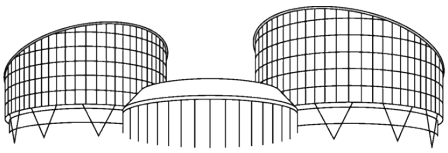

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GROSSMAN v. RUSSIA

(Application no. 46282/07)

JUDGMENT

STRASBOURG

31 October 2013

FINAL

24/03/2014

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

In the case of Grossman v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 46282/07) 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 Yuriy Gennadyevich Grossman ("the applicant"), on 25 September 2007.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, a lawyer practising in Moscow. 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 pending trial, that he had not had an effective remedy in that respect and that his pre-trial detention had been unreasonably long.

4. On 27 August 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 1977 and is serving a prison sentence in the Kemerovo Region.

A. Criminal proceedings against the applicant

1. Detention pending investigation

6. On an unspecified date the prosecution authorities opened an investigation into the activities of an organised criminal gang that had committed a series of murders and other crimes. The applicant was one of the suspects.

7. On 1 August 2006 the Naberezhnyye Chelny Town Court, Republic of Tatarstan, authorised a search of the applicant's flat. According to the applicant, he unsuccessfully complained about the court's search order to the town prosecutor on 20 March 2009.

8. On 19 August 2006 the applicant was arrested and informed of the court order of 1 August 2006. His flat was searched on the same day.

9. On 20 August 2006 the prosecutor's office appointed counsel N. to represent the applicant. On the same date the Town Court authorised the applicant's detention pending investigation. In particular, the court noted as follows:

> "[The applicant] is suspected of involvement in serious crimes which present a heightened danger to public order and entail a custodial sentence exceeding two years ...
>
> The court considers that, if released, [the applicant], who does not have a permanent place of residence in Naberezhnyye Chelny and who knows where the witnesses reside, might abscond or otherwise interfere with the establishment of the truth."

10. On 12 October 2006 the Town Court extended the applicant's detention until 18 February 2007. The court refused to release the applicant pending investigation, noting as follows:

> "The investigator requests that the [applicant's] detention be extended. ... If released, [the applicant] might abscond, continue criminal activities, put pressure on witnesses or otherwise interfere with the administration of justice.
>
> Having heard the defendant and his lawyer, who asked the court to dismiss the request, and the prosecutor who considered that it should be granted, and having studied the materials of the case, the court finds that the investigator's request is substantiated and should be granted."

11. On 14 November 2006 the Supreme Court of the Republic of Tatarstan upheld the decision of 12 October 2006 on appeal.

12. On 12 January 2007 counsel K. replaced counsel N., who had asked to be withdrawn.

13. On 13 February 2007 the Town Court extended the applicant's detention until 27 April 2007. The court held as follows:

> "... [the applicant] is charged with very serious offences which present a heightened danger to public order and entail a custodial sentence exceeding two years. This criminal case is of extreme complexity. The reasons justifying the [applicant's]

> remand in custody have not ceased to exist. The time-limit for the preliminary investigation has been extended until 27 April 2007. A number of investigative activities involving [the applicant] are pending. [The applicant] might abscond or commit new crimes [if released]."

14. On 20 March 2007 the Supreme Court of the Republic of Tatarstan upheld the court order of 13 February 2007 on appeal.

15. On 24 April 2007 the Town Court further extended the applicant's detention until 27 July 2007. The court reiterated verbatim the reasoning of 13 February 2007.

16. On 17 July 2007 the Town Court extended the applicant's detention until 18 August 2007, noting as follows:

> "[The applicant] is charged with a number of serious offences. His involvement in the crimes he has been charged with is supported by the materials submitted. The circumstances underlying the [applicant's] remand in custody have not ceased to exist."

17. On 26 July 2007 the Supreme Court of the Republic of Tatarstan extended the applicant's detention until 27 October 2007, referring to the gravity of the charges against the applicant and the risk that he might abscond or re-offend. On 4 October 2007 the Supreme Court of Russia upheld the decision of 26 July 2007 on appeal.

2. Detention pending study of the case file

18. On 21 May 2007 the applicant started reading the case file, which comprised twenty-five volumes and concerned twelve defendants. On 15 October 2007 the Supreme Court of the Republic of Tatarstan held that the applicant could not be released pending study of the case file, noting that he might abscond, put pressure on the parties to the criminal proceedings against him or re-offend, and extended the applicant's detention until 27 January 2008. On 10 January 2008 the Supreme Court of Russia upheld the decision of 15 October 2007 on appeal.

19. The applicant's detention pending study of the case file was further extended on 16 January 2008 until 19 February 2008. Referring to the reasons indicated earlier to justify the applicant's detention, the court held that he could not be released. It appears that on an unspecified date the decision of 16 January 2008 was quashed by the Supreme Court of Russia on appeal. The matter was remitted for fresh consideration and on 24 January 2008 the Supreme Court of the Republic of Tatarstan extended the applicant's detention pending study of the case file until 27 April 2008. The applicant communicated with the court via video link.

20. On 9 February 2008 the applicant started studying three additional volumes of the case. He was provided with a photocopying machine and a digital camera. On 19 February 2008 the prosecutor's office asked the Town Court to set a time-limit for the applicant to study the case file. The

applicant asserted that he would need five additional days to complete the study. The court granted him three additional days.

21. On 24 April 2008 the Supreme Court of Russia quashed the decision of 24 January 2008 on appeal. The court noted that the applicant should have been granted time to study the request lodged by the investigator asking for an extension of the applicant's detention. The court further indicated that the applicant should remain in custody pending consideration of the matter by the lower court. It appears that on 21 May 2008 the Supreme Court of the Republic of Tatarstan authorised the applicant's detention pending study of the case file until 19 February 2008. On 23 July 2008 the Supreme Court of Russia upheld the decision of 21 May 2008 on appeal.

3. Trial

22. On an unspecified date the prosecutor's office completed the investigation and forwarded the case file to the Supreme Court of the Republic of Tatarstan. Counsel A. was appointed to represent the applicant. On 24 April 2008 the Supreme Court fixed the preliminary hearing of the matter and ordered that the applicant remain in custody pending trial. On 25 June 2008 the Supreme Court of Russia upheld the decision of 24 April 2008 on appeal, after having heard the applicant, his counsel and the judge rapporteur.

23. On 2 June 2008 the Supreme Court of the Republic of Tatarstan opened a jury trial against the applicant and eleven other defendants.

24. On 25 September 2008 the jury delivered a guilty verdict in respect of the applicant on charges of membership of a criminal gang, illegal possessions of firearms, infliction of bodily injuries, kidnapping and murder.

25. On 3 October 2008 the Supreme Court of the Republic of Tatarstan authorised an extension of the applicant's detention until 10 January 2009 pending sentencing. On 25 November 2008 the Supreme Court of Russia upheld the decision of 3 October 2008 on appeal.

26. On 15 October 2008 the Supreme Court of the Republic of Tatarstan sentenced the applicant to sixteen years' imprisonment.

27. On 18 June 2009 the Supreme Court of Russia upheld the applicant's conviction on appeal.

28. On 7 November 2012 the Presidium of the Supreme Court of Russia quashed the appeal judgment of 18 June 2009 by way of a supervisory review for the appeal court's failure to ensure the presence of the applicant's lawyer at the appeal hearing and remitted the matter for a new appeal hearing. The parties did not inform the Court of the outcome of the proceedings.

B. Conditions of pre-trial detention

29. Following his arrest on 19 August 2007, the applicant was placed in detention in a remand prison. On numerous occasions between 2006 and 2009 the applicant was transferred to and detained in the Naberezhnyye Chelny temporary detention unit in connection with the investigation and trial.

1. Description provided by the Government

30. According to the Government, the applicant was detained at the temporary detention centre during the following periods:

- from 20 August to 6 September 2006;
- from 11 to 13 and from 18 to 27 October 2006;
- from 8 to 18 December 2006;
- from 10 to 19 January 2007;
- from 5 to 14 February 2007;
- from 28 February to 9 March 2007;
- from 14 to 19 March 2007;
- from 4 to 9 and from 20 to 25 April 2007;
- from 16 to 23 May 2007;
- from 30 May to 9 June 2007;
- from 29 June to 9 July 2007;
- from 11 to 18 and from 25 to 30 July 2007;
- from 1 to 10 August 2007;
- from 31 August to 10 September 2007;
- from 3 to 17 October 2007;
- from 2 to 12 and from 16 to 21 November 2007;
- from 12 December 2007 to 8 January 2008;
- from 11 to 18 January 2008;
- from 24 January to 1 February 2008;
- from 4 to 8 and from 11 to 27 February 2008;
- from 3 to 5 March 2008;
- from 4 to 9 and from 16 to 18 April 2008;
- from 15 to 24 June 2009;
- from 6 to 22 July 2009;
- from 22 to 29 December 2009.

31. The Government were unable to indicate the exact numbers of the cells in which the applicant had been detained. Nor could they submit information on the population of the temporary detention centre at the time of the applicant's detention. They provided the following overview of all the cells in the temporary detention centre:

Cell no.	Cell surface, square metres	Number of sleeping places
1	18.7	3

Cell no.	Cell surface, square metres	Number of sleeping places
2	12.4	2
3	12.0	2
4	6.81	2
5	18.7	3
6	12.3	6
7	11.9	6
8	12.8	4
9	19.3	10
10	18.7	10
11	12.7	6
12	18.9	3
13	12.5	6
14	19.3	10
15	12.1	6
16	19.6	3
17	12.3	4
18	11.5	6
19	6.9	2
20	11.9	6
21	11.7	6
22	20.2	4

32. There were no individual beds in the cells. The inmates had to share sleeping platforms. All the cells were equipped with a functioning ventilation system. All the cells had two windows, except for cells nos. 4 and 19, which had one window. Each window was covered with two metal grilles which did not prevent access to daylight. The cells were lit with 100-watt electric bulbs. The toilet in each cell was located at least 1.5 metres away from the dining table and the nearest sleeping place. It was separated from the living area of the cell by a 1.2-metre high brick wall.

33. The cells were disinfected once every three months. Inmates received three meals a day. The applicant did not have the opportunity to take daily outdoor exercise. He spent a certain amount of time outside the cell participating in investigative activities, taking showers, visiting doctors and meeting with his lawyer. He consulted a medical practitioner thirty-three times.

34. In June 2008 the temporary detention centre was completely refurbished. The electrical wiring and other equipment, toilets, water supply, ventilation and sewerage systems were replaced. The sleeping platforms were replaced with individual beds. The brick walls separating the toilets from the living areas of the cells were removed and new metal cabins were installed. New window frames were also installed.

2. Description provided by the applicant

35. According to the applicant, he was always detained in overcrowded cells. In particular, at least twelve inmates were detained in cells nos. 1, 12, 16 and 22, and at least nine were detained in cells nos. 2, 3 and 13.

36. There was no ventilation or access to daylight. The electric lighting was constantly on. Each cell was lit with a 60-watt electric bulb.

37. The distance between the toilet and the nearest sleeping places was between 0.2 and 0.5 metres. The wall separating the toilet from the living area of the cell was 0.5-metres high and offered no privacy to the person using the toilet.

38. The applicant was never taken out of the cell to participate in investigative activities. Meals were provided once a day. The food rations were insufficient; no meat, fish, fruit or vegetables were served. The applicant was not given bed sheets.

3. The authorities' response to the applicant's complaints about the conditions of his detention

39. On 21 February 2007 the deputy town prosecutor dismissed the applicant's complaint about the conditions of his detention in the temporary detention centre, noting as follows:

> "In the course of the inquiry [the head of the temporary detention centre] submitted that, in order to bring the premises of the temporary detention centre into compliance with the federal legislation, it should be subjected to reconstruction and refurbishment. The maximum capacity is 110 persons. However, following the amendments to the Code of Criminal Procedure of the Russian Federation requiring that suspects and defendants be present at court hearings, the average daily population has drastically increased to 140 persons. ... Every day the police book in 4-5 new inmates. Accordingly it is impossible to provide every detainee with an individual sleeping place. Furthermore, on 13 February 2007 ... 42 newly arrived inmates were booked in. As a result, the population of the temporary detention centre rose to 171 persons. There were eight inmates detained in cell no. 3 ... . This number does not exceed the capacity of the cell."

40. On 27 March 2007 the Ministry of the Interior of the Republic of Tatarstan replied to a complaint lodged by the applicant about the conditions of his detention in the temporary detention centre. In particular, the letter read as follows:

> "... the complaints about the conditions of detention communicated by [the applicant] at the hearing of the [Town Court] on 7 February 2007 should be considered substantiated in part. However, the allegation that there was an intent on the part of [the head of the temporary detention centre] to deliberately create such conditions of detention has not been substantiated.
>
> I would also inform you that in 2008 it is planned to allocate monetary funds for capital refurbishment and reconstruction of the temporary detention centre that would bring the conditions of detention in the temporary detention centre into compliance with the applicable legislation of the Russian Federation."

41. On 10 July 2007 the applicant and six other inmates detained in cell no. 2 of the temporary detention centre complained to the town prosecutor about overcrowding in the cell where they were detained. The applicant did not inform the Court of the prosecutor's response to the complaint, if any.

II. RELEVANT DOMESTIC LAW

42. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences ("the Detention of Suspects Act") (as amended), in force since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are held in remand prisons (section 8). They may be transferred to temporary detention facilities if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or court-house is not feasible because of the distance between them. Such detention in a temporary detention facility may not exceed ten days a month (section 13). Temporary detention facilities in police stations are designated for the detention of persons arrested on suspicion of a criminal offence (section 9).

43. Under paragraph 3.3 of the Internal Regulations for Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be 4 square metres. Paragraph 3.2 made provision for cells in temporary detention facilities to be equipped with a table, a toilet, running water, a shelf for toiletries, a drinking water tank, a radio and a rubbish bin. Furthermore, paragraphs 6.1, 6.40, and 6.43 of the regulations made provision for detainees to have outdoor exercise for at least one hour a day in a designated exercise area.

III. RELEVANT INTERNATIONAL DOCUMENTS

44. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ... However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities.

> They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.
>
> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

THE LAW

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

45. The applicant complained, under Articles 3, 6 and 13, of the appalling conditions of his detention in the Naberezhnyye Chelny temporary detention unit during multiple periods between 20 August 2006 and 29 December 2009. The Court will examine the complaint under Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

46. The Government noted that the applicant had failed to bring his grievances to the attention of the Russian courts and considered that his complaint should be rejected for failure to comply with the requirements of Article 35 § 1 of the Convention. In support of their argument, they cited the following examples from domestic practice. On 19 July the Novgorod City Court, Novgorod Region, awarded 45,000 roubles (RUB) to D. in respect of non-pecuniary damage resulting from the domestic authorities' failure to ensure proper conditions during his pre-trial detention. On 17 December 2008 the Sovetskiy District Court of Nizhniy Novgorod granted G.'s claims concerning his detention in an overcrowded cell and

awarded him RUB 2,000. On 14 October 2009 the Sovetskiy District Court of Nizhniy Novgorod granted B.'s claims concerning the conditions of his pre-trial detention in view of the lack of sufficient personal space, lighting, ventilation, fresh air and medical assistance, and awarded him RUB 100,000. On 26 March 2007 the Tsentralniy District Court of Kaliningrad found that the correctional colonies where R. had been serving a prison sentence had failed to provide him with adequate medical assistance and awarded him RUB 300,000. On 26 September 2008 the Berezniki Town Court of the Perm Region awarded Ye. RUB 65,000 in respect of non-pecuniary damage resulting from his detention in the temporary detention centre.

47. The applicant submitted that he had lodged numerous complaints about the conditions of his detention with the domestic authorities. All of them had been to no avail.

A. Admissibility

48. The Court observes that the applicant was detained in the Naberezhnyye Chelny temporary detention centre during multiple periods between 20 August 2006 and 29 December 2009. At the end of each period he was transferred to another detention facility pending the criminal proceedings against him. Those regular interruptions in the applicant's detention in the temporary detention centre do not prevent the Court from treating such detention as a "continuing situation". In the Court's opinion, it would be excessively formalistic, in the circumstances of the case, to insist that the applicant lodge a new complaint after the end of each of the multiple periods of his detention at the same detention facility (see, *mutatis mutandis*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

49. As regards the Government's objection as to the non-exhaustion of domestic remedies, the Court reiterates that in the case of *Ananyev* (*Ananyev*, cited above, §§ 93-119) 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 pre-trial detention. The Court concluded in that case that it had not been 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 complaints, in breach of Article 13 of the Convention.

50. The Court further observes that that in a number of earlier cases against Russia (see, for example, *Khristoforov v. Russia*, no. 11336/06, §§ 18-19, 29 April 2010) it dismissed the Government's objection as to the

alleged non-exhaustion of domestic remedies by the applicant for their failure to demonstrate the practical effectiveness of the applicant's recourse to the domestic authorities in respect of his complaints about the conditions of his detention in a temporary detention centre.

51. Having examined the Government's arguments, the Court finds no reason to depart from that conclusion in the present case. Accordingly, the Court rejects the Government's argument as to the exhaustion of domestic remedies.

52. In the light of the Court's above finding that the Russian legal system offers no effective remedy providing adequate redress, the Court considers that the six months' period should start running from the end of the situation complained of. Accordingly, the Court concludes that, by introducing the complaint on 25 September 2007, the applicant complied with the six-month criterion.

53. The Court notes that the complaints under Articles 3 and 13 of the Convention 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 3 of the Convention

(a) The parties' submissions

54. The Government considered that the conditions of the applicant's detention in the Naberezhnyye Chelny temporary detention centre, overall, had been compatible with national and Convention standards.

55. The applicant maintained his complaint. He also submitted statements made by K., Kh. and Yu., who had been detained in the same detention centre in 2006, 2008 and 2008-10 respectively. All of them confirmed the applicant's allegations concerning the conditions in the temporary detention centre.

(b) The Court's assessment

56. Article 3 of the Convention, as the Court has observed on many occasions, enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that, for a violation to be found, the suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or

punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland [GC], no. 30210/96, § ..., ECHR* 2000-XI §§ 92-94).

57. Turning to the circumstances of the present case, the Court observes that the parties disagreed as to certain aspects of the conditions of the applicant's detention. 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.

58. In this connection, the Court takes into account the information contained in the official documents addressed to the applicant in response to his complaints about the conditions of his detention. The Russian competent authorities expressly admitted that the temporary detention centre in Naberezhnyye Chelny had been overcrowded. The number of detainees had exceeded its maximum capacity. The designed capacity of the centre was 110 inmates, whereas its average daily population was as high as 140, and at times more than 170 inmates were detained there simultaneously (see paragraph 39 above).

59. The Court further notes that it has already examined the situation concerning the conditions of detention in the Naberezhnyye Chelny temporary detention centre during the period between 31 January 2005 and 1 October 2007 and found it incompatible with the requirements of Article 3 of the Convention (see *Gorovoy v. Russia*, no. 54655/07, §§ 47-51, 27 June 2013).

60. Having regard to the above, coupled with the fact that the Government did not submit any relevant information, the Court accepts as credible the applicant's allegations concerning the overcrowding of the temporary detention centre, which was corroborated by the statements of other inmates detained there. As a result of such overcrowding, the applicant's detention did not meet the minimum requirement as laid down in the Court's case-law, of 3 square metres per person (see, among many other authorities, *Ananyev*, cited above, § 148; *Trepashkin v. Russia* (no. 2), no. 14248/05, § 113, 16 December 2010; *Kozhokar v. Russia*, no. 33099/08, § 96, 16 December 2010; and *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010). The Court notes that the applicant was held at the temporary detention centre for 260 days. Although he was not permanently confined to his cell and spent some time outside the cell when meeting his lawyer or consulting a doctor, the Court nevertheless considers that such brief periods did not have an alleviating effect on the applicant's situation.

61. In the Court's opinion, such conditions of detention must have caused him considerable mental and physical suffering, diminishing his

human dignity, which amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

62. The Court takes into account the Government's argument that in the present case there was no positive intention to humiliate or debase the applicant. However, the absence of any such intention cannot exclude the finding of a violation of Article 3 of the Convention. Even if there had been no fault on the part of the administration of the temporary detention facility, it should be emphasised that Governments are answerable under the Convention for the acts of any State agency, since what is at issue in all cases before the Court is the international responsibility of the State (see, among other authorities, *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005).

63. The Court therefore considers that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in the Naberezhnyye Chelny temporary detention centre during multiple periods, totalling 260 days, between 20 August 2006 and 29 December 2009.

2. Article 13 of the Convention

64. The Court takes note of its earlier findings (see paragraphs 48-52 above), and concludes that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law enabling the applicant to complain about the conditions of his pre-trial detention in the temporary detention centre.

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

65. The applicant complained under Article 5 of the Convention that his pre-trial detention had not been based on sufficient and relevant reasons. The Court will examine the applicant's grievances under 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."

A. Admissibility

66. 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

1. The parties' submissions

67. The Government asserted that the length of the applicant's pre-trial detention had been justified. There had been specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, had outweighed the rule of respect for individual liberty. In particular, the applicant had been a member of an organised criminal gang and had been charged with serious crimes. He had not had a permanent place of residence and could have threatened the parties to the criminal proceedings against him, continued his criminal activities or interfered with the administration of justice. Furthermore, the domestic judicial authorities had taken into account that the applicant had absconded in 1997; he had been in hiding for two years before his arrest in 1999. In the Government's view, the applicant's pre-trial detention had been compatible with the standards set forth in Article 5 § 3 of the Convention. In particular, when considering the issue of the applicant's pre-trial detention, the national courts had examined the possibility of using alternative preventive measures to ensure that the applicant attended trial.

68. The applicant maintained his complaint. He considered that the national authorities had failed to substantiate their reasoning when extending his pre-trial detention. None of their arguments, such as the risk of his absconding or interfering with the administration of justice, or his lack of a permanent place of residence, had had any evidentiary basis. In particular, at no time had the domestic courts mentioned the fact that the applicant had allegedly absconded in 1997-99. Lastly, he argued that the national authorities had failed to demonstrate "special diligence" when bringing his case to trial.

2. The Court's assessment

(a) General principles

69. 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*, cited above, §§ 110 et seq.).

70. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a *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 continued 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*, cited above, §§ 152 and 153). 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 at trial (see *Jabłonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

71. 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 length. To this end they must examine all the arguments for and against the existence of a public interest which justifies a departure from the rule in Article 5, paying due regard to the principle of the presumption of innocence, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in those 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 the principles to the present case

72. The applicant was remanded in custody on 20 August 2006. He was convicted by the trial court on 15 October 2008. Thus, the period to be taken into consideration lasted approximately two years and two months.

73. The Court accepts that the reasonable suspicion that the applicant had 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 ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicant's placement in detention and whether they displayed "special diligence" in the conduct of the proceedings.

74. When extending the applicant's pre-trial detention, the domestic authorities referred to the gravity of the charges against him. In this respect they noted that he might interfere with the administration of justice, put pressure on the witnesses or other parties to the proceedings, or destroy evidence. They also cited the risk that he would abscond or continue with criminal activities, in view of his prior criminal record.

75. 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).

76. The Court accepts that in cases concerning organised crime and involving numerous accused, the risk that a detainee, if released, might put pressure on witnesses or otherwise obstruct the proceedings is often particularly high. All those factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account. There is no indication in the present case that the domestic courts in any way checked whether the applicant had indeed attempted to intimidate witnesses or to obstruct the course of justice in any other way. In such circumstances the Court has difficulty accepting the argument that there was a risk of interference with the administration of justice. Furthermore, such a risk was bound to decrease gradually as the trial proceeded and the witnesses were interviewed (compare *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006). The Court is not therefore persuaded that, throughout the entire period of the applicant's detention, compelling reasons existed for fearing that he might interfere with witnesses or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

77. As regards the existence of a risk that the applicant might abscond, the Court reiterates that such a danger 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 danger 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 authorities gave no reasons why they considered the risk of the applicant absconding to be decisive. The Government submitted that the applicant had absconded from the investigating authorities in 1997 and had subsequently been in hiding for two years. However, it is not the Court's task to take the place of the national authorities who ruled on the applicant's detention and to substitute its own analysis of the facts, arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). That circumstance was referred to for the first time in the proceedings before the Court; the domestic courts did not mention it in their decisions. The Court finds that the existence of a risk that the applicant might abscond was not established.

78. Similarly, the Court is not convinced that the domestic authorities' finding that the applicant might continue his criminal activities was sufficiently established. The Court does not discern any evidence in the materials submitted by the Government to substantiate that allegation.

79. Lastly, the Court observes that all the court orders extending the applicant's detention issued within the period under consideration were stereotypically worded in the same summary form.

80. 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 with pertinent specific facts or to consider alternative preventive measures, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as sufficient to justify its duration of two years and two months. Even though the reasons for the applicant's pre-trial detention might have existed, the authorities have failed to convincingly demonstrate them. In these circumstances, it will not be necessary for the Court to examine whether the domestic authorities acted with "special diligence".

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

82. Lastly, the applicant complained under Article 8 of the Convention about the search of his flat on 19 August 2006. He complained under Article 5 of the Convention that several extensions of his pre-trial detention had been unlawful and that the domestic judicial authorities had failed to ensure his effective participation in a number of detention hearings. Relying on Article 6 of the Convention, the applicant alleged that he had been unable to prepare for the trial and that the defence provided by State-appointed counsel had not been effective. He also relied on Article 13 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government considered the applicant's claim excessive. They further submitted that, given that the applicant's rights under the Convention had not been infringed, his claim in respect of damage should be rejected in full. Alternatively, they proposed that the finding of a violation would constitute sufficient just satisfaction.

87. The Court observes that the applicant was detained in appalling conditions in contravention of Article 3 of the Convention. The length of his pre-trial detention, which lasted approximately two years and two months, was not justified. The Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. However, the Court accepts the Government's argument that the specific amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

89. 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

1. *Declares* unanimously the complaints concerning the conditions of the applicant's detention in the Naberezhnyye Chelny temporary detention centre, the lack of an effective remedy in this respect and the length of his pre-trial detention admissible and the remainder of the application inadmissible;

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

3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

4. *Holds* by five votes to two that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five 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;

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

Done in English, and notified in writing on 31 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate joint opinion of Judges Isabelle Berro-Lefèvre and Dmitry Dedov is annexed to this judgment.

I.B.L.
S.N.

JOINT DISSENTING OPINION OF JUDGES BERRO-LEFEVRE AND DEDOV

We regret that we cannot share the view of the majority of the Chamber who found a violation of Article 5 § 3 of the Convention.

We observe that the present case concerned serious crimes, namely membership of a criminal gang, illegal possession of firearms, infliction of bodily injuries, kidnapping and murder. It was a classic example of organised crime, by definition presenting more difficulties for the investigating authorities and, later, for the courts in determining the circumstances of the matter. It is obvious that in cases of this kind continuous control and limitation of the defendants' contact with each other and with other persons may be essential to prevent their absconding, tampering with evidence and most importantly of all influencing, or even threatening, witnesses. All those factors can justify a relatively long period of detention, which in this case lasted approximately two years and two months.

Therefore, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see, for example, *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007). Accordingly, longer periods of detention than in other cases may be reasonable (compare *Rażniak v. Poland*, no. 6767/03, § 25, 7 October 2008).

In our view, the reasonable suspicion that the applicant had committed the offences he had been charged with, being based on cogent evidence, persisted throughout the trial leading to his conviction. And we consider that the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicant's detention and displayed "special diligence" in the conduct of the proceedings.

When extending the applicant's pre-trial detention, the domestic authorities did not automatically refer to the gravity of the charges against him. They noted that he might interfere with the administration of justice, put pressure on the witnesses or other parties to the proceedings or destroy evidence, as such actions remained vital for the criminal group throughout the whole period of the investigation proceedings. They also cited the risk that he would abscond or continue with criminal activities, in view of his prior criminal record.

It is clear from the case materials that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the twelve defendants who had been charged with acting as part of an organised criminal gang. The Chamber itself recognises that the reasons for the applicant's pre-trial detention "might have existed" (see paragraph 88). In these circumstances, and contrary to the majority, we consider that the need to obtain voluminous evidence from many sources,

coupled with the existence of a general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending his detention during the time necessary to complete the investigation, to prepare the case for trial and to hold a jury trial.

Regard being had to the above, we think that the combined arguments advanced by the domestic courts when deciding to keep the applicant in custody pending the criminal proceedings against him were capable of justifying his detention.

Lastly, it should be noted that the proceedings were of considerable complexity, taking into consideration the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. There is nothing in the materials before the Court – a fact not disputed by the parties – to suggest that there were significant periods of inactivity on the part of the prosecution or the court. The period under consideration comprised the investigation stage, the study of the case file by the defendants and the jury trial. We therefore consider that the national authorities displayed special diligence in the conduct of the proceedings.

Having regard to the foregoing, we conclude that there has been no violation of Article 5 § 3 of the Convention.