



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

FIRST SECTION

**CASE OF VELIYEV v. RUSSIA**

*(Application no. 24202/05)*

JUDGMENT

STRASBOURG

24 June 2010

**FINAL**

*24/09/2010*

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



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

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 3 June 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 24202/05) 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 national of the Republic of Azerbaijan, Mr Tudzhar Ali ogly Veliyev on 27 June 2005.

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

3. The applicant alleged, in particular, that the conditions of his detention during criminal proceedings had been appalling, that his detention on remand had been unlawful, too lengthy and otherwise irregular, and that the criminal proceedings against him had been too lengthy.

4. On 15 January 2008 the President of the First Section decided to give notice of 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).

5. The Government of the Republic of Azerbaijan, having been informed by the Registrar of the right to intervene (Article 36 § 1 of the Convention), did not avail themselves of this right.

6. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1964 and previously resided in the town of Baku, in the Republic of Azerbaijan.

8. He is currently serving a sentence of imprisonment in penitentiary establishment IK-4 in the town of Vyazniki of the Vladimir Region, Russia.

#### **A. Criminal proceedings in respect of the applicant**

##### *1. The applicant's arrest and detention order of 28 February 2004*

9. On 26 February 2004 the applicant was arrested on suspicion of having taken part in multiple episodes of organised armed robbery, along with eight other people.

10. Since that date he has remained in custody.

11. On 28 February 2004 the Frunzenskiy District Court of the town of Vladimir ("the District Court"), having heard submissions from a prosecutor and from the applicant in person, authorised the applicant's arrest and pre-trial detention.

12. The court examined the materials of the case file and noted that the applicant was suspected of having committed a series of particularly serious crimes, had no fixed place of residence, work or registration in Russia, that he was a foreign national, that there were grounds to believe that being at large the applicant might flee from justice or continue his criminal activity, and that the application of less drastic preventive measures was generally not justified.

13. It does not appear that the applicant brought appeal proceedings in respect of this detention order.

14. On 2 March 2004 the charges were brought against the applicant on suspicion of his involvement in multiple episodes of organised armed robbery.

15. Subsequently, on an unspecified date, the applicant's case was merged with other cases which concerned the applicant's criminal activity in the Vladimir, Ivanovo and Saratov Regions.

##### *2. Extension of detention until 6 July 2004*

16. By order of 22 April 2004 the District Court, having heard submissions from the applicant, his counsel and the prosecutor, extended the applicant's detention until 6 July 2004, for a total period of 4 months and 10 days.

17. The court mentioned the same reasons as in the order of 28 February 2004, adding that the applicant could put pressure on other participants in the criminal case, attempt to eliminate evidence and otherwise impede the proceedings.

18. The decision also noted the need to finalise investigative actions in the Vladimir, Ivanovo and Saratov Regions. The prosecutor estimated that these actions could take at least two months and ten days. The court examined the materials in the case file as collected so far and agreed with the investigator's reasons.

19. It does not appear that the applicant brought appeal proceedings in respect of this decision.

### *3. Extension of detention until 6 September 2004*

20. On 6 July 2004 the District Court extended the pre-trial detention until 6 September 2004, for a total period of 6 months and 10 days. The court noted that the applicant had been accused of a serious crime, that he was unemployed, and that from the case-file materials it followed that further investigative actions were required.

21. According to the court, there was reason to believe that being at large the applicant might flee, continue his criminal activity or impede the criminal proceedings.

22. It is not clear whether the judge heard submissions from the applicant or his counsel in person or whether any appeal proceedings were brought in respect of this extension.

23. On 25 August 2004 further charges were brought against the applicant on account of other alleged criminal activity on his part.

### *4. Extension of detention until 6 November 2004*

24. On 6 September 2004 the applicant's pre-trial detention was further extended by the District Court, this time until 6 November 2004, for a total period of 8 months. The court gave reasons essentially similar to those mentioned in its previous decisions.

25. It is not clear whether the judge heard submissions from the applicant or his counsel in person or whether any appeal proceedings were brought in respect of this extension.

### *5. Extension of detention until 6 December 2004*

26. In a decision dated 22 October 2004 the District Court again extended the applicant's pre-trial detention, this time until 6 December 2004, referring to the same reasons as in its previous decisions. The total period of the applicant's authorised detention now amounted to 9 months and 10 days.

27. It is not clear whether the judge heard submissions from the applicant or his counsel in person or whether any appeal proceedings were brought in respect of this extension.

*6. Extension of detention until 6 February 2005*

28. On 6 December 2004 the District Court extended the pre-trial detention until 6 February 2005, for a total period of 11 months and 10 days. The court justified the decision with reference to essentially the same reasons as previously.

29. It is not clear whether the judge heard submissions from the applicant or his counsel in person or whether any appeal proceedings were brought in respect of this extension.

*7. The first bill of indictment and decision of 27 January 2005*

30. It appears that on 11 January 2005 the investigation in respect of nine co-accused in the case, including the applicant, was over and the prosecution authority sent the bill of indictment, along with the case file, to the trial court for examination on the merits.

31. On 27 January 2005 the Vladimir Regional Court (“the Regional Court”) carried out a preliminary examination of the case and, having detected various shortcomings and defects in the investigation, decided to return the file to the prosecutor.

32. Those defects included the following: failure to notify the accused of their rights in relation to the jury trial procedure; failure to decide whether there was any need to split the case in view of the fact that some co-accused had opted for a jury trial procedure; and lastly certain inconsistencies and shortcoming in the factual conclusions made by the prosecution in the bill of indictment.

33. The court noted that all accused in the case should remain in detention as there were no reasons to release them. The court did not set any specific time-limit for their detention. The decision referred to all accused collectively, without analysing their circumstances individually. In taking this decision the court relied on Article 237 of the Code of Criminal Procedure.

34. Upon expiration of the ten-day time-limit for appeal on 3 February 2005, the court sent the case file back to the prosecutor's office.

*8. The applicant's request for release dated 10 March 2005, the second bill of indictment and the decision of 28 March 2005 to stay the proceedings*

35. On 4 March 2005, having introduced necessary corrections and amendments, the prosecution sent the corrected case file to the trial court for examination on the merits.

36. On an unspecified date, the trial court decided to hold a preliminary hearing in the case on 28 March 2005. It does not appear that any formal decision was taken as regards the applicant's detention on remand.

37. On 10 March 2005 the applicant, through his lawyer, applied for release. The request referred to the alleged lack of any lawful basis for his continued detention as of 6 February 2005.

38. This request was examined and rejected by the Regional Court at the preliminary hearing on 28 March 2005. The court decided that the investigation should be suspended because one of the accused, Mr D.G. K., was seriously ill, while one of the others, Mr A.A. G., could not take part in the proceedings as he was being tried in a different set of proceedings for a different offence. The court noted that it was impossible to try the applicant separately from the other co-accused and that the six month time-limit, as set out in Article 255 § 3 of the Code of Criminal Procedure, was not breached.

39. In respect of the lawfulness of the applicant's detention on remand, the court noted that until 11 January 2005, the date on which the case had been sent to the trial court for examination on the merits, the applicant had been regarded as "detained pending investigation" and that after that date he was "detained pending trial". In view of the trial court's decision of 27 January 2005 remitting the case to the prosecution as of 3 February 2005, the applicant was again detained "pending investigation". On 4 March 2005 the case was again sent to the trial court and the applicant detained "pending trial". The court then gave the following reasoning:

"Under Part 2 of Article 255 of the Code of Criminal Procedure, if a preventive measure in the form of detention on remand is chosen ..., then the term of the detention counted from the date on which the case reached the court and until the verdict has been given may not exceed six months, except for cases explicitly mentioned in Part 3 of the above-mentioned Article. The norm in question means that as of the date on which the case reached the court the accused is counted as being detained pending trial.

Under Part 3 of Article 255 of the Code of Criminal Procedure, the court in charge of the case may, upon expiry of the above-mentioned six months, extend the term. At the same time, such an extension is possible only in cases involving serious or particularly serious offences, and each time for a term not exceeding three months.

At the time when the case reached the court that is on 4 March 2005 [the applicant] was counted as being detained pending trial. The six-month time-limit mentioned in Part 3 of Article 255 has not expired to date. The court finds no violation of the domestic law in this respect."

40. The decision of 28 March 2005 was contested by the applicant, through his lawyer, before the Supreme Court on 7 April 2005.

41. On 20 June 2005, that is seventy-four days thereafter, the Supreme Court of Russia ("the Supreme Court") examined and rejected the complaint. The decision referred to all the accused collectively, without

analysing their circumstances individually. In its relevant part, the court ruling stated as follows:

“[the applicant and eight others] are accused by the investigation of commission of crimes, including serious and very serious offences.

The circumstances which served as a basis for the preventive measure in the form of detention did not change. Having noted its reasons in the decision, the court came to the conclusion that the need for the preventive measure in respect of [the applicant and other co-accused] had not ceased to exist, and that there had been no reason to release him or to choose a milder preventive measure, which is why the court had taken the decision ...

This court has no reason to differ.”

*9. Decision dated 20 June 2005 to resume criminal proceedings*

42. On 20 June 2005 the Regional Court resumed the proceedings in the case and decided to hold a preliminary hearing on 11 July 2005.

*10. Extension of detention for three months until 18 October 2005*

43. In view of the fact that the six-month time-limit set out in Part 3 of Article 255 of the Code was about to expire, on 11 July 2005 the Regional Court extended the applicant's detention for three months until 18 October 2005. The court gave the same reasons as previously.

44. The decision of 11 July 2005 was contested by the applicant through his lawyer before the Supreme Court on 18 July 2005.

45. On 15 September 2005, that is two months and five days later, the Supreme Court examined this appeal and decided to uphold the decision of 11 July 2005. The court essentially relied on the fact that the circumstances relevant in the applicant's situation had not changed and that the proceedings could not be finalised “for objective reasons”. Again, the court referred to all the accused collectively, without analysing their circumstances individually.

*11. Decision of 19 July 2005 to remit the case for further investigation*

46. On 19 July 2005 the Regional Court yet again carried out a preliminary examination of the case and decided to return the case to the prosecution. The court ordered an additional investigation to be carried out, having spotted a number of defects in the work of the investigator, including multiple breaches of the rights of the accused.

47. By the same decision the court decided to leave the applicant's preventive measure unchanged. The court referred to all the accused collectively, without analysing their circumstances individually. It gave the following reasoning:



“... Deciding on the question of the preventive measure in respect of all the accused, the court is of the view that they are accused of committing a few crimes in the categories of serious and especially serious offences, do not have any fixed abode in the Vladimir Region, and according to the bill of indictment had committed crimes as part of a criminal group, and therefore the preventive measure imposed on them should be left unchanged.”

48. The decision of 19 July 2005 was contested by the applicant through his lawyer in the Supreme Court on 25 July 2005.

49. On 6 October 2005, that is two months and eighteen days later, the Supreme Court examined and rejected the appeal. The court referred to all the accused collectively, without analysing their circumstances individually. It upheld the decision of 19 July 2005 in full, having noted that:

“... the grounds for choosing the preventive measure in the form of detention in respect of [the applicant] had not changed; the need for its application had not ceased ...”

#### *12. Extension of detention until 23 September 2005*

50. On 2 September 2005 the District Court, whilst the case was still pending with the investigator, authorised the applicant's detention for twenty days more, until 23 September 2005. It indicated the same reasons for the detention as in the previous decision. In particular, it noted:

“The extension of the term of detention of [the accused] is justified by objective reasons and is well-founded. [The applicant] is accused of the commission of a number of crimes, including very serious offences that were highly dangerous to society, and has no fixed place of residence in Russia; this is why there are reasons to believe that if at large he may continue his criminal activity, abscond from the investigative bodies or impede the investigation in the case. In these circumstances, there are no grounds for a change in the preventive measure or for its cancellation ...”

51. On 5 September 2005 the applicant, through his lawyer, complained to the Regional Court about the decision of 2 September 2005.

52. On 4 October 2005 the Regional Court upheld the decision of 2 September 2005. The court noted that the applicant's detention on remand was lawful and that:

“... the impossibility of applying to [the applicant] a different, milder, preventive measure was justified in the court decision on several occasions and the circumstances which served as a basis for confinement of [the applicant] have not become obsolete [since then] ...”

#### *13. Extension of detention until 1 January 2006*

53. On 22 September 2005 the Regional Court, whilst the case was still pending with the investigator, further extended the applicant's detention, this time until 1 January 2006.

54. The decision of 22 September 2005 was contested by the applicant through his lawyer on 23 September 2005.

55. On 8 December 2005 the Supreme Court decided to uphold the decision of the Regional Court dated 22 September 2005, having noted that “[the applicant] had been accused of a number of crimes, including serious and very serious offences” and that the applicant's detention on remand had been, and remained, lawful and justified.

*14. Decision dated 11 November 2005 to send the case to the trial court for examination on the merits*

56. On 11 November 2005 the prosecutor finalised the investigation and referred the case to the trial court for examination on the merits.

57. On 5 December 2005 the Regional Court decided to hold the first preliminary hearing of the case. It rejected the applicant's request for release and decided that the applicant should remain in detention, relying essentially on the same reasons as previously.

58. On 13 December 2005 the applicant through his lawyer contested the decision of 5 December 2005 in the Supreme Court.

59. On 15 December 2005 the court hearing was delayed until 22 December 2005 with reference to the absence of co-accused D.G. K. and his lawyer.

60. On 22 December 2005 the hearing resumed. The court decided to continue the examination of the case on 12 January 2006 because six defence lawyers were busy in other sets of proceedings.

61. On 12 January 2006 the court decided to postpone further examination of the case because of the illness and absence of co-accused D.G. K. until 23 January 2006.

62. The hearing of 23 January 2006 was again postponed because of the absence of co-accused D.G. K., some witnesses and one defence lawyer.

63. The hearing scheduled for 25 January 2006 was cancelled and postponed with reference to the illness of the applicant's counsel.

64. On 1 February 2006 the hearing resumed, but later it was decided to postpone it again, this time with reference to the inability of one of the defence lawyers to continue on the next day.

65. On 3 February 2006 the hearing resumed. At the end of the hearing, it was decided to continue on 9 February 2006, since in between these two days there were some public holidays, and one of the defence lawyers as well as one translator were busy in a different set of proceedings.

66. The hearing of 9 February 2006 took place as planned. At the end of it, the court decided to continue the examination of the case on 14 February 2006.

67. On 14 February 2006 the examination of the case resumed.

68. The next hearing took place on 27 February 2006, since the applicant's lawyer, one of the translators and yet one other defence lawyer were busy and could not attend earlier.

69. The hearing of 27 February 2006 took place as planned.

70. On 3 and 6 March 2006 the hearings resumed.

71. The hearings scheduled for 9 and 17 March 2006 did not take place because of the absence of one of the defence counsel.

72. On 22 March 2006 the Supreme Court upheld the decision of 5 December 2005 (see paragraph 58 above), yet again referring to all the accused without analysing their circumstances individually.

73. On 21, 22 and 23 March 2006 the trial court hearings resumed.

74. On 27 March 2006 the prison authorities failed to escort co-accused A.A. G. to the courtroom and the court had to adjourn the hearing of the case until 3 April 2006.

75. The hearings of 3 and 6 April 2006 did not take place as one of the defence counsels was ill.

76. The hearings of 11, 12, 14 and 24 April 2006 did not take place owing to the illness of one of the co-accused and the unavailability of one of the translators and three defence lawyers, including the applicant's counsel.

77. The examination of the case resumed on 26, 27 and 28 April 2006.

78. On 4 May 2006 the court was unable to continue owing to the illness of one of the defence counsel. It was decided to adjourn the hearing until 12 May 2006.

#### *15. Extension of detention until 14 August 2006*

79. On 12 May 2006 the Regional Court extended the applicant's detention for another three months, until 14 August 2006. The court again referred to the same reasons as in previous decisions.

80. The court could not continue the examination of the merits of the case owing to the absence of one of the translators who was busy elsewhere.

81. On 17 May 2007 the hearing of the case resumed.

82. On 17 May 2006 the applicant contested the decision of 12 May 2006.

83. The decision of 12 May 2006 was upheld by the Supreme Court on 27 July 2006, again repeating the same reasons.

#### *16. Extension of detention until 14 November 2006*

84. On 25 July 2006 the Regional Court ordered the extension of the applicant's detention for another three months, until 14 November 2006. The court again mentioned the same reasons as previously, having rendered a decision in respect of a number of co-accused in the case. In response to the applicant's argument about poor conditions of detention, the court noted that the applicant had failed to present any evidence of the alleged conditions.

85. On 31 July 2006 the decision of 25 July 2006 was contested by the applicant.

86. On 19 October 2006 the Supreme Court rejected the appeal. It also essentially dismissed the assertion about poor conditions of detention as unsubstantiated.

*17. Extension of detention until 14 December 2006*

87. On 7 November 2006 the Regional Court, in a decision collectively referring to a number of co-accused, including the applicant, again extended the applicant's detention on remand, this time until 14 December 2006.

*18. First-instance judgment and appeal proceedings*

88. On 14 November 2006 the applicant, along with eight other co-accused, was found guilty by the Regional Court of having taken part in aggravated robbery, participation in a criminal gang, and illegal storage, trafficking and use of firearms, and was sentenced to twelve years and six months of imprisonment. The court established that the applicant and the co-accused, acting as a criminal gang, had robbed trucks by disguising themselves as police officers and using real firearms to scare the drivers. They had subsequently sold the stolen property at local markets. The body of evidence included, among other items collected in various regions of Central Russia, oral and written submissions given by over forty witnesses and nine victims.

89. The judgment of 14 November 2006 became final after it was upheld on appeal by the Supreme Court on 21 June 2007. It appears that the applicant raised an argument concerning the conditions of his detention on remand, but the court rejected it as irrelevant.

**B. The conditions of the applicant's detention in IZ-33/1**

90. Since 26 February 2004 the applicant has remained in custody.

91. Between that date and 4 March 2004 the applicant was detained in a Temporary Detention Wing of the Department of the Interior of the town of Vladimir.

92. Between 4 March 2004 and 31 August 2007 he was held in pre-trial detention centre IZ-33/1.

93. Since 31 August 2007 he has been detained in penitentiary establishment IK-4.

*1. The applicant's account of conditions of detention in IZ-33/1*

94. The applicant submitted that he had been detained in cells nos. 39, 19, 55, 36 and 32: cell no. 39 measured thirty-two square metres with twenty-four sleeping places and thirty-five to forty inmates at all times; cell no. 19 measured twenty-four square metres, had thirteen sleeping places and contained fifteen to seventeen inmates; cell no. 55 measured fifty-six

square metres, had thirty-five sleeping places for the total number of inmates ranging from thirty-two to sixty-two; cell no. 36 measured forty-eight square metres, had thirty-five sleeping places and contained thirty-five to forty inmates; cell no. 32 measured forty-eight square metres, had thirty sleeping places for no more than thirty inmates.

95. In all cells toilets were situated close to the dining table and were very dirty. No toilet accessories, such as toilet paper, toothpaste, toothbrushes or toilet soap, were provided by the prison administration. There was no ventilation and many inmates were heavy smokers. The air in the cells was very humid. The walls in all cells were infested with mice, lice and insects. There was furthermore no proper day-time light so that it was impossible to read and write. Each cell was provided with one bucket of warm water per day. It was possible to take a fifteen-minute shower once a week. The inmates had no access to clean water and had to drink tap water. The cells were not cleaned. The prison walks took place within a limited space almost entirely covered by a roof.

## *2. The Government's account of conditions of detention in IZ-33/1*

96. The Government commented only on the period starting from 15 December 2004.

97. As of that date and until 31 August 2007 the applicant was detained in cell no. 55 measuring 46.68 square metres and equipped with 16 sleeping places. The Government submitted a certificate dated 19 March 2008, in which the head of prison administration and a senior inspector certified that there had been between 12 and 16 inmates in the cell at the relevant period of time. At the same time, they conceded that the cell had been "somewhat overcrowded".

98. The applicant was provided with an individual sleeping place and bedding. Cell no. 55 had two glazed windows which let daylight through. According to the Government, the toilet in the cell was partitioned from the rest of the living area, and there was a regular water supply and heating in the cell. The applicant was fed three times a day and had the possibility of taking a one to two hour walk once a day.

99. In a letter dated 27 March 2008 addressed to the Court the head of the Vladimir Regional Department of the Federal Service of Execution of Sentences, submitted that, at the time of the applicant's detention, facility IZ-33/1 had been overcrowded, but argued that such overcrowding had been insignificant and offered to pay the applicant 4,085 Russian roubles (RUB) in compensation for any damage suffered.

## II. RELEVANT DOMESTIC LAW

### **A. Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000)**

100. Rule 42 provided that all suspects and accused persons in detention had to be given, among other things: a sleeping place, bedding, including one mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

101. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches with a number of seating places corresponding to the number of inmates, sanitation facilities, tap water and lamps to provide day-time and night-time illumination.

102. Rule 46 provided that prisoners were to be given three warm meals a day, in accordance with the norms laid down by the Government of Russia.

103. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh linen after taking their shower.

### **B. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005**

104. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with implementation of the “Pre-trial detention centres 2006” programme.

105. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem.

106. The programme mentions pre-trial detention centre IZ-33/1 among those affected. In particular, the programme states that, on 1 July 2004, the detention centre had a capacity of 507 inmates and in reality housed 1,009 detainees.

### **C. Detention during criminal proceedings**

107. Since 1 July 2002, criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the “CCrP”).

108. “Preventive measures” (*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).

109. 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, re-offend 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).

110. 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).

111. After arrest the suspect is placed in custody “pending investigation”. The maximum permitted period of detention “pending investigation” is two months but it can be extended for up to eighteen months in “exceptional circumstances” (Article 109 §§ 1-3). The period of detention “pending investigation” is calculated up to the date on which the prosecutor sends the case to the trial court (Article 109 § 9).

112. From the time the prosecutor sends the case to the trial court, the defendant's detention is “before the court” (or “pending trial”). The period of detention “pending trial” is calculated up to the date on which 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).

113. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10).

114. Under Article 237 of the Code, the trial judge can return the case to the prosecutor for defects impeding the trial to be remedied, for instance if the judge has identified serious deficiencies in the bill of indictment or a copy of it was not served on the accused. The judge must require the prosecutor to comply within five days (Article 237 § 2) and must also decide on a preventive measure in respect of the accused (Article 237 § 3). By a federal law no. 226-FZ of 2 December 2008, Article 237 was amended to the effect that, if appropriate, the judge should extend the accused's detention with due regard to the time-limits in Article 109 of the Code.

### III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

115. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

#### **Extracts from the 2nd General Report [CPT/Inf (92) 3]**

“46. Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ...”

#### **Extracts from the 7th General Report [CPT/Inf (97) 10]**

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee’s mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and



hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ...”

**Extracts from the 11th General Report [CPT/Inf (2001) 16]**

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

## THE LAW

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

116. Under Article 3 of the Convention the applicant complained that the conditions of his detention in pre-trial detention centre IZ-33/1 had been deplorable. Article 3 provides as follows:

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

### A. Admissibility

117. The Government argued that, in view of the fact that the application had been lodged on 27 June 2005, the Court could only examine the events relating to the conditions of detention six months before this date, that is to say starting from 27 December 2004. Accordingly, they commented only on the period between 27 December 2004 and 31 August 2007.

118. The Government further submitted that the applicant had failed to exhaust available domestic remedies. According to them, he could have applied to the domestic courts with claims for compensation in respect of any non-pecuniary damage allegedly resulting from his conditions of detention.

119. The applicant disagreed and maintained his complaints.

120. As regards its competence *ratione temporis* to examine the events at issue, the Court would note that the complaint about the applicant's detention in IZ-33/1 between 4 March 2004 and 31 August 2007 relates to a set of uninterrupted events which took place in the same prison over a period of 3 years, 5 months and 28 days and it therefore falls within its competence entirely (see, for example, *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). Accordingly, the Government's argument concerning the application of the six-month rule is dismissed.

121. In as much as the Government claim that the applicant has not complied with the rule on exhaustion of domestic remedies, the Court finds that the Government did not specify with sufficient clarity the type of action which would have been an effective remedy in their view, nor did they provide any further information as to how such action could have prevented the alleged violation or its continuation or provided the applicant with adequate redress. Even if the applicant, who at the relevant time was still being held in detention on remand, had been successful, it is unclear how the claim for damages could have afforded him immediate and effective redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that the Government did not substantiate their claim that the remedy or remedies the applicant had allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). For the above reasons, the Court finds that this part of the application cannot be rejected for non-exhaustion of domestic remedies (see also *Popov v. Russia*, no. 26853/04, §§ 204-06, 13 July 2006; *Mamedova v. Russia*, no. 7064/05, §§ 55-58, 1 June 2006; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

122. In the light of the parties' submissions, the Court finds that the applicant's complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the

merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

## **B. Merits**

123. The Government conceded that the facility, and in particular cell no. 55 in which the applicant had been held between 15 December 2004 and 31 August 2007, had been “somewhat” overcrowded, but argued that the conditions of his detention had not breached Article 3 of the Convention. They also referred to the fact that the applicant's complaints in respect of the conditions of his detention had been rejected by the domestic courts as unsubstantiated (see paragraphs 84, 86 and 89).

124. The applicant disagreed and maintained his complaints. He argued that the data and figures provided by the Government were inaccurate and incomplete.

125. The parties disagreed as to the specific conditions of the applicant's detention in IZ/33-1. However, there is no need for the Court to establish the veracity of each and every allegation, as it has sufficient documentary evidence in its possession to confirm the applicant's allegations of severe overcrowding in pre-trial detention centre IZ-33/1, and this in itself is sufficient to conclude that Article 3 of the Convention has been breached.

126. The Court observes that it has previously, in two cases, examined the conditions of detention in pre-trial detention centre IZ-33/1 and on both occasions found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding in that facility. In the case of *Mamedova v. Russia* (no. 7064/05, §§ 61-67, 1 June 2006), the complaints related to the period of time between 23 July 2004 and 19 May 2005, whilst in the case of *Sukhovoy v. Russia* (no. 63955/00, §§ 20-34, 27 March 2008) the applicant's submissions referred to the period from 8 January to 2 August 2000. The existence of such a deplorable state of affairs in IZ-33/1 may also be inferred from the information contained in Order No. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 104-106), which expressly acknowledges the issue of overcrowding in IZ-33/1 and states that, on 1 July 2004, the detention centre had a capacity of 507 inmates and in reality housed 1,009 detainees.

127. In view of the above and having regard also to the evidence submitted by the parties and in particular the admissions made by the head of the Vladimir Regional Department of the Federal Service for Execution of Sentences, in his letter of 27 March 2008 (see paragraph 99), the Court observes that the case file contains sufficient indication that the prison in question was experiencing severe overcrowding of its premises during the applicant's stay there. In this respect, the Court cannot accept the certificate

of 19 March 2008 issued by the prison administration as sufficiently conclusive, as it lacks any reference to the original prison documentation and is apparently based on personal recollections and not on any objective data (see *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007, and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007). Furthermore, it finds irrelevant the Government's reference to the conclusions of the domestic courts made in the course of the detention and trial proceedings (see paragraphs 84, 86 and 89), as the domestic courts in those proceedings were not empowered to make any factual findings in connection with the applicant's complaints about his conditions of detention and it does not appear that they even attempted to make any such findings.

128. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

129. 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the prisoners in the applicant's cell had, depending on the exact number of inmates, less than 1 square metre of space per person, and that the applicant was held in these conditions for 3 years, 5 months and 28 days, was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

130. There has therefore been a violation of Article 3 of the Convention in that the Court finds that the applicant's detention was inhuman and degrading within the meaning of that provision.

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

131. The applicant complained that his detention between 6 February and 28 March 2005 had been unlawful. He relied on Article 5 § 1 of the Convention:

“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:

...

(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 ...”

132. The Government disagreed and argued that all of the applicant's detention on remand had been covered by appropriate court orders.

133. The applicant maintained his complaints.

### **A. Admissibility**

134. 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. General principles*

135. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006).

#### *2. Scope of the Court's review*

136. It is uncontested that the applicant's detention pending criminal investigation and trial from 26 February 2004 to 6 February 2005 and between 28 March 2005 and 14 November 2006 was regular and lawful within the meaning of the domestic law. Accordingly, the Court will only examine the lawfulness of the applicant's detention on remand between 6 February and 28 March 2005.

### 3. *The Court's analysis*

137. The Court observes that between 6 February and 28 March 2005 the only basis for the applicant's continued detention pending criminal proceedings was the Regional Court's decision dated 27 January 2005, by which the court refused to consider the merits of the case (see paragraph 31) and returned it to the prosecution for corrections and amendments.

138. The Court notes that in ordering the applicant to remain in detention the Regional Court relied on Article 237 of the Code of Criminal Procedure, but did not specify whether this detention would be governed by Article 109 of the Code (“detention pending investigation”) and or by Article 255 of the Code (“detention pending trial”). It also did not set any time-limit in connection with this extension. In this respect, the Court notes that Article 237 of the Code relied on by the Regional Court required that after receipt of the case file from the judge the prosecutor should comply with his or her instructions within five days. This requirement was neither mentioned by the Regional Court in its decision, nor complied with by the prosecution on the facts of the case.

139. In the Court's opinion, the absence of sufficiently precise rules concerning the legal grounds for detention following the return of the case to the prosecutor seriously affected the “lawfulness” of the applicant's detention. The applicant was placed in a situation of uncertainty as to the legal grounds and the exact duration of his continued detention.

140. In view of this, the Court finds that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the period of detention from 6 February to 28 March 2005 (see *Shteyn (Stein) v. Russia*, no. 23691/06, §§ 89-96, 18 June 2009).

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

141. The applicant complained under Article 5 § 3 of the Convention that his detention on remand had been excessively long and lacked sufficient justification. Article 5 § 3 reads in the relevant part as follows:

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

#### **A. Admissibility**

142. 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. Submissions by the parties*

143. The Government submitted that the detention decisions in respect of the applicant had been based on relevant and sufficient considerations. The case against him was particularly complex, including episodes of criminal activity on the part of an organised group or a criminal gang consisting of ten members (the applicant's co-accused) with criminal operations in different regions of Russia. The decision to join various episodes was justified with a view to avoiding possible duplication of the proceedings. The investigation of the case involved investigative activity with forty witnesses and five victims and resulted in a case file running to fifteen volumes. Moreover, there was a risk that the applicant would abscond from the investigation and trial in view of the gravity of the charges against him for offences punishable with long custodial sentences. The courts had also taken into account that the applicant had no permanent place of residence in Russia, that he was an Azeri national and that he had no personal ties or steady income in Russia. Less stringent preventive measures, such as compulsory residence, could not be applied in the absence of any permanent place of residence. Neither would financial sureties, whatever their value, be sufficient for securing the applicant's presence at the trial. Lastly, the applicant's defence allegedly failed even to make a proposal as regards any possible release of the applicant on bail.

144. The applicant disagreed and argued that the detention orders against him lacked sufficient justification and that the only two reasons to leave him in detention were his Azeri nationality and his lack of permanent residence in Russia. The applicant further contended that the court decisions had been poorly reasoned, some of them failing to mention relevant reasons or even any reasons at all. He contested the Government's assertion that his counsel had failed to propose his release on bail. Overall, the applicant argued that the detention decisions had not applied a proper test in considering his requests for release.

### *2. The Court's assessment*

145. The Court observes that the applicant's detention started on 26 February 2004, the date of his arrest, and ended on 14 November 2006, when he was convicted. Thus he spent two years, seven months and twenty one days in detention on remand. The length of the applicant's detention is a matter of concern for the Court. The presumption being in favour of release, the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such a long time.

146. The applicant was apprehended on suspicion of participating in multiple acts of organised armed robbery. The Court is satisfied that this

suspicion was reasonable. For an initial period at least, its existence justified the applicant's detention. However, 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, but with the lapse of time this no longer suffices. Thus, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-...). Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings.

147. The question whether or not a period of detention is reasonable must be assessed in each case according to its special features; there is no fixed time-frame applicable to each case (see *McKay*, cited above, § 45). It is essentially on the basis of the reasons given in the domestic courts' decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether Article 5 § 3 has been complied with. It will therefore examine the reasons given by the Russian courts throughout the period of detention.

148. In its assessment the Court does not lose sight of the fact that after the applicant had been charged in March 2004, further charges were brought in August 2004 on account of various other criminal activities (see paragraph 23 above). However, the Court has repeatedly held that, although the gravity of the charges or the severity of the sentence faced is relevant in the assessment of the risk of an accused absconding, reoffending or obstructing justice, it cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80 and 81, 26 July 2001). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

149. The Government have laid particular emphasis on the concerted or organised nature of the alleged criminal activities. Indeed, the applicant was charged with membership of a criminal gang, which is an offence under the Criminal Code, and with the commission of offences classified as aggravated robbery within such an organised group. As the Court has previously observed, the existence of a general risk flowing from the organised nature of criminal activities may be accepted as the basis for detention at the initial stages of the proceedings (see *Kučera v. Slovakia*, no. 48666/99, § 95, ECHR 2007-... (extracts), and *Celejewski v. Poland*, no. 17584/04, §§ 37 and 38, 4 May 2006). The Court cannot agree, however, that the nature of those activities could form the basis of the detention orders at an advanced stage of the proceedings. Neither was the



Court provided with any evidence which would support the Government's own submission on that point. Thus, the above circumstances alone could not constitute a sufficient basis for holding the applicant for such a long period of time.

150. The other grounds for the applicant's continued detention were the domestic courts' findings that the applicant could abscond or pervert the course of justice and reoffend.

151. As to the domestic courts' findings that the applicant was liable to pervert the course of justice, in particular by putting pressure on witnesses, the Court notes that at the initial stages of the investigation the risk that an accused person may pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes less justified. In particular, as regards the risk of pressure being put on witnesses, the Court reiterates that for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant's detention, it did not suffice merely to refer to an abstract risk unsupported by any evidence. They should have analysed other pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant's personality, his behaviour before and after the arrest and any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed at falsification or destruction of evidence or manipulation of witnesses (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A).

152. Furthermore, the Court notes that the pre-trial investigation in respect of the applicant was completed in January 2005. Thereafter, he remained in custody for one year and nine months, for most of which the proceedings were pending before the trial court. It thus appears that the domestic authorities had sufficient time to take statements from witnesses in a manner which could have excluded any doubt as to their veracity and would have eliminated the need to continue the applicant's deprivation of liberty on that ground (see, for similar reasoning, *Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007). Furthermore, the Court observes that the national courts did not specify why and to what extent such risk existed in relation to the applicant as compared to the other detained co-accused.

153. The Court therefore considers that the national authorities were not entitled to regard the circumstances of the case as justification for using the risk of collusion as a ground for the applicant's detention pending criminal for its entire duration.

154. As regards the risk of absconding, the Court notes that throughout the period of detention the Russian courts also referred to the applicant's Azeri nationality as a reason to believe that he might abscond, if released. The Court accepts that a detainee's foreign nationality could be a relevant factor in assessing the risk of flight (see *Lind v. Russia*, no. 25664/05, § 81,

6 December 2007). Given that the applicant did not have a place of residence in Russia which could be classified as “permanent” by the Russian courts, the Court finds that indeed a serious risk of the applicant absconding in case he was released could be said to have existed.

155. Finally, as regards the risk of reoffending, the Court accepts that the danger of reoffending, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, for the danger to be a plausible one and for the measure to be appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225). On the facts, nothing in the criminal case or the applicant's personal profile indicated that he had been previously involved in any criminal activity or that, given the nature of criminal charges brought against him and the fact that all presumed members of a criminal group were being tried along with the applicant, he was likely to continue his criminal activities. Thus, the Court cannot accept that the risk of reoffending was sufficiently established.

156. To sum up, the Court is satisfied that, in the particular circumstances of the case, a substantial risk of the applicant's absconding persisted throughout his detention and accepts the domestic courts' finding that no other measures to secure his presence would have been appropriate. The Court concludes that there were relevant and sufficient grounds for the applicant's continued detention. Accordingly, it remains to be ascertained whether the judicial authorities displayed “special diligence” in the conduct of the proceedings.

157. The Court observes that certain delays were attributable to the domestic authorities, in particular those following the judge's decisions on 27 January and 19 July 2005 to return the case to the prosecutor. These remittals resulted from mistakes committed by the investigation authorities and resulted in a five months delay in the examination of the applicant's. The Court also observes that the authorities were largely inactive in 2005, that hearings were rare from December 2005 to February 2006 and that the period between May and November 2006 remained unaccounted for. Furthermore, the appeal proceedings were pending for more than seven months. Although the Court does not underestimate the danger of organised crime, especially when it concerns aggravated robbery, and the overall complexity of this particular case, it cannot but conclude that the length of the proceedings is attributable primarily to the lack of diligence and expedition on the part of the domestic authorities in dealing with the case (see also the Court's conclusions under Article 6 in paragraphs 173-180 below).

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

#### IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

159. Relying on Article 5 § 4 of the Convention, the applicant was dissatisfied with delays in the judicial examination of his appeals against the detention orders of 28 March 2005, 11 and 19 July, 22 September and 5 December 2005. This provision reads as follows:

“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.”

160. The Government submitted that the CCrP did not set a time-limit for sending a case for examination by a court of appeal. Having received the case file, the court of appeal had to start examining the appeal within one month (Article 374 of the CCrP). The delays in examination of the applicant's appeals were accounted for by the need to allow the other defendants in the case to submit their comments, to dispatch a large bulk of detention materials from Vladimir to Moscow and to ensure the applicant's counsel's presence at the appeal hearing. In view of the above, the appeals against the detention orders were examined within a reasonable period of time.

161. The applicant maintained his complaint.

##### **A. Admissibility**

162. 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. General principles*

163. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, ECHR 2000). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Howiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

164. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of

detention. However, where national law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, in particular, as regards the speediness of the review by an appellate body of a detention order imposed by the court below (see *Lebedev*, cited above, § 96). At the same time, the standard of “speediness” is less stringent when it comes to proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. However, if the detention is confirmed by a court it must be considered to be lawful and not arbitrary, even where an appeal is available (*ibid.*). Subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention (*loc. cit.*). Therefore, the Court is less concerned about the speediness of proceedings before the court of appeal where the detention order under review has been imposed by a court, provided that the procedure followed by that court was of a judicial nature and afforded to the detainee the appropriate procedural guarantees.

## 2. Application in the present case

165. The Court notes that if counted from the date of adoption of the respective detention orders, the applicant's appeals were examined within the following periods: 74 days (detention order of 28 March 2005), 59 days (detention order of 11 July 2005), 73 days (detention order of 19 July 2005), 76 days (detention order of 22 September 2005) and 99 days (detention order of 5 December 2005).

166. The Government have not adduced any evidence to show that, having lodged those appeals, the applicant himself caused significant delays in their examination. The Court would note that the applicant generally lodged his appeals within seven to ten days from the date of the respective detention orders (see paragraphs 40, 44, 48, 54 and 58), and this, in its view, did not protract the proceedings at all.

167. Furthermore, the Court is prepared to accept that the domestic authorities required some time to allow the other defendants in the criminal case to submit their comments, to dispatch a large bulk of detention materials from Vladimir to Moscow and to settle other formalities in preparation for the detention hearings. However, in the absence of any concrete and specific evidence justifying the delays point by point, the Court is not persuaded that such obligations should have required periods of up to three months, as they did in the present case. The Court considers that such delays cannot be considered compatible with the “speediness” requirement of Article 5 § 4 (see *Lebedev*, cited above, §§ 102 and 108; *Mamedova*, cited above, § 96; and *Khudoyorov*, cited above, §§ 198 and 204). The Court also deplores the fact that on two occasions (see paragraphs 45-46 and 49-50) the appeals against the above detention orders

were examined only after a fresh detention order had been issued by the Regional Court. It appears that it was open to the applicant to lodge applications for release during the intervening periods of time (see *Khudobin v. Russia*, no. 59696/00, § 117, ECHR 2006-... (extracts)). However, the availability of such recourse did not absolve the national authorities from their obligation to decide “speedily” on the validity of an extension order (see *Starokadomskiy v. Russia*, no. 42239/02, § 85, 31 July 2008, with further references).

168. There has therefore been a violation of Article 5 § 4 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

169. Lastly, the applicant complained that the length of the criminal proceedings against him had exceeded the “reasonable time” requirement of Article 6 § 1 of the Convention. The relevant part of that provision reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

### A. Admissibility

170. 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. Submissions by the parties*

171. The Government submitted that the criminal case was particularly complex, in view of the number of co-accused and of the criminal acts concerned. Each of the co-accused in the case was prosecuted in relation to three to six crimes, including organised robbery, armed assaults and arms trafficking. The charges concerned criminal activities in various regions. The investigation was rendered difficult by the fact that there were some forty witnesses and five victims in the case, all of them residing quite far from the Vladimir Regional Court. The case was returned to the prosecutor on two occasions. One of the co-accused, D.G. K., was seriously ill and it was impossible to proceed with examination of the case in his absence. In addition, delays had been caused by the need to secure the attendance of Russian to Azeri translators, the occasional illnesses of five different

lawyers representing the co-accused (fifty-three days in total), the occasional illnesses of three of the co-accused, including the applicant, and the acts of co-accused G., who had deliberately protracted the proceedings by slashing his wrists and whose mental health thus had to be examined.

172. The applicant disagreed with the Government and argued that his case was relatively straightforward and was not too voluminous. Had the preparation been better, the domestic authorities would have been able to finalise the case much faster. The applicant argued that the delays were due mostly to the errors committed by the investigation authority and the subsequent remittals of the case for additional investigation to the prosecution. According to the applicant, the defendants' lawyers could not be held responsible for the errors committed by the prosecution and that more generally any delays resulting from the conduct of the defence counsel were minor and insignificant.

## 2. *The Court's assessment*

173. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). Article 6 is, in criminal matters, designed to ensure that a person charged does not remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006, and *Taylor v. the United Kingdom* (dec.), no. 48864/99, 3 December 2002). The Court considers that much was at stake for the applicant in the present case, bearing in mind that he risked imprisonment and was detained pending the proceedings.

174. The Court observes that the period under consideration in the present case began on 26 February 2004, when the applicant was arrested, and ended on 21 June 2007, when the appeal decision was issued. It follows that the criminal proceedings against the applicant lasted for almost three years and four months before two instances, during which the applicant remained detained. The Court has examined the applicant's complaint, bearing in mind that it essentially concerned the trial proceedings (see *Dawson v. Ireland* (dec.), no. 21826/02, 8 July 2004). He made no submissions in relation to the investigative stage of the proceedings. The Court finds no reason to hold that there were any unjustified substantial delays during the investigation.

175. The trial proceedings lasted from 27 January 2005 to 14 November 2006, that is for one year, nine months and seventeen days. They were followed by the appeal proceedings, which ended on 21 June 2007.

176. The Court accepts that the case revealed a certain degree of complexity; it concerned nine defendants who had been charged with

several counts of serious criminal offences. While admitting that the task of the national authorities was rendered more difficult by these factors, the Court cannot accept that the complexity of the case, taken on its own, is such as to justify the length of the proceedings.

177. As to the applicant's conduct, the Court reiterates that an applicant cannot be required to co-operate actively with the judicial authorities, nor can he be criticised for having made full use of the remedies available under the domestic law in the defence of his interests (see, among other authorities, *Rokhlina v. Russia*, no. 54071/00, § 88, 7 April 2005). The Court cannot uphold the Government's argument that the applicant went beyond the limits of legitimate defence by lodging unsubstantiated requests. It appears that the absence or illness of the applicant's counsel was the cause of a short delay. Nonetheless, the Court finds that the applicant has not contributed significantly to the length of the proceedings.

178. On the other hand, the Court considers that certain delays were attributable to the domestic authorities, in particular those following the judge's decisions on 27 January and 19 July 2005 to return the case to the prosecutor. On both occasions, the remittals were caused by mistakes committed by the investigation authorities and resulted in an overall delay of around five months. The Court also observes that only one fully fledged hearing was held in 2005, that there were few hearings between December 2005 and February 2006 and that the Government failed to account for the period between May and November 2006. The appeal proceedings were pending for more than seven months. Nor does the Court lose sight of the fact that throughout the proceedings the applicant remained in custody, in the cramped conditions referred to above (see paragraphs 129 and 130, and 145-158 above).

179. It is true that Article 6 commands that judicial proceedings be expeditious, but it also lays down the more general principle of the proper administration of justice (see *Boddaert v. Belgium*, 12 October 1992, § 39, Series A no. 235-D). However, in the circumstances of the case, the Court is not satisfied that the conduct of the authorities was consistent with the fair balance which has to be struck between the various aspects of this fundamental requirement.

180. Making an overall assessment, the Court concludes that in the circumstances of the case the "reasonable time" requirement has not been complied with. There has accordingly been a violation of Article 6 § 1 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. 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**

182. The applicant claimed compensation of 35,000 euros (EUR) in respect of non-pecuniary damage.

183. The Government submitted that these claims were unfounded and generally excessive.

184. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 23,400 (twenty three thousand four hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable.

### **B. Costs and expenses**

185. The applicant also claimed a lump sum of EUR 7,000 for the legal costs incurred before the Court.

186. The Government contested the applicant's claims.

187. 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. Having regard to the material in its possession, the Court considers it reasonable to award him the sum of EUR 1,000 for the legal expenses incurred in relation to the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

### **C. Default interest**

188. 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 § 1 (c) of the Convention in respect of the period from 6 February to 28 March 2005;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
7. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 23,400 (twenty three thousand four hundred euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;
  - (b) any tax that may be chargeable to the applicant on these amounts;
  - (c) 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;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Christos Rozakis  
President