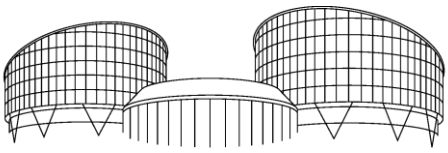

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BLOKHIN v. RUSSIA

(Application no. 47152/06)

JUDGMENT

STRASBOURG

14 November 2013

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 23/03/2016

This judgment may be subject to editorial revision.

In the case of Blokhin v. Russia,

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

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

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 47152/06) 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 Ivan Borisovich Blokhin ("the applicant"), on 1 November 2006.

2. The applicant was represented by Mr I. Novikov, a lawyer practising in Novosibirsk. 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 his detention in a temporary detention centre for juvenile offenders had been unlawful, that the conditions of his detention there had been inhuman, and that the proceedings against him had been unfair.

4. On 29 September 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1992 and lives in Novosibirsk.

A. The applicant's background and medical condition

6. The applicant's parents were deprived of their parental responsibility and he was brought up by his grandfather, who was his guardian.

7. The applicant was twelve years old at the material time. He suffered from an attention-deficit hyperactivity disorder (a mental and neurobehavioural disorder characterised by either substantial attention difficulties, or hyperactivity and impulsiveness, or a combination of the two) and enuresis (a disorder involving urinary incontinence).

8. On 27 December 2004 and 19 January 2005 he was examined by a neurologist and a psychiatrist. He was prescribed medication, regular supervision by a neurologist and a psychiatrist and regular psychological counselling.

B. Pre-investigation inquiry regarding the applicant

9. On 3 January 2005 the applicant was at the home of his nine-year old neighbour S. when he was arrested and taken to the police station of the Sovetskiy District of Novosibirsk. He was not informed of the reasons for the arrest.

10. According to the applicant, he was put in a cell that had no windows and the lights in the cell were turned off. After he had spent about an hour in the dark, he was questioned by a police officer. The police officer told him that S. had accused him of extortion. He urged the applicant to confess, saying that if he did he would be immediately released, whereas if he refused he would be placed in custody. The applicant signed a confession statement. The police officer then immediately telephoned the applicant's grandfather to tell him that the applicant was at the police station and could be taken home. When his grandfather arrived at the police station, the applicant retracted his confession and protested his innocence.

11. The Government disputed the applicant's account of the events at the police station. They submitted that the applicant had been asked to give an "explanation" rather than being formally questioned, that he had been interviewed by a police officer who had pedagogical training, and that he had been apprised of his right to remain silent. He had not been subjected to any pressure or intimidation. His grandfather had been present during the interview.

12. On the same day the applicant's grandfather signed a written statement describing the applicant's character and way of life. He stated that two days earlier he had seen the applicant in possession of some money. When asked where the money had come from, the applicant had said that he had got it from his father.

13. On 12 January 2005 the Department of the Interior of the Sovetskiy District of Novosibirsk refused to institute criminal proceedings against the

applicant. Relying on the applicant's confession and the statements of S. and his mother, it found it to be established that on 27 December 2004 and 3 January 2005 the applicant had extorted money from S. His actions therefore contained elements of the criminal offence of extortion, punishable under Article 163 of the Criminal Code. However, given that the applicant was below the statutory age of criminal responsibility he could not be prosecuted for his actions.

14. On 3 February 2005 the applicant's grandfather complained to the prosecutor's office of the Sovetskiy District of Novosibirsk that the applicant, a minor suffering from a psychological disorder, had been intimidated and then questioned in the absence of his guardian and that his confession had been obtained under duress. The grandfather requested that the confession statement be declared inadmissible as evidence and that the pre-investigation inquiry be closed on account of lack of evidence of an offence, rather than the applicant's age.

15. On 8 June 2005 the prosecutor's office of the Sovetskiy District of Novosibirsk quashed the decision of 12 January 2005, finding that the pre-investigation inquiry had been incomplete. It ordered a further pre-investigation inquiry.

16. On 6 July 2005 the Department of the Interior of the Sovetskiy District of Novosibirsk again refused to institute criminal proceedings against the applicant, for the same reasons as before.

17. During the following months the applicant's grandfather lodged several complaints with prosecutor's offices of various levels, asking for a fresh examination of the case against the applicant. He complained that the applicant's confession had been obtained as a result of intimidation by the police; in particular, he had been placed in a dark cell for an hour and he had then been questioned by a police officer in the absence of a guardian, psychologist or teacher. The police officer had coerced the applicant into signing the confession statement without the benefit of legal advice. He had then issued a decision refusing to institute criminal proceedings on the ground that the applicant had not reached the statutory age of criminal responsibility, while stating at the same time that the applicant's involvement in extortion had been established.

18. By letters of 4 August, 9 November and 16 December 2005 the prosecutor's office of the Sovetskiy District of Novosibirsk and the prosecutor's office of the Novosibirsk Region replied that no criminal proceedings had been instituted against the applicant on grounds of his age. He therefore did not have the status of a suspect or a defendant. On 3 January 2005 he had been asked to give an "explanation" rather than questioned by the police. In those circumstances the participation of a lawyer, psychologist or teacher had not been mandatory. There was no evidence that the applicant had been held in a dark cell before the interview. That the applicant had committed extortion had been established on the

basis of the statements of S. and his mother and the applicant's admission of guilt during the interview of 3 January 2005.

C. Detention order

19. On 10 February 2005 the Department of the Interior of the Sovetskiy District asked the Sovetskiy District Court of Novosibirsk to order the applicant's placement in a temporary detention centre for juvenile offenders. It noted that the applicant had a history of delinquency, such as several instances of disorderly behaviour and extortion committed between 2002 and 2004. He had been detained in the temporary detention centre for juvenile offenders in September 2004. His parents had been deprived of parental responsibility and he lived with his grandfather, who was also his guardian. The applicant spent most of his time on the streets committing delinquent acts or in a computer club. On 27 December 2004 he had committed a further act of extortion. On account of his age, no criminal proceedings had been instituted. In view of those factors, it was in his interest to place him in the detention centre for thirty days to prevent him for committing further delinquent acts and to "correct" his behaviour.

20. On 21 February 2005 the Sovetskiy District Court held a hearing. The applicant and his grandfather attended and asked the court to refuse the Department of the Interior's request. They submitted medical certificates confirming that the applicant suffered from a psychological disorder and enuresis. Court-appointed counsel was also present at the hearing but, according to the applicant, he remained passive throughout the proceedings.

21. On the same day the court ordered the applicant's placement in the temporary detention centre for juvenile offenders for thirty days. Referring to section 22(2)(4) of the Minors Act (see paragraph 58 below), it held as follows:

> "Having heard the parties to the proceedings and having examined the materials submitted by them, the court considers that the request must be allowed for the following reasons: [the applicant] is registered in the database of [the Juvenile Department of the police]; he was previously placed in the [temporary detention centre for juvenile offenders] for behaviour correction but did not draw the proper conclusions and committed further delinquent acts; the preventive measures put in place by the inspection [on juvenile issues] and by the guardian have not produced results, which shows that [the applicant] has not learnt his lesson. [The applicant] must be placed in the [temporary detention centre for juvenile offenders] for thirty days for behaviour correction ..."

The court further noted that it had been established on the basis of a written statement by S.'s mother and the applicant's confession statement that the applicant had committed delinquent acts on 27 December 2004 and 3 January 2005. His guardian's submission that he had not committed those acts was therefore unconvincing.

D. Detention in the temporary detention centre for juvenile offenders

22. On 21 February 2005 the applicant was placed in the Novosibirsk temporary detention centre for juvenile offenders, where he remained until 23 March 2005.

1. The applicant's description of the conditions of detention in the centre

23. According to the applicant, he had shared his bedroom in the centre with seven other inmates. The lights were kept on all night.

24. During the day inmates were forbidden to lie on their beds or to enter the bedroom. They had to spend the whole day in a large empty room which had no furniture or sports equipment. On a few occasions they were given a chess set and other board games. They were allowed to go out into the yard only twice during the applicant's thirty-day stay in the centre.

25. Inmates had classes twice a week for about three hours. They had mathematics and Russian grammar classes only. They were not taught any other courses from the officially approved secondary school curriculum. About twenty children of different ages and school levels were taught together in one class.

26. The supervisors applied collective punishment to the inmates. If one of them committed a breach of the centre's strict regime, all inmates were forced to stand in line against the wall without moving, talking or being allowed to sit down. Given that many inmates were psychologically unstable and unruly, because of their socially disadvantaged background, such punishment was applied every day and often lasted for hours.

27. Inmates were not allowed to leave the room where they were assembled. They had to ask for the supervisor's permission to go to the toilet and were accompanied there in groups of three. They therefore had to wait until such a group was formed before being able to go to the toilet. Given that the applicant suffered from enuresis, the fact that he could not go to the toilet as often as he needed caused him bladder pain and psychological suffering. If his requests for permission to go to the toilet became too frequent, the supervisors punished him by making him do particularly arduous cleaning work.

28. Although the applicant's grandfather had informed the staff of the centre about the applicant's enuresis and his attention-deficit hyperactivity disorder, the applicant did not receive any treatment.

2. The Government's description of the conditions of detention

29. According to the Government, each bedroom in the temporary detention centre for juvenile offenders measured seventeen square metres and was equipped with four beds. Access to the bathrooms and toilets situated on each floor was not limited.

30. The centre had a dining room where meals were served five times a day. There was also a games room and a sports room. Audio and video equipment, educational games and fictional works were available.

31. The supervisors carried out "preventive work" with each inmate of the centre and could apply incentive measures or punishment measures in the form of oral reprimands. Corporal punishment was not used; nor were juvenile inmates ever required to do hard or dirty work.

32. The centre's medical unit had all the necessary equipment and medicine. It can be seen from the staff list of the centre submitted by the Government that the medical unit was staffed by a paediatrician, two nurses and a psychologist. According to the Government, each child was examined by the paediatrician on his admission and every day thereafter. Treatment was prescribed when necessary. It could be seen from the applicant's medical records that he had not informed the doctor about his enuresis.

33. The applicant's personal file containing, in particular, the information about his medical condition on admission, the preventive work carried out and the punishment applied to him was destroyed after the expiry of the statutory time-limit on storage, in accordance with Order no. 215 of the Ministry of the Interior of 2 April 2004 (see paragraph 65 below). The Government submitted an undated certificate issued by the detention centre's administration stating that the applicant's personal file had been burnt, together with other files from 2005, on 17 January 2008.

34. According to the Government, the applicant's medical records were destroyed for the same reason, in accordance with Order no. 340 of 12 May 2006 of the Ministry of the Interior which provided that medical records were to be stored for three years.

35. The Government submitted a written statement by a supervisor at the detention centre dated 23 December 2010. She confirmed the Government's description of the conditions of detention in the centre. She also stated that one of the supervisors was always present in the room where the inmates were gathered, which ensured continuity of the educational process. Teachers from the neighbouring school regularly came to the centre so that the inmates could follow the secondary-school curriculum. After their release from the centre, they received an education progress record. She stated that she did not remember the applicant but asserted that she had not received any requests or complaints from him or from any other inmate.

36. The Government also submitted a copy of an agreement of 1 September 2004 between the detention centre and secondary school no. 15 according to which the school undertook to organise secondary-school courses in the centre in accordance with a curriculum developed by the centre. A copy of an undated two-week curriculum was produced by the Government. It included four classes per day on Tuesdays, Thursdays and Fridays.

3. The applicant's medical condition after release from the temporary detention centre for juvenile offenders

37. On 23 March 2005 the applicant was released from the detention centre.

38. On 24 March 2005 he was taken to hospital, where he received treatment for neurosis and attention-deficit hyperactivity disorder.

39. On 31 August 2005 the applicant was placed in an orphanage. On 1 November 2005 he was transferred to a psychiatric hospital, where he remained until 27 December 2005.

40. On 4 October 2005 the applicant's grandfather complained to the Prosecutor General's Office that the applicant, who suffered from a mental disorder, had not received any medical treatment in the temporary detention centre for juvenile offenders, which had caused a deterioration in his condition; nor had he been provided with any educational courses. He did not receive any reply to his complaint.

E. Appeals against the detention order

41. Meanwhile, the applicant's grandfather appealed against the detention order of 21 February 2005. He submitted, firstly, that the detention was unlawful because the Minors Act did not permit detention for "behaviour correction". Secondly, he complained that he had not been informed of the decision of 12 January 2005 refusing to institute criminal proceedings against the applicant and had therefore been deprived of an opportunity to appeal against it. He further submitted that the court's finding that the applicant had committed an offence had been based on the statements of S. and his mother and the applicant's confession statement. However, the applicant had made his confession statement in the absence of his guardian. Nor had a teacher been present. No teacher had been present during the questioning of S. either. Their statements were therefore inadmissible as evidence. Moreover, S. and his mother had not attended the court hearing and had not been heard by the court. Nor had the court verified the applicant's alibi. Lastly, the applicant's grandfather complained that the court had not taken into account the applicant's frail health and had not verified whether his medical condition was compatible with detention.

42. On 21 March 2005 the Novosibirsk Regional Court quashed the detention order of 21 February 2005 on appeal. It found that behaviour correction was not among the grounds listed in section 22(2)(4) of the Minors Act for placing a minor in a temporary detention centre for juvenile offenders. Detention for behaviour correction therefore had no basis in domestic law. Moreover, the District Court had not stated reasons why it considered it necessary to detain the applicant. The mere fact that the applicant had committed an offence for which he was not liable to

prosecution because of his age could not justify his detention. Such detention would be permissible only if one of the additional conditions listed in section 22(2)(4) of the Minors Act (see paragraph 58 below) was met. The Regional Court remitted the case to the District Court for fresh examination.

43. On 11 April 2005 the Sovetskiy District Court discontinued the proceedings because the Department of the Interior had withdrawn its request for the placement of the applicant in the temporary detention centre for juvenile offenders. The applicant and his grandfather were not informed of the date of the hearing.

44. On 22 March 2006 the applicant's grandfather lodged an application for supervisory review of the decision of 11 April 2005. He complained that as a result of the discontinuation of the proceedings the applicant had been deprived of an opportunity to prove his innocence in respect of the offence for which he had already unlawfully served a term of detention in the temporary detention centre for juvenile offenders.

45. On 3 April 2006 the President of the Novosibirsk Regional Court quashed the decision of 11 April 2005. He found, firstly, that, in accordance with section 31.2 § 3 of the Minors Act, a judge examining a request for the placement of a minor in a temporary detention centre for juvenile offenders had the power either to grant or to reject the request. He had no power to discontinue the proceedings. Secondly, the applicant and his guardian had not been informed of the date of the hearing and had therefore been deprived of an opportunity to make submissions on the issue of discontinuation of the proceedings.

46. On 17 April 2006 the prosecutor of the Novosibirsk Region lodged an application for supervisory review of the Regional Court's decision of 21 March 2005.

47. On 12 May 2006 the Presidium of the Novosibirsk Regional Court quashed the decision of 21 March 2005, finding that it had been adopted by an unlawful composition of judges. It remitted the case for a fresh examination on appeal.

48. On 29 May 2006 the President of the Novosibirsk Regional Court held a fresh appeal hearing and upheld the decision of 21 February 2005 ordering the applicant's placement in the temporary detention centre for juvenile offenders. He found that the applicant had committed a delinquent act punishable under Article 163 of the Criminal Code but that no criminal proceedings had been instituted against him because he had not reached the statutory age of criminal responsibility. He belonged to a "problem family"; his parents had been deprived of parental responsibility and he was cared for by his grandfather. He played truant from school and spent most of the time on the streets or in a computer club. In those circumstances, it had been necessary, in accordance with section 22(2)(4) of the Minors Act, to place him in the temporary detention centre for juvenile offenders for thirty days

to prevent him from committing further delinquent acts. The fact that the District Court had referred to "behaviour correction" as a ground for detention had not made the detention order of 21 February 2005 unlawful. The applicant's detention had been justified by other grounds. Nor could the detention order of 21 February 2005 be quashed on account of the applicant's frail health, given that it had already been enforced in March 2005.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

A. Relevant domestic law

1. Constitution of the Russian Federation

49. An arrested or detained person or a person accused of a criminal offence is entitled to legal assistance from the time of his or her arrest, placement in custody, or when charges are brought (Article 48 § 2).

2. Criminal Code

50. The Criminal Code fixes the age of criminal responsibility at sixteen years old. For certain offences, including extortion, the age of criminal responsibility is fixed at fourteen years old (Article 20).

3. Code of Criminal Procedure

51. A suspect or an accused is entitled to legal assistance from the time of the arrest (Articles 46 § 4 (3), 47 § 4 (8) and 49 § 3).

52. The presence of a defence lawyer is mandatory if the suspect or the accused is a minor. If neither the minor nor his guardian has retained a defence lawyer, one must be appointed by the police officer, the investigator, the prosecutor or the judge in charge of the case (Article 51 §§ 1 and 3).

53. A defence lawyer must be present during each questioning of the minor suspect. The presence of a psychologist or a teacher is also mandatory if the suspect is under sixteen years old. The police officer, the investigator or the prosecutor who is in charge of the questioning must ensure that a psychologist or a teacher is present during each questioning (Article 425 §§ 2 to 4).

54. The guardian of a juvenile suspect is entitled to participate in all investigative actions starting from the first questioning (Article 426 §§ 1 and 2 (3)).

55. Witnesses are to be examined directly by the trial court (Article 278). Statements given by the victim or a witness during the pre-trial investigation can be read out with the consent of the parties in two cases: (i) if there is a substantial discrepancy between those statements and the testimony before the court; or (ii) if the victim or witness has failed to appear in court (Article 281).

4. Minors Act

56. The Federal Law on the Basic Measures for Preventing Child Neglect and Delinquency of Minors, no. 120-FZ of 24 June 1999 ("the Minors Act") defines a minor as a person under the age of eighteen years (section 1).

57. A minor with special educational needs who has committed a delinquent act before reaching the statutory age of criminal responsibility may be placed in a "closed educational institution" for up to three years (section 15(4-7)). The main aims of closed educational institutions are as follows:

i) the accommodation, upbringing and education of minors between eight and eighteen years old requiring a special educational approach;

ii) the psychological, medical and pedagogical rehabilitation of minors, as well as individual preventive work;

iii) the protection of the rights and legitimate interests of minors, and the provision of medical care and of secondary and professional education;

iv) the provision of social, psychological and pedagogical assistance to minors with health, behavioural or educational difficulties;

v) the organisation of sports, science or other clubs or sections and encouragement of participation by minors in such clubs or sections;

vi) the implementation of programmes and policies aimed at developing law-abiding behaviour in minors (section 15(2)).

58. A minor may only be placed in a temporary detention centre for juvenile offenders for the shortest possible time necessary for appropriate accommodation to be found, and for a maximum of thirty days (section 22(6)), in the following cases:

(a) a minor whose placement in a closed educational institution has been ordered by a court may be placed in a temporary detention centre for juvenile offenders for the time necessary to prepare his transfer to the closed educational institution (section 22(1)(3) and 22(2)(1) and section 31(1);

(b) a minor in respect of whom a request for placement in a closed educational institution is pending before a court may be placed in a temporary detention centre for juvenile offenders for a period of up to thirty days if it is necessary in order to protect his life or health or to prevent him from committing a further delinquent act, or if he has no fixed residence, has absconded or has failed to appear at court hearings or medical

examinations more than twice without a valid reason (sections 22(2)(2) and 26(6));

(c) a minor who has escaped from a closed educational institution may be placed in a temporary detention centre for juvenile offenders for the time necessary for appropriate accommodation to be found for him (section 22(2)(3));

(d) a minor who has committed a delinquent act before reaching the statutory age of criminal responsibility may be placed in a temporary detention centre for juvenile offenders if it is necessary in order to protect his life or health or to prevent him from committing a further delinquent act, or if his identity is unknown, he has no fixed place of residence, resides in a region other than the one where the delinquent act was committed, or if he cannot be immediately placed in the charge of his parents or guardians owing to the remoteness of their place of residence (section 22(2)(4-6)).

59. The main aims of temporary detention centres for juvenile offenders are as follows:

- the temporary detention of juvenile offenders with the aim of protecting their life and health and preventing them from committing further delinquent acts;
- individual preventive work with minors with the aim of discovering whether they are involved in the commission of delinquent acts, establishing the circumstances, reasons and conditions conducive to such acts, and informing the competent law-enforcement authorities;
- the transfer of minors to closed educational institutions and other measures aimed at finding accommodation for minors temporarily placed in its care (section 22(1)).

60. Placement in a temporary detention centre for juvenile offenders is to be ordered by a judge (section 22(3)(2)) at the request of the local department of the interior, which must submit the following materials in support of the request: evidence confirming that the minor has committed a delinquent act; materials indicating the aims of, and reasons for, the placement of the minor in the temporary detention centre for juvenile offenders; and materials confirming that such placement is necessary to protect the life or health of the minor or to prevent him from committing a further delinquent act (section 31.1). The minor and his parents or guardians are entitled to study these materials. The materials are then examined by a single judge at a hearing with the participation of the minor concerned, his parents or guardians, defence lawyer, a prosecutor, and representatives of the local department of the interior and of the temporary detention centre for juvenile offenders. The judge issues a reasoned decision either granting or rejecting the request for the placement of the minor in the temporary detention centre for juvenile offenders (section 31.2). The minor or his parents, guardians, or defence lawyer may, within ten days, appeal against the decision to a higher court (section 31.3).

5. Instruction on temporary detention centres for juvenile offenders

61. The Instruction on the organisation of the activities of temporary detention centres for juvenile offenders, adopted by Order no. 215 of the Ministry of the Interior on 2 April 2004 (in force at the material time) provides that temporary detention centres for juvenile offenders are managed by the local departments of the interior (§ 4).

62. On admission to a temporary detention centre for juvenile offenders, the minor and his belongings must be searched. Prohibited belongings must be confiscated, while money, valuables and other belongings must be deposited with the centre's accountant (§§ 14 and 15).

63. Temporary detention centres must be enclosed and the enclosures must be equipped with an alarm system and an entry checkpoint (§ 19). The disciplinary regime is maintained by a duty squad (§ 22).

64. The director of the temporary detention centre for juvenile offenders is responsible for security arrangements, which must ensure the twenty-four-hour surveillance of inmates, including during their sleep, and must exclude any possibility of unauthorised leaving of the premises by inmates (§ 39).

65. A personal file must be opened in respect of each minor. It must contain the following information: the documents which served as the basis for the minor's admission to the centre, the search report, the record of preventive work carried out and of rewards and punishment applied, the medical certificates documenting the minor's condition on admission, and any others (§ 18). Personal files must be stored for two years and be destroyed after the expiry of that time-limit (Appendix no. 5).

66. If appropriate, individual preventive work may be carried out with the minors, taking into account their age, conduct, the gravity of the delinquent acts committed and other circumstances (§ 24). In order to make the preventive work more efficient, incentives and punishment may be applied to minors (§ 25).

67. With the aim of preventing delinquency, the staff of temporary detention centres for juvenile offenders may take the following measures in the context of preventive work:

(a) establish the living and educational conditions of the minor's family, the minor's personal qualities and interests, his or her reasons for running away from home or for abandoning school, and the facts of the minor's participation in the commission of any delinquent acts and the circumstances in which they were committed, including information on any accomplices and how any stolen property was disposed of;

(b) pass to the law-enforcement authorities any information about those involved in delinquent acts, or any other information that may contribute to the investigation of such delinquent acts;

(c) take individual educational measures, with particular emphasis on developing positive qualities and interests, to combat any defects of character and to motivate the minors in studying and working (§ 26).

6. Case-law on placement in temporary detention centres for juvenile offenders

68. In judgments of 7 and 14 July 2009 the Supreme Court of the Udmurtiya Republic held that the judge ordering the placement of a minor in a temporary detention centre for juvenile offenders had no competence to determine the duration of the detention. In accordance with section 22(6) of the Minors Act, placement in a temporary detention centre for juvenile offenders was permissible only for the shortest possible time necessary for appropriate accommodation to be found, and for a maximum of thirty days. Were the judge to determine the duration of the detention, that would deprive the above-cited provision of its substance, and the administration of the detention centre of the possibility of releasing the minor before the expiry of the detention period determined by the judge, that is, as soon as appropriate accommodation was found and necessary preventive work completed.

69. In its case-law review on the application by the courts of the Perm Region of the provisions of the Minors Act, issued on 6 March 2009, the Presidium of the Perm Regional Court held that the judge ordering the placement of a minor in a temporary detention centre for juvenile offenders had no competence to determine the duration of the detention. It was for the administration of the centre to decide, on the basis of individual circumstances, when the minor could be released or transferred. Such detention should in no case exceed the statutory maximum of thirty days.

70. The Presidium of the Perm Regional Court also held that domestic law did not require the judge to hear witnesses to the delinquent act imputed to the minor before ordering the minor's placement in a temporary detention centre for juvenile offenders. However, such witnesses could be questioned if the judge considered it necessary. Further, the fact that the minor had not been given access to the case file could not serve as a ground for rejecting a request for his placement in a temporary detention centre for juvenile offenders. However, access to the case file should be given if the minor requested it. Lastly, the Presidium of the Perm Regional Court held that the placement order could be enforced only after its confirmation on appeal, except in cases where the placement in the centre was necessary to protect the minor's life or health.

7. Time-limits for the storage of medical documents

71. Order no. 493 on documents held by the USSR Ministry of Health and all health-service bodies, institutions, organisations and agencies,

including time-limits for their storage, adopted by the USSR Ministry of Health on 30 May 1974, and Order no. 1030 on the approval of official forms of medical documents in the health services, adopted by the USSR Ministry of Health on 4 October 1980 (both in force at the material time), provided that a minor's medical records were to be stored for ten years (§§ 400 and 40 respectively).

B. Relevant international material

1. United Nations Organisation documents

72. Article 37 of the Convention on the Rights of the Child (CRC), in so far as relevant, reads as follows:

> "States Parties shall ensure that: ...
>
> (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

73. General comment no. 10 of the Committee on the Rights of the Child, dated 25 April 2007 (CRC/C/GC/10), provides, in respect of legal assistance to minors in police custody, as follows:

> "49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of the States parties to determine how this assistance is provided but it should be free of charge ...
>
> 52. ... decisions without delay should be the result of a process in which the human rights of the child and legal safeguards are fully respected. In this decision-making process without delay, the legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police."

74. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the General Assembly on 29 November 1985 (A/RES/40/33, hereinafter – "The Beijing Rules"), provide as follows:

> "4. Age of criminal responsibility
>
> 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity ...
>
> 5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence ...

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings ...

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter ...

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

... Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To ‘avoid harm’ admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term ‘avoid harm’ should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile’s attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations ...

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case ...

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

... Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, it encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety ...

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic

guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to 'open' over 'closed' institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type ...

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults ...

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage ...

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society ... "

75. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990, provide as follows:

"I. Fundamental perspectives

...2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release ...

II. Scope and application of the rules

...12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society ...

IV. The management of juvenile facilities

... B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

...(e) Details of known physical and mental health problems, including drug and alcohol abuse ...

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being ...

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities ...

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected ...

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty ...

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform ...

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it ...

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release ...

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their family and to receive special permission to leave the detention facility for educational, vocational or other important reasons ...

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or

degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited ... ”

76. The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted by General Assembly resolution 45/112 of 14 December 1990, provide as follows:

“5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection; ...

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child’s own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child’s own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment ...

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization ..."

2. Council of Europe documents

77. Resolution No. (77) 62 on juvenile delinquency and social change, adopted by the Committee of Ministers on 29 November 1978, recommended that member States

"a. ensure the safeguarding of the fundamental rights of young people by their participation in all judicial and administrative measures which concern them;

b. review the sanctions and other measures applied to young people and increase their educative and socialising content;

c. keep to a minimum the sanctions and other measures which entail deprivation of liberty, and develop alternative methods of treatment;

d. provide for the abolition of large isolating institutions and their replacement by smaller establishments supported by the community;

e. attach special importance to assisting young people during periods of institutional treatment and in particular in the period of transition from institutional treatment to freedom outside;

f. review the law on minors in order to provide more effective assistance for young people at risk while avoiding marginalisation ...”

78. Recommendation No. R (87) 20 on social reactions to juvenile delinquency, adopted by the Committee of Ministers on 17 September 1987, states as follows:

“...Considering that young people are developing beings and in consequence all measures taken in their respect should have an educational character;

Considering that social reactions to juvenile delinquency should take account of the personality and specific needs of minors and that the latter need specialised interventions and, where appropriate, specialised treatment based in particular on the principles embodied in the United Nations Declaration of the Rights of the Child;

Convinced that the penal system for minors should continue to be characterised by its objective of education and social integration and that it should as far as possible abolish imprisonment for minors;

Considering that measures in respect of minors should preferably be implemented in their natural environment and should involve the community, in particular at local level;

Convinced that minors must be afforded the same procedural guarantees as adults;
...

Recommends the governments of member states to review, if necessary, their legislation and practice with a view:

...

II. Diversion - mediation

2. to encouraging the development of diversion and mediation procedures at public prosecutor level (discontinuation of proceedings) or at police level, in countries where the police has prosecuting functions, in order to prevent minors from entering into the criminal justice system and suffering the ensuing consequences; to associating Child Protection Boards or services to the application of these procedures;

3. to taking the necessary measures to ensure that in such procedures:

- the consent of the minor to the measures on which the diversion is conditional and, if necessary, the co-operation of his family are secured;

- appropriate attention is paid to the rights and interests of the minor as well as to those of the victim;

III. Proceedings against minors

4. to ensuring that minors are tried more rapidly, avoiding undue delay, so as to ensure effective educational action;

5. to avoiding committing minors to adult courts, where juvenile courts exist;

6. to avoiding, as far as possible, minors being kept in police custody and, in any case, encouraging the prosecuting authorities to supervise the conditions of such custody ...

8. to reinforcing the legal position of minors throughout the proceedings, including the police investigation, by recognising, inter alia:

- the presumption of innocence;

- the right to the assistance of a counsel who may, if necessary, be officially appointed and paid by the state;

- the right to the presence of parents or of another legal representative who should be informed from the beginning of the proceedings;

- the right of minors to call, interrogate and confront witnesses;

- the possibility for minors to ask for a second expert opinion or any other equivalent investigative measure;

- the right of minors to speak and, if necessary, to give an opinion on the measures envisaged for them;

- the right to appeal;

- the right to apply for a review of the measures ordered;

- the right of juveniles to respect for their private lives; ...

IV. Interventions

11. to ensuring that interventions in respect of juvenile delinquents are sought preferably in the minors' natural environment, respect their right to education and their personality and foster their personal development ...

14. with the aim of gradually abandoning recourse to detention and increasing the number of alternative measures, to giving preference to those which allow greater opportunities for social integration through education, vocational training as well as through the use of leisure or other activities;

15. among such measures, to paying particular attention to those which:

- involve probationary supervision and assistance;

- are intended to cope with the persistence of delinquent behaviour in the minor by improving his capacities for social adjustment by means of intensive educational action (including "intensive intermediary treatment");

- entail reparation for the damage caused by the criminal activity of the minor;

- entail community work suited to the minor's age and educational needs;

16. in cases where, under national legislation, a custodial sentence cannot be avoided:

- to establishing a scale of sentences suited to the condition of minors, and to introducing more favourable conditions for the serving of sentences than those which the law lays down for adults, in particular as regards the obtaining of semi-liberty and early release, as well as granting and revocation of suspended sentence;

- to requiring the courts to give reasons for their prison sentences;

- to separating minors from adults or, where in exceptional cases integration is preferred for treatment reasons, to protecting minors from harmful influence from adults;

- to providing both education and vocational training for young prisoners, preferably in conjunction with the community, or any other measure which may assist reinsertion in society;

- to providing educational support after release and possible assistance for the social rehabilitation of the minors ... "

79. The recommendation of the Committee of Ministers to Member States of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (Rec (2003)20), adopted on 24 September 2003 at the 853rd meeting of the Ministers' Deputies, in so far as relevant, reads as follows:

"15. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor ..."

80. Recommendation No. CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, adopted by the Committee of Ministers on 5 November 2008, states as follows:

"Part I – Basic principles, scope and definitions

...2. The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the principles of social integration and education and of the prevention of re-offending ...

4. The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports ...

7. Sanctions or measures shall not humiliate or degrade the juveniles subject to them.

8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm ...

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention ...

12. Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile ...

21. For the purpose of these rules:

...21.4. "community sanctions or measures" means any sanction or measure other than a detention measure which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations, and which is implemented by bodies designated by law for that purpose. The term designates any sanction imposed by a judicial or administrative authority and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment;

21.5. "deprivation of liberty" means any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will ...

Part II – Community sanctions and measures

...23.1. A wide range of community sanctions and measures, adjusted to the different stages of development of juveniles, shall be provided at all stages of the process.

23.2. Priority shall be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by juveniles ...

Part III – Deprivation of liberty

...49.1. Deprivation of liberty shall be implemented only for the purpose for which it is imposed and in a manner that does not aggravate the suffering inherent to it ...

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.

50.2. Juveniles shall be encouraged to take part in such activities and interventions ...

53.2. Such institutions shall provide conditions with the least restrictive security and control arrangements necessary to protect juveniles from harming themselves, staff, others or the wider community.

53.3. Life in an institution shall approximate as closely as possible the positive aspects of life in the community.

53.4. The number of juveniles in an institution shall be small enough to enable individualised care. Institutions shall be organised into small living units ...

56. Juveniles deprived of liberty shall be sent to institutions with the least restrictive level of security to hold them safely.

57. Juveniles who are suffering from mental illness and who are to be deprived of their liberty shall be held in mental health institutions ...

62.2. At admission, the following details shall be recorded immediately concerning each juvenile:

...*g*. subject to the requirements of medical confidentiality, any information about the juvenile's risk of self-harm or a health condition that is relevant to the physical and mental well-being of the juvenile or to that of others **…**

62.5. As soon as possible after admission, the juvenile shall be medically examined, a medical record shall be opened and treatment of any illness or injury shall be initiated.

62.6. As soon as possible after admission:

a. the juvenile shall be interviewed and a first psychological, educational and social report identifying any factors relevant to the specific type and level of care and intervention shall be made;

b. the appropriate level of security for the juvenile shall be established and if necessary alterations shall be made to the initial placement;

c. save in the case of very short periods of deprivation of liberty, an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile shall be developed and the implementation of such programmes shall begin; and

d. the views of the juvenile shall be taken into account when developing such programmes ...

63.2. Juveniles shall normally be accommodated during the night in individual bedrooms, except where it is preferable for them to share sleeping accommodation. Accommodation shall only be shared if it is appropriate for this purpose and shall be occupied by juveniles suitable to associate with each other. Juveniles shall be consulted before being required to share sleeping accommodation and may indicate with whom they would wish to share ...

65.1. All parts of every institution shall be properly maintained and kept clean at all times.

65.2. Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy ...

69.2. The health of juveniles deprived of their liberty shall be safeguarded according to recognised medical standards applicable to juveniles in the wider community ...

73. Particular attention shall be paid to the needs of:

d. juveniles with physical and mental health problems ...

77. Regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release. These may include:

a. schooling;

b. vocational training;

c. work and occupational therapy;

d. citizenship training;

e. social skills and competence training;

f. aggression-management;

g. addiction therapy;

h. individual and group therapy;

i. physical education and sport;

j. tertiary or further education;

k. debt regulation;

l. programmes of restorative justice and making reparation for the offence;

m. creative leisure time activities and hobbies;

n. activities outside the institution in the community, day leave and other forms of leave; and

o. preparation for release and aftercare.

78.1. Schooling and vocational training, and where appropriate treatment interventions, shall be given priority over work.

78.2. As far as possible arrangements shall be made for juveniles to attend local schools and training centres and other activities in the community.

78.3. Where it is not possible for juveniles to attend local schools or training centres outside the institution, education and training shall take place within the institution, but under the auspices of external educational and vocational training agencies ...

78.5. Juveniles in detention shall be integrated into the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty.

79.1. An individual plan shall be drawn up based on the activities in Rule 77 listing those in which the juvenile shall participate.

79.2. The objective of this plan shall be to enable juveniles from the outset of their detention to make the best use of their time and to develop skills and competences that enable them to reintegrate into society ...

81. All juveniles deprived of their liberty shall be allowed to exercise regularly for at least two hours every day, of which at least one hour shall be in the open air, if the weather permits ...

90.1. Staff shall not use force against juveniles except, as a last resort, in self-defence or in cases of attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property ...

94.1. Disciplinary procedures shall be mechanisms of last resort. Restorative conflict resolution and educational interaction with the aim of norm validation shall be given priority over formal disciplinary hearings and punishments.

94.2. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence ...

95.1. Disciplinary punishments shall be selected, as far as possible, for their educational impact. They shall not be heavier than justified by the seriousness of the offence.

95.2. Collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited ...

Part IV – Legal advice and assistance

120.1. Juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures.

120.2. The competent authorities shall provide juveniles with reasonable facilities for gaining effective and confidential access to such advice and assistance, including unrestricted and unsupervised visits by legal advisors.

120.3. The state shall provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require ..."

81. The Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted by the Committee of Ministers on 17 November 2010, provide as follows:

"II. Definitions

For the purposes of these guidelines on child friendly justice (hereafter "the guidelines"):

...*c.* 'Child-friendly justice' refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity ...

III. Fundamental principles

...E. Rule of law

1. The rule of law principle should apply fully to children as it does to adults.

2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and non-judicial and administrative proceedings ...

IV. Child-friendly justice before, during and after judicial proceedings

6. Deprivation of liberty

19. Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time ...

21. Given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should ensure respect and actively support the fulfilment of the rights of the child as set out in universal and European instruments. In addition to other rights, children in particular should have the right to:

...

b. receive appropriate education, vocational guidance and training, medical care, and enjoy freedom of thought, conscience and religion and access to leisure, including physical education and sport;

c. access programmes that prepare children in advance for their return to their communities, with full attention given to them in respect of their emotional and physical needs, their family relationships, housing, schooling and employment possibilities and socio-economic status ...

B. Child-friendly justice before judicial proceedings

...24. Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice ...

26. Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings.

C. Children and the police

27. Police should respect the personal rights and dignity of all children and have regard to their vulnerability, i.e. take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties.

28. Whenever a child is apprehended by the police, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. Children should be provided with access to a lawyer and be given the opportunity to contact their parents or a person whom they trust.

29. Save in exceptional circumstances, the parent(s) should be informed of the child's presence in the police station, given details of the reason why the child has been taken into custody and be asked to come to the station.

30. A child who has been taken into custody should not be questioned in respect of criminal behaviour, or asked to make or sign a statement concerning such involvement, except in the presence of a lawyer or one of the child's parents or, if no parent is available, another person whom the child trusts ...

32. Authorities should ensure that children in police custody are kept in conditions that are safe and appropriate to their needs ...

E. Child-friendly justice after judicial proceedings

...82. Measures and sanctions for children in conflict with the law should always be constructive and individualised responses to the committed acts, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right to education, vocational training, employment, rehabilitation and reintegration should be guaranteed ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

82. The applicant complained under Article 3 of the Convention that he had not been provided with adequate medical care in the Novosibirsk temporary detention centre for juvenile offenders where he was detained from 21 February to 23 March 2005. In addition, he complained that the conditions of his detention in that centre had been inhuman. Article 3 reads as follows:

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

A. Admissibility

83. 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. Submissions by the parties

84. The Government submitted that the applicant's medical records had been destroyed on account of the expiry of the time-limit for storage. They affirmed, however, that the applicant had been examined by a doctor on admission to the centre and had then been given daily medical check-ups. He had not informed the medical staff about his health problems. If he had

complained about his health he would have immediately received medical aid.

85. The Government further submitted that the conditions of detention in the temporary detention centre for juvenile offenders had been satisfactory. Access to the toilet had not been limited. All sanitary and hygiene standards had been met. Inmates had received five meals a day. They had been provided with audio and video equipment, educational games and literature. They had never been required to do hard or dirty work and the only punitive measures applied to them had been oral reprimands. In sum, the conditions of the applicant's detention had been compatible with Article 3.

86. The applicant pointed to a contradiction in the Government's submissions. While claiming that the applicant's medical documents had been destroyed, the Government had at the same time relied on his medical records in support of their allegation that he had not informed the temporary detention centre for juvenile offenders about his health problems. The applicant asserted that his grandfather had informed the medical staff about his attention-deficit hyperactivity disorder and his enuresis and had requested treatment. However, he had not received proper medical attention.

87. The applicant also submitted that the conditions of detention in the temporary detention centre for juvenile offenders had been inhuman. The inmates had been kept in a large empty room all day. They had not been given board games or allowed to go outdoors, save for a couple of occasions during his one-month detention there. Collective punishment had been applied to the inmates. For example, they had often been forced to stand in line against the wall for hours without being allowed to move. Access to the toilet had been limited, so the applicant, who suffered from enuresis, had had to endure bladder pains and humiliation.

2. The Court's assessment

88. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care (see *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). The Court has held on many occasions that lack of appropriate medical care may amount to treatment contrary to Article 3 (see, for example, *Wenerski v. Poland*, no. 44369/02, §§ 56 to 65, 20 January 2009; *Popov v. Russia*, no. 26853/04, §§ 210 to 213 and 231 to 237, 13 July 2006; and *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 100-106, ECHR 2005-II).

89. It was not contested that at the time of his detention at the temporary detention centre for juvenile offenders the applicant suffered from attention-deficit hyperactivity disorder and enuresis, and that his condition required

regular treatment and regular specialist medical supervision by a neurologist and a psychiatrist (see paragraphs 7 and 8 above).

90. The Court notes that despite its request for a copy of the applicant's medical records the Government failed to produce one, claiming that the records had been destroyed on account of the expiry of the three-year time-limit on storage established by Order no. 340 of the Ministry of the Interior of 12 May 2006. However, the Government did not submit a copy of that Order, which has never been published and is not accessible to the public. At the same time it is clear from the official, published Instructions of the Ministry of Health that the time-limit for storage of medical records is ten years (see paragraph 71 above). It is significant that the Government did not submit any authentic documents confirming that the medical records had indeed been destroyed. Moreover, the Government themselves relied on the records in question in support of their allegation that the applicant had not informed the medical staff of the temporary detention centre for juvenile offenders about his health problems, although they did not produce a copy of the documents referred to (see paragraph 32 above).

91. In view of the above, the Court finds the Government's explanations for their failure to submit the requested documents insufficient and considers that it can draw inferences from the Government's conduct in view of the well-founded nature of the applicants' allegations (see, for similar reasoning, *Maksim Petrov v. Russia*, no. 23185/03, §§ 92-94, 6 November 2012).

92. The Court observes that the applicant's grandfather repeatedly informed the authorities about the applicant's health problems, stating that his state of health was incompatible with detention (see paragraphs 20, 40 and 41 above). In such circumstances, and in the absence of any documentary evidence supporting the Government's allegation to the contrary, there is no reason to doubt the applicant's assertions that the staff of the temporary detention centre for juvenile offenders had been made aware of his health problems.

93. Further, the Court notes that the Government did not submit any document capable of refuting the applicant's allegation that during his detention in the temporary detention centre for juvenile offenders he did not receive medical supervision and care appropriate to his health condition. The Court takes note of the fact that the centre's medical unit was staffed by a paediatrician and several nurses, and a psychologist who had no medical qualification. It follows that during his detention in the centre the applicant was supervised by a paediatrician who had no expertise in the treatment of the mental disorder from which he suffered. There is no evidence that he was examined by a neurologist or a psychiatrist, despite the fact that regular consultations by such specialist doctors were repeatedly recommended for him, or that the medication prescribed by a psychiatrist before his placement in the centre was ever administered during his detention.

94. The Court finds the lack of expert medical attention with regard to the applicant's condition unacceptable. It notes with concern that during the applicant's detention his condition deteriorated to the point where he had to be taken to hospital suffering from neurosis on the day after his release (see paragraph 38 above).

95. To sum up, the Government have not provided sufficient evidence to enable the Court to conclude that the applicant received adequate medical care in respect of his attention-deficit hyperactivity disorder and enuresis during his detention in the Novosibirsk temporary detention centre for juvenile offenders. The Court considers that the lack of adequate medical treatment amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. In view of that finding, it is not necessary to examine the remainder of the applicant's complaints under that Article.

96. The Court therefore finds that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

97. The applicant complained that his detention in the temporary detention centre for juvenile offenders had violated Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

98. 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. Submissions by the parties

99. The Government submitted that the applicant had been placed in the temporary detention centre for juvenile offenders in accordance with section 22(2)(4) of the Minors Act (see paragraph 58 above) because he had committed a delinquent act before reaching the statutory age of criminal responsibility and it had been necessary to prevent him from committing further delinquent acts. It had been taken into account that he had previously committed similar acts, that his parents had been deprived of parental responsibility, and that his guardian had been unable to control his behaviour. His placement in the centre had therefore been lawful and justified.

100. The Government further submitted that, under Russian law, placement in a temporary detention centre for juvenile offenders was not classified as a deprivation of liberty. The main mission of such centres was to accommodate juvenile offenders with the aim of protecting their life and health, preventing them from committing delinquent acts and conducting individual preventive work with them. Placement in such a centre could not in any event be considered a form of punishment. The applicant had been placed in the centre for the purpose of behaviour correction, which in practice meant individual preventive work against delinquent behaviour. The applicant had also followed the secondary school curriculum. His placement in the centre had therefore complied with the requirements of Article 5 § 1 (d).

101. The applicant submitted that his placement in the temporary detention centre for juvenile offenders had amounted to a deprivation of liberty. The centre was enclosed and guarded. Inmates could not leave it save under escort of the guards. All personal belongings were confiscated. Inmates had to follow a strict disciplinary regime enforced by a duty guard.

102. The applicant argued that his placement in the temporary detention centre for juvenile offenders for the purpose of behaviour correction had had no basis in domestic law. The Minors Act did not list behaviour correction among the permissible grounds for the detention of a minor. Further, temporary detention centres for juvenile offenders were not designed for providing educational supervision within the meaning of

Article 5 § 1 (d). Such educational supervision was provided by closed educational institutions. By contrast, temporary detention centres for juvenile offenders were designed to provide temporary accommodation to minors for the shortest possible time necessary for their return to their family or transfer to a closed educational institution to be arranged. Indeed, according to the established case-law of the Russian courts the judge had no competence to determine the duration of the detention and the minor had to be released as soon as appropriate accommodation had been found and the necessary preventive work carried out (see paragraphs 68 and 69 above).

103. The applicant further contested the Government's submission that the inmates of the centre followed the secondary school curriculum, stating that the only classes they had had were mathematics and Russian grammar, twice a week for three hours. No other courses from the secondary school curriculum had been taught. Children of different ages and school levels had been taught together in one class. No individual preventive work had been carried out. As a result of such fragmentary and unsystematic education in the centre, the applicant had fallen behind the rest of his class in his ordinary school and had failed to get the required credits for many courses.

104. Lastly, the applicant submitted that he had been placed in the temporary detention centre for juvenile offenders two months after the commission of the delinquent act imputed to him. He had not committed any further delinquent acts during that time. There had therefore been no reason to assume that he might commit further delinquent acts during the next thirty days. The applicant concluded that the aim of his placement in the temporary detention centre for juvenile offenders had clearly been to punish him for the commission of a delinquent act rather than educational supervision or prevention.

2. The Court's assessment

105. The Court notes, firstly, that the parties disputed whether the applicant's placement in the temporary detention centre for juvenile offenders constituted a deprivation of liberty. It therefore considers that the first issue to be determined is whether the applicant was "deprived of his liberty" within the meaning of Article 5 of the Convention.

106. The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting-point must be the concrete situation of the individual concerned, and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the

applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, §§ 92 and 93, Series A no. 39, and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX).

107. Turning to the circumstances of the present case, the Court notes that the applicant was placed in a temporary detention centre for juvenile offenders for thirty days. The key factor for the Court is that the centre was closed and guarded to exclude any possibility of leaving the premises without authorisation. There was an entry checkpoint and an alarm to prevent inmates from escaping. Supervision was carried out strictly and on an almost constant basis. It is also relevant that inmates were routinely searched on admission and that all personal belongings were confiscated. Lastly, the Court takes note of the disciplinary regime applicable to the inmates. It is significant that the regime was maintained by duty squads and that any breach was punishable by disciplinary sanctions (see paragraphs 62-64 above). The Court considers that those elements are clearly indicative of a deprivation of liberty. In these circumstances the Court finds that the applicant was deprived of his liberty within the meaning of Article 5 § 1.

108. The Court must next ascertain whether the applicant's deprivation of liberty complied with the requirements of Article 5 § 1. It reiterates in this connection that the list of exceptions to the right to liberty set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, among many others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV).

(a) Article 5 § 1 (d)

109. According to the Government, the applicant's deprivation of liberty fell within the ambit of Article 5 § 1 (d). It was clear that the applicant had not been placed in the temporary detention centre for juvenile offenders for the purpose of bringing him before a competent authority within the meaning of that subparagraph. The applicant had indeed been arrested on 3 January 2005 for the purposes of his appearance "before the competent legal authority", but had made no complaint about that arrest or about the brief loss of liberty, amounting to a few hours, which his arrest entailed. He had complained only of his detention from 21 February to 23 March 2005 in the temporary detention centre for juvenile offenders, which had been ordered by the court at the end of the proceedings against him.

110. The Government justified the applicant's placement in the temporary detention centre for juvenile offenders on the grounds of "educational supervision". The Court reiterates that in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace

many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned (see *Koniarska v. the United Kingdom*, (dec.), no. 33670/96, 12 October 2000; *D.G. v. Ireland*, no. 39474/98, § 80, ECHR 2002-III; and *P. and S. v. Poland*, no. 57375/08, § 147, 30 October 2012).

111. Further, detention for educational supervision pursuant to Article 5 § 1 (d) must take place in an appropriate facility with the resources to meet the necessary educational objectives and security requirements. However, the placement in such a facility does not necessarily have to be an immediate one. Sub-paragraph (d) does not preclude an interim custody measure being used as a preliminary to a regime of supervised education, without itself involving any supervised education. In such circumstances, however, the interim custody measure must be speedily followed by actual application of a regime of educational supervision in a setting (open or closed) designed – and with sufficient resources – for the purpose (see *Bouamar v. Belgium*, 29 February 1988, §§ 50 and 52, Series A no. 129, and *D.G.*, cited above, § 78).

112. The Court observes that, in contrast to closed educational institutions whose mission is to provide long-term accommodation, upbringing and education to minors requiring a special educational approach (see paragraph 57 above), temporary detention centres for juvenile offenders are designed for the temporary detention of minors while more appropriate accommodation is being sought. In particular, a temporary detention centre for juvenile offenders may be used for detaining a minor in respect of whom a request for placement in a closed educational institution is pending before a court, or who is awaiting transfer to a closed educational institution following a court order, or who has escaped from a closed educational institution. It may be also used for detaining a minor who has committed a delinquent act before reaching the statutory age of criminal responsibility, if such detention is necessary to protect his life or health or to prevent him from committing further delinquent acts, or if he cannot, for various reasons, be immediately returned to his parents or guardians (see paragraph 58 above). It is significant that temporary detention centres for juvenile offenders are designed for short-term detention not exceeding thirty days. They are therefore meant to provide a temporary solution for dealing with an abandoned or disturbed minor until a durable solution is found through his or her return to the family or placement in an educational institution under the supervision of the authorities.

113. In view of the above, it is clear that temporary detention centres for juvenile offenders are not designed for providing educational supervision within the meaning of Article 5 § 1 (d). Indeed, the domestic law does not provide for any educational activities to be organised in the centre. Although it mentions "preventive" work with the inmates, such work is not mandatory and appears to be focused on the collection of data on the

possible involvement of minors in delinquent acts with the aim of passing that data to the competent law-enforcement authorities (see paragraphs 59, 66 and 67 above; see also, for similar reasoning, *Ichin and Others v. Ukraine*, nos. 28189/04 and 28192/04, § 39, 21 December 2010).

114. The Court observes that the applicant was placed in the temporary detention centre for juvenile offenders for thirty days for the purpose of "behaviour correction" and the prevention of delinquent acts (see paragraph 21 above). His detention in the centre was not an interim custody measure preliminary to his placement in a closed educational institution, or to any other measure involving educational supervision, as permitted by Article 5 § 1 (d) (see case-law cited in paragraph 111 above). Nor did he receive any regular and systematic educational supervision while in the centre. The Court takes note of the Government's argument that the secondary school curriculum was taught to the inmates by teachers from a neighbouring school. However, according to the applicant, the classes were irregular, the curriculum fragmented and incomplete, and children of different ages and school levels were taught together in one class. The Government did not submit any document capable of refuting the applicant's allegations, such as, for example, a copy of the curriculum for the period of the applicant's detention in the centre. There is therefore no evidence that, except for some irregular and fragmentary classes from the secondary school curriculum, any educational or vocational training measures were taken in respect of the applicant.

115. In any event, it is clear that the applicant's detention in the centre was not "for the purpose of" educational supervision and that any education which was offered was purely incidental to the main reason for the detention as stated in the domestic proceedings, which was to prevent him from committing new delinquent acts.

116. Accordingly, the Court finds that the applicant's detention in the temporary detention centre for juvenile offenders did not fall under sub-paragraph (d) of paragraph 1 of Article 5. The Court must therefore examine whether it was covered by Article 5 §§ (b) or (c).

(b) Article 5 § 1 (b) and (c)

117. The Court observes that the main purpose of the applicant's placement in the temporary detention centre for juvenile offenders was, as established by the domestic courts, to prevent him from committing further delinquent acts (see paragraphs 21 and 48 above). The Court will therefore examine whether the applicant's placement in the centre could be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c).

118. The Court reiterates in this connection that Article 5 § 1 (c) does not permit a policy of general prevention directed against an individual or a category of individuals who are perceived by the authorities, rightly or

wrongly, as being dangerous or having a propensity to commit unlawful acts. It does no more than afford the Contracting States a means of preventing a concrete and specific offence as regards, in particular, the place and time of its commission and its victim(s) (see *Guzzardi*, cited above, § 102; *Shimovolos v. Russia*, no. 30194/09, § 54, 21 June 2011; *M. v. Germany*, no. 19359/04, §§ 89 and 102, ECHR 2009; and *Ostendorf v. Germany*, no. 15598/08, § 66, 7 March 2013). It is clear from the domestic judgments in the present case that the applicant's propensity to commit delinquent acts was gauged with reference to his unruly way of life, the lack of parental control, and the delinquent acts previously committed by him. Neither the domestic authorities nor the Government mentioned any concrete and specific delinquent acts being prepared by the applicant which he had to be prevented from committing.

119. In addition, Article 5 § 1 (c) requires that detention to prevent a person from committing an offence is "effected for the purpose of bringing him before the competent legal authority" and under Article 5 § 3 that person is "entitled to trial within a reasonable time". Consequently, the second limb of Article 5 § 1 (c) covers only pre-trial detention which is imposed in connection with criminal proceedings in the case of a person who has already carried out punishable preparatory acts to an offence, in order to prevent his committing that offence. That person must then be brought before a judge and tried in respect of the punishable preparatory acts to the offence (see *Ostendorf*, cited above, §§ 67, 68, 82, 85 and 86, with further references). In the present case the Court has already found that the applicant's detention in the temporary detention centre for juvenile offenders was not "effected for the purpose of bringing him before the competent legal authority" (see paragraph 109 above).

120. The Court concludes that the applicant's detention could not be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c). The Court will therefore now examine whether the detention fell under Article 5 § 1 (b).

121. The Court reiterates that detention may be authorised under the second limb of Article 5 § 1 (b) in order to "secure the fulfilment of any obligation prescribed by law". It concerns cases where the law permits the detention of a person to compel him to fulfil a specific and concrete obligation already incumbent on him, and which he has until then failed to satisfy. In order to be covered by Article 5 § 1 (b), the arrest and detention must further aim at or directly contribute to securing the fulfilment of the obligation and not be punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist. Lastly, a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of the obligation in question and the importance of the right to liberty (see, among many others, *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 73,

ECHR 2011 (extracts), and *Ostendorf*, cited above, §§ 69-71, 97, 99 and 101).

122. The Court has already found that the general duty not to commit a criminal offence in the imminent future cannot be considered sufficiently concrete and specific to fall under Article 5 § 1 (b), at least as long as no specific measures have been ordered which have not been complied with (see *Schwabe and M.G.*, cited above, § 82). The obligation not to commit a criminal offence may only be considered sufficiently "specific and concrete" for the purposes of sub-paragraph (b) if the place and time of the imminent commission of the offence and its potential victim(s) have been sufficiently specified, if the person concerned was made aware of the specific act which he or she was to refrain from committing, and if that person showed himself or herself not to be willing to refrain from so doing (see *Ostendorf* §§ 93 and 94).

123. In the present case, as already found above, neither the domestic authorities nor the Government referred to any concrete and specific delinquent acts at a specified time and place and against specified victims which the applicant had to be prevented from committing (see paragraph 118 above). The obligation not to commit a criminal offence in issue in the present case cannot therefore be considered sufficiently concrete and specific to fall under Article 5 § 1 (b).

(c) Article 5 § 1 (a)

124. The Court observes that the applicant's placement in a temporary detention centre for juvenile offenders was ordered by a court following the finding that he had committed the delinquent act of extortion (see paragraphs 21 and 48 above). There are indications in the wording of the domestic decisions that the detention measure applied to the applicant contained punitive elements as well as elements of prevention and deterrence (see paragraphs 143 to 146 below). In such circumstances the applicant's detention in the centre may resemble detention covered by Article 5 § 1 (a).

125. The Court reiterates in this connection that for the purposes of Article 5 § 1 (a), the word "conviction" has to be understood as signifying both a finding of guilt after it has been established in accordance with the law that there has been an offence and the imposition of a penalty or other measure involving deprivation of liberty (see, among many others, *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, § 189, 18 September 2012, with further references).

126. The applicant in the present case was never convicted of an offence under Russian law because he had not reached the statutory age of criminal responsibility. Given that the terms "lawful" and "in accordance with a procedure prescribed by law" contained in Article 5 § 1 refer essentially to national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67,

ECHR 2008), the applicant's detention in the temporary detention centre for juvenile offenders cannot be regarded as "lawful detention after conviction by a competent court" within the meaning Article 5 § 1 (a). Accordingly, it was not covered by that sub-paragraph.

(d) Conclusion

127. The Court has found that the applicant's detention did not fall under sub-paragraphs (a), (b), (c) or (d) of Article 5 § 1. Sub-paragraphs (e) and (f) are clearly not relevant to the present case.

128. It follows that the applicant's detention in the temporary detention centre for juvenile offenders did not have any legitimate purpose under Article 5 § 1 and was accordingly arbitrary. There has therefore been a violation of that Article.

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

129. The applicant further complained that he had not been informed of the hearing of 11 April 2005. He had therefore been unable to participate in that hearing, at which the lawfulness of his placement in the temporary detention centre for juvenile offenders had been examined.

130. The Court will examine this complaint under Article 5 § 4, 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."

131. The Government submitted that the decision of 11 April 2005 had been quashed by way of supervisory review precisely on the ground of the applicant's absence from that hearing. Thus the applicant could no longer claim to be a victim of a breach of Article 5 § 4.

132. The applicant maintained his claims.

133. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports* 196-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010).

134. In the instant case the President of the Novosibirsk Regional Court explicitly acknowledged that the applicant's right to attend the hearing had been infringed when quashing the decision of 11 April 2005 (see paragraph 45 above). The applicant and his guardian were informed of, and attended, all subsequent hearings relating to the issue of the lawfulness of

the applicant's detention. Therefore, having regard to the contents of the President's decision of 3 April 2006 and to the way the proceedings which followed the reopening were conducted, the Court finds that the national authorities acknowledged, and then afforded redress for, the alleged breach of the Convention.

135. It follows that the applicant can no longer claim to be a "victim" of the alleged violation of Article 5 § 4 of the Convention within the meaning of Article 34 of the Convention and that this complaint must be rejected pursuant to Articles 34 and 35 §§ 3 (a) and 4.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

136. The applicant further complained that the proceedings that had ended with his placement in the temporary detention centre for juvenile offenders on account of extortion had been unfair. In particular, he complained that he had been questioned by the police in the absence of his guardian, defence lawyer or a teacher. He further complained that he had had no opportunity to cross-examine witnesses against him. He relied on Article 6 §§ 1 and 3, which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

137. The Government submitted that no criminal proceedings had been instituted against the applicant and that the procedural guarantees provided by the Code of Criminal Procedure had therefore not been applicable to him.

138. The Court considers that this submission can be interpreted as a plea of inapplicability in respect of the criminal limb of Article 6 to the proceedings against the applicant.

139. The Court reiterates that the concept of a "criminal charge" within the meaning of Article 6 § 1 is an autonomous one. The Court's established case-law sets out three criteria, commonly known as the "Engel criteria" (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22), to be considered in determining whether or not there was a "criminal charge" within the meaning of Article 6 § 1 of the Convention. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned risks incurring. The second and third criteria are alternative, and not necessarily cumulative. This, however, does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see, in particular, *Jussila v. Finland* [GC], no. 73053/01, § 30-31, ECHR 2006-XIII, and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X).

140. Turning to the present case, the Court observes that, after establishing that the applicant's actions contained elements of the criminal offence of extortion, the domestic authorities refused to institute criminal proceedings against him because he was under the statutory age of criminal responsibility (see paragraph 13 above). Subsequently, in separate proceedings, a court ordered the applicant's placement in a temporary detention centre for juvenile offenders for thirty days on the ground that he had committed a delinquent act – extortion – and it was necessary to "correct his behaviour" and prevent him from committing further delinquent acts (see paragraph 21 above).

141. The Court takes note of the Government's argument that the proceedings against the applicant were not classified as criminal under domestic law. It has already recognised that States, in the performance of their task as guardians of the public interest, are entitled to create or maintain a distinction between different categories of offences for the purposes of their domestic law and to draw a dividing line between what belongs to the criminal sphere and what does not. By removing certain forms of conduct from the category of criminal offences under domestic law, the law-maker may be able to serve the needs of the proper

administration of justice, as well as the interests of the individual, as in the present case for example, by exempting minors under a certain age from criminal liability for their actions according to the level of development of their mental and intellectual capacities. Nevertheless, the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of Article 6. Otherwise, the application of this provision would be left to the discretion of the Contracting States to a degree that might lead to results incompatible with the object and purpose of the Convention (see *Őztürk v. Germany*, 21 February 1984, § 49, Series A no. 73; *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 68, Series A no. 80; *Ezeh and Connors*, cited above, § 83; and *Matyjek v. Poland* (dec.), no. 38184/03, § 45, 30 May 2006). In view of the above, the fact that the proceedings against the applicant were not classified as criminal under Russian law has only a formal and relative value; the "very nature of the offence is a factor of greater import" (see *Ezeh and Connors*, cited above, § 91).

142. It was not disputed before the Court that the delinquent act imputed to the applicant corresponded to an offence in the ordinary criminal law. Indeed, the decision not to institute criminal proceedings stated that "[the applicant's] actions ... contained elements of the criminal offence of extortion, punishable by Article 163 of the Criminal Code" (see paragraph 13 above). At the same time, the Court does not lose sight of the fact that the criminal charges against the applicant were not pursued on the ground that he had not reached the statutory age of criminal responsibility. It is, however, not necessary to decide whether, despite the indisputably criminal nature of the imputed offence, the fact that criminal prosecution of the applicant was legally impossible because of his age removed the proceedings against him from the ambit of the criminal limb of Article 6. The Court will instead concentrate on the third criterion: the nature and degree of severity of the penalty that the applicant risked incurring.

143. The Court observes that under Russian law a minor who has committed a delinquent act before reaching the statutory age of criminal responsibility may be placed in a closed educational institution for up to three years, or in a temporary detention centre for juvenile offenders for up to thirty days (see paragraphs 57 and 58 above). In the present case, within a month of the refusal to institute criminal proceedings against the applicant, the local department of the interior asked a court to place him in a temporary detention centre for juvenile offenders on the ground that he had committed a delinquent act for which he could not be held criminally liable because of his age. Referring to his unruly way of life and previous delinquent acts, the local department of the interior claimed that it was necessary to detain the applicant in order to "correct" his behaviour and prevent him from committing further delinquent acts (see paragraph 19 above). The District Court ordered the applicant's placement in a temporary

detention centre for juvenile offenders for thirty days for "behaviour correction", on the grounds that he had not "drawn proper conclusions" from his previous placements in that centre and had committed a further delinquent act (see paragraph 21 above). The Regional Court upheld that decision on appeal, referring to the fact that the applicant had committed a delinquent act punishable by the Criminal Code and to his family situation and poor school performance. It found that his placement in the centre was necessary to prevent him from committing further delinquent acts (see paragraph 48 above).

144. The Court is not oblivious to the fact that the decision to place the applicant in the temporary detention centre for juvenile offenders was taken in separate proceedings which were formally unrelated to the criminal pre-investigation inquiry regarding the applicant. However, taking into account that the domestic courts referred to the fact that the applicant had committed a delinquent act as the main reason for his placement in the temporary detention centre for juvenile offenders, and that in their decisions they extensively relied on the documents obtained and the findings made during the criminal pre-investigation inquiry, the Court considers that there was a close link, both in law and fact, between the criminal pre-investigation inquiry and the placement proceedings. Indeed, the wording of the applicable legal provisions and of the judicial decisions, both cited in paragraph 143 above, clearly shows that the applicant's placement in the temporary detention centre for juvenile offenders was a direct consequence of the local department of the interior's finding that his actions had contained elements of the criminal offence of extortion.

145. The Court has already found that the placement in a temporary detention centre for juvenile offenders amounted to a deprivation of the applicant's liberty (see paragraph 107 above). There is therefore a presumption that the proceedings against the applicant were "criminal" within the meaning of Article 6, a presumption which was rebuttable only in entirely exceptional circumstances and only if the deprivation of liberty could not be considered "appreciably detrimental" given its nature, duration or manner of execution (see *Ezeh and Connors*, cited above, § 126).

146. As already found above, the applicant's placement in the temporary detention centre for juvenile offenders did not pursue the purpose of educational supervision (see paragraphs 109 to 116 above). The stated purpose of the applicant's placement in the detention centre for juvenile offenders was to correct his behaviour and to deter him from committing further delinquent acts rather than to punish him. However, the Court's case-law indicates that it may be necessary to look beyond the appearances and the language used and concentrate on the realities of the situation (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 64, ECHR 2002-IV, and *Ezeh and Connors*, cited above, § 123).

147. The Court notes that the applicant's detention lasted thirty days and was served in a detention centre for juvenile offenders rather than in an educational institution. As established above, the centre was closed and guarded to prevent inmates from leaving without authorisation. Inmates were subject to constant supervision and to a strict disciplinary regime (see paragraph 107 above). The Court therefore considers that the deprivation of liberty, imposed after a finding that the applicant's actions contained elements of the criminal offence of extortion and served in a detention centre for juvenile offenders subject to a quasi-penitentiary regime as described above, contained punitive elements as well as elements of prevention and deterrence. The Court finds it difficult to distinguish between the punishment and deterrent aims of the measure in question, these objectives not being mutually exclusive and being recognised as characteristic features of criminal penalties. Indeed, in the Court's case-law criminal penalties have customarily been recognised as comprising the twin objectives of punishment and deterrence (see *Őztürk*, cited above, § 53; *Bendenoun v. France*, 24 February 1994, § 47, Series A no. 284; *Lauko v. Slovakia*, 2 September 1998, § 58, *Reports* 1998-VI; and *Ezeh and Connors*, cited above, §§ 102 and 105).

148. In view of the nature, duration and manner of execution of the deprivation of liberty which was liable to be, and which actually was, imposed on the applicant, the Court finds no exceptional circumstances capable of rebutting the presumption that that the proceedings against the applicant were "criminal" within the meaning of Article 6.

149. In view of the above, the Court concludes that the nature of the offence, together with the nature and severity of the penalty, were such that the proceedings against the applicant constituted criminal proceedings within the meaning of Article 6 of the Convention. This Article therefore applies to the proceedings against the applicant.

150. The Court further notes that the complaint under Article 6 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

151. The Government submitted that no criminal proceedings had ever been instituted against the applicant. Accordingly, during the pre-investigation inquiry in his regard he had not had the formal status of a suspect or a defendant as defined by the Code of Criminal Procedure. He could not therefore have benefited from the procedural guarantees afforded

by that Code to suspects and defendants. In particular, he had had no right to legal assistance or to cross-examine witnesses.

152. As regards the confession statement of 3 January 2005, the Government argued that the applicant had not been formally questioned on that day within the meaning of the Code of Criminal Procedure. He had rather been asked to give an "explanation", and therefore the presence of a defence lawyer had not been required. The applicant had been interviewed by a police officer who had pedagogical training. He had been apprised of his right to remain silent. He had not been subjected to any pressure or intimidation. His grandfather had been present during the interview, as was confirmed by the fact that the case file contained a written statement by the grandfather dated 3 January 2005.

153. As regards the witnesses, the Government submitted that although the applicant had not been given the opportunity to confront S. or his mother, he had been given access to their written statements and had been allowed to comment on them.

154. The applicant submitted that on 3 January 2005 he had been questioned by the police in the absence of his guardian, defence lawyer or a teacher. The questioning had been carried out in an intimidating atmosphere and had been preceded by one hour's detention in a completely dark cell. The Government's allegation that the applicant's grandfather had been present during the questioning was not supported by any evidence. The confession statement signed on that date did not mention his grandfather's presence. Nor had it been countersigned by his grandfather. In fact, his grandfather had been summoned to the police station only after he himself, ceding to pressure, had signed the confession statement. After his grandfather had arrived and explained to the applicant the nature of the charge against him and his procedural rights, he had immediately retracted his confession.

155. The applicant further submitted that he had had no opportunity to cross-examine S. and his mother, the only witnesses against him. Statements by those two witnesses had been used as a basis for the finding that he had committed a delinquent act and that it was therefore necessary to place him in a temporary detention centre for juvenile offenders for thirty days. For those reasons the applicant maintained that he had not had a fair trial.

2. The Court's assessment

(a) General principles

156. The Court reiterates that, as the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, it often examines the complaints under both provisions taken together (see, among many other authorities, *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A; *Lala v. the*

Netherlands, 22 September 1994, § 26, Series A no. 297-A; *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II; and *Lucà v. Italy*, no. 33354/96, § 37, ECHR 2001-II). Where the applicant complains of numerous procedural defects, the Court may examine the various grounds giving rise to the complaint in turn in order to determine whether the proceedings, considered as a whole, were fair (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, §§ 67 et seq., Series A no. 146; *Mirilashvili v. Russia*, no. 6293/04, §§ 164 et seq., 11 December 2008; and *Insanov v. Azerbaijan*, no. 16133/08, §§ 159 et seq. 14 March 2013).

157. As regards juvenile defendants, the Court has held that the criminal proceedings must be so organised as to respect the principle of the best interests of the child. It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings (see *V. v. the United Kingdom* [GC], no. 24888/94, § 86, ECHR 1999-IX; *T. v. the United Kingdom* [GC], no. 24724/94, § 84, 16 December 1999; *Panovits v. Cyprus*, no. 4268/04, § 67, 11 December 2008; and *Adamkiewicz v. Poland*, no. 54729/00, § 70, 2 March 2010). The right of a juvenile defendant to effective participation in his criminal trial requires that the authorities deal with him with due regard to his vulnerability and capacities from the first stages of his involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce as far as possible his feelings of intimidation and inhibition and ensure that he has a broad understanding of the nature of the investigation, of what is at stake for him, including the significance of any penalty which may be imposed as well as of his rights of defence and, in particular, of his right to remain silent (see *Panovits*, cited above, § 67; *S.C. v. the United Kingdom*, no. 60958/00, § 29, ECHR 2004-IV; and *Martin v. Estonia*, no. 35985/09, § 92, 30 May 2013).

(i) Right to legal assistance

158. The Court reiterates that, although not absolute, the right under Article 6 § 3 (c) of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Poitrimol*, cited above, § 34).

159. As regards legal assistance at the pre-trial stages of the proceedings, the Court has held that the particular vulnerability of the accused at the initial stages of police questioning can only be properly compensated for by the assistance of a lawyer, whose task is, among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will

of the accused. Accordingly, in order for the right to a fair trial to remain sufficiently "practical and effective" Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as soon as a suspect is first questioned by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict that right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced where incriminating statements made during police questioning without access to a lawyer are used to secure a conviction (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 50-55, ECHR 2008, and *Panovits*, cited above, §§ 64-66 and 83).

160. In view of the particular vulnerability of children and taking into account their level of maturity and intellectual and emotional capacities, the Court stresses in particular the fundamental importance of providing access to a lawyer where the person in custody is a minor (see *Salduz*, cited above, § 60; see also the case-law cited in paragraph 157 above).

(ii) Right to obtain the attendance and examination of witnesses

161. The Court reiterates that Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his statement or at a later stage of the proceedings (see *Lucà v. Italy*, cited above, §§ 39-40).

162. Thus, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 119, 15 December 2011).

163. Nonetheless, even where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. However, where a conviction is based solely or decisively on such evidence or on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This

would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case (see *Al-Khawaja and Tahery*, cited above, § 147).

(b) Application to the present case

(i) Right to legal assistance

164. The Court notes that the applicant, who was twelve years old at the material time, was arrested and taken to a police station, where he was interviewed by a police officer and confessed to extortion. He was not assisted by a defence lawyer during the interview. It is disputed between the parties whether his guardian was present at the time of the confession.

165. The Court is not persuaded by the Government's assertion that the applicant's grandfather, who was his guardian, was present at the police station during the applicant's interview, that assertion being unsupported by any evidence. Indeed, the confession statement signed by the applicant did not mention the grandfather's presence and was not countersigned by the grandfather. The fact that the grandfather signed a written statement on the same day (see paragraph 12 above) does not prove his presence at the police station at the time of the confession. He could have signed the statement in question in the circumstances described by the applicant, that is, when he was summoned to the police station to pick the applicant up after the confession had been made (see paragraph10 above).

166. The Court finds it established that, once at the police station, the applicant was not provided with any opportunity to contact his family or to obtain legal assistance. Given his very young age, the Court does not doubt that he felt vulnerable and intimidated when facing the police officers alone. In the Court's opinion, the circumstances surrounding the interview were psychologically coercive and conducive to breaking down any resolve the applicant might have had to remain silent. Having regard to these considerations, the Court considers that the applicant, as a matter of procedural fairness, should have been given access to a lawyer as a counterweight to the intimidating atmosphere capable of sapping his will and making him confess to the police officers questioning him (see, for similar reasoning, *Adamkiewicz*, cited above, § 89, and *Süzer v. Turkey*, no. 13885/05, § 78-79, 23 April 2013; see also *Magee v. the United Kingdom*, no. 28135/95, § 43, ECHR 2000-VI).

167. According to the Government, the applicant was not entitled to legal assistance because this was not provided for by law where the police interviewed a minor below the statutory age of criminal responsibility (see paragraph 151 above). The Court has previously found that a systematic restriction on the right of access to legal assistance, on the basis of statutory provisions, is sufficient in itself for a violation of Article 6 to be found (see *Dayanan v. Turkey*, no. 7377/03, § 33, 13 October 2009).

168. Lastly, the applicant was undoubtedly affected by the restrictions on his access to a lawyer in that his statement to the police was used against him in the ensuing proceedings. Indeed, it is clear from the local department of the interior's decision of 12 January 2005 and from the judicial decisions of 21 February 2005 and 29 May 2006 that the applicant's confession, obtained without the benefit of legal advice, served as a basis for the finding that his actions contained elements of the criminal offence of extortion and that it was therefore necessary to place him in a temporary detention centre for juvenile offenders (see paragraphs 13, 21 and 48). The Court therefore finds that, irrespective of whether the applicant had the opportunity to challenge the evidence against him before the courts, the absence of a lawyer while he was in police custody irremediably affected his defence rights (see *Salduz*, cited above, §§ 58 and 62; *Panovits*, cited above, §§ 75-77 and 84-86; and *Pavlenko v. Russia*, no. 42371/02, § 119, 1 April 2010).

169. The Court concludes from the above-mentioned factors that the absence of legal assistance during the applicant's interview by the police irremediably prejudiced his defence rights and undermined the fairness of the proceedings as a whole.

170. In view of the above finding, it would normally be unnecessary to examine separately the applicant's complaint that the proceedings were also unfair on account of the denial of an opportunity to cross-examine the witnesses against him (see, for example, *Pishchalnikov v. Russia*, no. 7025/04, § 93, 24 September 2009; and, *mutatis mutandis*, *Salduz*, cited above, § 58, and *Panovits*, cited above, § 75). However, given that this is the first time that the Court has an opportunity to examine the special procedures applicable in Russia to minors who have committed a delinquent act before reaching the statutory age of criminal responsibility, it considers that an examination of the other aspects of these special procedures is required in the present case. It will therefore examine separately the applicant's complaint about an alleged violation of his right to challenge and question witnesses.

(ii) Right to obtain the attendance and examination of witnesses

171. The Court observes that, in addition to the applicant's confession, the domestic authorities also relied on statements by S. and his mother in support of their finding that the applicant's actions contained elements of the criminal offence of extortion (see paragraphs 13, 21 and 48). It is significant that, apart from the confession obtained without the benefit of legal advice and later retracted by the applicant, the statements by those two witnesses were the only evidence against the applicant. The statements of S. and his mother were therefore, if not the sole, at least the decisive evidence against him.

172. No effort was made by the authorities to secure the appearance of the witnesses in question at court. The reason for this, as submitted by the Government, was that the right to cross-examine witnesses was not provided for by law in the case of proceedings against a minor below the statutory age of criminal responsibility (see paragraph 151 above).

173. Lastly, the Court notes the absence of any counterbalancing factors to compensate for the applicant's inability to cross-examine S. and his mother at any stage of the proceedings, and for the difficulties caused to the defence by the admission in evidence of their untested statements (compare *Al-Khawaja and Tahery*, cited above, §§ 156-58 and 161-65). The applicant was not provided with an opportunity to scrutinise the witnesses' questioning by the investigator, nor was he then or later provided with the opportunity to have his own questions put to them. Furthermore, as the witnesses' statements to the investigator were not recorded on video, neither the applicant nor the judges were able to observe their demeanour under questioning and thus form their own impression of their reliability (see, for similar reasoning, *Makeyev v. Russia*, no. 13769/04, § 42, 5 February 2009).

174. Having regard to the fact that the applicant was not afforded any opportunity to question S. and his mother, whose evidence was of decisive importance in establishing whether or not his actions contained elements of the criminal offence of extortion and whether it was necessary to place him in a temporary detention centre for juvenile offenders, and to the fact that the authorities failed to make a reasonable effort to secure their presence in court or compensate for the difficulties experienced by the defence on account of the admission of their evidence, the Court finds that the applicant's defence rights, in particular the right to challenge and question witnesses, were restricted to an extent incompatible with the guarantees provided by Article 6 §§ 1 and 3 (d) of the Convention.

(iii) Conclusion

175. The Court has found that the applicant's defence rights were restricted to an extent incompatible with the guarantees provided by Article 6 because of the absence of legal assistance during his interview by the police and the denial of an opportunity to cross-examine the witnesses whose evidence against him had been decisive.

176. The Court observes that the above-mentioned restrictions on the applicant's defence rights were due to the special legal regime applicable to his situation on account of the fact that he had not reached the statutory age of criminal responsibility. Indeed, according to the Government, the procedural guarantees provided by the Code of Criminal Procedure, such as the right to legal assistance from the time of the first questioning or the right to cross-examine witnesses, and the specific rights of juvenile defendants, such as the presence of a guardian, psychologist or teacher during each questioning (see paragraphs 51 to 55 above), did not apply to the

proceedings against the applicant. The Minors Act applicable to the proceedings against him provided for significantly restricted procedural guarantees, such as legal assistance only from the time when the case was transferred to court, and did not in any way guarantee such important rights as, for example, the right to cross-examine witnesses, the right not to incriminate oneself, or the right to the presumption of innocence (see paragraph 60 above).

177. In view of the above-mentioned considerations, the applicant cannot be said to have received a fair trial. It follows that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (c) and (d) of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

178. Lastly, the Court has examined the other complaints submitted by the applicant, and, 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

179. 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

180. The applicant claimed 144,000 euros (EUR) in respect of non-pecuniary damage and loss of income. He submitted, in particular, that as a result of the inadequate medical treatment his future income would be lower than the income he would have earned had his mental health problem been treated. He also claimed EUR 1,014,960 in respect of medical treatment in Germany.

181. The Government submitted that there was no causal link between the applicant's complaints and the pecuniary damage claimed. Moreover, his calculations were not supported by any documents. As to non-pecuniary damage, the applicant had not shown that he had endured any suffering as a result of the authorities' actions.

182. The Court observes that the claims in respect of pecuniary damage were not supported by any documentary evidence. It therefore rejects them as unsubstantiated.

183. As regards non-pecuniary damage, the Court observes that it has found a combination of violations in the present case. Making an assessment on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

184. The applicant also claimed EUR 1,652 for legal fees, photocopying, translation, and postal expenses.

185. The Government submitted that the applicant's claims were supported by documents only in part. Thus, although he had produced documents showing that he had indeed paid 50,000 Russian roubles to his representative, he had not submitted the relevant legal fee agreement. It was not clear from the translation invoices what documents had been translated and whether they were relevant to the present application. Lastly, no invoices for copying and postal expenses had been submitted.

186. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,493 for legal fees and translation expenses, plus any tax that may be chargeable to the applicant on that amount. It rejects the remainder of the claim as unsubstantiated.

C. Default interest

187. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged lack of medical care and the allegedly inhuman conditions of detention, the alleged unlawfulness of the detention and the alleged unfairness of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention;

5. *Holds*

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

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,493 (one thousand four hundred and ninety-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 14 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President