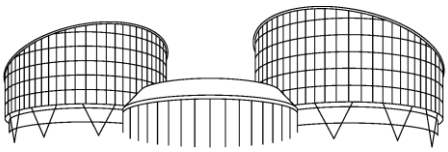

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHCHERBAKOV v. RUSSIA (No. 2)

(Application no. 34959/07)

JUDGMENT

STRASBOURG

24 October 2013

FINAL

24/01/2014

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

In the case of Shcherbakov v. Russia (no. 2),

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 34959/07) 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 Igor Nikolayevich Shcherbakov ("the applicant"), on 9 June 2007.

2. 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, in particular, that he had been detained in appalling conditions and for an unreasonably long time pending criminal proceedings against him; that an appeal he lodged against a detention order of 1 November 2006 had been considered belatedly; that the criminal proceedings against him had been unreasonably lengthy; and that he did not have an effective remedy in respect of his complaints.

4. On 27 May 2010 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 1955 and lives in Tula.

A. The applicant's arrest and pre-trial detention

1. Detention pending investigation

6. On 16 November 2004 the applicant was arrested on suspicion of extortion.

7. On 18 November 2004 the Proletarskiy District Court of Tula authorised his pre-trial detention. The court noted as follows:

> "... in view of the nature of the charges against [the applicant], the investigating authorities have compelling reasons to believe, that [he] may, if released, abscond, continue to commit crimes, or intimidate witnesses to impede the establishment of the truth ...
>
> Having regard to the nature of the charges against [the applicant], [the court] does not consider it possible to apply a less severe preventive measure than detention."

8. On 29 November 2004 the applicant was charged with robbery.

9. On 14 January 2005 the Tsentralniy District Court of Tula extended the applicant's detention pending investigation until 13 April 2005. The court accepted the reasoning of the investigator, who suggested that the applicant might, if released, continue to commit crimes, intimidate witnesses to interfere with the administration of justice, or abscond. On 9 February 2005 the Tula Regional Court upheld the decision of 14 January 2005 on appeal.

10. On 12 April and 13 May 2005 the District Court further extended the applicant's detention until 16 May and 28 June 2005 respectively. On both occasions the court used the following reasoning:

> "... [the court] does not consider it feasible to release [the applicant], given that he has committed several serious offences and may continue to commit crimes, intimidate witnesses to interfere with the administration of justice, or abscond."

11. On 23 June and 21 July 2005 the District Court extended the applicant's detention until 28 July and 28 August 2005 respectively. In each of the detention orders the court noted as follows:

> "[The court] does not consider it feasible to release [the applicant], given that he has committed several offences, some of which were very serious, and may, if released, continue to commit crimes, intimidate witnesses to interfere with the administration of justice, or abscond."

12. On 5 August 2005 the Regional Court upheld the decision of 23 June on appeal.

13. According to the Government, in 2004-2005 a number of witnesses complained to the investigator that the applicant had threatened them while at liberty. According to the applicant, it was the investigator who encouraged the witnesses to complain. On an unspecified date the witnesses confirmed the applicant's allegations in court.

2. Detention pending trial

14. On 2 August 2005 the District Court received the case file for the trial, which involved six defendants, including the applicant.

15. On 24 August 2005 the District Court fixed the trial date for 28 September 2005 and extended the detention of five of the defendants until 28 February 2006. The court noted, in particular, as follows:

> "Having regard to the fact that Ch., [the applicant], M., K., and A. are charged with particularly serious offences ..., they may continue to commit crimes, intimidate witnesses to interfere with the administration of justice, or abscond. The court does not discern any reason why they should be released."

16. On 2 September 2005 the Regional Court upheld the decision of 21 July 2005 on appeal.

17. On 28 September 2005 the Regional Court considered an appeal lodged by the applicant against the court order of 24 August 2005 and upheld it in substance, changing the end date of the applicant's detention to 2 February 2006.

18. On 1 February 2006 the District Court extended the applicant's detention until 2 May 2006. The court referred to the gravity of the charges against the applicant, noting that he might, if released, continue to commit crimes and put pressure on witnesses. On 17 March 2006 the Regional Court upheld the decision of 1 February 2006 on appeal.

19. On 24 April 2006 the District Court extended the applicant's detention until 2 August 2006, reiterating verbatim its reasoning of 1 February 2006. On 26 May 2006 the Regional Court upheld the decision on appeal.

20. On 1 August 2006 the District Court extended the detention of five of the defendants, including the applicant, until 2 November 2006. The court stated as follows:

> "Having heard the parties to the proceedings and having studied the material in the case file, the court does not discern any reason why the earlier imposed preventive measure in the form of custody should be lifted or replaced.
>
> [The defendants] are charged with serious and particularly serious criminal offences ... The court has not received any information to suggest that the defendants are unfit for detention on health grounds."

21. On 1 September 2006 the Regional Court upheld the decision of 1 August 2006 on appeal.

22. On 1 November 2006 the District Court extended the detention of five of the defendants until 2 February 2007. The court reiterated that they had been charged with particularly serious offences and might continue to commit crimes, intimidate witnesses to interfere with the administration of justice, or abscond. On 9 November 2006 the applicant lodged an appeal against the decision of 1 November 2006.

23. On 13 December 2006 the Regional Court upheld the decision of 1 November 2006 on appeal.

24. On 1 February 2007 the District Court extended the detention of the applicant and three of his co-defendants until 2 May 2007. The court noted as follows:

> "... the court concludes that ... the [defendants'] pre-trial detention should be extended ... [They] are charged with particularly serious and serious criminal offences. If released, the defendants may continue to commit crimes or put pressure on witnesses and the victims.
>
> The [defendants'] release from custody would seriously hamper the examination of the case. The reasons justifying the remand of the defendants in custody have not ceased to exist."

25. On 26 April 2007 the District Court extended the detention of the applicant and three of his co-defendants until 2 August 2007. The court stated as follows:

> "... the court concludes that ... the [defendants'] pre-trial detention should be extended ... [They] are charged with particularly serious and serious criminal offences. A number of witnesses have not yet been questioned. If released, the defendants may put pressure on witnesses and the victims.
>
> The [defendants'] release from custody would seriously hamper the examination of the case. The reasons justifying the remand of the defendants in custody have not ceased to exist."

26. On 16 May 2007 the Regional Court upheld the decision of 1 February 2007 on appeal.

27. On 31 July 2007 the District Court extended the detention of the applicant and three of his co-defendants until 2 November 2007. In particular, the court noted as follows:

> "... the court concludes that ... the [defendants'] pre-trial detention should be extended ... [They] are charged with particularly serious and serious criminal offences. Prosecution witnesses B. and E. have not yet been questioned. If released, the defendants may put pressure on witnesses; given the character of each of the defendants, they may abscond, continue to commit crimes, intimidate witnesses and other parties to the proceedings, or otherwise interfere with the administration of justice. ... The [defendants'] release from custody would seriously hamper the examination of the case. The reasons justifying the remand of the defendants in custody have not ceased to exist."

28. On 15 August 2007 the Regional Court upheld the decision of 26 April 2007 on appeal.

29. On 30 October 2007 the District Court extended the detention of the applicant and three of his co-defendants until 8 February 2008. The court reasoned as follows:

> "... the court concludes that ... the [defendants'] pre-trial detention should be extended ... [They] are charged with particularly serious and serious criminal offences. Witness E., expert witnesses and lay witnesses who participated in the

> investigation ... have not yet been questioned. If released, the defendants may put pressure on witnesses; given the character of each of the defendants, they may abscond, continue to commit crimes, intimidate witnesses and other parties to the proceedings, or otherwise interfere with the administration of justice. ... The [defendants'] release from custody would seriously hamper the examination of the case. The reasons justifying the remand of the defendants in custody have not ceased to exist."

30. On 21 December 2007 the Regional Court adjourned an appeal by the applicant against the detention order of 30 October 2007 to ensure his participation in the hearing. On 26 December 2007 the Regional Court upheld the decision of 31 July 2007 on appeal.

31. On 23 January 2008 the Regional Court upheld the decision of 30 October 2007 on appeal.

32. On 31 January 2008 the District Court extended the applicant's pre-trial detention until 2 March 2008. The court referred to the gravity of the charges against the applicant and the complexity of the case. On 27 February 2008 the Regional Court upheld the decision of 31 January 2008 on appeal. The applicant was convicted by the District Court on 28 February 2008 (see paragraph 36 below).

B. Criminal court proceedings

33. Following the applicant's arrest on 16 September 2004 and the preliminary investigation, on 2 August 2005 the criminal case file, comprising seventeen volumes of documents, was received by the District Court for the trial.

34. The six defendants, including the applicant were charged with numerous counts of fraud, robbery, threats to kill, extortion and money laundering. The trial court was to question fifty witnesses and to study substantial volumes of documentary evidence. The court held one-hundred-and-twenty-five hearings.

35. The Government provided the following information as regards adjournments of the trial hearings:

Date	Reason for adjournment
28 September and 31 October 2005	The applicant asked for additional time to study the case file.
From 1 to 5 December 2005	The trial was stayed.
From 7 December 2005 to 30 January 2006	The trial was stayed.
30 January 2006	The applicant and his lawyer asked for certain witnesses to be summoned for questioning.

Date	Reason for adjournment
20 February 2006	A number of defendants could not attend the hearing on account of illness.
From 29 March to 24 April 2006	The trial was stayed.
From 17 to 24 May 2006	The trial was stayed.
24 May 2006	The judge was on sick leave.
29 June 2006	The defendants remanded in custody were not transported to the courthouse.
14 July 2006	One of the defence counsel failed to appear.
6 September 2006	The defendants remanded in custody were not transported to the courthouse.
20 September 2006	One of the defence counsel failed to appear.
4 October 2006	One of the defence counsel failed to appear. According to the Government, witness F. failed to appear from that day on in court until the appeal hearing.
From 11 to 25 October 2006	The trial was stayed.
25-26 October 2006	One of the defence counsel failed to appear.
20 and 27 March 2007	One of the defence counsel failed to appear.
24 and 26 April 2007	One of the defence counsel failed to appear.
6, 13 and 14 June 2007	One of the defence counsel failed to appear.
24 and 31 July 2007	One of the defence counsel failed to appear.
2 August to 11 September 2007	The judge was on annual leave.
11 September 2007	One of the defence counsel failed to appear.

36. On 28 February 2008 the District Court found the applicant guilty of extortion and fraud, and sentenced him to three-and-a-half years' imprisonment. The applicant appealed, maintaining his innocence.

37. On 15 May 2008 the applicant was released upon having served his sentence.

38. On 24 December 2008 the Regional Court reclassified the applicant's conviction without changing the imposed sentence.

C. Conditions of detention

1. Temporary detention unit

39. From 16 to 18 November 2004 the applicant was detained in a temporary detention unit at the regional police headquarters. According to the Government, the applicant was held in a cell measuring 18.36 square metres. The cell had four sleeping places, but the applicant was the only occupant. A vent in the window permitted access to fresh air. There were two windows in the cell covered with metal grills, which did not prevent access to daylight. The toilet was located in the left corner of the cell, some 2.7 metres away from the dining table and some 2.4 metres away from the nearest sleeping place. It was separated from the living area of the cell by a 1.35-metre-high wooden partition.

40. According to the applicant, there was no running tap water in his cell. The lighting was insufficient, and he was not given the opportunity to take any outdoor exercise.

2. Remand prison no. IZ-71/1 in Tula

(a) The description provided by the Government

41. The Government provided the following information as regards the conditions of the applicant's detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008:

Period of detention	Cell no.	Surface area in square metres	Number of beds	Number of inmates
From 19 November 2004 to 18 March 2005	20	9.8	6	4-6
From 18 March 2005 to 9 June 2007	36	35	21	14-19
From 9 June to 2 July 2007	54	10.7	6	2-4
From 2 July to 1 August 2007	36	35	21	14-16
From 1 August 2007 to 15 May 2008	48	29	12-14	7-10

42. All the cells in the remand prison were equipped with a ventilation system ensuring adequate fresh air circulation.

43. The windows in the cells were covered with metal grills, which did not prevent access to daylight. The cells had electric lighting, which was constantly switched on. From 10 p.m. to 6 a.m. the cells were lit with

60-watt bulbs. This night lighting was used for surveillance purposes and to facilitate the use of the toilet.

44. The toilet was located in the corner of each cell, some 2.5 metres away from the nearest bed and some 3 metres away from the dining table. It was separated from the living area of the cell by a 1.5-metre-high wooden partition and a wooden door, which ensured sufficient privacy for the person using it.

45. Inmates were allowed at least an hour's daily outdoor exercise in designated exercise areas measuring 30.8 square metres on average. The exercise areas were covered with metal wire mesh, with openings measuring 17 x 17 square centimetres.

46. The applicant was not confined to his cell all the time. On numerous occasions he met with the investigator for questioning and participation in other investigative activities. He had meetings with his lawyers and visits from his family. According to copies of the relevant records of the remand prison, none of the meetings or visits lasted any longer than two hours. The Government's submissions on the issue can be summarised as follows:

Year	Number of meetings
2004	The applicant had four meetings with his lawyer and one meeting with the investigator. He had two family visits.
2005	On fifteen occasions the applicant met with his lawyers. He had forty-eight meetings with the investigator and three family visits.
2006	The applicant had twelve meetings with his lawyers and two meetings with the investigator. He had six family visits.
2007	The applicant had thirty-three meetings with his lawyers. He met with the investigator twice.
2008	The applicant met with his lawyers four times. He met with the investigator twice and two family visits.

(b) The description provided by the applicant

47. According to the applicant, the number of inmates detained in remand prison no. IZ-71/1 in Tula was much higher than the number suggested by the Government. In particular, he submitted that in cell no. 20 the number of inmates had been between six and seven, and in cell no. 36 between sixteen and twenty-two people had been detained with him.

48. The lighting in the cells was constantly switched on. There was one window in each cell, but it did not permit much access to fresh air, as the ventilation system did not comply with the accepted standards. Water was available from 6.30 a.m. to 9 a.m., from 12 noon to 3 p.m., and from 6 p.m. to 10 p.m. The toilet was separated from the living area of the cells by a 1-metre-high partition, but it offered no privacy. The cells were

infested with insects. The administration took no measures to exterminate them. The inmates were allowed a one-hour walk per day. The exercise area did not have any sports equipment. The food was of a poor quality. There were no refrigerators in the cells. On several occasions inmates suffering from tuberculosis and AIDS were placed in the same cells as non-infected inmates.

II. RELEVANT DOMESTIC LAW

A. Conditions of pre-trial detention

49. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Under section 23, detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Pre-trial detention

1. Grounds for ordering detention on remand

50. Article 97 of the Code of Criminal Procedure (CCrP) provides that an investigator or a court may order a preventive measure, for instance detention pending investigation or trial, if there were sufficient grounds to consider that the defendant might abscond, continue his or her criminal activity or threaten a witness or otherwise obstruct the proceedings. They must also take into account the gravity of the charge, information on the defendant's character, his or her profession, age, health condition, family status and other circumstances (Article 99 of the CCrP). Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1of the CCrP).

2. Review of pre-trial detention

51. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention (Article 108 § 10 of the CCrP). A statement of appeal should be submitted to the court at first level of jurisdiction (Article 355 § 1 of the CCrP). The CCrP contains no time-limit during which the court at first level of jurisdiction should send

the statement of appeal and the case file to the appeal court. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10 of the CCrP).

C. Remedies in respect of a violation of the right to trial within a reasonable time

52. Federal Law No. 68-ФЗ of 30 April 2010 (in force as of 4 May 2010) provides that in the case of a violation of the right to a trial within a reasonable time, the party concerned is entitled to seek compensation in respect of non-pecuniary damage. Federal Law № 69-ФЗ (enacted on the same date) introduced a number of corresponding changes to the Russian legislation.

53. Section 6.2 of Federal Law No. 68-ФЗ provided that parties who had an application pending before the European Court of Human Rights concerning a violation of their right to a trial within a reasonable time, had six months from the date of entry into force of the Law to lodge their claim for compensation with the domestic courts.

THE LAW

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

54. The applicant complained that he had been detained in appalling conditions pending the criminal proceedings against him in contravention of Article 3 of the Convention, which reads as follows:

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

The applicant also claimed that he did not have at his disposal an effective remedy in respect of the conditions of his pre-trial detention. He relied on Article 13 of the Convention, which, in so far as relevant, provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

A. Admissibility

1. Compliance with the six months' rule

55. Regard being had to the differences in the material conditions of the applicant's detention in the temporary detention centre from 16 to 18 November 2004 and the remand prison from 19 November 2004 to 15 May 2008, which fact is not disputed by the parties, the Court does not find that those two periods in question constituted a "continuing situation" requiring a global assessment (see *Pavlenko v. Russia,* no. 42371/02, § 73, 1 April 2010, and *Maltabar and Maltabar v. Russia*, no. 6954/02, § 83, 29 January 2009). The Court further notes that the complaint in respect of the applicant's detention in the temporary detention centre, which lasted from 16 to 18 November 2004, was lodged only on 9 June 2007, that is almost two-and-a-half years after the end of the period complained of. The Court also takes into account the applicant's contention that he had not had an effective domestic remedy against the alleged violation and the fact that he had not brought his grievances to the attention of any domestic authority. In such circumstances, in the Court's view, it was incumbent on the applicant to raise the complaint within the six months from the end-date of the period complained of. By having failed to do so, he has not complied with the six months' rule in respect of his complaint about the conditions of detention in the temporary detention centre from 16 to 18 November 2004 and it must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

56. The Court further notes that, by lodging the complaint on 9 June 2007, the applicant has complied with the six months' rule in respect of his grievances about the conditions of his detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008.

2. Exhaustion of domestic remedies

57. As regards the conditions of the applicant's detention in the remand prison from 19 November 2004 to 15 May 2008, the Government submitted that his complaint should be dismissed for failure to exhaust effective domestic remedies. They asserted that it had been open to the applicant to bring a civil action for damages or restitution. They relied on the following examples of domestic case-law. On 19 July 2007 the Novgorod City Court of the Novgorod Region had awarded 45,000 Russian roubles (RUB) to D. in respect of non-pecuniary damage on account of the domestic authorities' failure to ensure him with adequate conditions of detention between 3 November 2004 and 5 July 2005. On 26 March 2007 the Tsentralniy District Court of Kaliningrad had granted R.'s claim for compensation in respect of non-pecuniary damage on account of the prison administration's failure to provide him with adequate medical assistance. On 5 August 2009

the Astrakhan Regional Court had found credible A.'s allegations concerning the conditions of his detention in a remand prison and awarded him non-pecuniary damages in the amount of RUB 4,700.

58. The applicant claimed that he had not complained about the conditions of his detention for fear of reprisal on the part of the administration of the remand prison. It was also his view that any complaint he might have made about overcrowding in the remand prison would have been to no avail.

59. The Court considers that the issue of non-exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy in respect of his allegations about the inhuman and degrading conditions of his detention. The Court therefore finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention.

3. Conclusion

60. The Court further notes that the complaints under Articles 3 and 13 of the Convention, in so far as they concern the period from 19 November 2004 to 15 May 2008, are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 13 of the Convention

(a) The parties' submissions

61. The Government reiterated their argument put forward in support of their assertion that the applicant had failed to exhaust the effective domestic remedies concerning the complaint under Article 3 of the Convention (see paragraph 57 above).

62. The applicant maintained his complaint.

(b) The Court's assessment

63. In the case of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 93-119, 10 January 2012) the Court carried out a thorough analysis of domestic remedies in the Russian legal system in respect of a complaint relating to the material conditions of detention in a remand centre. The Court concluded in that case that it was not shown that the Russian legal system offered an effective remedy that could be used to prevent the alleged violation or its continuation and provide the applicant with adequate and sufficient redress in connection with a complaint of

inadequate conditions of detention. Accordingly, the Court dismissed the Government's objection as to the non-exhaustion of domestic remedies and found that the applicants did not have at their disposal an effective domestic remedy for their grievances, in breach of Article 13 of the Convention.

64. Having examined the Government's arguments, the Court finds no reason to depart from this conclusion in the present case. Noting that the applicant raises an "arguable" complaint under Article 3 of the Convention, the Court finds that there has been a violation of Article 13 of the Convention.

2. Article 3 of the Convention

(a) The parties' submissions

65. Relying on extracts from the remand prison population register and certificates issued by its administration in August 2010, the Government asserted that the conditions of the applicant's detention in remand prison no. IZ-71/1 in Tula had been compatible with the standards set forth in Article 3 of the Convention. They admitted that the personal space afforded him during the period in question had been below the statutory minimum. Nevertheless, at all times the applicant had had his own individual sleeping place. Inmates had not been confined to their cells. They had spent most of their time out of their cells, for example when meeting with their lawyers and receiving visits from their relatives, or when taking exercise outdoors or participating in investigative activities.

66. The applicant submitted that for three and a half years he had been detained in degrading and inhuman conditions which had caused him mental and physical suffering.

(b) The Court's assessment

67. For an overview of the general principles, see the Court's judgment in the case of *Ananyev and Others* (cited above, §§ 139-159).

68. Turning to the circumstances of the present case, the Court observes that the parties disagreed as to most of the aspects of the conditions of the applicant's detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent Government did not refute.

69. In this connection the Court takes into account the Government's admission that during the period in question in remand prison no. 71/1 in Tula, the personal space afforded to each inmate was below the statutory minimum of 4 square metres.

70. According to extracts from the remand prison population register submitted by the Government, the applicant was afforded no more than 3 square metres of personal space on average. Sometimes he had as little as 1.63 square metres. As a result of such overcrowding, the applicant's conditions of detention did not meet the minimum standard as laid down in the Court's case-law (see, among many other authorities, *Ananyev and Others*, cited above, §§ 143-49). This fact alone is sufficient for the Court to find that the problem of overcrowding had not been alleviated by the authorities in the present case. The Court does not lose sight of the fact that on certain days, the number of inmates detained with the applicant decreased and the personal space afforded to them exceeded 3 square metres. In the circumstances of the case, however, the Court does not consider that such occasional fluctuations in the remand prison population significantly affected the applicant's situation as a whole.

71. Apart from an hour's daily exercise, the applicant was confined to his cell for the rest of the time. In the Court's view, his out of cell activity, namely occasional meetings with his lawyer, visits from his family, or fifteen-minute weekly showers, did not significantly alter the conditions of his detention.

72. The Court therefore concludes that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention. In view of the Court's findings under Article 13 of the Convention, the Government's argument concerning the non-exhaustion of domestic remedies should be dismissed.

73. In the circumstances, the Court concludes that there has been a violation of Article 3 of the Convention.

74. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention in remand prison no. 71/1 in Tula.

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

75. The applicant complained that his pre-trial detention had been unreasonably lengthy. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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."

76. The Government contested that argument. They submitted that the applicant's pre-trial detention had been in compliance with Article 5 § 3 of the Convention. Firstly, the applicant had been remanded in custody on reasonable suspicion of having committed a serious criminal offence.

Secondly, between 2004 and 2005 a number of witnesses had complained to the investigator that the applicant had threatened them while at liberty. Witness F. had disappeared before the court hearing of 4 October 2006 and his whereabouts had been unknown until the appeal hearing. In the Government's view, the domestic courts' findings as regards the risk that the applicant might abscond, put pressure on witnesses, or otherwise interfere with the administration of justice had been fully substantiated. The applicant's pre-trial detention had been based on sufficient and relevant reasons.

77. The applicant maintained his complaint. He claimed that the investigator had encouraged the witnesses to complain about him, but their complaints had not been based on fact, which had been confirmed by the witnesses themselves during their examination in court.

A. Admissibility

78. 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

(a) General principles

79. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq., ECHR 2000-XI).

80. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is sine qua non for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV). Justification for any

period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance for trial (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

81. The responsibility falls in the first place on the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the public interest which justifies a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

(b) Application of these principles to the present case

82. The applicant was arrested on 16 November 2004 and convicted by the trial court on 28 February 2008 (see paragraphs 6, 33 and 36 above). Thus, the period to be taken into consideration lasted approximately three years and three-and-a-half months.

83. The Court accepts that the reasonable suspicion of the applicant having committed the offences he had been charged with, being based on cogent evidence, persisted throughout the trial leading to his conviction. It remains to be established whether the courts gave "relevant" and "sufficient" grounds to justify remanding the applicant in custody and whether they displayed "special diligence" in their conduct of the proceedings.

84. The inordinate length of the applicant's pre-trial detention – three years and three-and-a-half months – is a matter of concern for the Court. It considers that the Russian authorities were required to put forward weighty reasons for keeping the applicant in pre-trial detention for such a long time.

85. When extending the applicant's pre-trial detention, the domestic courts referred to the gravity of the charges against him. In this connection they noted that he might abscond, continue to commit crimes or intimidate witnesses.

86. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier*

v. France, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

87. As regards the existence of a risk of absconding, the Court reiterates that such a risk cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors, which may either confirm the existence of a risk of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko*, cited above, § 106, and *Letellier*, cited above, § 43). In the present case the domestic courts gave no reasons in their decisions why they considered the risk of his absconding to be decisive. Accordingly, the Court finds that the existence of a risk that the applicant might abscond was not established.

88. Similarly, the Court is not convinced that the domestic courts' findings that he put pressure on witnesses or otherwise interfered with the administration of justice were sufficiently established. The Court observes that, in extending the applicant's detention, the domestic courts did not refer to any complaints lodged by witnesses concerning threats made by the applicant. As it follows from their decisions, at no time did the court refer to any evidence as regards its conclusion that the applicant was likely to put pressure on witnesses. In any event, it appears that the domestic courts had sufficient time to take statements from the witnesses in a manner which could have excluded any doubt as to their veracity, and that would have eliminated the necessity to continue the applicant's deprivation of liberty on that ground (see, for similar reasoning, *Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007). The Court therefore considers that the domestic courts were not entitled to regard the circumstances of the case as justification for using the risk of putting pressure on witnesses as a further ground for the applicant's detention.

89. After the case had been sent for trial in August 2005, the court repeated the same standard formula to extend the detention of five and then four of the defendants, including the applicant. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention of each detainee is incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova v. Russia*, no. 75039/01, § 76, 8 June 2006; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the defendants' detention by means of collective detention orders, the domestic courts gave no real consideration to their individual circumstances.

90. The Court further observes that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at court. This provision of the Convention enshrines not only the

right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Jabłoński*, cited above, § 83). In the present case the courts never considered the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure.

91. Having regard to the above, the Court considers that by relying essentially on the gravity of the charges, and by failing to substantiate their findings by addressing specific facts or to consider alternative "preventive measures", the courts extended the applicant's detention on grounds which, although "relevant", cannot be regarded as sufficient to justify its duration of three years and three-and-a-half months. In these circumstances it is not necessary for the Court to examine whether the domestic courts acted with "special diligence".

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

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

93. The applicant complained that his appeal against the detention order of 1 November 2006 had not been decided "speedily", as the respective hearing had not taken place until 13 December 2006. On 7 December 2010 he raised a similar complaint with the Court in respect of the detention orders of 1 February, 26 April, 31 July and 30 October 2007. He relied on Article 5 § 4 of the Convention which reads as follows:

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

94. The Government admitted that one of the judges had failed to act on the applicant's appeals against the detention orders upon receipt, thereby causing an infringement of his right to a speedy review of his pre-trial detention. In particular, on 23 January 2008 the Regional Court, when reviewing the extension of the applicant's pre-trial detention on appeal, had expressly noted that judge L. had persistently delayed transferring the case file to the appellate court for consideration. The judicial qualifications board subsequently issued a warning to her for, *inter alia*, failing to comply with procedural time-limits when dealing with the applicant's pre-trial detention.

95. The applicant maintained his complaint.

A. Admissibility

96. The Court observes that the appeal hearings in respect of the detention orders of 1 February, 26 April, 31 July and 30 October 2007 were

held on 16 May, 15 August and 26 December 2007 and 23 January 2008 respectively. Accordingly, the part of the applicant's complaint concerning those appeal hearings should have been lodged no later than 23 July 2008. However, as it was lodged on 7 December 2010, it has been submitted belatedly and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

97. The Court further notes that his complaint in respect of the review of the detention order of 1 November 2006 held on 13 December 2006 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

98. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons 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 the ordering of its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). The question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

99. The Court further considers that there is a special need for a swift decision determining the lawfulness of a detention in cases where a trial is pending, as the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

100. Turning to the circumstances of the present case, the Court observes that the applicant lodged an appeal against the detention order of 1 November 2006 on 9 November 2006, whereas the appellate court examined it on 13 December 2006 (see paragraphs 22-23 above). It follows that it took the domestic courts thirty-four days to schedule and hold the respective appeal hearing.

101. In the Court's opinion, the issues before the appellate court were not complex. Nor is there anything in the material before the Court to suggest that either the applicant or his counsel contributed to the length of the appeal proceedings. Moreover, the Government did not provide any justification for the delays in the appeal proceedings. Accordingly, the entire length of the appeal proceedings in the present case was attributable to the authorities. The Court further reiterates that where an individual's personal liberty is at stake, it has very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see *Mooren v. Germany*, no. 11364/03, § 74, 13 December 2007,

and compare, for example, with *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered a time-period of seventeen days in deciding on the lawfulness of the applicant's detention to be excessive, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia*, twenty-six days, was found to be in breach of the "speediness" requirement of Article 5 § 4 of the Convention).

102. Having regard to the above, the Court considers that the appeal proceedings for the review of the lawfulness of the applicant's pre-trial detention cannot be considered compatible with the "speediness" requirement of Article 5 § 4 of the Convention. There has therefore been a violation of that provision.

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

103. The applicant further complained under Article 6 § 1 of the Convention that the criminal proceedings against him had been unreasonably lengthy. Article 6 reads, in so far 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 ..."

104. The Government submitted that the criminal proceedings against the applicant had been complex. The case had involved six defendants charged with several counts of various offences, and the case file had comprised numerous volumes of documentary evidence. The trial had been adjourned several times, on account of the applicant's requests to study the case file and the defence counsel's failure to appear at court.

105. The applicant maintained his complaint.

A. Admissibility

106. 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

107. The Court observes that the applicant was arrested on 16 September 2004. It takes this date as the starting point for assessing the length of the criminal proceedings against the applicant, and the end date as being 24 December 2008, when the applicant's conviction was upheld on appeal (see paragraph 38 above). Accordingly, the period in question in the present case comprised four years and three-and-a-half months, which spanned the

investigation stage and the court proceedings, when the case was reviewed by courts at two levels of jurisdiction.

108. 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 applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

109. The Court accepts the Government's argument that the proceedings against the applicant were complex. The investigation was opened in respect of six defendants, including the applicant, who were charged with several counts of fraud, robbery, threats to kill, extortion and money laundering.

110. As regards the applicant's conduct, the Court does not discern anything in the material before it to suggest that the applicant seriously contributed to the length of the proceedings. The fact that the trial was adjourned from 28 September to 1 December 2005 on account of the applicant's request for additional time to study the case file did not have a significant adverse effect on the overall duration of the trial.

111. As to the conduct of the authorities, the Court is satisfied that they demonstrated sufficient diligence in handling the proceedings. The investigation into the matter lasted for ten-and-a-half months. The appeal proceedings lasted approximately ten months. The trial hearings were held regularly. Admittedly, the trial at the first level of jurisdiction lasted almost two years and seven months, but the court held one-hundred-and-twenty-five hearings, and the Court discerns nothing in the material before it to suggest that there were any unreasonable delays or adjournments in the proceedings.

112. Making an overall assessment of the complexity of the case, the conduct of the parties and the total length of the proceedings, the Court considers that the latter did not go beyond what may be considered reasonable in this particular case.

113. There has accordingly been no violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE COMPLAINT OF AN UNREASONABLE LENGTH OF PROCEEDINGS

114. The applicant further complained that he did not have an effective remedy in respect of the allegedly unreasonable length of the proceedings in his case. He relied on Article 13 of the Convention.

115. The Government submitted that the applicant had failed to bring his grievances to the attention of the domestic courts, asserting that he could

have done so using the applicable domestic legislation in force since 4 May 2010.

116. The applicant maintained his complaint.

A. Admissibility

117. 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

118. The Court considers the complaint under Article 13 in respect of the length of the proceedings arguable, even though it has not found a violation of the applicant's right to a trial within a reasonable time.

119. The Court takes cognisance of the existence of a new remedy introduced by Federal Laws no. 68-ФЗ and no. 69-ФЗ in the wake of the pilot judgment adopted in the case of *Burdov v. Russia* (no. 2) (no. 33509/04, ECHR 2009). These laws, which entered into force on 4 May 2010, introduced a new remedy, which enables those concerned to seek compensation for damage sustained as a result of unreasonably lengthy proceedings (see paragraph 52 above).

120. The Court accepts that from 4 May 2010 and until 4 November 2010 the applicant had a right to use this remedy (see paragraph 53 above), but he did not choose to pursue it.

121. The Court observes that, in the pilot judgment cited above, it stated that it would be unfair to request applicants, whose cases have already been pending for many years in the domestic system and who have come to seek relief at the Court, to bring their claims again before domestic tribunals (see *Burdov* (no. 2), cited above, § 144). In line with that principle, the Court decided to examine the complaint about the length of the proceedings on its merits and found no violation of the substantive provision of the Convention.

122. However, an examination of the present case on its merits should in no way be interpreted as prejudging the Court's assessment of the quality of the remedy introduced in 2010. It will examine this question in other cases that are more suitable for such analysis. It does not see fit to do so in the present case, particularly as the parties' observations were made in relation to a situation that had existed before its introduction.

123. Having regard to these special circumstances, the Court does not consider it necessary to pursue a separate examination of the complaint under Article 13 in the present case.

VI. OTHER ALLEGED VIOLATION OF THE CONVENTION

124. Lastly, the applicant complained under Articles 6 and 13 of the Convention that the criminal proceedings against him had been unfair. Referring to Article 14 of the Convention, he alleged that he had been regarded as inferior on account of him being a defendant in criminal proceedings.

125. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant claimed 1,400,000 euros (EUR) in respect of non-pecuniary damage.

128. The Government argued that his claims were excessive and unreasonable. They further submitted that the finding of a violation would constitute sufficient just satisfaction in the circumstances of the case.

129. The Court accepts the Governments' argument that the applicant's claims appear excessive. Nevertheless, it considers that the non-pecuniary damage sustained by the applicant cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 16,000 in respect of non-pecuniary damage.

B. Costs and expenses

130. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

131. 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. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the conditions of his detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008 and rejects it;

2. *Declares* the complaints concerning the applicant's conditions of detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008 and the lack of effective remedy in this respect, the length and the review of the applicant's pre-trial detention, the length of the criminal proceedings against him and the lack of an effective remedy in this respect admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedy in respect of the applicant's complaint under Article 3 about the conditions of his detention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of his detention in remand prison no. IZ-71/1 in Tula from 19 November 2004 to 15 May 2008;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the domestic court's failure to examine speedily the applicant's appeal against the detention order of 1 November 2006;

7. *Holds* that there has been no violation of Article 6 of the Convention on account of the length of the criminal proceedings against the applicant;

8. *Holds* that there is no need to examine the applicant's complaint under Article 13 of the Convention on account of the lack of effective remedy in respect of the complaint about the length of the criminal proceedings against him;

9. *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 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent state 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;

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

Done in English, and notified in writing on 24 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President