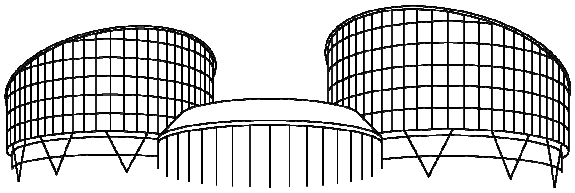

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

**CASE OF KOKOSHKINA v. RUSSIA**

*(Application no. 2052/08)*

JUDGMENT

STRASBOURG

28 May 2009

**FINAL**

*06/11/2009*

*This judgment may be subject to editorial revision.*

**In the case of Kokoshkina v. Russia,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 May 2009,

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

# PROCEDURE

1. The case originated in an application (no. 2052/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Natalya Konstantinovna Kokoshkina ("the applicant"), on 24 December 2007.

2. The applicant was represented by Mr F. Bagryanskiy and Mr M. Ovchinnikov, lawyers practising in Vladimir. The Russian Government ("the Government") were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged that she had been detained in inhuman conditions and that her detention had been excessively long.

4. On 7 March 2008 the President of the First Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in the Moscow Region.

## A. Criminal proceedings against the applicant

6. On 3 October 2006 the applicant was arrested on suspicion of drug trafficking. On an unspecified date charges were brought against her and several other persons.

7. On 5 October 2006 the Podolsk Town Court of the Moscow Region remanded her in custody. It referred to the gravity of the charge and found that she might abscond, reoffend, threaten witnesses, destroy evidence or impede the investigation in some other way.

8. The applicant appealed. She submitted that she had no intention of absconding or interfering with the investigation and asked the court to release her on bail. She had a permanent place of residence and employment, positive references and a clean criminal record.

9. On 31 October 2006 the Moscow Regional Court upheld the detention order on appeal, finding that it had been lawful and justified. There was a well-founded suspicion of the applicant's involvement in drug trafficking.

10. On 30 November 2006 the Podolsk Town Court extended the applicant's detention until 3 February 2007, referring to the gravity of the charge, the risk of absconding, reoffending or interfering with the proceedings, and the need for a further investigation. In particular, it noted that it was necessary to listen to 126 recordings of the applicant's phone conversations, to perform an expert analysis of those recordings, to carry out fingerprint, physico-chemical and psychiatric expert examinations, to make these expert opinions available to the defendants and counsel and to draft a bill of indictment.

11. The applicant appealed. She repeated her arguments advanced in the previous grounds of appeal and further claimed that the Town Court had not explained how she could interfere with the expert examinations or obstruct the listening to the recordings. She also submitted that her brother was terminally ill with cancer.

12. On 19 December 2006 the Moscow Regional Court upheld the extension order on appeal, finding that it had been lawful and justified.

13. On 1 February 2007 the Podolsk Town Court extended the applicant's detention until 3 April 2007, referring to the gravity of the charge, "her active role in the commission of the crime", her being the leader of an organised criminal group, her refusal to cooperate with the investigator and to name her accomplices, the risk of absconding, reoffending or interfering with the proceedings, and the need for a further investigation. In particular, it noted that it was necessary to listen to 123 recordings of the applicant's phone conversations, to perform an expert analysis of those recordings, to identify other members of the organised criminal group, to find and question witnesses who might have information about the group's activities, to verify whether the applicant was involved in the commission of other crimes related to drug trafficking, to bring final

charges against her and her seven accomplices and to perform other investigative measures.

14. On 13 February 2007 the Moscow Regional Court upheld the extension order on appeal.

15. On an unspecified date the investigator applied for a further extension of the applicant's detention, submitting that the investigation had not been completed. It was necessary to listen to fifty-one recordings of the applicant's phone conversations, to perform an expert analysis of those recordings and make the results available to the defendants and counsel, to find and question witnesses who might have information about the group's activities, to find one of the accomplices who had absconded, to find out whether the defendants were involved in the commission of other crimes related to drug trafficking, to bring final charges against them and to perform other investigative measures.

16. On 2 April 2007 the Podolsk Town Court extended the applicant's detention until 3 June 2007, referring to the gravity of the charge, the need for a further investigation, and the risk that she might abscond, reoffend or interfere with the investigation. On 11 April 2007 the Moscow Regional Court upheld the extension order on appeal.

17. On an unspecified date the investigator applied for a further extension of the applicant's detention, submitting that the investigation was still pending. In particular, an expert analysis of the recordings of the applicant's telephone conversations had not been completed and some of the applicant's accomplices had not been charged yet. The applicant refused to cooperate with the investigation and there was a risk that she might abscond, reoffend or put pressure on witnesses if released.

18. On 31 May 2007 the Podolsk Town Court extended the applicant's detention until 3 October 2007. It noted that the applicant was charged with a particularly serious offence and that further investigation was necessary. The purpose of her detention was to ensure that the investigation was completed effectively and in good time and to eliminate any risk of her absconding, reoffending or hampering the proceedings.

19. In her appeal submissions the applicant complained that the court's conclusions had not been based on relevant facts. She had a permanent place of residence and employment, positive references and a clean criminal record. There was no evidence of any attempts to interfere with the investigation, either on her part or on the part of her co-defendants who were not in custody.

20. On 13 June 2007 the Moscow Regional Court upheld the extension order on appeal.

21. On 24 September 2007 the Moscow Regional Court extended the applicant's detention until 3 February 2008, referring to the gravity of the charges, the need for a further investigation and the risk of her absconding or interfering with the investigation.

22. The applicant appealed. In her grounds of appeal she complained, in particular, that the length of her detention had exceeded a "reasonable time", contrary to 5 § 3 of the Convention. She submitted that all evidence had been already collected and the investigation completed, save for certain purely administrative formalities. She further claimed that the Regional Court's conclusion that she might abscond or interfere with the investigation had been hypothetical and had not been supported by relevant facts. The court had disregarded her arguments that she had a permanent place of residence and employment, positive references, a clean criminal record and a terminally ill brother. She also complained about inhuman conditions of her detention, in particular overcrowding, insufficient number of sleeping places and poor sanitary conditions. She asked the court to apply a more lenient preventive measure.

23. On 30 November 2007 the Supreme Court of the Russian Federation upheld the extension order on appeal. It noted, in particular, that the maximum eighteen-month time-limit permitted by the domestic law had not been exceeded.

24. On 18 January 2008 the Moscow Regional Court extended the applicant's detention until 3 April 2008. It noted that the defendants and their counsel were studying the voluminous case file and the investigator needed time to prepare the case for the committal before a court. It referred to the complexity of the case, the number of the defendants, the gravity of the charges against the applicant and her leadership of an organised criminal group. The applicant's arguments about her good character were insufficient to warrant release. The court found that she might reoffend, abscond, or intimidate witnesses. It also rejected the applicant's request to be released on bail of 100,000 Russian roubles (RUB, approximately 2,800 euros (EUR)), finding that there was no reason to amend the preventive measure.

25. In her appeal submissions the applicant asked to be released. She complained that the court had not given reasons for rejecting her bail offer and offered to post higher bail if the proposed amount was insufficient. She argued that the length of her detention had exceeded a "reasonable time" and that the investigating authorities had failed to display "special diligence" in the conduct of the investigation. In particular, they had procrastinated in preparing the case for remittal before a court. She further submitted that she could no longer interfere with the investigation as it had been completed, all witnesses had been questioned and material evidence collected. Finally, she again complained of overcrowding, insufficient sleeping places and poor sanitary conditions in the detention facility and submitted that the combination of those factors to which she had been exposed for many months had already resulted in a deterioration in her health.

26. On 13 March 2008 the Supreme Court upheld the detention order on appeal, finding that it had been lawful, well-reasoned and justified.

27. On 17 March 2008 the Moscow Regional Court extended the applicant's detention until 3 July 2008. It noted that the defendants and their counsel were studying the case file and that the investigator needed time to prepare the case for committal before a court. It referred to the complexity of the case, the number of the defendants, the gravity of the charges against the applicant and her leadership of an organised criminal group. It also noted that her drug test had been positive, therefore there were reasons to believe that she might abscond, reoffend, intimidate witnesses or interfere with the proceedings in some other way.

28. The applicant appealed, repeating her arguments set forth in the previous appeal submissions. She also argued that the drug test had been performed a long time ago and its results were irrelevant for the assessment of the risk of absconding, reoffending or interfering with the proceedings.

29. On 7 May 2008 the Supreme Court quashed the extension decision and ordered that the applicant be released on bail of RUB 100,000. It found that the Regional Court had not adduced sufficient reasons to justify an extension of the applicant's detention up to twenty-one months. In particular, it held that under domestic law the complexity of the case could only serve as a justification for up to twelve months' detention and could not justify an extension of detention beyond that time-limit. The Regional Court's conclusion that the applicant might abscond, reoffend or interfere with the proceedings had not been supported by relevant facts or evidence. The Regional Court had disregarded such pertinent facts as the applicant's positive references, permanent residence and employment and her family situation. It had failed to take into account the recent death of her brother, which mitigated the risk of her absconding as in such circumstances she naturally wished to be with her family. As the investigation had been completed and the witnesses questioned, the risk of interfering with the proceedings was also negligible. The results of the drug test were irrelevant for the assessment of the risk of reoffending, as the test had been performed immediately after the arrest, that is more than a year before, and the applicant had never been medically certified as being a drug addict. The Supreme Court further referred to the applicant's frail health and "her well-founded complaints about the inhuman conditions of her detention, which caused her humiliation and imperilled her health". Finally, it found fault with the Regional Court for its failure to consider the possibility of applying a more lenient preventive measure, although the applicant had asked to be released on bail.

30. On the same day the applicant posted bail and was released. It appears that the criminal proceedings against her are still pending.

## B. Conditions of the applicant's detention

31. From 11 October 2006 to 7 May 2008 the applicant was held in detention facility no. IZ-50/3 in the town of Serpukhov, the Moscow Region.

### *1. Number of inmates per cell and sleeping arrangements*

32. According to a certificate of 10 April 2008 from the facility administration, produced by the Government, from 11 October 2006 to 17 September 2007 and from 25 September 2007 to 7 May 2008 the applicant was held in cell no. 32 measuring 21.2 sq. m. It was equipped with eight bunks and accommodated five to eight inmates. From 17 to 25 September 2007 she was held in cell no. 52 measuring 41 sq. m. It was equipped with twelve bunks and accommodated eight inmates. The Government supported their assertions with copies of extracts from registration logs showing the number of detainees on 11 October, 4 November and 8 December 2006, 19 January, 6 February, 2 April, 3, 14, 15, 21, 22 and 23 May, 6 and 7 June, 8 and 9 July, 9 August, 4 and 17 September, 11 October, 13 November and 18 December 2007, and 11 January, 6 February, 11 March and 9 April 2008. They further submitted that the applicant had at all times had a separate bunk and had been provided with clean bedding and a mattress which was 6.5 centimetres thick.

33. The applicant did not dispute the cell measurements or the number of bunks. She disagreed, however, with the number of inmates asserted by the Government. According to her, cell no. 32 accommodated up to twelve inmates. At times inmates did not have individual bunks and had to take turns to sleep. The metal bunks were covered with thin mattresses. The applicant, who suffered from back pain, had to stuff a layer of magazines between the metal frame and the mattress to make her bed softer.

### *2. Sanitary conditions and installations, temperature, food and water supply*

34. The Government contended that the cells had natural light from the windows. Each cell had two windows measuring 1.44 m in width and 1.60 m in length. The windows were covered with metal bars. Openings between the metal bars, measuring 10 centimetres in width and 20 centimetres in length, allowed natural light. The cells were also equipped with fluorescent lamps which functioned during the day and at night. The applicant stated that the windows were covered with thick metal bars that blocked access to natural light. The openings between the metal bars measured no more than five centimetres by five centimetres. The artificial light was dim and did not allow inmates to read or write. As the artificial light was never switched off at night the applicant's sleep was disturbed.

35. The Government submitted that each cell had a ventilation system. They were also naturally ventilated through the windows. They admitted that there was a pigsty 62 m away from the detention facility. They insisted however that the windows of the applicant's cells looked onto the opposite side. There were no insects or rodents in the detention facility, as all the cells were disinfected every month. It follows from the certificate of 10 April 2008 from the facility administration that sanitary services cleansed the cells regularly to reduce the number of rodents and insects. The applicant claimed that there was no forced ventilation and it was stifling and smoky in the cells. It was also smelly as the windows faced a pigsty. The cells swarmed with flies, mosquitoes and lice. Inmates had to do their laundry indoors, creating excessive humidity. The ceiling was covered with fungus. Some of the inmates were suffering from tuberculosis.

36. Relying on the certificates issued by the facility administration on 10 April 2008, the Government stated that the average temperature in the cells was 20 to 23 degrees Celsius both in winter and in summer. The floor was covered by wood plates which were four centimetres thick. According to the applicant, it was very cold in the cells in autumn and spring when the heating system was not on. She had to sleep in woollen clothes. The cells had a concrete floor covered with thin wood flooring and it was freezing to walk on.

37. It follows from the same certificates produced by the Government that the cells were equipped with a lavatory bowl, a sink and a tap with running cold and hot water. This was separated from the living area by a partition 167 centimetres in height in cell no. 32 and 137 centimetres in height in cell no. 52. Toilet articles and detergents were distributed regularly. In cell no. 32 the dining table was situated 0.63 m from the toilet bowl, while in cell no. 52 the distance between the toilet bowl and the dining table was 2.90 m. The applicant disagreed with this description. She claimed that the lavatory bowl was placed in the corner of the cell. There was indeed a partition on one side, but the other side was left unshielded so that the person using the toilet was in view of the other inmates and the warders. The dining table was fixed to the floor less than a metre from the toilet and the bunks were 1.5 metres from it. No toilet articles or detergents were distributed. There was no running hot water in the cell but detainees were permitted to use immersion heaters.

38. The Government further contended that inmates were allowed to take a shower once a week and were provided at that time with clean bedding and towels. The temperature in the shower hall was 31 degrees Celsius, while the water temperature was 70 degrees Celsius. The water temperature could be adjusted by the warders upon request. According to the applicant, inmates were allowed to take a shower once a week for ten or fifteen minutes. The water was too hot. It took time to call a warder to adjust the temperature and then inmates had insufficient time to shower. It

was so cold in the changing room in winter that the door was covered with ice.

39. Finally, the Government submitted that inmates were provided with sufficient and wholesome food. There were containers with boiled drinking water in each cell. The applicant claimed that the food was insipid and she could not bring herself to eat it. Inmates were not provided with drinking water and had to drink tap water which did not meet sanitary conditions.

*3. Outdoor exercise*

40. The Government submitted that the applicant had an hour-long walk daily. The yard measured 20.8 sq. m. It was covered by a roof to protect inmates from rain. The entire cell population was taken to the yard at once. The number of inmates walking in the yard simultaneously with the applicant varied between four and seven.

41. The applicant did not dispute the yard measurements. She claimed however that up to twelve detainees were taken into the yard at once. The walls were coated with *shuba*, a sort of abrasive concrete lining, designed to prevent detainees from leaning on the walls. The opening to the sky was covered with rusty metal bars. When it rained rusty water came pouring down on the detainees. The yard had a concrete floor and was freezing to walk on. It was very smoky in the yard.

## II. RELEVANT DOMESTIC LAW

42. "Preventive measures" or "measures of restraint" (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112 of the CCrP).

43. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

44. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

45. After arrest the suspect is placed in custody "during the investigation". The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention "during the

investigation" is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

46. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial"). The period of detention "during the trial" is calculated up to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

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

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that the conditions of her detention in detention facility no. IZ-50/3 in Serpukhov had been in breach of Article 3 of the Convention, which provides:

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

### A. Admissibility

49. The Government argued that the applicant had not exhausted the domestic remedies available to her. In particular, she had not sought compensation for non-pecuniary damage before a court. To prove the effectiveness of that remedy, they referred to an article in a Russian newspaper, reporting on the case of Mr D., who had contracted scabies while in detention and had been awarded RUB 25,000 by the Novgorod Town Court in respect of non-pecuniary damage. They further referred to the judgment of the Zheleznodorozhniy District Court of Orel of 2 June 2004, awarding Mr R. RUB 30,000 as compensation for unlawful detention

lasting fifty-six days, for four of which he had been without food. Mr S. had been awarded RUB 3,000 for the inadequate conditions of his detention by the judgment of the Supreme Court of the Mariy-El Republic of 14 March 2006. It had been also open for the applicant to complain to a prosecutor, such complaint being, in the Government's opinion, an effective remedy. They referred to improvements in the conditions of detention which had been made in response to complaints lodged with the prosecutor's office by Mr N., Mr D. and Mr Sh. (a medical unit had been created, medicines purchased and maintenance works carried out). They stated that 13% of complaints about the allegedly inadequate conditions of detention had been considered well-founded in 2007, while in the first half of 2006 the prosecutors had recognised 18% of such complaints as well-founded.

50. The Government further submitted that the Court had competence to examine the conditions of the applicant's detention only during the six months preceding the submission of her application form. They argued that the applicant's detention had not been a continuing situation, as she had been repeatedly transferred from one cell to another and the conditions of her detention had varied in different cells. Moreover, if detainees were allowed to complain about long periods of detention, this would impose a disproportionate burden on the authorities to store detention facility registers indefinitely. Accordingly, the Government invited the Court to reject the applicant's complaints relating to the period prior to 24 June 2007 for non-compliance with the six-month rule.

51. The applicant submitted that she had raised a complaint of poor conditions of detention at court hearings. She consistently mentioned inhuman conditions in her appeal submissions. However, the courts ignored her complaints. She further argued that her detention had been a continuous situation. During the majority of her detention she had been held in overcrowded conditions in cell no. 32, except for several days in September 2007 when she had been temporarily transferred to cell no. 52.

52. The Court observes that in the cases of *Mamedova v. Russia* (no. 7064/05, § 57, 1 June 2006) and *Benediktov v. Russia* (no. 106/02, §§ 29-30, 10 May 2007), in comparable circumstances, it found that the Government had failed to demonstrate what redress could have been afforded to the applicant by a prosecutor or a court, taking into account that the problems arising from the conditions of the applicant's detention had apparently been of a structural nature and had not concerned the applicant's personal situation alone. In the case at hand, the Government submitted no evidence to enable the Court to depart from these findings with regard to the existence of an effective domestic remedy for the structural problem of overcrowding in Russian detention facilities. Although they referred to three cases in which the domestic courts had granted detainees non-pecuniary damage for inadequate conditions of detention, the Court notes that in those cases compensation was awarded for a detainee's infection with scabies or a

failure to provide a detainee with food. Neither of those cases concerned detention in overcrowded cells. Moreover, the Government did not produce copies of the judgments cited by them. Nor did they submit the prosecutor's decisions to which they referred. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

53. As regards the Government's argument about non-compliance with the six-month rule, the Court notes that the applicant was detained in the same detention facility from 11 October 2006 to 7 May 2008. The continuous nature of her detention, her identical descriptions of the general conditions of detention in all the cells in the detention facility and the allegation of severe overcrowding as the main characteristic of her detention conditions in both cells in which she was held warrant the examination of the applicant's detention from 11 October 2006 to 7 May 2008 as a whole, without dividing it into separate periods (see, for similar reasoning, *Guliyev v. Russia*, no. 24650/02, §§ 31 to 33, 19 June 2008, and *Benediktov*, cited above, § 31). The Court does not lose sight of the Government's argument that certain aspects of the conditions of the applicant's detention varied in different cells. However, it does not consider that those differences are sufficient to allow it to distinguish between the conditions of the applicant's detention or for her detention to be separated into several periods depending on the cell in which she was kept. The Court therefore dismisses the Government's objection as to non-compliance with the six-month rule.

54. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. Arguments by the parties*

55. The Government submitted that the conditions of the applicant's detention had been satisfactory. They conceded that detention facility no. IZ-50/3 in Serpukhov had been overcrowded. However, the authorities had done their best to improve the conditions of detention there. The applicant had had sufficient personal space and had been provided with an individual bunk and bedding at all times. She had been able to move freely and to exercise both in her cell and, for an hour daily, in the exercise yard. The sanitary and hygienic norms had been met. In sum, the conditions of the applicant's detention had been compatible with Article 3. In support of their submissions, the Government produced black and white photographs of the cells in which the applicant had been held. They also produced extracts from the registration logs showing the number of detainees in the

applicant's cells on certain dates (see paragraph 32 above) and numerous certificates issued by the facility administration on 10 April 2008.

56. The applicant maintained that her cell had been overcrowded. The number of inmates per cell had been greater than that suggested by the Government and she had not always had a bed to herself. She drew the Court's attention to the fact that the Government had submitted extracts from the registration logs showing the number of detainees on certain dates only, and claimed that the Government had deliberately chosen days when her cell had not been overcrowded, and omitted those when it had been filled beyond its design capacity. Given that the other cells in the detention facility had been severely and routinely overpopulated, as the Government had admitted, it was implausible that her cell had never been affected by that problem. The applicant also challenged the Government's description of sanitary conditions as factually untrue. Her cells had been dim, cold, stuffy and smelly. Toilet facilities had offered no privacy. The artificial light had never been turned off, disturbing the applicant's sleep. Although the Government denied the presence of insects, it transpired from the certificate of 10 April 2008 issued by the detention facility administration that the cells had been regularly cleansed to reduce the number of rodents and insects (see paragraph 35 above). The use of the word "reduce" implied, in the applicant's opinion, that the cells had been infested with parasites and that the disinfection carried out by the facility administration had been unsuccessful, as the population of parasites had been thereby reduced rather than exterminated. The applicant further stated that there had been no real opportunity for outdoor exercise because the exercise yards had been overcrowded and also covered with metal bars that severely limited access to fresh air. In support of her submissions the applicant produced a statement by Ms B. who had been detained in cell no. 32 of the same facility from 15 January to 6 June 2007, and a statement by Ms K. who had been held in a neighbouring cell.

*2. The Court's assessment*

57. The Court notes that parties have disputed certain aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government have failed to refute.

58. The focal point for the Court's assessment is the living space afforded to the applicant. The main characteristic, which the parties agreed upon, is the size of the cells. However, the applicant claimed that they had accommodated up to twelve persons, thus exceeding their design capacity. The Government conceded that the detention facility had been in general overcrowded, but asserted that the applicant's cells had not been affected by that condition. They submitted that the number of inmates per cell had never

exceeded the number of bunks and that the applicant's cells had accommodated no more than eight persons.

59. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, among other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 79, ECHR 2005-IV, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

60. Applying the above principles in the present case, the Court finds that the Government failed to submit information capable of refuting the applicant's allegations. In their plea concerning the number of detainees the Government cited statements by the director of the facility indicating that the applicant's cells accommodated five to eight inmates. Those statements were supported by extracts from the registration logs showing the number of detainees in the cells (see paragraph 32 above). The Court however notes that the Government preferred to submit the extracts for certain dates only and finds such incomplete and selective evidence unconvincing. It observes that the Government did not refer to any source of information on the basis of which they had made the assertion that the applicant's cells had never accommodated more than eight persons and did not submit documents on the basis of which that assertion could be verified. The directors' certificates and extracts from the logs are therefore of little evidential value for the Court (see, for similar reasoning, *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008). The Court also takes note of the Government's acknowledgement that the detention facility had been overpopulated at the material time. It is not convinced by the Government's assertion, which is not supported by conclusive documentary evidence, that the applicant's cell had remained unaffected by that problem.

61. The Court further observes that the applicant's allegations of severe overcrowding and a shortage of sleeping places were corroborated by written depositions by persons held in the same remand centre at the same time. Moreover, a Russian court found her allegations of cramped conditions to be well-founded (see paragraph 29 above). In the absence of conclusive official data as to the number of detainees in the applicant's cells, the Court will examine the issue on the basis of the applicant's submissions.

62. According to the applicant, the number of inmates in cell no. 32 was at times greater than the number of available bunks. The Court therefore finds it established to the standard of proof required under Article 3 of the

Convention that cell no. 32 in which the applicant was held for the majority of her detention was at times overcrowded beyond its design capacity and that the applicant had not had a sleeping place she could call her own. She was moreover afforded less than three square metres of personal space and on occasions her personal space was reduced to less than two square metres. Even when the cell was filled below its design capacity and accommodated seven or eight inmates, such occurrences being undisputed by the Government, the applicant was afforded three square metres or less of personal space. The applicant was confined to her cell day and night, save for one hour of daily outdoor exercise. The Court reiterates in this connection that in previous cases where the applicants had at their disposal less than three square metres of personal space, it found that the overcrowding was so severe as to justify in its own right a finding of a violation of Article 3 of the Convention. Accordingly, it was not necessary to assess other aspects of the physical conditions of detention (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mamedova,* cited above, §§ 61-67; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

63. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. That the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

64. The Court concludes that by keeping the applicant in overcrowded cells the domestic authorities subjected her to inhuman and degrading treatment. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. IZ-50/3.

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

65. The applicant complained of a violation of her right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons. She relied on Article 5 § 3 of the Convention, which provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

### A. Admissibility

66. The Government invited the Court to reject the applicant's complaint relating to the period of her detention before 24 June 2007. In their opinion, the Court had competence to examine the applicant's detention only with regard to the six months preceding the submission of her application form. The Government further claimed that the applicant could no longer claim to be a victim of a violation of Article 5 § 3. On 7 May 2008 the Supreme Court had found that the length of her detention had been excessive and ordered her release. The alleged violation of her rights had been thereby redressed. Following her release the applicant could have made a civil claim for pecuniary and non-pecuniary damages arising from unlawful detention.

67. The applicant submitted that there was no basis in the Court's case-law for the Government's claim that her detention should be divided into separate periods for the purposes of verifying compliance with the six-month rule. She further argued that her release had not deprived her of her victim status. The Supreme Court had only found that the extension order of 17 March 2008 had been poorly reasoned and unjustified. The decision of 7 May 2008 had not contained any acknowledgement of a violation of the applicant's rights during the preceding months of her detention. In the absence of such acknowledgment, a civil action for damages had not had any prospects of success.

68. The Court considers that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his or her detention complains of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following her placement in custody on 3 October 2006 the applicant remained continuously in detention until 7 May 2008. The Court therefore finds that it has competence to examine the entire period of her detention and dismisses the Government's objection as to non-compliance with the six-month rule.

69. The Court further 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*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). It observes that on 7 May 2008 the Supreme Court ordered the applicant's release on the ground that her further detention would be unjustified. It did not however acknowledge that her detention during the preceding period had been founded on insufficient reasons or had exceeded a reasonable time. The decision of 7 May 2008 cannot therefore be regarded as an acknowledgment, even in substance, of a

violation of the applicant's right to trial within a reasonable time or release pending trial. Moreover, the Court is not convinced by the Government's argument that the applicant could have obtained redress by bringing a civil action for damages. It has already found that Russian law does not provide for State liability for detention which is not based on "relevant and sufficient" reasons or which exceeds a "reasonable time". This state of Russian law precludes any legal opportunity for the applicant to receive compensation for the detention which was effected in breach of Article 5 § 3 of the Convention (see *Korshunov v. Russia*, no. 38971/06, § 62, 25 October 2007, and *Govorushko v. Russia*, no. 42940/06, § 60, 25 October 2007). The Court therefore finds that the applicant can still claim to be a "victim" of a breach of Article 5 § 3 of the Convention, and dismisses the Government's objection.

70. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. Arguments by the parties*

71. The Government argued that the decisions to remand the applicant in custody had been lawful and justified. The applicant had been charged with a particularly serious criminal offence. She had moreover been suspected of being the leader of an organised criminal group trafficking in drugs and presenting an increased danger to society. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V), the Government submitted that her membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. As to the applicant's character, her drug test had been positive, she had refused to give evidence against her accomplices or cooperate with the investigation team and, if released, she had been likely to abscond, reoffend or interfere with witnesses or obstruct the investigation and the trial in some other way. She had not provided any guarantees that she would appear for trial. The Government considered the applicant's detention had been founded on "relevant and sufficient" reasons.

72. The applicant considered that there had been no "relevant and sufficient" reasons to hold her in custody for a year and seven months. The domestic authorities had continuously extended her detention, relying essentially on the gravity of the charge and without demonstrating the existence of concrete facts in support of their conclusion that she might abscond, interfere with the investigation or reoffend. She argued she had not

presented any such risks. She was in frail health, had positive references, no criminal record, had permanent residence and employment, and her brother had been dying of cancer. She had moreover offered to post bail. Although her drug test had indeed been positive, the Supreme Court had found that it could not serve as a basis for her detention in the absence of any medical evidence of drug addiction. The need for a further investigation could not justify her detention after September 2007, as by that time the investigation had already been completed. No further investigative measures had been carried out during the subsequent months of her detention.

*2. The Court's assessment*

**(a) General principles**

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

74. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)).

75. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which

makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov,* cited above, § 86; and *Labita*, cited above, § 152).

**(b) Application to the present case**

76. The applicant was arrested on 3 October 2006. She was released on bail on 7 May 2008. The period to be taken into consideration lasted slightly more than one year and seven months.

77. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of her involvement in drug trafficking. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify her continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

78. The gravity of the charges was the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. However, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov,* cited above, § 81). The Court will therefore examine whether the other grounds referred to by the domestic courts were sufficient to justify the applicant's detention.

79. The Court is prepared to accept that there were relevant and sufficient grounds for the applicant's detention during the time needed to terminate the investigation. Although the applicant's refusal to name her accomplices cannot serve as a justification for her detention, as she was not

obliged to cooperate with the authorities and she cannot be blamed for having taken full advantage of her right to silence (see *Mamedova*, cited above, § 83, and, *mutadis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A, and *W. v. Switzerland*, 26 January 1993, § 42, Series A no. 254-A), the Court accepts that the authorities could justifiably consider that the risk of interference with the investigation was initially present, taking into account that the applicant was suspected of being the leader of an organised criminal group. In cases concerning organised crime the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The Court is convinced that in the particular circumstances of the present case the applicant's presumed leadership of an organised criminal group may be regarded as a sufficient ground to justify her detention while the investigation was pending. The investigation was conducted with due expedition and completed within a year, which does not appear excessive having regard to the relative complexity of the case, the number of defendants, and the need to obtain a considerable amount of evidence. However, after the evidence had been collected, the witnesses interviewed and the investigation completed, the reference to the risk of interfering with the proceedings became less relevant. In the Court's opinion, after the completion of the investigation in September 2007 it was no longer sufficient to outweigh, in its own, the applicant's right to trial within a reasonable time or release pending trial.

80. The domestic courts, however, did not refer to any other grounds which could be regarded as sufficient to justify the applicant's detention after September 2007. The Regional Court's reference to her positive drug test results in the extension order of 17 March 2008 was found to be irrelevant by the Supreme Court (see paragraph 29 above). The Court does not see any reason to depart from the Supreme Court's finding. It therefore concludes that the domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that she presented a persistent risk of fleeing from justice or reoffending. The applicant, on the other hand, constantly invoked the facts mitigating such risks. However, the domestic courts devoted no attention to discussion of the applicant's arguments that she was in frail health, had positive references, no criminal record, had a permanent place of residence and employment, and that her brother had been terminally ill. It was not until May 2008 that the Supreme Court discussed those factors for the first time and, on finding that they negated the risks of absconding or reoffending,

considered that there was no justification for the applicant's further detention.

81. The Court further notes that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005, and *Jabłoński*, cited above, § 83). The Court considers that after the investigation had been completed the domestic authorities should have discussed with particular attention the possibility of bail as a guarantee against absconding. However, they had not considered such a possibility until May 2008, that is about eight months after the termination of the investigation, although the applicant had offered to post bail many times.

82. Finally, the Court observes that although the investigation had been terminated in September 2007, in May 2008 the case was still not ready for referral to a trial court. The Government did not provide any explanation for that eight-month delay.

83. The Court has frequently found violations of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, cited above, §§ 72 et seq.; *Dolgova v. Russia*, cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

84. Having regard to the above, the Court considers that by failing to address specific situation or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" for the entire period of detention. Nor were the proceedings conducted with "special diligence".

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

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

88. The Government submitted that the claim was excessive and not supported by any document.

89. The Court notes that it has found a combination of grievous violations in the present case. The applicant spent a year and seven months in custody, in inhuman and degrading conditions. Moreover, the duration of her detention was not based on sufficient grounds. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

### B. Costs and expenses

90. The applicant claimed RUB 176,460 for her representation. She produced the legal fee agreements and the receipts showing that she had already paid the legal fee.

91. The Government considered the costs and expenses claimed by the applicant to be unnecessary and unreasonable as to quantum.

92. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses 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 4,000, plus any tax that may be chargeable to the applicant on that amount.

### C. Default interest

93. The Court considers it appropriate that the default interest 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 application admissible;

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 § 3 of the Convention;

4. *Holds*

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

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand 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;

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

Done in English, and notified in writing on 28 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Søren Nielsen | Christos Rozakis |
| Registrar | President |