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

FIRST SECTION

Application no. 47283/09
Oleg Lvovich LEDENTSOV
against Russia
lodged on 24 April 2009

STATEMENT OF FACTS

The applicant, Oleg Lvovich Ledentsov, is a Russian national who was born in 1963. He lives in Perm and is currently serving his imprisonment sentense in correctional colony IK-11 in Bor (Nizhniy Novgorod Region).

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Criminal proceedings against the applicant

On 13 June 2000 the applicant, who was a deputy military prosecutor of military unit no. 63549 (Perm Region) at the material time, was discharged from military service "for breach of contract".

On 10 July 2000 the Military Prosecutor's Office of the Russian Missile Forces ("the Military Prosecutor's Office") opened a criminal case against the applicant into abuse of powers and extortion.

On 17 July 2000 the applicant's mother received summons for the applicant to appear at Military Prosecutor's Office on 18 July 2000. According to her, she forgot to inform the applicant about the summons.

On 18 July 2000 the Military Prosecutor's Office issued a charging order as well as an arrest warrant against the applicant *in absentia*. The arrest warrant stated that it had not been possible to establish the applicant's whereabouts. On the same day the applicant's name was included on the federal search list.

On 20 July 2000 Mr Moskalev, an advocate, informed the Military Prosecutor's Office that he was hired as the applicant's legal counsel.

On 26 July 2000 the applicant's father was questioned as a witness in that criminal case.

On 6 August 2000 the Military Prosecutor's Office opened a criminal case against the applicant into murder. It appears that two cases were subsequently joined.

On 14 September 2000 the applicant was additionally charged *in absentia* with murder. On the same day the arrest warrant of 18 July 2000 was replaced by a new one issued in the applicant's absence as well. The new arrest warrant stated that the applicant had been charged with serious crimes but had fled from justice and that he had attempted to put pressure on

witnesses. The arrest warrant did not specify any period of the applicant's authorised detention.

On 11 October 2002 the applicant was placed on an international wanted list.

On 27 December 2000 Mr Sachikhin, an applicant's counsel, complained to the General Prosecutor's Office that he had not been provided with procedural decision taken in the applicant's criminal case, *inter alia*, with the charging order and arrest warrant. The outcome of the complaint is unknown.

On 9 July 2001 the applicant's father was again questioned as a witness in the applicant's criminal case.

On 10 July 2001 the investigation was suspended because the applicant's whereabouts could not be established.

According to the applicant, in 2002 Mr Meshkantsev entered into the proceedings as his legal counsel and participated in some investigative actions, *inter alia*, searches of the applicant's parents' flat.

On 19 December 2004 the investigation was resumed.

On 20 December 2004 the applicant was arrested in Minsk (Belarus).

On 14 January 2005 the First Deputy of the Main Military Prosecutor withdrew the above-mentioned criminal cases from the Perm Military Prosecutor's Office and assigned it to the Main Military Prosecutor's Office in Moscow for investigation.

On 1 March 2005 the investigator in charge of the applicant's case sent to Minsk remand prison no. 1 a letter informing the applicant that he would be formally charged in due course after his extradition to Russia. In this letter the applicant was also informed of his right to have a legal counsel. According to the applicant, he has not received that letter being transferred to a remand prison in Vitebsk in the meantime.

On 22 March 2005 the applicant was extradited to Russia.

According to a written affidavit signed by Mr G., an applicant's inmate, between 23 and 28 March 2005 the applicant was kept in Smolensk remand prison *IZ-67/1* being unaware of the reasons for his arrest and the authorities did not contact the applicant during that period.

On 29 March 2005 Mr Meshkantsev informed the Main Military Prosecutor's Office that he was the applicant's legal counsel.

On 29 March 2005 the applicant was transferred to Moscow for investigation.

On 1 April 2005 the applicant was formally charged in the presence of his legal counsel, Mr Meshkantsev.

On 9 September 2005 the applicant's criminal case was submitted to the Military Court of 101st Garrison in Perm for trial. The applicant was tried by a single-judge formation composed of the judge R.

On 28 October 2005 the court granted the applicant's request and allowed his mother to represent him in the criminal proceedings along with a legal counsel.

On 25 July 2006 the Military Court of 101st Garrison convicted the applicant of murder, extortion and four counts of abuse of powers. He was sentenced to fifteen years' imprisonment. The conviction was based, *inter alia*, on testimonies of a victim (Mr Shakirov) and several prosecution witnesses (Mr Krasnoperov, Mr Maleshin, Mr Kamenshchikov and

Ms Shardakova) who failed to appear before the court. Their pre-trial written statements were read out.

The applicant and his mother lodged appeals within the time-limits established by law. They complained, *inter alia*, that the reading-out of the above pre-trial statements was unlawful.

Subsequently several additional briefs of appeal were filed by the defence. They were accompanied by written affidavits, *inter alia*, of newly discovered eye-witnesses of the murder who stated that the applicant had acted in self-defence.

On 20 June 2007 the Military Court of the Third Command in Odintsovo-10 (Moscow Region) refused to accept for examination the additional briefs of appeal because they were bearing the signature of the applicant's counsel who had not lodged the initial appeals. According to the applicant, they were also signed by him and his mother, i.e. the persons who had lodged the initial appeals. In support of his allegations the applicant submitted to the Court copies of the briefs of appeal, a written affidavit signed by his legal counsel, Mr Polezhaev, and the latter's speech before the appeal court.

22 June 2007 the Military Court of the Third Command examined the applicant's case on appeal. The court amended the judgment but upheld the sentence imposed on the applicant. The judgment stated that the victim (Mr Shakirov) and two witnesses (Mr Maleshin and Mr Kamenshchikov) did not appear before the trial court due to their illnesses. The judgment did not address the applicant's complaint in respect of the absence from the trial of two other prosecution witnesses, Mr Krasnoperov and Ms Shardakova.

On 15 December 2008 a judge of the Supreme Court of Russia initiated supervisory review proceedings and ordered a re-examination of the applicant's criminal case by the Presidium of the Military Court of the Third Command.

On 26 January 2009 the Presidium of the Military Court of the Third Command examined the supervisory review complaints lodged by the defence and dismissed them.

On 25 May 2009 a judge of the Supreme Court of Russia initiated supervisory review proceedings and submitted the applicant's case to the Military Section of the Supreme Court of Russia.

On 23 June 2009 the Military Section of the Supreme Court of Russia quashed the judgment of 26 January 2009 and ordered a new examination of the case by the Presidium. The Military Section found that the applicant had not been dully notified of the date of the hearing of 26 January 2009 and that the Presidium had given insufficient reasoning in its judgment.

On 17 September 2009 the Presidium of the Military Court of the Third Command examined the applicant's case anew and dismissed the supervisory review complaints lodged by the defence.

On 11 May 2010 a judge of the Supreme Court of Russia initiated supervisory review proceedings and submitted the applicant's case to the Military Section of the Supreme Court of Russia.

On 10 June 2010 the Military Section of the Supreme Court quashed the judgment of 17 September 2009 and ordered a new examination of the case by the Presidium of the Military Court of the Third Command. The Military Section held that the judges had examined the applicant's criminal case

previously and, therefore, they impartiality was open to doubts. It appears that the applicant's counsel was not informed of the date of the hearing despite his and the applicant's requests in this regard.

On 11 August 2010 the Presidium of the Military Court of the Third Command examined the applicant's case on the merits and dismissed the supervisory review complaints.

The supervisory review instances upheld the refusal by the appeal court to examine the additional briefs of appeal. It appears that at no time did they examine the additional briefs of appeal or written affidavits attached thereto.

The applicant also submitted to the Court two written affidavits signed by a defence witness, Mr M., and a legal counsel, Mr B. They were addressed to the Supreme Court of Russia and apparently attached to the appellant's supervisory review complaints.

According to the first affidavit, in July 2006 Mr M. saw the judge R. in Zvezdny Town, after he had retired to issue his judgment in the applicant's case in Perm, talking to several people and saying, *inter alia*, that he would impose on the applicant a heavy sentence. The judge was allegedly drunk and his conversations took place on working days during the office hours. The affidavit also contained allegations of unethical behaviour of the judge during the trial.

According to the second affidavit, the judge R. shouted at the applicant's legal counsels and defence witnesses during the trial in obscene language, made threats against them pounding on the table with his fist. The judge allegedly breached confidentiality of the deliberation room preparing the judgment in Zvezdny Town and having conversations with several people on working days during office hours.

The supervisory review instances dismissed the complaint of alleged breach by the judge R. of confidentiality of the deliberation room with reference to the trial minutes which did not indicate any breach thereof. It appears that the courts never addressed the applicant's complaint about unethical behaviour of the judge R. during the trial.

B. The applicant's arrest and detention

1. Detention between 20 December 2004 and 20 February 2005

On 20 December 2004 the applicant was arrested in Minsk (Belarus) as a person wanted by the Russian authorities. A record of the applicant's arrest was drawn up by the local police and given to the applicant against his signature. The arrest record, in so far as relevant, reads as follows:

> "[The applicant] is placed on an international wanted list. He is suspected of having committed crimes under Articles 105 § 1, 286 § 3 (a) and (b), and 163 § 2 (g) of the Criminal Code of the Russian Federation.
>
> On 8 April 2000 [he] murdered Mr S. at the dacha of his [the applicant's] parents situated at the address ..., Perm Region.
>
> In the end of April 2000, being a State official, he abused his powers in the town of Perm-75.
>
> In February 2000 he, in the town of Perm, committed extortion in respect of Mr K., under threats of violence and applying violence, and in respect of Mrs K., under threats of violence and negative consequences, making unlawful request to transfer [their] assets to him.

> Between 2 January and 1 February 2000, being a State official, he abused his powers in the town of Chaykovskiy, Perm Region, in the town of Perm and in the town of Perm-75".

On 2 February 2005 the Prosecutor's Office of Belarus informed its Russian counterpart that the applicant was detained in Minsk on the basis of the arrest warrant of 14 September 2000, that this arrest warrant expires on 20 February 2005 and a new detention order was necessary. Otherwise, the applicant would be released on 20 February 2005.

According to the applicant, he and his legal counsel Mr Meshkantsev did not receive a copy of the detention order of 14 September 2000 until 1 April 2005.

On an unspecified date in November 2005 the applicant lodged a complaint under Article 125 of the Code of Criminal Proceedings with the Military Court of the 101st Garrison claiming, *inter alia*, that his detention in Belarus on the basis of the detention order of 14 September 2000 had been unlawful. He argued that it had been issued by a prosecutor and not by a court, as required by the new Code of Criminal Procedure in force since 1 July 2002.

On 5 October 2006 the Military Court of the 101st Garrison in Perm dismissed the complaint as unfounded. It held that under Transitional Law no. 177-*FZ* of 18 December 2001, detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them (section 10 of the Law).

On 15 December 2006 the Military Court of the Third Command in the town of Odintsovo-10 (Moscow Region) upheld the decision of 5 October 2006.

On an unspecified date the applicant challenged before the Constitutional Court of Russia several provisions of the new Code of Criminal Procedure which had allowed his detention in Belarus on the basis of the arrest warrant issued by a prosecutor.

On 21 December 2006 the Constitutional Court of Russia issued ruling no. 528-*O*. The Constitutional Court declared the application inadmissible. It reiterated its settled case-law that non-judicial decisions relating to deprivation of liberty had ceased to be applicable after 1 July 2002. The Constitutional Court emphasised that "this position was fully applicable to the applicant's detention".

On 14 July 2010 the Presidium of the Military Court of the Third Command granted the applicant's supervisory review complaint against the appeal decision of 15 December 2006 and ordered a new appeal hearing. The Presidium held that the applicant had not been properly notified about the date of the appeal hearing.

On 20 September 2010 the Military Court of the Third Circuit examined the applicant's appeal against the decision of 5 October 2006, quashed the latter and issued a new decision granting his complaint. The court referred to the case-law of the Russian Constitutional Court on interpretation of section 10 of Transitional Law no. 177-*FZ* of 18 December 2001 and held that the applicant's detention in Belarus on the basis of the prosecutor's arrest warrant was unlawful because it was no longer valid at that time. The court noted that the Russian authorities were responsible for the applicant's unlawful detention in Belarus because it had been in direct causal link with

their legal assistance request. The court also declared unlawful the following omissions of the investigation authorities in connection with the applicant's detention in Belarus on the basis of the above arrest warrant: (a) failure to provide the applicant with a copy of the arrest warrant, (b) failure to give him reasons for his arrest and (c) failure to explain him his rights as a detained person.

On 29 November 2010 the applicant brought civil proceedings against the Russian Finance Ministry and Military Prosecutor's office seeking compensation of non-pecuniary damage for violation of his rights established by the Military Court of the Third Circuit.

On 18 May 2011 the Khamovnicheskiy District Court of Moscow granted the applicant's claim and awarded him 5.000 Russian roubles (about EUR 125 at the relevant time). The applicant appealed claiming that the amount of compensation was insufficient.

On 2 December 2011 the Moscow City Court upheld the judgment. According to the applicant, the judgment remains unenforced.

2. Detention between 20 February and 20 May 2005

On 14 February 2005, following a prosecutor's request to this effect, the Military Court of the Moscow Garrison issued a detention order to extend the applicant's detention pending his extradition to Russia "for three months, until 20 May 2005". The court noted in its detention order that, according to the prosecutor, the applicant's authorised period of detention was due to expire on 20 February 2005. The court referred to the gravity of the charges, the risks of absconding, re-offending and interfering with the justice, and the applicant's previous behaviour (hiding from justice in Belarus). The applicant, being in Belarus in detention pending extradition, was represented before the court by a legal-aid counsel appointed the same day.

According to the applicant, he was notified of the detention order on an unspecified date in March 2005 and received a copy thereof on an unspecified date in April 2005. His legal counsel allegedly received the detention order at the end of March 2005. The applicant appealed.

On 27 April 2005 the Military Court of the Moscow Command upheld the detention order in a summary fashion. Neither the applicant nor his counsels were present at the hearing.

On 21 December 2005 the Presidium of the Military Court of the Moscow Command, following the applicant's supervisory review complaint, quashed the appeal decision of 27 April 2005 and ordered a fresh examination of the applicant's case by the appeal court. The Presidium found that the applicant's legal counsel had not been summoned to the appeal hearing, that the applicant's request for personal participation in the appeal hearing and his additional briefs of appeal had not been examined by the appeal court.

On 10 February 2006 the Military Court of the Moscow Command examined the applicant's appeal anew and quashed the detention order of 14 February 2005. The appeal court found that, in breach of procedural law, the first-instance court had extended the applicant's detention instead of ordering his placement in custody. The applicant's case was remitted to the first instance court for a re-examination.

On 1 March 2006 the Military Court of the Moscow Garrison transferred the applicant's case to the Military Court of the 101st Garrison in Perm due to the rules of territorial jurisdiction.

On 17 April 2006 the Military Court of the 101st Garrison authorised the applicant's detention for three months, from 20 February 2005 to 20 May 2005.

On 13 October 2006 the Military Court of the Third Command upheld the detention order of 17 April 2006.

3. Detention between 20 May 2005 and 20 August 2005

On 18 May 2005 the Military Court of the Moscow Garrison extended his detention for three months, until 20 August 2005. The applicant was represented by two legal counsels, M. and V. The court noted that the applicant's attendance was not possible due to the fact that he was undergoing medical examination in the Serbskiy institute (a leading State psychiatric research centre based in Moscow). The reasons given by the court for the applicant's detention were essentially the same as in its previous detention order.

According to a medical certificate by the Serbskiy institute, the applicant underwent medical examination from 19 April to 17 May 2005. According to a letter of 25 May 2005 by the governor of remand prison *IZ-77/1*, the applicant was returned from the Serbskiy institute to the prison on 17 May 2005.

According to the applicant, he was provided with the detention order of 18 May 2005 only on 25 May 2005. The applicant lodged an appeal complaining, *inter alia*, that the detention order had been issued in his absence.

On 31 May 2005 the Military Court of the Moscow Command upheld the detention order in a summary fashion. The applicant and his legal counsel M. were present. As to the applicant's absence from the hearing, the court noted the first instance court had not been in possession of information about the end of the applicant's medical examination. It appears that one of the applicant's briefs of appeal against the detention order of 18 May 2005 was not examined.

On 30 June 2006 the Military Court of the Moscow Command examined that brief of appeal, set aside the detention order of 18 May 2005 and ordered a new examination of the applicant's case by the Military Court of the Moscow Garrison. The appeal court held that the first instance court did not take into account the judgment no. 6-*P* of 14 March 2002 by the Constitutional Court of Russia that non-judicial decisions relating to deprivation of liberty had ceased to be applicable after 1 July 2002. The court noted that on 20 February 2005 the applicant should have been placed in custody instead of his detention being extended.

On 11 July 2006 the Military Court of Moscow Garrison transferred the applicant's case to the Military Court of the 101st Garrison in Perm due to the rules of territorial jurisdiction.

On 22 May 2008 the Military Court of the 101st Garrison extended the applicant's detention for three months, until 20 August 2005.

On 5 November 2008 the Military Court of the Third Command upheld the detention order on appeal.

4. Detention between 20 August 2005 and 20 October 2005

On 7 July 2005 the Military Court of Moscow Garrison, giving essentially the same reasons as previously, extended the applicant's detention for two months, until 20 October 2005. The applicant appealed.

On 5 August 2005 the Military Court of the Moscow Command upheld the detention order, endorsing its reasoning. The court added that, according to the witnesses T. and M., the applicant had incited them to withdraw their incriminating testimonies.

5. Detention between 20 October 2005 and 9 April 2006

On 22 September 2005 the Military Court of the 101st Garrison set the hearing for 3 October 2005 and ordered that the preventive measure in respect of the applicant "should remain the same". The court referred to the gravity of the charges and to the fact that the applicant was hiding from investigation, inter alia, abroad for several years. The court also noted that three were no reasons to change the preventive measure. The court decision did not specify the authorised period of the applicant's detention.

On 31 October 2005 the Military Court of the Third Command upheld the decision in a summary fashion.

6. Detention between 9 April 2006 and 9 June 2006

On 21 February 2006 the Military Court of 101st Garrison extended his detention for three months, until 9 June 2006. Along with its usual reasoning, the court noted that in several letters to the witnesses the applicant had attempted to interfere with the investigation (apparently he pushed the witnesses to change their testimonies) and referred to results of a handwriting examination.

On 21 April 2006 the Military Court of the Third Command upheld the detention order in a summary fashion.

7. Detention between 9 June 2006 and 9 July 2006

On 8 June 2006 the Military Court of 101st Garrison extended his detention for one month, until 9 July 2006. As usual, the court referred to the gravity of the charges, the risks of absconding, re-offending and interfering with the justice, and the applicant's previous behaviour (hiding from justice in Belarus). The applicant appealed.

On 14 July 2006 the Military Court of the Third Command upheld the detention order in a summary fashion.

8. Detention between 9 July 2006 and 25 July 2006

On 30 June 2006 the Military Court of 101st Garrison extended his detention for one month, until 9 August 2006. The court gave the same reasons as in its previous detention order. The applicant appealed.

On 25 July 2006 the applicant was convicted and sentenced to fifteen years' imprisonment.

On 4 September 2006 the Military Court of the Third Command upheld the detention order of 30 June 2006

C. Conditions of detention in *IZ-77/1*

Between 28 March 2005 and 19 April 2005, as well as between 17 May 2005 and 13 October 2005, the applicant was detained in Moscow remand prison no. *IZ-77/1*, also known as "Matrosskaya Tishina". He provided the following description of his conditions of detention:

He had been kept in cell no. 243. The cell was about 12 square metres and had four bunk beds. It accommodated four to six inmates, convicted and remand prisoners, who had to sleep in shifts. The bunk beds had been short and the space between them did not allow a detainee to remain in a seated position. The remaining floor-space had been occupied by a long rusty metal table. The lavatory pan had not been separated from the living area and offered no privacy. Moreover, it was out of order. Running water in the cell was cold. The cell was infested with bugs, lice, fleas and cockroaches. There was no ventilation, the window measured 1.1 square metres could not be opened. The air had been stale and full of smoke. The applicant was a non-smoker. The natural light was insufficient. The artificial lights in the cell remained on day and night making normal sleep impossible. The walls and the ceiling were wet, musty and badly damaged. The floor was extremely dirty and cold. No cleaning or disinfection of the cell took place.

The applicant had been allowed a daily one-hour outdoor walk. The courtyard had no benches, tables or shelter from inclement weather as well as any plants. Showers had been allowed once a week no longer than 15 minutes. There had been no facilities in the cell for storage of personal items. The temperature at night fell down to 10ºC. The food was poor.

In support of his submissions the applicant produced written affidavits by his former cellmates who had been held in the same cell at the relevant time. The applicant also referred to the judgment in the case of *Starokadomskiy v. Russia* (no. 42239/02, §§ 42-49, 31 July 2008), where the Court had found a violation of Article 3 on account of his former cellmate's condition of detention in the same cell.

According to the applicant his complaints about conditions of detention to various authorities were to no avail.

D. Compensation proceedings under Federal Law no. 68-*FZ*

On 30 April 2010 the Russian Parliament adopted Federal Law no. 68-*FZ* "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act") which entered into force on 4 May 2010. The applicant initiated three sets of proceedings under the Compensation Act.

By a final decision of 28 October 2010 the Supreme Court of Russia refused to accept for examination the applicant's claim for compensation of unreasonable length of proceedings in respect of his complaint under Article 125 of the CCrP. The decision stated that those proceedings had not affected the length of the criminal proceedings against the applicant.

By a final decision of 15 February 2011 the Supreme Court of Russia refused to accept for examination the applicant's claim for compensation of unreasonable length of appeal proceedings against the detention order of

22 May 2008, the appeal decision being adopted on 5 November 2008. The decision stated that those proceedings had not lasted unreasonably long.

By a final decision of 29 March the Supreme Court again refused to accept for examination the applicant's claim for compensation of unreasonable length of proceedings in respect of his complaint under Article 125 of the CCrP. The Supreme Court found that the Compensation Act was not applicable to those proceedings.

RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. International law

1. CIS Agreement on crime control

Russia and Belarus are members of the CIS. On 24 April 1992 the Ministries of Internal Affairs of the CIS signed an Agreement on Co-operation in the Sphere of Crime Control ("the Agreement on Crime Control"). Section 6 of that Agreement provides as follows:

> "A Party shall, with regard to its internal legislation, assist another Party who requests:
>
> (a) the arrest of a person who evades investigating authorities, trial or serving a sentence, or the detention of such a person if necessary;
>
> (b) the extradition of a person for criminal prosecution or for serving a sentence."

2. CIS Convention on legal assistance

On 22 January 1993 the Independent States signed a Convention on Legal Assistance in Civil, Family and Criminal Cases ("the Convention on Legal Assistance"), which provided as follows:

> **Article 6. Range of legal assistance**
>
> "The Contracting Parties shall provide each other with legal assistance through conducting procedural and other actions provided for by the legislation of the requesting Contracting Party, in particular, ... interrogation of accused persons, ... opening criminal proceedings, ... and service of documents."
>
> **Article 56. Obligation of extradition**
>
> "1. The Contracting Parties shall ... on each other's *requests* extradite persons, who find themselves in their territory, for criminal prosecution or serving a sentence.
>
> 2. Extradition for criminal prosecution shall extend to offences which are criminally punishable under the laws of the requesting and requested Contracting Parties, and which entail at least one year's imprisonment or a heavier sentence."
>
> **Article 58. Request for extradition**
>
> "1. A *request* for extradition (*требование о выдаче*) shall include the following information:
>
> (a) the title of the requesting and requested authorities;

(b) the description of the factual circumstances of the offence, the text of the law of the requesting Contracting Party which criminalises the offence, and the punishment sanctioned by that law;

(c) the [name] of the person to be extradited, the year of his birth, citizenship, place of residence, and, if possible, the description of his appearance, his photograph, fingerprints and other personal information;

(d) information concerning the damage caused by the offence.

2. A *request* for extradition for the purpose of criminal persecution shall be accompanied by a certified copy of a detention order....”

Article 61. Arrest or detention before the receipt of a request for extradition

“1. The person whose extradition is sought may also be arrested before receipt of a *request* for extradition, if there is a related *petition* (*ходатайство*). The *petition* shall contain a reference to a detention order ... and shall indicate that a request for extradition will follow. A *petition* for arrest ... may be sent by post, wire, telex or fax.

2. The person may also be detained without the *petition* referred to in point 1 above if there are legal grounds to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition.

3. In case of [the person’s] arrest or detention before receipt of the *request* for extradition, the other Contracting Party shall be informed immediately.”

Article 61-1. Search for a person before receipt of the request for extradition

“1. The Contracting Parties shall ... search for the person before receipt of the *request* for extradition if there are reasons to believe that this person may be in the territory of the requested Contracting Party....

2. A request for the search ... shall contain ... a request for the person’s arrest and a promise to submit a request for his extradition.

3. A request for the search shall be accompanied by a certified copy of ... the detention order....

4. The requesting Contracting Party shall be immediately informed about the person’s arrest or about other results of the search.”

Article 62. Release of the person arrested or detained

“1. A person arrested pursuant to Article 61 § 1 and Article 61-1 shall be released ... if no *request* for extradition is received by the requested Contracting Party within 40 days of the arrest.

2. A person arrested pursuant to Article 61 § 2 shall be released if no *petition* issued pursuant to Article 61 § 1 arrives within the time established by the law concerning arrest.”

Article 67. Handing over the person to be extradited

“The requested Contracting Party shall inform the requesting Contracting Party about the place and time of the hand-over. If the requesting Contracting Party does not take the person to be extradited within 15 days after the fixed date for handing over, the person shall be released.”

B. Domestic law and practice

1. Detention on remand and judicial review thereof

A new Code of Criminal Procedure (CCrP) of 2001 entered into force on 1 July 2002. Under Article 108 of the CCrP, a court was empowered to order detention of an accused pending investigation.

Under the Transitional Law no. 177-FZ of 18 December 2001, detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them (section 10 of the Law).

The Constitutional Court of Russia stated with reference to the Transitional Law that non-judicial decisions relating to deprivation of liberty ceased to be applicable after 1 July 2002 (see, among others, judgment no. 6-P of 14 March 2002; decision no. 181-O of 27 May 2004 and decision no. 3-O-P of 18 January 2011). The Constitutional Court also clarified that detention orders issued before 1 July 2002 continued to be valid within the time-limit indicated in them, the authorized period of detention starting from the date of their issue (decision no. 119-O-O of 19 January 2010).

Pursuant to Article 220-1 of the Code of Criminal Procedure of 1960, in force at the material time, a remand prisoner could apply for a judicial review of his pre-trial detention.

Article 125 of the new CCrP provides for judicial review of a decision or (in) action on the part of an inquirer, investigator or prosecutor, which has affected constitutional rights or freedoms of parties to criminal proceedings. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

2. Regulations on judicial ethics and confidentiality of deliberation room

In exercising his or her powers, and also in his or her conduct outside the office, a judge must refrain from anything that would derogate from the authority of the judicial power or the dignity of a judge or cast doubts on his or her objectivity, fairness and impartiality (Section 3 § 2 of Law No. 3132-I of 26 June 1992 “On the Status of Judges”).

The judge shall be tolerant, polite, tactful and respectful in regard to the trial participants (Article 4 § 4 of the Code of Judicial Ethics of 2 December 2004).

A judge may not participate in proceedings in a criminal case where circumstances disclose reasons to believe that he/she has personal interest, direct or indirect, in the outcome of the case (Article 61 of the CCrP).

After hearing the final statement of the defendant, the court shall retire to the deliberation room (Article 295 § 1 of the CCrP).

A judgment shall be determined by the court in the deliberation room (Article 298 § 1 of the CCrP). After working hours, as well during the working day, the court may take a recess and leave the deliberation room. The judges may not disclose the opinions they had while they deliberated and determined the judgment (Article 298 § 2 of the CCrP).

The unconditional grounds for quashing of a judicial decision include an unlawful court composition which issued a judgment as well as a violation of the secrecy of judges' deliberations while determining the judgment (Article 381 § 2 (2) and (8) of the CCrP).

3. Right to file additional appeal submissions

A person who has filed an appeal may modify it or add additional arguments to it until the beginning of the appeal hearing (Article 359 § 4 of the CCrP).

COMPLAINTS

(1) He complains under Article 6 that the trial court was biased and issued its judgment in breach of confidentiality of the deliberation room;

(2) He complains under Article 6 that his conviction was based, *inter alia*, on pre-trial statements of a victim and four prosecution witnesses who were not examined in court;

(3) He complains under Article 6 that the appeal court did not accept for examination his additional briefs of appeal.

QUESTIONS

1. Was the judge R., who heard the applicant's case at first instance, impartial, as required by Article 6 § 1 of the Convention? The Government are requested to address the following points:

(a) Was the requirement of impartiality observed, given the information provided for in written affidavits by Mr B. and Mr M.?

(b) Were their allegations verified by any domestic authority (see *Remli v. France*, 23 April 1996, § 48, *Reports of Judgments and Decisions* 1996-II; *Farhi v. France*, no. 17070/05, §§ 27-32, 16 January 2007)? If so, the Government are requested to produce the findings of any such inquiry.

(c) If the allegation of lack of impartiality of the trial court has been proven, was it a ground for setting aside the conviction?

2. Given that the victim (Mr Shakirov) and prosecution witnesses (Mr Krasnoperov, Mr Maleshin, Mr Kamenshchikov and Ms Shardakova) were absent from the trial and that their pre-trial written statements were read out instead, did the applicant have an effective opportunity to question them, as required by Article 6 §§ 1 and 3 (d) of the Convention? The Government are requested to address the following points:

(a) Was the applicant's conviction in respect of the relevant episodes based to a decisive degree on the statements of the victim and the witnesses absent from trial?

(b) Did the defense object to the reading out of their written statements?

(c) Did the competent national courts assess the impact of the absence of the victim and witnesses on the fairness of the proceedings?

(d) Was the applicant able to examine the witnesses against him during the pre-trial proceedings? Specifically, was he able to put questions to these witnesses and to submit his objections? In the affirmative, was he assisted by a lawyer in examining the witnesses? Did the confrontation procedure, conducted by the State officials, meet the requirements of independence and impartiality (see *Melnikov v. Russia*, no. 23610/03, § 80, 14 January 2010)?

(e) Was there a good reason for the absence of the victim and witnesses during the whole trial?

(f) Did the national authorities make reasonable effort to secure presence of the victim and witnesses during trial as requested by the applicant? Were these efforts duly reviewed by the domestic courts (see *Bonev v. Bulgaria*, no. 60018/00, § 43 with further references, 8 June 2006)?

3. Was the refusal by the appeal court to accept for examination the additional briefs of appeal against the applicants' conviction compatible with the requirements of Article 6 § 1 of the Convention? Were those briefs of appeal and evidence attached thereto examined in the subsequent supervisory review proceedings?