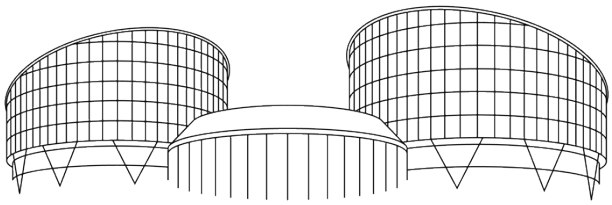

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GRISHIN v. RUSSIA

(Application no. 14807/08)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

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

In the case of Grishin v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 14807/08) 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 Mikhail Vladimirovich Grishin ("the applicant"), on 13 February 2008.

2. The applicant, who had been granted legal aid, was represented by Mrs V.Y. Komissarova, a lawyer practising in Magadan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the length of his detention on remand, the appeal proceedings in respect of the first-instance court's decisions extending his detention and the criminal proceedings against him was excessive, and that the conditions of his detention in the remand prison violated his rights under Article 3 of the Convention.

4. On 23 October 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in the settlement of Sinegorye, Yagodninskiy District of the Magadan Region.

6. In 1997 the applicant had his right leg amputated at thigh level after a gunshot wound.

7. On 23 September 2002 the applicant was driving a car in the proximity of the settlement of Burkhala in the Yagodnindskiy District of the Magadan Region when it collided with another car. As it was later established in a final judgment of the Magadan Regional Court of 19 March 2009, as upheld on appeal by the Supreme Court of the Russian Federation on 23 July 2009, the applicant had attacked the driver and a passenger of the other car, who were husband and wife - Mr A.S. and Mrs T.S. - in the presence of passers-by. The applicant, armed with a pistol, had struck several blows with his fist and the pistol on different parts of the woman's body while making verbal threats to kill her or to inflict bodily injuries. The woman had received several injuries to her head and her teeth and a brain concussion. The applicant had then struck multiple blows with his fist and the pistol on different parts of the man's body and kicked him, making similar verbal threats. He had inflicted seven contused wounds on the man's scalp and face, bruises on the face and the lumbar region, an eye contusion and a brain concussion. The applicant had then fired his pistol twice in the air and once on the ground near the man. Then the applicant had pushed his victims into the rear compartment of a car belonging to Mr P., had locked them up and kept them there for a half an hour. He had then demanded money in the amount of 3,000 US dollars as compensation for the damage to his car, threatening them with reprisals. Mrs T.S. had left in a car, which Mr P. had been driving, in order to find the money, while the applicant had kept Mr A.S. until he received the money from the latter's wife.

A. Preliminary investigation

1. Investigation proceedings

8. On 24 September 2002 the Far Eastern Federal Circuit Investigation Department of the Investigation Committee at the Ministry of the Interior ("the Investigation Committee") brought criminal proceedings against the applicant on suspicion of having committed aggravated robbery punishable under Article 162 § 2 of the Criminal Code ("the CC") , and hooliganism punishable under Article 213 § 3 of the CC, described as a flagrant violation

of public order demonstrating blatant disrespect for society, accompanied by the use of violence against citizens and threats of such violence, committed by a group of individuals according to a premeditated plan, with the use of arms (case no. 23334).

9. On the same day the applicant was informed of his rights as a suspect and questioned in his lawyer's presence. He gave a written undertaking to appear on summons before the investigating authority and court, and to immediately inform them of any change of his place of residence. On the same day he left Sinegorye, his place of residence, without informing the investigating authority, for Magadan situated more than 500 kilometres away. On the next day he was admitted to a hospital in Magadan.

10. The Investigation Committee lodged an application for the applicant's remand in custody before the Magadan Region Yagodninskiy District Court, arguing that the applicant could abscond from the investigating authority and court, threaten the victims and destroy the evidence since he had breached his undertaking to appear and had been evading the investigating authority for ten days; that he had threatened to kill the victims or to inflict bodily injuries on them; that he had not been working, had no family and had negative references from his place of residence; and that his previous prosecution had been terminated on non-exonerating grounds.

11. On 6 October 2002 the District Court examined the Investigation Committee's application in the presence of a representative of the Prosecutor's Office and the applicant's lawyer who produced a medical certificate dated 4 October 2002 issued by the Magadan regional hospital stating that the applicant had been undergoing treatment in its cardiology department since 25 September 2002. The District Court observed that the applicant was suspected of having committed aggravated robbery and hooliganism. It further stated that the applicant had absconded from the investigating authority and that a summons for a hearing on 6 October 2002 had not been handed over to him because he had not been residing at the address indicated by him as his place of his residence. His parents who were residing at that address had not seen the applicant for a long time. However, since the applicant was currently undergoing in-patient treatment, the District Court considered that there had been a valid reason for his failure to appear before it, that he had currently no possibility to exert influence over victims and witnesses, and that the decision on whether or not to remand him in custody could not be taken in his absence. It was also noted that the applicant had not been tried by a court in the earlier criminal proceedings against him. The application was rejected.

12. At an unspecified time on the same day the applicant left the hospital without permission. On the next day he was discharged from the hospital for having violated the applicable rules.

13. On 10 October 2002 the applicant was hospitalised again, this time having been diagnosed with gastroenterocolitis, for which he underwent treatment in the infectious diseases department of the Magadan regional hospital. The treatment was completed on 20 October 2002. The applicant stayed in the hospital for further tests.

14. On 23 October 2002 in report no. 131/K of the Magadan Regional Forensic Medical Bureau ordered by the Investigation Committee a commission of eight experts established on the basis of the applicant's medical records that on 25 September 2002 he had come to the Magadan regional hospital on his own initiative without any doctor's referral. The records drawn up by a hospital cardiologist who had examined the applicant were not complete and lacked essential information. There had been no medical ground for the applicant's hospitalisation on 25 September 2002. He could have undergone outpatient treatment instead. Furthermore, the applicant's stay in the hospital had been delayed for no good reason. As regards the applicant's second hospitalisation on 10 October 2002, the experts concluded that by 17 October 2002 his state of health had normalised and he could have been discharged from hospital. The remaining faeces analysis did not require his stay in the hospital. The experts held that the applicant's current state of health was compatible with participation in the investigative activities and detention in a remand prison, provided that he was supervised by a medical unit in the remand prison until the results of his further tests had been obtained.

15. The Investigation Committee sent a summons to the applicant to appear on 28 October 2002 for questioning as a suspect. On that day his lawyer allegedly informed the investigator that the applicant was still at the hospital.

16. On 4 November 2002 the applicant was discharged from hospital. On 11 November 2002 the police reported that he had not been found at any of his known addresses. On 14 November 2002 the Investigation Committee requested the police to establish the applicant's whereabouts and to ensure that he would appear before the investigator on 18 November 2002.

17. On 18 November 2002 the applicant was arrested as a suspect and placed in a temporary detention facility ("IVS") at the Magadan police station.

18. On 20 November 2002 the applicant was charged with aggravated robbery under Article 162 § 2 of the CC and aggravated hooliganism under Article 213 § 3 of the CC, and was detained on remand.

19. On 26 November 2002 the investigating authority obtained a report following an expert ballistic examination in the applicant's case.

20. On 9 December 2002 new criminal proceedings (case no. 23385) were brought against the applicant on suspicion of having participated in October 2001 in a robbery with violence and use of arms by an organised group in respect of Mr V.B., a director of a private gold-refining company.

21. On 8 January 2003 the applicant was charged with aggravated robbery and aggravated hooliganism in case no. 23334 in respect of the crimes allegedly committed on 23 September 2002.

22. On 31 January 2003 new criminal proceedings - case no. 30401 (armed robbery) and case no. 30402 (armed hooliganism) - were brought against the applicant.

23. On 3 March 2003 all four proceedings against the applicant were joined in one case - no. 23334.

24. On 13 May 2003 the applicant was charged with the following crimes allegedly committed in the period from April 2001 to September 2002 on the territory of the Yagodninskiy District of the Magadan Region:

(i) hooliganism on 17 April 2001 at the Sinegorye town hospital with use of arms and violence against citizens and threats of such violence, by an organised group according to a premeditated plan, and resistance to a person suppressing a breach of public order – under Article 213 § 3 of the CC;

(ii) hooliganism in July 2001 with use of arms and violence against Mr Ye.G. and threats to use such violence, by an organised group, with damage to others' property – under Article 213 § 3 of the CC;

(iii) creating in October 2001 and leading a stable armed gang – under Article 209 § 1 of the CC;

(iv) robbery in October 2001 of Mr V.B., a director of a private gold-refining company, with use of arms and violence dangerous to life and health and a threat to use such violence, by an organised group, with the aim of misappropriating others' property of substantial value – under Article 162 § 3 of the CC;

(v) illegal storage and transportation of precious metals (industrial gold misappropriated from Mr V.B.) of substantial value by an organised group – under Article 191 § 2 of the CC;

(vi) extortion (from Mr V.B.) with the aim of receiving a right to property under the threat of the use of violence, repeatedly, by an organised group, from October 2001 to August 2002 – under Article 163 § 3 of the CC;

(vii) robbery of Mr Ya.B. in October 2001 with use of arms and violence dangerous to life and health and the threat to use such violence, by a group of persons according to a premeditated plan, repeatedly, with illegal entry into a dwelling, with the aim of misappropriating others' property of substantial value – under Article 162 § 3 of the CC;

(viii) in respect of the episode on 23 September 2002 - hooliganism with the use of firearms and violence and threats to use such violence, by an organised group according to a premeditated plan – under Article 213 § 3 of the CC; and robbery-related assault with the use of arms and violence dangerous to life and health and the threat to use such violence, by an organised group according to a premeditated plan, repeatedly, with the aim of misappropriating others' property – under Article 162 § 3 of the CC; and

(ix) illegal acquisition, storage, transfer, transportation and carrying of firearms, repeatedly, by an organised group – under Article 222 § 3 of the CC.

25. Charges were also brought against three other alleged members of the gang.

26. On 20 May 2003 the investigation was completed and on 23 May 2003 the defence received access to the case file.

27. On 14 August 2003 the Magadan Town Court examined the investigator's request to limit the time for the applicant's examination of the case file. The investigator stated that the applicant had been clearly delaying the examination of the case file. Thus, on 30 May 2003 he had acquainted himself with only nine pages of the case file, on 4 June with seven pages, on 24 June five pages, on 4 July six pages, from 7 to 9 July twenty-seven pages, of which nineteen pages were incorporation documents of a company which he himself had founded, on 14 and 29 July with eleven pages on each day, and one day to view a thirty-five-minute video recording. During the period from 23 May to 8 August 2003 his two lawyers had often failed to appear for examination of the case file without any valid excuse. The Town Court established that the applicant, who had been examining five to eleven pages during periods of two to three hours each time, and had often requested to postpone examination in order to go have a bath or meet a visitor, and his two lawyers, who had repeatedly failed to appear at the investigator's requests, had been abusing their rights and deliberately delaying the examination of the case file and its transfer to court for trial, thus violating the victims' rights. The court therefore fixed a time-limit until 5 September 2003 which it considered reasonable for the applicant's and his lawyers' examination of the remaining materials. That decision was upheld on 10 September 2003 by the Magadan Regional Court.

2. The applicant's detention on remand during the preliminary investigation

(a) Decision of 20 November 2002

28. On 20 November 2002 the Magadan Town Court examined the investigator's request to remand the applicant in custody. The investigator argued that the applicant was accused of having committed particularly grave crimes, that he was not working, had no family, was characterised negatively at his place of residence, was predisposed to commit crimes against individuals with the use of arms and violence, that he could abscond from investigation and justice, continue his criminal activities, and threaten victims and other participants in the criminal proceedings against him. The prosecutor fully endorsed the investigator's arguments and added that the applicant had effectively been evading the investigating authority and that he had exerted influence over the victims in order to impel them to change

their testimonies. The applicant and his two lawyers contended that he had not escaped from the investigating authority and that the reason for his failure to appear had been his hospitalisation.

29. The Town Court established that the applicant who was accused of grave and very grave crimes had been characterised negatively at his place of residence as a person leading an antisocial way of life, abusing alcohol and not working. During the investigation he had breached his undertaking to appear on summons by leaving his place of residence without informing the competent authorities. Nor had he informed the investigating authority about his hospitalisation. Furthermore, after his discharge from hospital, between 7 and 10 October and after 5 November 2002, he had not appeared before the investigating authority. He was not residing at his known place of residence. The Town Court considered that the applicant was capable of fleeing from the investigation and the court and of obstructing the investigation, since the accusations against him involved violence and threats to the victims.

30. The Town Court took into account the conclusions of the commission of medical forensic experts in report no. 131/K of 23 October 2002, according to which the applicant could participate in investigative activities and court hearings and could be placed in a remand prison.

31. The court ordered the applicant's remand in custody and the applicant was placed in remand prison IZ-49/1 in Magadan.

32. On 11 December 2002 his appeal against the decision of 20 November 2002 was dismissed and the decision was upheld by the Magadan Regional Court which noted, *inter alia*, that the applicant was predisposed to consuming alcohol and committing unlawful acts, and that he had previously been subjected to administrative liability.

(b) Decision of 17 January 2003

33. On 17 January 2003 the Town Court granted the Investigation Committee's application for the extension of the applicant's remand in custody until 24 March 2003. The court found the application well-founded and noted that the applicant, who had been accused of grave and very grave crimes, had no permanent place of work, had been characterised negatively at his place of residence, that a number of investigative activities had to be carried out in case no. 23334, in particular the applicant's and his co-accused's questioning together with the victims and their acquaintance with the case file.

34. It also noted that the applicant's allegation that his state of health was incompatible with his detention had not been supported by any evidence.

(c) Decision of 22 March 2003

35. On 22 March 2003 the Town Court granted the Investigation Committee's request for the extension of the applicant's remand in custody until 24 June 2003 in view of the fact that he might continue his criminal activities, abscond from investigation, threaten the persons participating in the proceedings and destroy the evidence. The Town Court agreed with the Investigation Committee that there were weighty grounds to believe that the applicant might continue criminal activities, in particular, the nature of the crimes of which he was accused, and the fact that he was not working and had extremely negative references.

36. It noted that the defence had submitted no evidence that the applicant's state of health was incompatible with his detention, while the forensic medical experts had confirmed that it was.

(d) Decision of 21 June 2003

37. On 21 June 2003 the Town Court examined the Investigation Committee's request for the extension of the applicant's remand in custody until 24 September 2003, in which it was submitted that the applicant, who had a propensity to commit offences with the use of firearms and violence, had extremely negative references from his place of residence and did not work, could flee from justice, continue his criminal activities, threaten the participants in the proceedings and destroy the evidence. It was also noted that the case involved numerous incidents and four co-defendants, was very complex, and that a number of investigative activities, such as the applicant's and his lawyer's examination of the materials in the case file after the completion of the investigation and the preparation of the indictment, were yet to be carried out.

38. The Town Court granted the request, taking into consideration that the applicant was capable of escaping from justice and continuing criminal activities, given the gravity of the charges and the lengthy imprisonment which they might entail, as well as his negative references, the fact that he did not work and had no dependants, the complexity of the case and the lack of evidence that his state of health was incompatible with the conditions of his detention.

B. Trial

1. First set of proceedings

(a) Jury trial

39. On 19 September 2003 the case was transferred for trial to the Magadan Regional Court, which scheduled on 2 October 2003 and held

from 16 October to 26 December 2003 a preliminary hearing to decide on numerous requests by the applicant, his three co-defendants and their lawyers concerning the admissibility of evidence, often involving the reproduction of video records of investigative activities, and other procedural issues, as well as to prepare a jury trial, as requested by the applicant and the other co-accused. During this period the hearing was postponed for about four weeks at the applicant's request.

40. As a result of the preliminary hearing the Regional Court issued a ruling on 26 December 2003. It ordered that the case be examined at an open hearing by a jury court on 23 January 2004, and granted the applicant additional time until 22 January 2004 for the examination of the case file.

41. On 23 January 2004 less than twenty candidate jurors appeared before the court instead of the fifty invited and the court, therefore, ordered that 100 other candidate jurors be summoned.

42. On 13 February 2004 a jury was formed and the jurors took an oath.

43. Six court sessions followed during which the court heard eight victims and two witnesses and decided various procedural issues, such as the replacement of some jurors, the exclusion or examination of certain evidence and the ordering of expert opinions.

44. The Regional Court held twenty-four further sessions during which it continued its examination of the evidence including the victims', witnesses' and experts' testimonies, started the examination of the defendants and decided on various procedural requests by the parties. The hearing was adjourned for two weeks as one of the defence lawyers could not be present.

45. On 15 June 2004 the prosecution dropped one of the charges of hooliganism against the applicant and altered one of the charges of robbery to a milder charge.

46. The trial continued on 17-18, 21-24 and 29 June 2004, when the Regional Court delivered its judgment by which the applicant was convicted of battery under Article 116 of the CC, sentenced to a fine and indemnified from punishment as the prosecution had become time-barred; he was acquitted of the other charges based on the jury's non-guilty verdict. The applicant was released in the courtroom.

47. The applicant, his co-defendant and the prosecution appealed against the trial court's judgment. On 7 December 2004 the Supreme Court examined the case on appeal and quashed the judgment on the grounds, *inter alia*, of some jurors' having concealed information about their family members' criminal records while they had been obliged to communicate such information to the parties and the court at the time of their selection, as well as the presiding judge's failure to sum up the evidence in his directions to the jury, notably the victims' and witnesses' statements. It remitted the case to the Magadan Regional Court for a fresh examination.

(b) The applicant's detention on remand during the first set of court proceedings

(i) Decision of 26 December 2003

48. In its decision of 26 December 2003 (which was upheld by the Supreme Court on 6 April 2004) the Regional Court observed that on 30 September 1999 the applicant's criminal prosecution for inflicting grave bodily harm on Mr N. had been terminated as time-barred, and that on 26 April 2002 he had been subjected to administrative liability for petty hooliganism. The Regional Court was of the opinion that the above circumstances, together with the new offences of which the applicant had been accused, involving numerous incidents of criminal activity punishable by lengthy terms of imprisonment, did not preclude the risk of the applicant's hindering the administration of justice and violating law and order. It took into account the length of the applicant's detention and decided that the particular circumstances of the case before it, its complexity and public interest prevailed over the applicant's right to be released pending trial, and ordered that the applicant's remand in custody as a measure of restraint should remain unchanged.

(ii) Decision of 16 March 2004

49. In its decision of 16 March 2004 (upheld by the Supreme Court on 18 May 2004) the Regional Court extended the applicant's detention until 19 June 2004. It observed that the applicant had previously been prosecuted for inflicting grave bodily harm and that the prosecution had been terminated as time-barred; and that he had previously been subjected to administrative liability for petty hooliganism. It considered that the risk of the applicant's obstructing justice and violating legal order persisted. It noted that the charges in the case had been brought against four persons accused of committing more than ten episodes of very grave crimes with more than seventy victims and witnesses involved. The court further stated that taking into account the particular features and the complexity of the case, the public interest it involved, the circumstances of the acts of which the defendants were accused, which were indicative of the latter's danger to society, their detention pending trial should be extended in order to prevent their committing new crimes and exerting influence over the victims and witnesses.

50. It observed that there was no evidence that the applicant's state of health was incompatible with his detention in a remand prison.

51. The court also noted that during the six-month period of the defendants' detention pending trial the case had not been examined for reasons beyond the court's control, such as the composition of the jury, issues concerning some jurors' participation in the trial, and difficulties in ensuring the appearance of victims and witnesses who lived in a remote

district of the Magadan Region more than 500 kilometres away from the place of the trial.

(iii) Decision of 15 June 2004

52. On 15 June 2004 the Regional Court extended the applicant's detention pending trial until 19 September 2004. It relied on grounds broadly similar to those in its previous decision.

(iv) The applicant's release

53. On 29 June 2004 the applicant was released following the delivery of the judgment in his case.

2. Second set of proceedings

(a) Jury trial

54. The Regional Court adjourned its hearing twice on 31 January and 7 February 2005 as a co-defendant's lawyer had failed to appear.

55. In a decision of 8 February 2005 the Regional Court imposed on the applicant and his three co-defendants an undertaking not to leave their places of residence without its permission, to appear on summons before it and not to obstruct the proceedings in any way, with a possibility of applying a stricter measure of restraint in the event of non-compliance.

56. The Regional Court's decision of the same day to remit the case to the Magadan regional prosecutor for rectification of errors in the indictment was appealed against by the defence and quashed as erroneous by the Supreme Court on 26 April 2005.

57. The hearing before the Regional Court was adjourned on 17 June 2005 as a result of two co-defendants' failure to appear for unknown reasons. It was adjourned again on 21 June 2005 owing to a co-defendant's hospitalisation and the impossibility of examining the case in respect of the other defendants in separate proceedings.

58. The hearing resumed on 22 November 2005. On that day, however, less than twenty candidate jurors appeared before the court instead of the thirty invited and the court, therefore, ordered that 100 other candidate jurors be summoned.

59. On 9 December 2005 the jury was formed and the court held hearings on 12, 20 and 23 December 2005. On the latter date the applicant was granted time to retain a new lawyer as he had declined the lawyer who had represented him before. On 27 December his new lawyer failed to appear and the hearing was adjourned until 10 January 2006, 1-9 January being non-working days. The Regional Court continued the examination of the case in January. It ruled on numerous procedural requests by the

defence, in particular their challenges to the presiding judge and the prosecutor.

60. As the witnesses and victims who lived in Sinegorye had failed to appear at the hearings several times the court ordered on 17 January that they should be brought before it by force. The hearing was adjourned on 20 January until 27 January and 26 February until 10 March 2006 for the execution of that order.

61. The examination of the case continued in February, March, April and May 2006. During this time the hearing was adjourned on a number of occasions for about four weeks in total at the request of the jurors who could not participate and for about a week at the request of one of the defence lawyers who was ill. On 2 June 2006 the presiding judge declared the examination of evidence closed. During five sessions in June 2006 the Regional Court heard the parties' pleadings. It announced a break from 14 July until 3 October 2006 in view of the fact that several jurors were leaving for summer holidays to the central parts of the country.

62. The hearing resumed on 3 October 2006. Having consulted the parties, the court decided that they would repeat their pleadings. They did so on 6, 12 and 19 October and 2 November 2006. The preparation of questions to the jury followed. The jury delivered its verdict on 17 November 2006. After the examination of legal issues during sessions held in November and December the Regional Court delivered its judgment on 5 December 2006. The applicant was convicted, *inter alia*, of aggravated hooliganism, extortion and illegal possession of arms, sentenced to seven years' imprisonment and acquitted of the remaining charges.

63. On 6 June 2007 the Supreme Court examined the appeals against the judgment lodged by the applicant, one of the victims and the prosecution. It found a violation of the rules pertaining to a criminal trial by the applicant, the other three defendants and their lawyers who had abused their rights and, despite the presiding judge's warnings, had discussed, in the jurors' presence, issues which fell out of the scope of their competence, such as the alleged falsification of the case materials, the alleged violations of the law in obtaining evidence, for example, by torturing one of the defendants, or the allegation that a certain victim had given statements on the investigators' instructions. They had made remarks, which did not concern the issues to be decided by the jury and which had been aimed at discrediting the lawfulness of evidence against them and creating a negative impression about the victims and the presiding judge, and a positive image of themselves. This could not but have had unlawfully influenced the jury's verdict. It was also noted that the jury's verdict had not been entirely clear as some of the answers had been contradictory. The Supreme Court quashed the judgment and remitted the case to the Regional Court for a fresh examination.

(b) The applicant's detention on remand during the second set of court proceedings

(i) Decision of 6 December 2005

64. On 6 December 2005 the Regional Court examined the prosecutor's request to detain on remand the applicant and the other three defendants as a measure of restraint.

65. It follows from the court records that the prosecutor submitted that victim Mr Ya.B. had categorically refused to appear at the hearing on 6 December 2005. He had feared physical reprisals by the accused, as had been confirmed by a report by police officer Sh. and by the victim's own written submissions to the court in which he had explained his refusal to appear before the court with his fears to give statements against the accused. The prosecutor further submitted that during the preliminary investigation victim Mr A.K. had refused to confront the applicant in person because he had been afraid of him. His mother too had stated that she had feared reprisals from the applicant. Victim Ms P. had feared the applicant, considering him to be dangerous for her and her family. Victim Mr V.B. and witness Ms S. had left Sinegorye for fear of reprisals from the applicant and had decided to give statements only when he had been detained on remand. Witness Ms K. had explained that her husband, witness Mr S.K., had feared reprisals from the applicant and his co-defendants. The applicant argued that after those persons' questioning at the preliminary investigation, including the time after his release on 29 June 2004, he had not put pressure on any of them, nor had he threatened them. Their fears had not therefore been supported by any specific facts. The applicant further argued that he had not breached his undertaking not to leave his place of residence, that he had been married since 2 December 2005, his wife was pregnant, he had a permanent place of residence, had been working, was the only breadwinner for his family and had a disability.

66. In its decision the Regional Court noted the grave crimes of which the applicant was accused. It further noted that some witnesses and victims had declared at the preliminary investigation that they had feared unlawful actions by the accused. One of the victims had been afraid to participate in the trial if the defendants were to remain at liberty. The Regional Court ordered the applicant's and the other three defendants' detention on remand with a view to precluding the possibility of them obstructing the establishment of the truth and absconding.

67. On 22 February 2006 the Supreme Court dismissed the applicant's appeal, noting that the court's finding that certain victims and witnesses had been reluctant to testify in court out of fear of reprisals from the defendants had been supported by the case materials, and had given the Regional Court grounds to believe that the defendants had breached their previous undertaking not to obstruct the proceedings in the case.

(ii) Decisions of 26 February, 22 May, 14 July and 12 October 2006

68. The applicant's detention was extended for three-month periods by the Regional Court's decisions of 26 February, 22 May, 14 July and 12 October 2006 (as upheld by the Supreme Court on 30 May 2006, 17 August 2006, 2 November 2006 and 1 February 2007) for reasons essentially the same as those in its decision of 6 December 2005. It was noted that the case file contained applications by several victims who had stated, at the time of the trial, that they were afraid to participate in the hearing on account of possible reprisals from the accused. It was also noted that the case was being examined by jurors who should also be protected from possible unlawful influence. The length of the proceedings was explained by the voluminous materials in the case file, which was composed of twenty-two volumes, the large number of victims and witnesses residing outside of Magadan whose appearance the court needed to ensure, and the fact that the case was being heard by a jury.

(iii) Decisions of 5 December 2006 and 6 June 2007

69. In its judgment of 5 December 2006 the Regional Court, and in its appeal decision of 6 June 2007 the Supreme Court, which quashed the judgment and ordered a fresh trial, ruled that the applicant should remain in custody.

3. Third set of proceedings

(a) Jury trial

70. On 4 September 2007 the Magadan Regional Court received the case file and started the proceedings.

71. On 5 October 2007 less than twenty candidate jurors appeared before the Regional Court instead of the 100 invited and the court, therefore, ordered that 150 other candidate jurors be summoned.

72. On 2 November 2007 the selection of jurors started. However, after a number of candidate jurors had refused to accept sitting in the case, their number was still insufficient and the court ordered that another 150 candidate jurors be summoned. The same situation occurred on 22 November 2007.

73. The number of candidate jurors who appeared before the Regional Court was again insufficient on 11 December 2007 and 17 January 2008, which necessitated the summoning of an additional 200 and 250 persons respectively.

74. The jury was formed on 5 February 2008 and the trial commenced. The court held five or six sessions monthly in February to June 2008, two sessions in July, four in August (after a break in view of the jurors' holidays from 1 July to 18 August), eleven in September, six in October, ten in

November and four in December 2008. Some of the sessions were held without the jury as they were devoted to various procedural issues including the admissibility of evidence and requests for the examination of evidence before the jury. The court examined the vast body of evidence including testimonies by more than seventy victims and witnesses and numerous expert reports.

75. At a hearing on 24 October 2008 the applicant was removed from the courtroom for improper behaviour and a violation of the rules pertaining to a jury trial. For about a month the trial was delayed by reason of the applicant's illness. Some delay was due to difficulties in ensuring the appearance of a number of victims and witnesses who resided in remote settlements in Burkhala and Sinegorye or who had moved to the central and other parts of the country.

76. On 13 February 2009 the Regional Court started hearing the parties' pleadings.

77. On 7 March 2009 the jury delivered its verdict in the case.

78. On 19 March 2009 the Magadan Regional Court delivered its judgment based on the jury's verdict. The applicant was convicted of armed hooliganism at the town hospital involving beatings and threats to medical staff in the presence of patients, assault and battery, and two other violent attacks on citizens, including the episode on the road on 23 September 2002, classified as arbitrary unlawful actions which had caused substantial harm. He was acquitted on the remaining charges.

79. The fact that the applicant had an infant and had compensated the victims for the damage was considered to amount to mitigating circumstances. No aggravating circumstances were found by the trial court. It considered that given the gravity of the acts committed by the applicant, as well as the specific circumstances which characterised the crimes committed as bold attacks on citizens with the use of violence, threats and arms, the deprivation of liberty was the only proper punishment. It sentenced the applicant to four years and eight months' imprisonment and discharged him from other punishment as criminal liability for some of the crimes committed had become time-barred.

80. The period of the applicant's detention on remand from 18 November 2002 to 29 June 2004 and from 6 December 2005 to 12 March 2009 – four years, ten months and nineteen days – was counted towards his sentence which the applicant was found to have served.

81. On 23 July 2009 the Supreme Court dismissed an appeal by the applicant and the prosecution and upheld the judgment.

(b) The applicant's detention on remand during the third set of proceedings

(i) Decision of 14 September 2007

82. On 14 September 2007 the Regional Court examined the need for the applicant's continued detention on remand. The applicant argued, *inter alia*, that he had a permanent place of residence, a family and a child born in May 2006 dependent on him, that he was an invalid and had a number of chronic diseases. The Regional Court ordered that the applicant's detention pending trial should be extended for three months to be counted from 4 September 2007 for the reasons relied on in its previous decisions, and that an undertaking not to leave their places of residence should be imposed on the other two accused.

83. On 3 October 2007 the Regional Court dispatched to the Supreme Court in Moscow statements of appeal against that decision by the applicant and his lawyer of 17 and 19 September 2007 and the case materials.

84. On 9 October 2007 an appeal by the applicant against the decision of 14 September 2007 was received by the Supreme Court which informed the parties on 12 November 2007 that the appeal would be examined on 5 December 2007.

85. On 5 December 2007 the Supreme Court rejected the applicant's appeal and upheld the Regional Court's decision. It stated that apart from the fact that the applicant had been accused of creating and leading an armed gang which had operated during a considerable period of time, the Regional Court had taken into account the fears of reprisals from the defendants on the part of some witnesses and victims in connection with their participation in the preliminary investigation and the previous trial.

86. It noted that in so far as the applicant complained that he had some chronic diseases, medical treatment could be provided to him, if necessary, in a medical unit of his remand prison.

(ii) Decisions of 22 November 2007, 19 February and 27 May 2008

87. The applicant's detention on remand was extended by the Regional Court's decisions of 22 November 2007 for three months to be counted from 4 December 2007 and 19 February 2008 for three months to be counted from 4 March 2008 (upheld by the Supreme Court on 13 March and 15 May 2008, respectively), and further by a decision of 27 May 2008 for three months to be counted from 4 June 2008 for reasons broadly similar to those cited previously. It was also noted in the first two decisions that the applicant was at present characterised negatively by the administration of his detention facility. It was noted in the last decision that the commission of forensic medical experts had concluded in their report of 22 May 2008 that the applicant's medical condition was compatible with his detention in a remand prison.

88. An appeal by the applicant against the latter decision was lodged on 30 May, dispatched on 17 June and received on 24 June 2008 by the Supreme Court which informed, on 3 July 2008, the parties of its hearing and rejected the appeal on 31 July 2008.

(iii) Decision of 1 July 2008

89. On 1 July 2008 the Regional Court dismissed the applicant's request for release on bail. It appears from the hearing records that the applicant argued, *inter alia*, that he had been recommended, in the forensic medical experts' report, to undergo surgery for the extraction of renal calculus from his left kidney, which might be scheduled and carried out in the Magadan regional hospital, and that he had allegedly been denied medical treatment in his detention facility. He also argued that the conditions of detention in his remand prison were not suitable for him as they were not adapted for people with disabilities. His lengthy detention in such conditions was therefore inhuman.

90. According to the court records, the prosecutor argued that the defence had failed to submit any evidence of the denial of medical treatment and that the court in its previous decisions concerning the applicant's detention on remand had rightly taken into account that certain victims and witnesses had feared potential reprisals from the applicant. The prosecutor recalled that a witness had declared before the trial court that she had feared coercion from the applicant. A victim had submitted that he had been afraid of the applicant; therefore, he had complained to the police only after the applicant had been detained on remand. According to a report by the court bailiffs, another witness had also explained his failure to appear before the trial court by the fact that he had feared for his life and the safety of his family.

91. The Regional Court noted in its decision that all of the applicant's arguments had been examined and dismissed previously when extending his detention on remand. It also noted that its decision to announce the break in the hearing from 1 July to 18 August 2008 criticised by the defence had been justified by the jurors' summer leave outside the Magadan Region, in view of the nature of work in the conditions of the Extreme North, which the jurors had made reference to at the time of their selection and of which the defence had been well aware.

92. On 30 July 2008 the applicant's appeal against that decision was received by the Supreme Court, which notified the parties on 12 August 2008 that it would hold a hearing on 23 September 2008.

93. On the latter date it terminated the proceedings on the ground that by virtue of Article 355 § 5 (2) of the Code of Criminal Procedure, court rulings on applications lodged during a trial were not subject to separate appeal proceedings.

(iv) Decision of 28 August 2008

94. The applicant's detention on remand was further extended for a three-month period by the Regional Court's decision of 28 August 2008.

95. According to the hearing records, the prosecutor argued that the fears on the part of the witnesses and victims in the case had been verified and confirmed at the trial hearings. Thus, a witness had testified that she still feared the applicant. The court examined statements by one of the victims who had asserted that he feared for his life and the lives of his family members. The defence pointed out that during the last six years there had been nothing to justify those fears, for example nothing to suggest that the applicant had threatened the persons in question or committed any other unlawful actions against them. While at liberty during a year and a half the applicant had had ample opportunities to commit unlawful acts against the persons concerned. He, however, had not done so. The defence also argued that the conditions of detention in the applicant's remand prison were unsuitable for people with disabilities and that his lengthy detention in such conditions had therefore been inhuman.

96. The Regional Court noted in its decision that the applicant was at present characterised positively by the administration of his detention facility. It further noted the conclusions of the commission of forensic medical experts in their report no. 165/K of 24 July 2008, according to which the applicant's illnesses did not preclude his detention in a remand prison. It also noted that the applicant had not complained to the administration of his remand prison about the conditions of his detention, as confirmed in a letter from the head of the administration of IZ-49/1 of 22 August 2008. It stated that the length of the proceedings had been justified by objective factors. It relied on the reasons in its previous decisions, stating that they remained valid.

97. The applicant's appeal against that decision was lodged on 30 August, dispatched on 9 and received on 16 September by the Supreme Court which informed, on 19 September 2008, the parties of its hearing and rejected the appeal on 14 October 2008.

(v) Decision of 20 November 2008

98. In its decision of 20 November 2008 the Regional Court stated that even though the applicant had currently been characterised positively by the administration of his remand prison, the reasons for which he had been detained on remand, in particular fears on the part of certain victims and witnesses, still remained valid. The applicant argued that the fears had been expressed in 2002-2003 and could no longer be relied on. He also argued that the conditions of his detention were inhuman as they were not suitable for people with disabilities.

99. The Regional Court noted that according to forensic medical experts' conclusions in their report no. 165/K of 24 July 2008, the

applicant's medical condition was compatible with his detention in a remand prison. The applicant had not complained to the administration of his remand prison about the conditions of his detention or any medical issues, in particular in view of his disability, as confirmed in a letter from the head of the administration of IZ-49/1 of 22 August 2008.

100. It also noted that the length of the trial proceedings had been beyond the courts' control and was explained by the jury's formation, the jurors' participation in the trial, victims and witnesses who resided in a distant district of the Magadan Region, more than 500 kilometres away from the place of the trial, the applicant's unavailability for the hearing in March-April 2008 and on 23 October 2008, his lawyer's illness from 9 to 15 October 2008 and a break from 1 July to 18 August 2008 which the court had to allow because of some jurors' departure for summer holidays about which they had informed the court at the time of their selection, referring to the particular features of work in the conditions of the Extreme North of the country.

101. The Regional Court also noted that the detention had further been justified by the need to prevent the jurors' exposure to possible attempts to exert unlawful influence over them. In balancing the applicant's right to be released pending trial and the public interest in the proper administration of justice, the Regional Court found that the latter prevailed in the circumstances.

(vi) Decision of 24 February 2009

102. On 24 February 2009 the Regional Court extended the applicant's detention for one month from 4 March 2009. In reiterating the reasons on which its previous decisions concerning the applicant's detention on remand had been based, it noted that all the circumstances relied on previously remained valid. The applicant had lately been characterised positively by the administration of his remand prison while his previous references had been ambiguous and sometimes negative.

103. No evidence had been submitted to show that the applicant's state of health was incompatible with his further detention on remand. On the contrary, according to fresh findings by forensic medical experts in their report no. 261/K of 14 January 2009 the applicant's medical condition was compatible with his detention in a remand prison.

104. The applicant had been unavailable for the hearings on 8 December 2008 and 30 January 2009. The Regional Court considered that if released the applicant might abscond from justice which would result in a yet greater delay in the trial, especially so as only one substitute juror now remained out of the seven available at the beginning of the trial.

105. On 27 February 2009 the applicant and his lawyer lodged an appeal against the decision of 24 February 2009. On 4 March 2009 the Regional Court sent a copy of the applicant's appeal to the prosecution and other

participants in the proceedings to allow them to file objections, as it was required to do under Article 358 § 1 of the Code of Criminal Procedure. On 10 March 2009 the Regional Court dispatched the applicant's appeal, together with the case file, to the Supreme Court, which received the documents on 20 March 2009 and informed, on 24 March 2009, the parties that a hearing would be held on 15 April 2009.

106. On the latter date the Supreme Court dismissed the applicant's appeal and upheld the decision.

(vii) Decision of 12 March 2009 ordering the applicant's release

107. On 12 March 2009 the Regional Court examined the applicant's request for release. It noted that the applicant had been detained with a view to precluding the possibility of him obstructing the proceedings in the case, in particular with regard to the fact that the case had been examined by a jury. The Regional Court considered that since the jury had delivered its verdict on 7 March 2009 and the remaining issues concerned the legal consequences of the jury's verdict, the grounds for the continuation of the applicant's detention on remand were no longer valid. It ordered that the applicant be immediately released on an undertaking not to leave his place of residence and to behave properly.

108. The applicant was released in the courtroom.

C. Conditions of the applicant's detention on remand

109. Throughout his detention on remand the applicant was held in remand prison IZ-49/1 in Magadan.

1. Cells

110. According to the Government, the cells in which the applicant had been detained had complied with the statutory standards. They had been equipped with running water and sewerage, natural and electric light, heating and ventilation. A squat toilet in the corner of a cell was forty centimetres above floor level and was separated with a concrete partition and wooden doors. The applicant had an individual sleeping berth and appropriate bedding at all times. He had been provided with crutches and a small bench to facilitate him using toilet facilities. He had been allowed sufficient time for getting ready when he was taken out of a cell.

111. According to the applicant, he had used his own crutches. Being one-legged he had experienced difficulties in view of the lack of any arrangements for his condition, in particular, on account of receiving food through a window in the door and carrying it to a table while holding on to crutches, taking a shower while leaning on crutches, using the toilet

facilities and getting into a car for being transported to the investigating authority or court.

2. Medical assistance

112. According to the applicant, he had not been provided with the necessary medical treatment for his urolithiasis.

113. According to documents submitted by the Government, in January 2005 the applicant, who was then at liberty, was diagnosed with urolithiasis for which he underwent in-patient treatment in January-February 2005 in a civil hospital. It follows from the applicant's medical records from IZ-49/1 that the applicant received necessary medical supervision and treatment for that diagnosis during his detention on remand at the medical unit of IZ-49/1 which had the necessary equipment and medicine, and that his state of health throughout his detention on remand was assessed as satisfactory.

114. On 26 February 2007 the applicant's lawyer inquired at the Magadan regional department of the Federal Service of Execution of Sentences ("FSIN") about the possibility of the applicant undergoing examination at the urology unit of the Magadan regional hospital. The FSIN replied on 5 March 2007, based on the conclusions of its group of medics who examined the applicant's medical history, that there was no medical need for such an examination or for the applicant's hospitalisation.

115. The applicant's medical examinations including periodic ultrasound scans were carried out and treatment for urolithiasis was provided in February and November 2007 and in March, April, October and December 2008. In April and October 2008 he was examined and prescribed treatment by an urologist from the Magadan regional hospital.

116. Throughout the applicant's detention pending trial the Magadan Regional Court ordered, often following requests by the defence and the applicant's assertions that he could not participate in the trial for health reasons, regular forensic medical expert opinions assessing the applicant's state of health, its compatibility with the conditions of his detention in a remand prison, in particular the possibility of providing him with the necessary medical treatment in a medical unit of his remand prison, and his ability to participate in the proceedings in the case.

117. One of such assessments was carried out by a commission of the Magadan Regional Forensic Medical Bureau composed of six experts, including a urologist, from 24 April to 22 May 2008 following the court order of 22 April 2008, which stated that as from 18 March 2008 the applicant had been asserting that he could not participate in the trial in the light of his poor health. The court had on several occasions adjourned the hearing in order for the applicant to undergo a medical examination at the Magadan regional hospital, have his illness diagnosed and receive appropriate treatment. On 22 April 2008 the applicant and his lawyer had stated that his additional medical examination had not been carried out, the

final diagnosis had not been established and appropriate treatment for his preliminarily diagnosed urolithiasis had not been provided. The commission of experts concluded in their report no. 112/K of 22 May 2008 that, taking into account his state of health, the applicant could participate in the trial and be detained in a remand prison. He needed to undergo a planned surgery for the extraction of renal calculus from his left kidney which could be scheduled and carried out at the Magadan regional hospital.

118. In its next report no. 165/K of 24 July 2008 a commission of forensic medical experts from the Magadan Regional Forensic Medical Bureau concluded that the applicant's medical condition was compatible with his detention in a remand prison and his participation in the trial.

119. In October and December 2008 the applicant, despite certificates from the medical unit of his detention facility positively assessing his state of health, requested the adjournment of the hearing in his case on health grounds. On 5 December 2008 he lodged an application for his release on the grounds, *inter alia*, of the alleged deterioration of his health. The Regional Court ordered, on 12 December 2008, the applicant's thorough medical examination. It transpires from the Regional Court's decision of 24 February 2009 that the experts concluded in their report no. 261/K of 14 January 2009 that the applicant's state of health was compatible with his continued detention in a remand prison.

3. Other issues

120. On 23 December 2005 Judge L. of the Magadan Regional Court forbade the applicant's and his co-defendants' telephone communications in order to prevent the possibility of their exerting pressure on the victims and witnesses. Visits by the applicant's wife were also allegedly forbidden.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure

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

1. Preventive measures

122. "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 imposed on 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 (Article 112).

2. Time-limits for detention

(a) Two types of remand in custody

123. The Code makes a distinction between two types of remand in 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) Time-limits for detention "pending investigation"

124. 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 time-limit for detention pending investigation is fixed at 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) Time-limits for detention "pending trial"

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

3. Proceedings before a court of appeal

126. A court of appeal should start the examination of a criminal case not later than a month after its receipt (Article 374).

127. Upon receipt of the criminal case and the statements of appeal, the judge fixes the date, time and place for a hearing. The parties shall be

notified of the date, time and place of the hearing no later than fourteen days before the scheduled hearing (Article 376 §§ 1 and 2).

III. RELEVANT INTERNATIONAL DOCUMENTS

128. Recommendation No. R (85) 11 of the Committee of Ministers of the Council of Europe to Member States on the position of the victim in the framework of criminal law and procedure (adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies) provides:

> "16. Whenever this appears necessary, and especially when organised crime is involved, the victim and his family should be given effective protection against intimidation and the risk of retaliation by the offender; ..."

129. In its Recommendation No. R (97) 13 concerning the intimidation of witnesses and the rights of the defence (adopted by the Committee of Ministers on 10 September 1997 at the 600th meeting of the Ministers' Deputies) the Committee of Ministers of the Council of Europe to Member States recommended principles and measures for protecting witnesses in criminal proceedings from intimidation by the accused and, in particular, the adoption of rules of procedure to ensure "the necessary balance in a democratic society between the prevention of disorder or crime and the safeguarding of the right of the accused to a fair trial".

THE LAW

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

130. The applicant complained under Article 5 §§ 1 (c) and 3 of the Convention that the only ground for his detention on remand relied on by the domestic courts was the gravity of the charges against him and that the other grounds cited by the domestic courts had not been based on any evidence.

131. The Court will examine this complaint under Article 5 § 3 of the Convention which in its relevant part reads 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. Release may be conditioned by guarantees to appear for trial."

132. The Government submitted that the gravity of the charges had not been the only ground for the extension of the applicant's detention on remand, contrary to what he had alleged. They argued that it had first of all

been the behaviour of the applicant who had breached his undertaking to appear on summons, left the boundaries of the administrative district in which he had resided without informing the investigating authority and had gone hiding after his discharge from hospital that had led to his being declared wanted. Another ground was his negative character references.

133. The Government further stated that the length of the applicant's detention pending preliminary investigation – nine months and twenty-eight days – had been reasonable within the meaning of Article 5 of the Convention, taking into account the complexity of the case which involved four defendants accused of a considerable number of crimes, eighty persons questioned and thirty-three expert examinations. The investigation had been delayed as a result of the suspects' attempt to flee. Thus, after the proceedings had been initiated not only the applicant but also his co-defendants had been missing from their places of residence.

134. The Government pointed out that neither the applicant nor his lawyers had offered guarantees to appear before the investigating authority and court. The domestic courts had judged that in view of the gravity of the charges and the above circumstances a milder measure of restraint not involving the deprivation of liberty would not have provided sufficient guarantees against the risk of the applicant's fleeing from justice and obstructing the establishment of truth in his case. The Government argued that the domestic courts had relied on "relevant and sufficient" reasons and had displayed due diligence in the proceedings concerning the applicant's detention on remand.

135. The applicant submitted that he had left Sinegorye, his place of residence, for Magadan because he had wished to retain lawyers to represent him in the criminal proceedings against him and to consult doctors. His hospitalisation had been a valid excuse for his having breached his undertaking to appear before the investigating authority and court. He had not been declared wanted. The investigating authority should have been aware of his whereabouts since he had resided in Magadan at one of the prosecution witnesses' home and his lawyers had contacted the investigator in order to schedule investigative activities. Lastly, he himself had arrived for questioning on 18 November 2002 when he had been arrested. The fact that he had been acquitted of the majority of the charges had shown that they had not been sufficiently supported by evidence. His disability, the lack of arrangements for disabled persons in his remand prison and his positive references had not been taken into account.

A. Admissibility

136. The Court recalls that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and

ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany,* 27 June 1968, § 9, Series A no. 7, and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

137. The applicant spent two periods in detention pending trial during the same criminal proceedings against him - one year and seven months from 18 November 2002 to 29 June 2004, and three years and three months from 6 December 2005 to 12 March 2009. The Court observes further that the applicant lodged his application on 13 February 2008, that is to say, more than six months after the end of his first period in detention. The six-month rule should be applied, separately, to each period of detention within the same criminal proceedings (see *Idalov v. Russia* [GC], no. 5826/03, § 135, 22 May 2012). Accordingly, the Court cannot consider whether or not the first period was compatible with the Convention. The applicant's complaint in respect of the first period should be declared inadmissible as being lodged out of time. However, the fact that the applicant had already spent time in custody pending the same set of criminal proceedings will be taken into account by the Court in its assessment of the sufficiency and relevance of the grounds justifying his subsequent period of detention (from 6 December 2005 to 12 March 2009), which the Court is competent to examine.

138. The Court considers that the applicant's complaint under Article 5 § 3 of the Convention in respect of his detention from 6 December 2005 to 12 March 2009 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

139. The Court reiterates that under the second limb of Article 5 § 3, a person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify his continuing detention. The domestic courts must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty and must set them out in their decisions on the applications for release (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 114, ECHR 2002-VI, and *Bykov v. Russia* [GC], no. 4378/02, §§ 61-64, 10 March 2009).

140. The preliminary investigation in the case ended in September 2003 after which the case was examined by the trial court three times, its judgment having been set aside twice by the appeal court. The applicant's detention under consideration occurred during the second and third sets of

the proceedings, after the Magadan Regional Court granted on 6 December 2005 the prosecutor's request for the applicant's incarceration. His detention on remand was regularly extended until 12 March 2009. On that day, after a jury had delivered its verdict in the case for the third time, the Regional Court ordered the applicant's release stating that his detention was no longer justified by the reasons for which it had been ordered and maintained.

141. The Court observes that those reasons were the gravity of the charges against the applicant, in particular, the charges of creating and leading an armed gang, and the danger of his absconding and obstructing the proceedings in the case by exerting pressure on the victims and witnesses, as well as the jurors.

1. Gravity of charges and danger of absconding

142. The Court reiterates that, although the gravity of the charges or the severity of the sentence faced is relevant in the assessment of the risk of an accused absconding or reoffending, it cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80 and 81, 26 July 2001). The same is true if those charges relate to the organised nature of criminal activities which could not alone form the basis of the detention orders at an advanced stage of the proceedings (see *Veliyev v. Russia*, no. 24202/05, § 149, 24 June 2010).

143. The risk of flight should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8).

144. Aside from noting the gravity of the charges and the applicant's negative references in some of its decisions, while noting his positive references in the other decisions, the Regional Court did not refer to any other facts to justify the risk of the applicant's absconding. It appears from its decisions that it gave no weight and, indeed, no assessment either to the advanced stage of the proceedings, or to the applicant's arguments, for example that he had been married since December 2005, had a child born in May 2006, that he had found employment and had a permanent place of residence.

145. Furthermore, before the period of detention in question the applicant had been at liberty for a year and five months. There is no indication in the materials before the Court of any abuse of his liberty which could have given grounds to believe that a risk of absconding existed.

146. The Court therefore considers that the domestic courts' reliance on the above reasons was not justified.

2. Danger of obstructing justice

147. The domestic courts laid particular emphasis on the fact that some victims and witnesses in the case had feared potential reprisals from the applicant.

148. The Court recalls that, as regards the risk of pressure being put on witnesses, for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant's detention, it did not suffice merely to refer to an abstract risk unsupported by any evidence. They should have analysed other pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant's personality, his behaviour before and after the arrest and any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed at the falsification or destruction of evidence or manipulation of witnesses (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A).

149. The Court observes that the domestic courts' decisions referred to a number of victims and witnesses who had expressed their fears of the applicant's reprisals at the time of the preliminary investigation which ended in September 2003. In the absence of any facts showing what acts or behaviour on the part of the applicant had triggered those fears or maintained them two to five years after the preliminary investigation, the domestic courts' reliance on them is not convincing. The fact alone that the applicant was accused of having committed serious crimes was not sufficient at such an advanced stage of the proceedings for keeping him in custody, especially so in the absence of any proof of his improper behaviour during a year and five months of his being at liberty before his incarceration.

150. The domestic courts' reference to the victims and witnesses who feared retaliation by the applicant at the time of the trial deserves specific attention. It follows from the records of the Regional Court's hearing on 6 December 2005 that a victim had feared reprisals from the applicant and his co-defendants and had refused to appear and testify before the trial court if they were to remain at liberty. The court records indicate that the applicant had denied any threats or pressure on that victim, at least after the preliminary investigation. It remains unclear what the basis for the victim's fears was. Neither the domestic courts' decisions nor any other documents in the Court's possession shed any light on that. Having regard also to the lack of any proof of the applicant's improper behaviour during one year and five months at liberty before the period of detention under consideration, this reason is not convincing either. The same is true for the Regional Court's other decisions citing the fears of reprisals on the part of some other victims and witnesses vis-à-vis the applicant without assessing their reasonableness.

151. Furthermore, the Court observes that at the moment of the applicant's incarceration on 6 December 2005 the hearing of his case was yet to start. Even assuming the existence at that time of a risk of collusion with victims and witnesses, such risk diminished, if not ceased to exist, after 2 June 2006 at the latest when the examination of evidence including those persons' testimonies was closed. The Regional Court, however, continued to invoke that risk in its decisions of 14 July and 12 October 2006. This situation repeated during the third set of proceedings before the Regional Court, which invoked that risk in its decision of 24 February 2009 having finished its examination of the evidence.

152. Lastly, there is no indication in the materials before the Court that the authorities had considered or applied measures other than the applicant's incarceration for the protection of victims and witnesses against intimidation and for encouraging them to testify freely and truthfully (see, for example, paragraphs 128-129 above).

153. In relying in some of its decisions on the risk of the applicant exerting pressure on the jurors the Regional Court did not mention any specific facts justifying the fear that the applicant might abuse his regained liberty by carrying out such acts.

154. The Court therefore is not satisfied that the risk of the applicant's obstructing the proceedings was sufficiently established.

C. Conclusion

155. The foregoing considerations are sufficient to enable the Court to conclude that there were no "relevant and sufficient" reasons for the applicant's detention on remand during three years and three months from 6 December 2005 to 12 March 2009, in particular since he had already been detained for a considerable period of time at an earlier stage.

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

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

157. The applicant further complained that the examination of his appeals against certain decisions of the Magadan Regional Court by the Supreme Court of the Russian Federation, maintaining his detention on remand, had not been speedy and often made no sense taking place after the relevant detention period had elapsed. He relied on Article 5 § 4 of the Convention which reads as follows:

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

158. The Government contested that argument, noting that under Article 374 of the Code of Criminal Procedure an appeal court should start its examination of a criminal case not later than a month after its receipt.

A. Admissibility

159. The Court notes that in so far as this complaint relates to the Supreme Court's decisions taken more than six months before 13 February 2008, when the complaint was lodged with the Court, it has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

160. It further notes that by contrast to the Magadan Regional Court's decisions by which the applicant's detention on remand was extended, that court's decision of 1 July 2008, in which it rejected the applicant's request for release on bail, was not subject to separate appeal proceedings (see paragraph 93 above). There is no indication that it was ever reviewed by a higher court. The complaint in this part is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

161. As regards the remaining part of the complaint concerning the applicant's appeals against the Magadan Regional Court's decisions of 14 September 2007, 27 May 2008, 28 August 2008 and 24 February 2009, which were decided by the Supreme Court in its decisions of 5 December 2007, 31 July 2008, 14 October 2008 and 15 April 2009, respectively, the Court considers, in the light of the parties' submissions, that it raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

162. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to persons detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

163. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review by appeal proceedings (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). At the same time, the standard of "speediness" is less stringent when it comes to the proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. Where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would not be concerned, to the same extent, with the speediness of the proceedings before the court of appeal, if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees (ibid).

164. The Court notes that it took the domestic courts two months and sixteen days (detention order of 14 September 2007), two months and one day (detention order of 27 May 2008), one month and fourteen days (detention order of 28 August 2008) and one month and sixteen days (detention order of 24 February 2009) to examine the applicant's appeals against the detention orders (see paragraphs 85, 88, 97, 105 and 106 above). Nothing suggests that the applicant, having lodged the appeals, caused delays in their examination. The Government did not claim that complex issues had been involved in the examination of the applicant's appeals by the second-instance court. The Court considers that these four periods cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Lebedev*, cited above, §§ 102 and 108, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, in which periods of twenty-six, twenty-nine and thirty-six days were found to be incompatible with Article 5 § 4). The Court also deplores the fact that the appeals against the detention orders of 14 September 2007 and 24 February 2009 were examined after the relevant detention periods had elapsed and, in the last case, more than a month after the applicant's release. In such circumstances, the applicant's right of appeal was rendered devoid of any useful purpose.

165. There has therefore been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

166. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads, as relevant, as follows:

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

167. The Government contested that argument.

168. The period to be taken into consideration began on 24 September 2002, when the applicant was questioned as a suspect in the case, and ended on 23 July 2009, when the trial court's judgment was upheld on appeal. It thus lasted six years and ten months over two levels of jurisdiction.

A. Admissibility

169. 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.

B. Merits

170. 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, 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).

171. The Court observes that the case was very complex. It comprised more than ten counts of grave crimes of which four persons were accused. It involved more than seventy victims and witnesses, many of whom resided in remote settlements situated more than 500 kilometres away from Magadan where the trial was held. Numerous expert reports were ordered and examined in the course of the trial.

172. The preliminary investigation in the case lasted eleven months, during a month and a half of which the applicant was evading the investigating authority, having breached his undertaking to appear on summons before it and to inform it of any change in his place of residence. Thus, in the month and twenty-three days during which the applicant was hospitalised, only seven days were justified by medical reasons according to the conclusions of the commission of eight forensic medical experts who considered the applicant fit for participation in the investigative activities

(see paragraph 14 above). After the applicant had been detained on remand the investigation advanced without delay until the applicant's examination of the case file which he had deliberately delayed between 23 May and 14 August 2003 (see paragraph 27 above).

173. The applicant and his co-defendants who were all represented by lawyers chose a jury trial. The case was considered by a jury three times as the Magadan Regional Court's judgment was twice set aside on appeal by the Supreme Court of the Russian Federation.

174. The first time it took the Regional Court nine months to hold a jury trial and deliver its judgment, after which the applicant was released. During that time the hearing was adjourned for about four weeks at the applicant's request, and for two weeks as one of the defence lawyers could not be present. It then took the Supreme Court six months to examine the case on appeal.

175. The Court considers that up to this moment there had been no delays on the part of the authorities, while the applicant was responsible for delaying the proceedings for several months.

176. The second time the case was pending before the Regional Court for two years after its first judgment was quashed by the Supreme Court on 7 December 2004 on the ground that some of the jurors had concealed their family members' criminal records at the time of their selection and that the presiding judge had failed to sum up the evidence properly.

177. During the first year it took three months for the Regional Court's erroneous decision to remit the case to the investigating authority to be quashed on appeal.

178. The hearing was adjourned for five months owing to the illness of one of the applicant's co-defendants and the impossibility of examining the charges against the applicant in separate proceedings. An additional delay was caused by the defendants' and their lawyers' failure to appear before the court. The State cannot be held responsible for this delay.

179. The trial finally started in December 2005 and ended a year later. During this time the hearing was adjourned for two months and twenty days for the jurors' summer holidays, after which the parties had to repeat their pleadings which required one additional month. The Court notes that the jurors' summer holidays were explained by the particular features of work in the conditions of the Extreme North of the country of which the applicant's lawyers should have been aware, and of which the jurors had warned the parties and the court at the time of their selection. The Court notes that in the third set of proceedings the hearing was adjourned for a similar break for a shorter period of time, notably one month and a half, and finds no indication in the case file that the above delay was entirely justified.

180. The appeal against the Regional Court's second judgment was examined in six months; and on 6 June 2007 the judgment was quashed, this

time on the ground, in particular, that the applicant, his co-defendants and their lawyers had abused their rights and violated the jury trial procedure in order to influence the jurors' verdict. The applicant therefore contributed to the resultant delay in the proceedings.

181. During a year and nine months until the third judgment was delivered the case had lain dormant for three months before the Regional Court started the proceedings in September 2007. Another five months passed until the jury was formed and the trial could start, which then lasted for more than a year. The hearing was adjourned for about a month owing to the applicant's illness. The appeal against the third judgment was examined in four months; on 23 July 2009 the appeal was rejected and the judgment was upheld.

182. Even though there clearly were delays for which the applicant was responsible, as well as his co-defendants, which do not engage the State's responsibility, there were significant delays attributable to the State during the period when the case was pending before the trial court for the second and the third time amounting at least to about a year, and that is while the applicant was detained on remand which required particular diligence on the part of the domestic courts to administer justice expeditiously (see *Kalashnikov*, cited above, § 132). While taking into account the complexity of the case and the difficulties which the Magadan Regional Court faced, the Court recalls that the State remains responsible for the efficiency of its system and the manner in which it provides for mechanisms to comply with the reasonable time requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Blake v. the United Kingdom*, no. 68890/01, § 45, 26 September 2006).

183. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

184. There has accordingly been a breach of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

185. The applicant further complained that he had been subjected to treatment prohibited by Article 3 of the Convention in Magadan remand prison IZ-49/1. Thus, being one-legged he had experienced difficulties in view of the lack of any arrangements for his condition, in particular, on account of receiving food through a window in the door of his cell and carrying it to a table while holding on to crutches, taking a shower while leaning on crutches, using toilet facilities and getting into a car for being

transported to court. Furthermore, he had allegedly been denied medical treatment for his urolithiasis. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

186. The Government considered those complaints to be manifestly-ill founded. They asserted that the applicant's disability was not such as to make him dependent on others for moving around and attending to his needs, that during his detention on remand he had had all that was necessary in view of his disability and that he had received proper medical assistance. They argued that he had not complained before the domestic authorities about the conditions of detention in remand prison IZ-49/1.

187. The applicant maintained his complaints, contending that it would have been useless to complain to the administration of his remand prison since the conditions of detention were the same for everyone. He, however, had constantly raised the issue of the lack of special arrangements in remand prison IZ-49/1 for people with disabilities in the proceedings concerning his detention on remand.

B. The Court's assessment

Admissibility

188. The Court recalls that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita*, cited above, § 119). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

189. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of

the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

(a) Lack of special arrangements

190. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against a State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention (with which it has close affinity), that there is an effective remedy available in respect of the alleged breach in the domestic system, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

191. The Court considers that the applicant's complaints stem not from the general conditions of detention but rather from the domestic authorities' alleged failure to cater for his particular needs due to his physical impairment. He was therefore required to make the authorities sufficiently aware of his individual situation in order to comply with the obligation of exhaustion of domestic remedies (see, *mutatis mutandis*, *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005; *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007; *Popov and Vorobyev v. Russia*, no. 1606/02, § 67, 23 April 2009; and *Vladimir Sokolov v. Russia*, no. 31242/05, § 70, 29 March 2011). In particular, a complaint concerning an applicant's individual situation should normally be first lodged with the administration of a detention facility (see *Popov and Vorobyev*, cited above, §§ 66-67, and *Vladimir Sokolov*, cited above, § 70).

192. The Court observes that the applicant had used his own crutches and that certain individual measures had been taken by the administration of remand prison IZ-49/1 to take account of his physical impairment. Thus, the applicant had been provided with a small bench to facilitate him using the toilet facilities. He had been given sufficient time to get ready when he was taken out of his cell. There is nothing in the materials before the Court to suggest that the applicant had made the administration of his remand prison sufficiently aware of the issues which he brought before the Court, in particular, that he had been suffering difficulties on account of receiving

food through a window in the door of his cell and carrying it to a table, taking a shower, using toilet facilities and getting into a car to be transported to court. There is no basis for the Court in the case at hand to conclude that the administration of his remand prison would not have taken other individual measures to help the applicant cope with the difficulties in question, for example by making arrangements for him to take a shower in a sitting position or facilitating his access to a car.

193. The Court further observes that the applicant raised the issue of his disability in court proceedings concerning his detention on remand as one of the grounds for his release and not as a separate complaint (see *Popov and Vorobyev*, cited above, § 66). The general manner in which those issues were raised was the vague argument that remand prison IZ-49/1 was not suitable for people with disabilities. There is no indication that the applicant raised before the domestic courts the specific grievances which now form the subject of his complaint before the Court. The domestic court decisions briefly stated that his condition was compatible with his detention in the remand prison conditions. They also noted that the applicant had not complained to the administration of his remand prison about the conditions of his detention or his medical issues, in particular, in view of his disability (see paragraphs 96 and 99 above).

194. On the facts of the present case and in view of the applicant's submissions, the Court considers that by failing to raise before the authorities the specific issues which he brought before the Court the applicant did not exhaust domestic remedies.

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

(b) Denial of medical treatment

196. As regards the alleged lack of medical treatment for the applicant's urolithiasis, the Court observes that medical examinations were carried out and treatment for his urolithiasis was provided (see paragraphs 113 and 115 above). The compatibility of his state of health with his detention in the conditions of the remand prison was assessed in reports by the commissions of forensic medical experts ordered by the Magadan Regional Court in the proceedings concerning the applicant's detention on remand. The recommendation that the applicant undergo surgery for the extraction of renal calculus from his left kidney did not contain a specific time frame. The forensic medical experts' reports which followed after that recommendation concluded that the applicant's state of health was compatible with his detention in the remand prison (see paragraphs 118 and 119 above). There are no medical opinions in the case file stating that surgery was required during the time of the applicant's detention or that the applicant's state of health required any other medical measures which could not be or had not been taken in the remand prison.

197. Even assuming that the applicant has exhausted domestic remedies in respect of his complaint about the alleged denial of medical treatment, the Court considers that the complaint is manifestly ill-founded.

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

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

199. Lastly, as regards the remaining complaints about the alleged irregularities in the proceedings in which the applicant was involved and other alleged violations of the Convention, having regard to the materials in its possession, and in so far as they fall within its jurisdiction, the Court finds that they have not been sufficiently made out and do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

200. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

201. 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

202. The applicant claimed 93,270 euros (EUR) in respect of non-pecuniary damage, including EUR 47,000 for violations of Articles 5 and 6 of the Convention.

203. The Government did not express an opinion on the matter.

204. The Court considers that the applicant must have sustained non-pecuniary damage on account of violations found under Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

205. The applicant also claimed RUB 318,626 as the total legal costs in the criminal proceedings against him which the domestic courts ordered him to pay, and RUB 24,239 for postal expenses incurred in the proceedings before the Court.

206. The Government did not express an opinion on the matter.

207. The Court found violations of Article 5 §§ 3 and 4 and Article 6 § 1 of the Convention in the present case. It considers, according to its case-law, that only those costs and expenses which were reasonable as to quantum and which had been actually and necessarily incurred in order to seek through the domestic legal system redress of the aforesaid violations and to have the same established by the Convention institutions are recoverable (see, for example, *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001). It is apparent from the material submitted that the applicant incurred legal costs in connection with his attempts to secure his release in the proceedings concerning his detention on remand, which are therefore related to the violation found under Article 5 § 3. Making an assessment on an equitable basis, the Court considers it reasonable to award the applicant the sum of EUR 2,000 for the legal costs in the domestic proceedings. In addition to the EUR 850 already received in legal aid from the Council of Europe, the Court further awards the applicant EUR 500 covering the expenses in the proceedings before the Court, plus any tax that may be chargeable to the applicant on those amounts.

C. Default interest

208. 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 complaints concerning the length of the applicant's detention from 6 December 2005 to 12 March 2009, the length of the appeal proceedings related to the Magadan Regional Court's decisions of 14 September 2007, 27 May 2008, 28 August 2008 and 24 February 2009, and the length of the criminal proceedings admissible and the remaining complaints inadmissible.

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the detention from 6 December 2005 to 12 March 2009.

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine speedily the applicant's appeals

against the detention orders of 14 September 2007, 27 May 2008, 28 August 2008 and 24 February 2009;

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

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

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

Søren Nielsen
Registrar

Nina Vajić
President