July, 1 October, 13 November and 15 December 2002 and 8 January 2003, and the courts' failure to examine his appeals against the detention order of 1 July 2001 and the decisions of 1 March, 4 September and 1 April 2002 and 26 March 2003 were lodged on 1 March 2006, that is more than six months after the latest of the said detention hearings and the second applicant's release on 10 July 2003. It follows that these complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

130. The Court also notes that the complaint about the absence of the lawyer during detention hearing of 17 October 2000 and the lack of personal presence during the subsequent appeal hearing of 9 November 2000, in so far as it concerns the second applicant, has already been examined and rejected as belated in its judgment *Solovyev v. Russia*, no. 2708/02, §§ 120 and 123, 24 May 2007. It follows that this part of the case is inadmissible and must be rejected in accordance with Article 35 § 2 (b) of the Convention

131. In the light of the parties' submissions, the Court finds that the remaining grievance of the first applicant, about the first instance hearing of 17 October 2000 and the appeal hearing of 9 November 2000, raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established.

2. Merits

(a) Principles established in the Court's case-law

132. The Court observes that it has previously held that there is no reason to distinguish between court decisions imposing detention, extending it or testing its lawfulness. All such proceedings should offer certain minimum procedural guarantees, and the case-law concerning Article 5 § 4 of the Convention is, as a rule, applicable to detention proceedings falling under Article 5 § 3 (see *Lebedev v. Russia*, no. 4493/04, § 76, 25 October 2007). The Court has also previously ruled that the proceedings should be

adversarial and ensure equality of arms (see, as a recent authority, *Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-...). However, the requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, 19 February 2009).

133. The Court has previously affirmed that the possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see, among other authorities, *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B, and *Allen v. the United Kingdom*, no. 18837/06, § 38, 30 March 2010). The Court has also found that an oral hearing may be necessary in cases of detention on remand (see *A. and Others* [GC], cited above, § 204, referring to *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). In some cases the Court has stated that where detention falls within the ambit of Article 5 § 1 (c) of the Convention, as a general rule a detainee should have a right to participate in person in a hearing where his detention is discussed (see *Lebedev*, cited above, § 113, and *Sorokin v. Russia*, no. 7739/06, § 80, 30 July 2009).

(b) Application of these principles

134. Turning to the present case, the Court notes that the first applicant's lawyer Ch. was absent from the court hearing of 17 October 2000, at which the prosecutor sought to detain him pending trial, although the first applicant was present (see paragraphs 13-16). The subsequent appeal hearing of 9 November 2000 took place in the absence of the first applicant, but was attended by his lawyer Ch, the prosecutor, and the victim (see paragraphs 17-19 above). The Court must examine whether in these circumstances the procedure under Article 5 § 4 was adversarial and respected the principle of equality of arms.

135. The Court observes that the issues discussed during the hearing of 17 October 2000 concerned the gravity of the charges against the defendant and the risk that the defendant might interfere with the conduct of the proceedings. That risk was formulated by the prosecutor and the court in specific terms and its existence was both inferred from the nature and gravity of the charges in general and based on an assessment of the first applicant's conduct during the investigation and the trial (see paragraph 16 above). The hearing therefore involved a discussion of the first applicant's personality and his current conduct. These questions had been raised for the

first time in the prosecutor's application made on the same day, and it is clear from the case file that the parties had never addressed them previously (see, by contrast, *Sorokin*, cited above, § 82). The first applicant had not had the benefit of legal advice from either of his lawyers, R. or Ch., before the discussion of these questions took place before the court in that hearing, which certainly placed him in a vulnerable situation vis-à-vis the prosecution during these proceedings.

136. The Court would underline that the hearing in question concerned the proceedings imposing the detention. As the Court has already ruled previously, such proceedings require special expedition and the judge may well decide not to wait until a detainee avails himself of his right to legal assistance (see *Lebedev*, cited above, § 84). What matters in the circumstances is not whether the first applicant's lawyer was present at the initial detention hearing, but rather and more importantly whether the first applicant had an opportunity to present his arguments properly in the subsequent review proceedings.

137. In the latter connection, the Court would note that the review proceedings took place in the presence of the prosecutor and the victim, who both requested the appeal court to uphold the initial detention order. The first applicant was not present because his request to attend had been left unanswered. He was represented by his lawyer Ch. (see paragraphs 17-19 above). Given the said vulnerability of the first applicant at the initial hearing and the lack of any explanation as to why he was not taken to the appeal hearing in person even though the appeal court was ruling on legal and factual issues, such as the assessment of his personality and his conduct during the investigation and the trial, which called for the first applicant's personal presence, the Court cannot conclude that the lawyer's presence was in itself sufficient to ensure that the proceedings were adversarial and the principle of equality of arms was respected.

138. Taking the first set of detention proceedings as a whole, the Court concludes that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

139. The applicants complained that the length of the criminal proceedings against them had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Submissions by the parties

140. The Government considered that the complaint about the excessive length of the proceedings was unmeritorious, because the applicants had caused delays by changing their legal representation, appealing against the trial court's decisions and requesting various procedural actions. At least fifteen hearings had been adjourned on account of the absence of the applicants' lawyers.

141. The applicants contested the Government's submissions and maintained their complaints.

B. The Court's assessment

1. Admissibility

142. The Court notes at the outset that it has already examined the second applicant's grievances about the excessive length of the criminal proceedings in the *Solovyev* judgment (cited above, §§ 140-50), and established that there was a breach of Article 6 § 1 of the Convention on that account. The Court finds that the complaints made by the second applicant in the present application are substantially the same as those examined in that judgment and contain no relevant new information. It follows that this part of the case is inadmissible and must be rejected in accordance with Article 35 § 2 (b) of the Convention.

143. As regards the complaint made by the first applicant, the Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 26 June 2003 when the Ordzhonikidzevskiy District Court discontinued the criminal proceedings against the first applicant in full. It thus lasted five years and twenty-two days.

144. The Court 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

145. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicant and the relevant authorities (see, among many

other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

146. The Court observes that the parties did not argue that the case was complex. Having regard to the nature of the case against the first applicant, the Court sees no reason to conclude otherwise.

147. As to the first applicant's conduct, the Government argued that he had contributed to the length of the proceedings by submitting various requests and appealing against the District Court's decisions. The Court is not convinced by this argument. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A).

148. The Court notes, however, the Government's argument that a substantial delay in the proceeding was caused by the failure of the lawyers of both applicants to attend hearings. The aggregate delay incurred as a result amounted to fourteen months at least (see paragraphs 32, 37, 41, 44 and 68 above).

149. As regards the conduct of the authorities, the Court considers that the overall period, less the period attributable to the first applicant, leaves the authorities accountable for a period of approximately four years. The Court is aware of substantial periods of inactivity attributable to the domestic authorities for which the Government have not submitted any satisfactory explanation. The Court notes that on 1 February 1999 the District Court received the case for trial. However, it took the presiding judge approximately one year and nine months to schedule and to hold the first trial hearing (see paragraph 13 above). The Government did not cite any reasons for that delay. Moreover, there were repeated delays in the proceedings between 28 November 2001 and 27 May 2002 (see paragraph 41 above), which resulted in six more months of unjustified delay. The Court also observes that on 27 May 2002 the District Court remitted the case for further investigation to enable the prosecution to correct certain defects. However, that decision was quashed on 21 August 2002 and the case was sent back to the District Court. This resulted in further unjustified delay of almost three months, attributable to the State (see paragraphs 48-51 above). Finally, from the case file it is also clear there were delays in the proceedings unaccounted for by the Government between 26 March 2003 and 25 June 2003 (see paragraphs 71 and 74 above).

150. Having examined all the material before it, and taking into account the overall length of the proceedings and its earlier conclusions in respect of the same set of criminal proceedings in the *Solovyev* judgment (cited above, §§ 147-49), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

151. The first applicant's complaint about the allegedly excessive length of his detention on remand and his grievance about the trial court's decision to charge him for the services of a legal-aid lawyer have been lodged out of time. The first applicant was released on 7 June 2001, which was more than six months before he raised this complaint in his letter of 14 June 2004. Likewise, the decision to charge him for the services of a legal-aid lawyer was adopted on 27 May 2002, whilst the complaint about it was made almost four years later, on 1 March 2006.

152. The applicants' complaint about their inability to attend the appeal hearing of 18 July 2001 is manifestly ill-founded. The hearing concerned interlocutory matters (see paragraph 28) which had no relevance for the fairness of the criminal proceedings under Article 6 of the Convention or the issue of the applicants' detention on remand under Article 5 § 4.

153. In so far as the first applicant complained about the alleged unfairness of the criminal proceedings against him, the Court notes that he did not appeal against the decision of 26 June 2003 discontinuing the criminal proceedings against him (see paragraph 76). It follows that the first applicant failed to exhaust domestic remedies in his case, as required by Article 35 § 1 of the Convention.

154. As regards the applicants' complaints under Article 34 of the Convention, the case file indicates that the applicants were able to lodge their application forms together with the authority forms without delay (see paragraph 91). The Court is unable to conclude that there was any hindrance with their right of individual petition as a result of the alleged actions of the prison administration. Hence, the complaint should be rejected.

155. As regards the second applicant's complaints about the length of his detention on remand and the alleged unfairness of the criminal proceedings, the Court finds that they are substantially the same as the ones examined in the *Solovyev* judgment (cited above, §§ 109-19 and 151-52) and contain no relevant new information. It follows that this part of the case is inadmissible and must be rejected in accordance with Article 35 § 2 (b) of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

156. 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

157. The first applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage allegedly sustained as a result of the absence of his counsel during the hearing of 17 October 2000. He asked for compensation of EUR 12,500 in respect of non-pecuniary damage allegedly sustained as a result of the protracted criminal proceedings in his case. He also claimed EUR 89,000 for non-pecuniary damage sustained as a result of other alleged violations of the Convention in his case, and 11,626 Roubles (RUB) for pecuniary damage. The second applicant claimed EUR 30,000 in respect of non-pecuniary damage allegedly sustained as a result of the appalling conditions of his detention and EUR 5,000 for the absence of his counsel during the hearing of 17 October 2000. He asked for EUR 1,761,100 for non-pecuniary damage sustained as a result of other alleged violations of the Convention in his case and RUB 251,012 for pecuniary damage.

158. The Government disagreed with the applicants' claims and considered them unsubstantiated.

159. The Court does not discern any causal link between the violations found and the pecuniary damage alleged by the applicants; it therefore rejects these claims. On the other hand, it finds that the applicants have suffered some non-pecuniary damage as a result of the violations found which cannot be compensated by the mere finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the first applicant EUR 5,000 and the second applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

160. The second applicant also claimed RUB 16,000 for costs and expenses incurred in the proceedings before the Court.

161. The Government contested the claim.

162. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that that the applicants were granted legal aid

and considers that that award covered reimbursement of the costs and expenses incurred. Therefore, regard being had to the documents in its possession and the above criteria, the Court rejects the second applicant's claims.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the second applicant's complaint about the conditions of his detention on remand in facility IZ-66/1, the complaint of the first applicant about the lack of legal assistance during the first detention hearing of 17 October 2000 and his inability to attend the appeal hearing concerning his detention on remand on 9 November 2000, as well as the first applicant's complaint about the length of the criminal proceedings, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the second applicant on account of the conditions of his detention in facility IZ-66/1 from 18 October 2000 to 10 April 2003 and from 18 April to 10 July 2003;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the first applicant on account of the procedural deficiencies during the detention hearings of 17 October 2000 and 9 November 2000;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first applicant on account of the excessive length of the criminal proceedings against him;

5. *Holds*
   (a) that the respondent State is to pay the following amounts within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) to the first applicant EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) to the second applicant EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(iii) any tax that may be chargeable on these amounts;

(b) that the amounts shall be converted into Russian roubles at the rate applicable on the date of settlement;

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

6. *Dismisses* the remainder of the applicants' 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