



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

FIRST SECTION

CASE OF SIZOV v. RUSSIA (No. 2)

(Application no. 58104/08)

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 Sizov v. Russia (no. 2),

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 58104/08) 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 Mikhaylovich Sizov (“the applicant”), on 6 November 2008.

2. The applicant was represented by Ms A. Vasilyeva and Mr A. Gliskov, lawyers practising in Krasnoyarsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been detained in appalling conditions, in which he had contracted tuberculosis, and that criminal proceedings against him had been excessively long.

4. On 27 August 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Krasnoyarsk.

A. Criminal proceedings against the applicant

1. First set of criminal proceedings

6. On 4 July 2003 the applicant was arrested on suspicion of extortion. On 6 July 2003 the Zheleznodorozhnyy District Court of Krasnoyarsk dismissed the prosecutor's request to place the applicant in detention and ordered his release on an undertaking not to leave his place of residence.

7. On 3 September 2003 the applicant was charged with extortion on several counts. In December 2003 the case was referred to the Central District Court of Krasnoyarsk for trial.

8. On 5 January 2004 the District Court received the case file. On 9 January 2004 the court scheduled the trial for 19 January 2004.

9. On 12 October 2004 the District Court decided to place the applicant and his co-defendants Zh. and T. in detention pending trial. On 16 November 2004 the Krasnoyarsk Regional Court upheld the detention order. The applicant remained in custody pending trial.

10. During the period between 19 January 2004 and 3 February 2005 the District Court scheduled thirty-nine hearings. The Government provided the following information concerning the adjournments:

Date of hearing	Reasons for adjournment
19 January 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
11 March 2004	Newly appointed counsel asked for additional time to study the case file.
26 March, 19 and 28 April, 6 and 14 May 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
28 May 2004	The prison guards failed to ensure two co-defendants' presence.
5 June 2004	One of the co-defendants' counsel failed to appear.
7, 9 and 16 June 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
17 June 2004	One of the co-defendants' counsel failed to appear.
21 June 2004	The applicant failed to appear.
22, 24 and 25 June, 1 July 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
7 September 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard. Counsel B., representing one of the victims, failed to appear.
14 September 2004	Counsel B., representing one of the victims, failed to appear.

Date of hearing	Reasons for adjournment
23 September and 5 October 2004	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
14 October 2004	The prison guards failed to ensure two co-defendants' presence.
28 October, 10 and 17 November 2004	The parties asked for additional time to prepare certain documentary evidence.
1 December 2004	Counsel B., representing one of the victims, failed to appear.
9 and 15 December 2004	The parties asked for additional time to prepare certain documentary evidence.
24 December 2004	One of the co-defendants' counsel failed to appear

11. On 14 February 2005 the District Court convicted the applicant and his co-defendants on several counts of extortion and acquitted them on one count. The applicant was sentenced to three years' imprisonment. On the same date the applicant appealed against his conviction.

12. On 24 May 2005 the Regional Court quashed the judgment of 14 February 2005 and referred the case back to the trial court for examination by a different panel. It held, in particular, that the trial court had failed to duly establish the circumstances of the case and to apply the criminal law correctly.

2. Second set of criminal proceedings

13. On 15 June 2005 the District Court returned the case to the prosecutor, at his request, to be joined to the cases against other defendants. On 30 June 2005 the district deputy prosecutor joined the cases in respect of five defendants, including the applicant. The case-file comprised sixteen volumes.

14. On 4 July 2005 the case was again referred to the District Court. During the period between 18 August 2005 and 15 May 2006 the District Court held nineteen hearings. The Government provided the following information concerning the adjournments:

Date of hearing	Reasons for adjournment
13 September 2005	One of the defendants' counsel failed to appear.
26 September, 27 October, 22 and 28 December 2005, 15 and 16 February, 2, 17 and 23 March and 6 April 2006	Certain witnesses failed to appear.

15. On 15 May 2006 the District Court found the applicant and his co-defendants guilty on several counts of extortion. The applicant was sentenced to eight years' imprisonment.

16. On 10 October 2006 the Regional Court quashed the judgment of 15 May 2006 on account of procedural breaches and referred the case to the trial court for fresh examination.

3. Third set of criminal proceedings

17. On 16 October 2006 the District Court set the case for trial. During the period between 16 October 2006 and 30 January 2008 the District Court held thirty-seven hearings. The Government provided the following information concerning the adjournments:

Date of hearing	Reasons for adjournment
24 October 2006	The prison guards failed to ensure one of the co-defendants' presence in court.
14 November 2006	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
17 November 2006	One of the defendants' counsel failed to appear.
27 November, 1 and 8 December 2006, 10, 26 and 30 January, 2 February, 2 March, 9 and 23 April 2007	Certain witnesses failed to appear and /or the parties asked for additional witnesses to be heard.
27 April 2007	Some of the defendants' counsel failed to appear.
18 July 2007	One of the defendants' counsel failed to appear.

18. On 2 August 2007 the District Court, at the prosecutor's request, suspended the criminal proceedings against the applicant on the ground that the applicant was undergoing intensive treatment for tuberculosis and his ill health prevented him from participating in the examination of the case. By the same decision the District Court held that the applicant was to remain in detention. The examination of the criminal charges against the applicant's co-defendants continued and, by a final decision of 15 November 2007, they were convicted.

19. On 9 January 2008 criminal proceedings against the applicant were resumed.

20. On 30 January 2008 the District Court found the applicant guilty of extortion and sentenced him to five years and ten months' imprisonment. On 13 May 2008 the Regional Court upheld that judgment.

21. On 4 September 2008 the Minusinskiy Town Court of the Krasnoyarsk Region ordered the applicant's release on parole.

B. Conditions of the applicant's detention

1. General conditions of detention

(a) Submissions by the Government

22. The applicant was detained pending trial in remand prison no IZ-24/1 in Krasnoyarsk. On several occasions he was transferred to a temporary detention centre for investigation purposes. Furthermore, the applicant spent certain time in hospital where he underwent anti-tuberculosis treatment. In support of their submissions the Government produced excerpts from the remand prison populations register reflecting the situation in the applicant's cell on one day per month for 2006-2007. They further indicated that the prison population register for 2003-2005 had been destroyed. The relevant information provided by the Government is summarised below:

Type of facility	Period of detention	Cell no.	Cell surface area (sq. m)	Number of inmates	Number of beds
Remand prison no. IZ-24/1	From 12 October 2004 to 3 February 2006	60 136	33 46	No data available	8 12
Temporary detention centre	From 3 to 6 February 2006	No data provided			
Remand prison no. IZ-24/1	From 6 February to 31 March 2006	60 136	33 46	No data available	8 12
Temporary detention centre	From 31 March to 2 April 2006	No data provided			
Remand prison no. IZ-24/1	From 2 April to 23 May 2006	60 136	33 46	No data available	8 12
Temporary detention centre	From 23 to 27 May 2006	No data provided			
Remand prison no. IZ-24/1	From 27 May to 5 June 2006	60 136	33 46	No data available	8 12
Temporary detention centre	From 5 to 13 June 2006	No data provided			
Remand prison no. IZ-24/1	From 13 June to 10 July 2006	60 136	33 46	No data available	8 12

Type of facility	Period of detention	Cell no.	Cell surface area (sq. m)	Number of inmates	Number of beds
Temporary detention centre	From 10 to 19 July 2006	No data provided			
Remand prison no. IZ-24/1	From 19 July to 8 August 2006	60 136	33 46	No data available	8 12
	From 8 August to 8 September 2006	The period not accounted by the Government			
Remand prison no. IZ-24/1	From 8 September to 23 October 2006	60 136	33 46	No data available	8 12
	From 23 October to 20 November 2006	63	45.75	10-12	12
	From 20 November 2006 to 12 January 2007	60	33	6-8	8
Temporary detention centre	From 12 to 20 January 2007	No data provided			
Remand prison no. IZ-24/1	From 20 January to 5 February 2007	60	33	6-8	8
	From 5 to 8 February 2007	198	25.85	2-6	6
Regional specialised anti-tuberculosis prison hospital	From 8 February to 1 March 2007	No data provided			
Remand prison no. IZ-24/1	From 1 March to 21 June 2007	211	24.75	2-6	6
	From 21 June to 2 July 2007	197	24.75	2-6	6

Type of facility	Period of detention	Cell no.	Cell surface area (sq. m)	Number of inmates	Number of beds
Regional specialised anti-tuberculosis prison hospital	From 2 July to 18 October 2007	No data provided			
Remand prison no. IZ-24/1	From 18 October 2007 to 14 February 2008	197	24.75	2-6	6
Regional specialised anti-tuberculosis prison hospital	From 14 to 21 February 2008	No data provided			
Remand prison no. IZ-24/1	From 21 February to 3 June 2008	197	24.75	2-6	6

(b) Submissions by the applicant

23. The applicant submitted that, in addition to the cells indicated by the Government, he was detained in cells nos. 155, 104, 109, 73, 201, and 196. The conditions of detention in the remand prison were unsatisfactory. He did not have sufficient personal space and had to share cells with detainees suffering from tuberculosis.

2. Anti-tuberculosis treatment

(a) Submissions by the Government

24. During the time the applicant was detained in the remand prison he underwent medical examinations and check-ups on a regular basis. At no time was he detained with inmates suffering from tuberculosis.

25. On 31 January 2007 the applicant underwent a chest X-ray test and was diagnosed with tuberculosis.

26. On 8 February 2007 the applicant was admitted to a regional specialised anti-tuberculosis prison hospital where he was treated for tuberculosis until 1 March 2007. He was then transferred to the remand prison hospital where he continued further treatment.

27. The applicant again underwent treatment in the regional prison hospital from 2 July to 18 October 2007 and from 14 to 21 February 2008. The treatment was conducted in strict compliance with national standards.

Upon discharge from the hospital, the applicant continued to receive outpatient treatment and undergo examinations at the remand prison hospital. In particular, he underwent regular chest X-rays, a sputum smear test and clinical and biochemical blood tests. The test results demonstrated a positive effect of the anti-tuberculosis treatment.

28. After the applicant's conviction became final, he was transferred to medical correctional facility LIU-32 in the Krasnoyarsk Region to serve his sentence and receive further treatment for tuberculosis. His subsequent examinations and tests carried out in June 2008 showed that the applicant was no longer in need of anti-tuberculosis treatment.

(b) Submissions by the applicant

29. Upon arrival in the remand prison, the applicant underwent a medical examination, including a chest X-ray, which established that he was in good health. Further medical examinations performed on 15 April and 19 November 2005 and 17 May 2006 revealed that his heart and lungs were healthy.

30. Upon his release on 4 September 2008 the applicant received an extract of his medical record, which stated that on release he had been diagnosed with tuberculosis of the upper lungs in the induration phase.

C. Proceedings for damage incurred as a result of infection with tuberculosis and the unreasonable length of the criminal proceedings

31. On 27 June 2007, when the criminal proceedings against the applicant were still pending and he was in custody, the applicant brought proceedings for damages against the Ministry of Finance. He claimed that the criminal proceedings against him had been excessively long and that as a result of his lengthy detention in unsatisfactory conditions in the remand prison he had contracted tuberculosis.

32. On 28 May 2008 the Zheleznodorozhnyy District Court of Krasnoyarsk dismissed the applicant's claim in full. The court held that the length of the proceedings was justified by the complexity of the case, as well as by the joining of several criminal cases and the suspension of the proceedings against the applicant pending his treatment for tuberculosis. As regards the applicant's allegations concerning his infection with tuberculosis, the court established that the applicant had received proper medical treatment for tuberculosis. The court further noted that the applicant had not described the conditions he had been detained in, why those conditions had not met legal requirements, with which detainees suffering from tuberculosis he had been detained and when he had been in contact with those detainees. It further held that the mere fact of contracting tuberculosis was not enough to entitle him to damages, since for such

entitlement to come into play the damage incurred had to be the result of concrete unlawful actions.

33. On 28 July 2008 the Regional Court upheld that judgment on appeal.

II. DOMESTIC LAW

A. Conditions of pre-trial detention

34. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

35. Moreover, detainees should be given, free of charge, sufficient food for the maintenance of good health in line with the standards established by the Government of the Russian Federation (section 22 of the Act).

B. Coercive powers of the court

36. Article 111 of the Code of Criminal Procedure (“the CCP”) provides that in order to ensure the proper administration of criminal proceedings, the courts have the power to compel the parties to the proceedings to cooperate by means of measures such as escorting them to a courtroom or imposing fines. The former can be applied to witnesses if they fail to honour court summonses without valid reasons (Article 113 of the CCP). A fine can be imposed on a party in the event of his or her failure to fulfil procedural obligations (Article 117 of the CCP).

37. Under Article 258 of the CCP, the penalties which a judge may impose on any party, including a defendant, who acts in a manner that disturbs order in the courtroom are (1) a warning, (2) removal from the courtroom, or (3) a fine. Article 258 § 3 establishes that the trial, including the parties’ closing arguments, may be conducted in the defendant’s absence. In such a case, the defendant must be brought back to the courtroom to make his or her final submissions. The judgment must always be pronounced in the defendant’s presence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained about the conditions of his detention in remand prison no. IZ-24/1 in Krasnoyarsk from 12 October 2004 to 3 June 2008. In particular, he alleged that he had not been afforded sufficient personal space as he had been detained with a large number of inmates, some of whom had been suffering from tuberculosis. As a result, he had contracted tuberculosis. He referred to Article 3 of the Convention, which reads as follows:

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

39. The Government contested that argument. They submitted that at no time had the applicant been detained together with inmates suffering from tuberculosis. Once he had been diagnosed with tuberculosis, he had received proper treatment which had resulted in his recovery. The regional prison specialised hospital and the remand prison hospital had been provided with the necessary medicine and equipment. The hospital staff had been qualified to administer proper anti-tuberculosis treatment. The Government relied on the certificates prepared by the hospitals' administration on 25 November 2011.

40. The Government indicated that the design capacity of the cells had never been exceeded. In support, they provided excerpts from the remand prison population registers for 2006-2007. As regards the initial period of the applicant's detention, the Government submitted that the remand prison population registers for 2003-2005 had been destroyed on 6 April 2009. They maintained that the applicant had been detained in satisfactory conditions. In this connection they relied on the certificates prepared by the remand prison administration in November 2009.

Admissibility

1. The applicant's complaint concerning the general conditions of his detention

41. The Court notes that the applicant's stay in the remand prison was punctuated with short stays in a temporary detention centre. Furthermore, on three occasions the applicant was transferred to a hospital, where he underwent treatment for tuberculosis. Nevertheless, the Court does not consider it necessary to ascertain whether or not the whole period of the

applicant's detention constituted a "continuing situation" since the complaint is, in any event, inadmissible for the following reasons.

42. The general principles concerning the establishment of facts in respect of the complaints about conditions of detention are well established in the Court's case-law and have been summarised as follows (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, 17 January 2012):

"89. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others v. Turkey* [GC], 16 September 1996, § 168, *Reports of Judgments and Decisions* 1996-IV).

90. The Court is mindful of the objective difficulties experienced by the applicants in collecting evidence to substantiate their claims about the conditions of their detention. Owing to the restrictions imposed by the prison regime, detainees cannot realistically be expected to be able to furnish photographs of their cell or give precise measurements of its dimensions, temperature or luminosity. Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, such as for instance the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds. Only a credible and reasonably detailed description of the allegedly degrading conditions of detention constitutes a *prima facie* case of ill-treatment and serves as a basis for giving notice of the complaint to the respondent Government.

91. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Gubin v. Russia*, no. 8217/04, § 56, 17 June 2010, and *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts)).

92. In previous conditions-of-detention cases, the extent of factual disclosure by the Russian Government was rather limited and the supporting evidence they produced habitually consisted in a series of certificates issued by the director of the impugned detention facility after they had been given notice of the complaint. The Court repeatedly pointed out that such certificates lacked references to the original prison documentation and were apparently based on personal recollections rather than on any

objective data and, for that reason, were of little evidentiary value (see, among other authorities, *Veliyev v. Russia*, no. 24202/05, § 127, 24 June 2010; *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; and *Belashev*, cited above, § 52).”

43. The Government’s evidence comprised the certificates prepared by the remand prison administration and the excerpts from the remand prison population register covering one day per month within the period of the applicant’s detention.

44. As regards the certificates prepared in respect of the applicant’s detention from 12 October 2004 to 22 October 2006, the Court observes that they merely affirmed that the conditions of the applicant’s detention had been in compliance with Article 3 of the Convention without indicating the actual cell population on any given date or referring to any evidence on which that affirmation was based. The fact that they were issued approximately three years after the relevant period of the applicant’s detention was over further undermined their evidential value: as the Court has pointed out on many occasions, documents prepared after a considerable period of time cannot be viewed as sufficiently reliable sources, given the length of time that has elapsed (see *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009, and *Shilbergs v. Russia*, no. 20075/03, § 91, 17 December 2009).

45. As regards the period of the applicant’s detention from 23 October 2006 to 3 June 2008, the Court observes that the certificates prepared by the prison administration and concerning the surface and the number of sleeping places in the cells where the applicant was detained were not contested by the applicant. Accordingly the Court considers the information provided by the Government in this respect as credible.

46. The Court is also satisfied that that the excerpts from the register were the original documents which had been prepared during the period under examination, that is, from 23 October 2006 to 3 June 2008, and which showed the actual number of inmates who had been present in those cells on those dates. The Court considers it regrettable that the extent of the Government’s disclosure was not complete and reflected the situation in the applicant’s cell on one day per month. On those dates the number of detainees in the relevant cells did not exceed the number of sleeping places, affording at least 3.8 sq. m of personal space per detainee.

47. The Court also notes that the excerpts from the prison population register in respect of the period from February to June 2008 demonstrate that the prison was not generally overcrowded.

48. The applicant did not provide any evidence in support of his allegations that he had been detained in appalling conditions. Nor did he describe the conditions of his detention in any detail, confining himself to the assertion that he had not been afforded sufficient personal space and that he had been detained with a large number of inmates.

49. Having assessed the evidence presented by the parties in its entirety, the Court lends credence to the primary documents produced by the Government and rejects the applicant's allegations as unsubstantiated. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant's allegations concerning infection with tuberculosis and subsequent treatment

50. The Court notes that even if the applicant had contracted tuberculosis while in detention, this fact in itself would not necessarily imply a violation of Article 3, provided that he received treatment for it (see *Babushkin v. Russia*, no. 67253/01, § 56, 18 October 2007; and *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005). However, a lack of adequate medical assistance for serious diseases which one did not suffer from prior to detention may amount to a violation of Article 3 (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 108 et seq., 29 November 2007).

51. The national authorities must ensure that diagnosis and care in detention facilitates, including prison hospitals, are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive treatment plan aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Pakhomov v. Russia*, no. 44917/08, § 62, 30 September 2010; and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011).

52. In the present case the Court observes that, according to the Government's submissions, which are not disputed by the applicant, the latter was under constant medical supervision and had received adequate medical assistance when the tuberculosis was detected. The medical records showed that the applicant was recovering. Nothing in the case file can lead the Court to the conclusion that the applicant did not receive comprehensive medical treatment for his stage of tuberculosis.

53. In view of the above considerations the Court finds that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

54. The applicant complained under Article 6 of the Convention about the excessive length of the criminal proceedings against him. Article 6, in so far as relevant, reads as follows:

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

55. The Government contested that argument. The Government submitted that the overall length of the proceedings had been reasonable. The case had been complex. It had concerned five co-defendants. The file had comprised sixteen volumes. There had not been any significant delays in the proceedings attributable to the authorities.

56. The applicant maintained his complaint. He considered that the proceedings had been unreasonably long and all the delays had been attributable to the authorities. In particular, he noted that the appeal court had twice quashed the verdict and remitted the matter to the trial court for fresh consideration due to the errors committed by the latter. The appeal hearings had been held belatedly. Further delay had been caused by referral of the applicant's case to the prosecutor to be joined with other cases. The applicant's infection with tuberculosis, resulting from inhuman conditions of detention, had also added to the length of the proceedings. Lastly, thirty-eight hearings had been adjourned due to certain witnesses' failure to appear, whereas the trial court had done nothing to ensure their attendance. On three occasions the prison guards had failed to arrange the co-defendants' transport to the courthouse.

A. Admissibility

57. 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

58. The Court observes that the applicant was first arrested on 4 July 2003. It takes this date as the starting point of the criminal proceedings. The final judgment in his case was rendered on 13 May 2008. Accordingly, the proceedings against the applicant lasted approximately four years and ten and a half months, which spanned an investigation stage and that of the judicial proceedings, when the case was reviewed three times at two levels of jurisdiction.

59. The Court reiterates that the reasonableness of the length of the 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

60. The Court considers that the proceedings at issue were of a certain complexity owing to the scope of the charges and the number of defendants. However, the Court finds that the complexity of the case alone cannot justify the overall length of the proceedings.

61. The Court further notes that, apart from the adjournment of the proceedings for five months in 2007-2008 due to the applicant's illness, the applicant himself did not contribute to the length of the proceedings, and that, in any event, that delay cannot be considered significant.

62. As regards the conduct of the authorities, the Court considers that the prosecutor's office promptly completed the investigation and prepared the case for trial. The trial court scheduled and held hearings at regular intervals without undue delay and cannot be said to have remained inactive. However, most of the court hearings had to be adjourned because of the witnesses' failure to appear. During the first trial, which lasted slightly over a year and one month, the court had to adjourn sixteen out of thirty-nine hearings for that reason. During the second trial, which lasted eleven months, ten out of nineteen hearings were similarly adjourned. During the third trial, which lasted approximately a year and three and a half months, twelve out of thirty-seven hearings were adjourned, again due to the witnesses' failure to appear. The Court discerns no indication in the case file that the trial court availed itself of the measures existing under national law to discipline the absent witnesses and obtain their attendance, in order to ensure that the case was heard within a reasonable time (see *Zementova v. Russia*, no. 942/02, § 70, 27 September 2007; *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007; and *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005). The Court therefore finds that the delay occasioned by the witnesses' failure to attend hearings and the trial court's failure to ensure their attendance is attributable to the State.

63. The Court further observes that the appeal courts quashed the applicant's conviction twice. As a result, the applicant had to stand trial three times. Although the Court is not in a position to analyse the legal quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see, *mutatis mutandis*, among other authorities, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The fact that the domestic courts heard the case several times did not absolve them from having to comply with the reasonable-time requirement of Article 6 § 1 (see, *mutatis mutandis*, *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

64. Lastly, the Court notes that the fact that the applicant was held in custody pending trial and appeal proceedings against him required particular diligence on the part of the authorities dealing with the case to administer

justice expeditiously (see, among other authorities, *Korshunov v. Russia*, no. 38971/06, § 71, 25 October 2007).

65. In the light of the criteria laid down in its case-law, and having regard to all the circumstances of the case, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

68. The Government considered that, given that the applicant’s rights under the Convention had not been infringed, his claims should be rejected in full. Alternatively, they suggested that a finding of a violation would constitute sufficient just satisfaction. In any event, they considered the applicant’s claims excessive.

69. The Court considers that the applicant must have sustained some anguish and suffering as a result of the excessive length of the criminal proceedings against him, and that this would not be adequately compensated by the finding of a violation alone. However, the amount claimed by the applicant appears to be excessive. Making its assessment on an equitable basis, it awards him EUR 2,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

70. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

71. 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 complaint concerning the excessive length of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *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, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *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