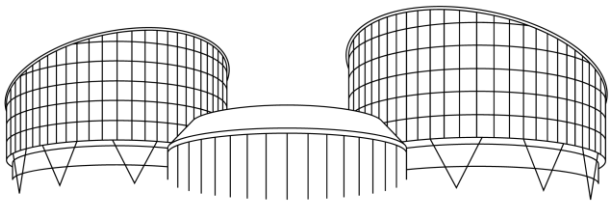

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF SHTEYN (STEIN) v. RUSSIA

(Application no. 23691/06)

JUDGMENT

STRASBOURG

18 June 2009

FINAL

18/09/2009

This judgment may be subject to editorial revision.

In the case of Shteyn (Stein) v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 28 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 23691/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian and German national, Mr Yevgeniy Mikhaylovich Shteyn (Stein[1]) ("the applicant"), on 23 May 2006.

2. The applicant was represented by Mr E. Terbalyan and Mr K. Filippov, lawyers practising in Tomsk. The Russian Government ("the Government") were represented by Ms V. Milinchuk and Mr A. Savenkov, former Representative and former acting Representative of the Russian Federation at the European Court of Human Rights respectively.

3. On 5 December 2007 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 of the Convention) and to grant priority treatment to the application (Rule 41 of the Rules of Court). On the same date, the German Government were informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 (b). They chose not to avail themselves of this right.

4. The Russian Government objected to the priority treatment and the joint examination of the admissibility and merits of the application. Having considered the Government's objections, the Court dismissed them.

[1] The applicant's name in his German passport.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and is being detained in Remand Centre IZ-70/1 of Tomsk, Russia.

A. The applicant's detention

6. A Ms M named the applicant as her supplier of MDMA pills also known as "ecstasy". On 9 December 2004 the Sovetskiy District Court of Tomsk authorised a search in the flat where the applicant was living. A pile of documents, cash and pills were seized. On the same day the applicant was arrested on suspicion of supplying 8.86 gm of MDMA to a Mr V (his co-accused in subsequent proceedings). By a decision of 10 December 2004, the Sovetskiy District Court of Tomsk authorised his detention. His detention was then extended on 4 February and 6 April 2005 until 9 April and 2 June 2005 respectively. His offer of a deposit of 150,000 Russian roubles (RUB) as surety for bail was refused.

7. On 18 May 2005 the applicant was charged with smuggling 77 gm of MDMA and 31 gm of amphetamine from Germany to Russia. His detention was extended on 31 May and 25 July 2005 until 2 August and 2 September 2005 respectively.

8. The investigator sought another extension, explaining that she needed more time to receive the forensic reports, list the full charges against the applicant and his co-accused, allow them to study the reports and other materials in the case file and draft a bill of indictment. On 31 August 2005 the Oktyabrskiy District Court of Tomsk decided to keep the applicant in detention until 2 December 2005 (that is for a total period of eleven months and twenty-four days). The court ruled in the following terms:

> "The time-limit for the preliminary investigation has not expired. The court grants the investigator's request for an extension until 2 December 2005 so as to enable her to take certain investigative measures. The court takes into account the gravity of the charges, the exceptional complexity of the case in view of the number of persons involved in the drug trafficking and the close link between them. In addition, given that [the applicant] has both Russian and German nationality but has no permanent place of residence in Russia, the court finds that there are reasons to believe that he would abscond, fearing an eventual custodial sentence, and would then obstruct the proceedings...In view of the above, a less stringent measure of restraint would be inappropriate."

9. On 25 October 2005 the applicant was charged with membership of a criminal gang, a further count of drug smuggling and a further count of supplying drugs committed as part of an organised group.

10. The investigator sought a further extension, stating in her request that the applicant's guilt had been proven; however, it was impracticable to complete the investigation before 2 December 2005. On 30 November 2005 the Tomsk Regional Court extended his detention until 2 January 2006 and held as follows:

> "On 25 November 2005 investigator Matveyeva, having obtained approval from the Tomsk regional prosecutor, lodged a request dated 24 November 2005 asking the court to extend [the applicant's] detention for one month, increasing the period of detention to twelve months and twenty-four days, that is until 2 January 2006...The accused was given access to the case file more than thirty days before the expiry of the maximum period of detention (28 October 2005). However, thirty days were not sufficient for the accused and the reasons for his detention persist. Thus, given the gravity of the charges, the specific circumstances of the case and his personality, as well as the lack of a permanent place of residence in Russia and the possibility that he would flee justice and resume his criminal activity, he should remain in detention."

The applicant appealed and sought his release on bail, referring to the fact that the investigation had been completed. The Supreme Court of the Russian Federation upheld the extension order on 27 February 2006.

11. On 29 December 2005 the Regional Court extended the applicant's detention for two months, reproducing the reasoning of the earlier orders. It held that the relevant period would end on 2 March 2006 and that the total period of detention would amount to fourteen months and twenty-four days.

12. On 23 January 2006 the applicant was committed for trial at the Regional Court. On 7 February 2006 the Regional Court decided to maintain the applicant in detention pending trial (see paragraph 57 below), endorsing the reasoning of the pre-trial detention orders. It did not set any time-limit.

13. On 13 February 2006 the judge held that a co-defendant's (Mr Z) counsel had previously represented another person when the latter testified against the defendants. The judge concluded that Z's defence rights had been affected, and returned the case to the prosecutor for "remedying the violation" with reference to Article 237 of the CCrP (see paragraph 58 below). Without setting any time-limit, the judge also decided to maintain the applicant in detention. The prosecution appealed against the decision to return the case to the prosecutor. The appeal was rejected by the Supreme Court on 27 April 2006. Having noted that the applicant did not challenge the above remand decision, the Supreme Court upheld the preventive measure. The case file was returned to the prosecutor and then the investigator on 29 and 31 May 2006 respectively.

14. In the meantime, on 14 March 2006 the Supreme Court upheld the order of 29 December 2005 (see paragraph 11 above) in the following terms:

> "...the investigator's extension request had been approved by the deputy Prosecutor General...In view of the gravity of the charges against Mr Sergeyev ...the Regional

> Court found no reasons for release... the detention was extended to allow him to study the case file."

15. On 31 May 2006 the applicant asked the governor of the remand centre to release him, considering that there was no valid court order authorising his continued detention. The governor replied that the applicant's detention was lawful under the order of 13 February 2006.

16. On 1 June 2006 the investigator removed Mr F, counsel for the applicant, from the proceedings on the ground that he had previously advised another party to the proceedings. The investigator appointed Mr S instead. On 2 June 2006 the Regional Court dismissed an objection by the applicant to this new counsel (see also paragraph 19 below). Having heard the parties, it extended, with reference to Article 109 of the CCrP, the applicant's detention until 29 July 2006 so that the total period of detention under Article 109 of the CCrP would be sixteen months and twenty-four days. The court stated as follows:

> "...the reasons for the repeated extensions of [the applicant's] detention still obtain; he has been charged with various offences...when he was arrested he had his permanent place of residence in Germany..., the court considers that if at large [the applicant] would abscond or continue his criminal activity...In view of the gravity of the charges against him and because the investigator needs more time, there are exceptional circumstances warranting the extension of [the applicant's] detention..."

17. On 5 June 2006 the applicant appealed against that extension order. He submitted further statements of appeal on 7, 13 and 19 June 2006. According to the Government, copies of those statements were sent to "the other parties to the proceedings" for comment by 21 July 2006. On 26 July 2006 the detention file was dispatched from Tomsk to Moscow, where the Supreme Court is situated. The latter received it on 3 August 2006. On 22 September 2006 the Supreme Court upheld the extension order of 2 June 2006 endorsing its reasoning. It indicated that the detention order had been issued under Article 109 § 7 of the CCrP and the relevant request had to be approved by the regional prosecutor, which had been done. It accepted that the first-instance court had established the exceptional circumstances warranting an extension within the eighteen months' statutory period. It appears that the applicant obtained a copy of the appeal decision on 23 November 2006.

18. In the meantime, on 26 July 2006 the Regional Court extended the applicant's detention further to 29 September 2006 with reference to Article 109 § 7 of the CCrP. It appears that the judge refused to consider his offer of RUB 340,000 as surety for bail. On 7 September 2006 the prosecutor resubmitted the criminal case for trial.

19. On 19 September 2006 the judge returned it to the prosecutor again indicating that the applicant had not been afforded adequate time to choose counsel on 2 June 2006 (see paragraph 16 above). On 26 September 2006 the Regional Court extended the applicant's detention until 29 November

2006. On an unspecified date the case was resubmitted to the Tomsk Regional Court for trial. On 9 November 2006 the Regional Court scheduled a preliminary hearing on 20 November 2006, in particular in order to decide on the detention issue. On the latter date, the judge returned the case to the prosecutor with reference to Article 237 of the CCrP and ordered that the applicant be kept in detention considering that he would abscond, if at large.

20. On 28 November 2006 the Regional Court adjourned the proceedings and decided to keep the applicant and co-accused Z in custody considering that they would abscond, if at large. The applicant appealed, contending that there had been no ascertainable facts confirming the risk that he would abscond and referring to his conditions of detention. It is unclear whether that appeal was examined.

21. On 11 December 2006 the Supreme Court upheld the detention order of 26 September 2006 (see paragraph 19 above), finding, *inter alia*, that the prosecution's failure to observe the seven-day time-limit for lodging that extension request had not amounted to a serious breach of law which would warrant annulment of the order.

22. On 4 May 2007 the Regional Court examined again the issue of the applicant's detention. As the applicant's new counsel T. was away from 23 April to 7 May 2007, the Regional Court appointed counsel K. for the duration of the detention hearing. According to the applicant, the hearing had initially been scheduled for 14 May 2007; he was unaware that it had been brought forward to 4 May; counsel T., who had been notified of that change only on 3 May 2007, was unable to attend. Nevertheless, the Regional Court extended the applicant's detention until 7 August 2007 stating as follows:

> "...[the applicant's] detention should be extended due to the gravity of the charges because prior to his arrest he had no stable work; he is acquainted with many witnesses and might therefore abscond, influence the witnesses or obstruct the proceedings."

On 16 July 2007 the Supreme Court upheld the detention order, reproducing verbatim the reasoning of the Regional Court.

23. On 31 July 2007 the Regional Court rejected the applicant's application for release and extended his detention until 7 November 2007 endorsing the previous orders and stating that it would be impracticable to complete the trial before 7 August 2007 because the trial court was attempting to secure the presence of witnesses residing in another region. The applicant's counsel appealed on 8 August 2007. According to the Government, a copy of the statement of appeal was sent to "the other parties to the proceedings" for comment by 23 August 2007. The applicant submitted an additional statement of appeal on 15 August 2007. According to the Government, a copy was sent to the parties on 20 August 2007 for comment by 3 September 2007. On 4 September 2007 the detention file was

dispatched to the Supreme Court. The latter received it on 14 September 2007. Due to a typographical error in the detention order of 31 July 2007, the Supreme Court returned the file to the Regional Court. The file was dispatched to the Supreme Court on 8 November 2007. It was received there on 16 November 2007. On 6 December 2007 the Supreme Court upheld the detention order of 31 July 2007.

24. In the meantime, on 6 November 2007 the Regional Court extended the applicant's detention for three months, that is, until 7 February 2008. On 31 January 2008 the Regional Court indicated that it would be difficult to complete the trial before 7 February 2008 in view of the need to ensure the attendance of witnesses living in other towns or persons in detention. The judge accordingly extended the applicant's detention for three months (until 7 May 2008) and held as follows:

> "...[the applicant's] detention should be extended in view of the gravity of the charges relating to drug trafficking, which represents a high level of public danger. Taken into account also are the fact that [the applicant] had had no permanent occupation prior to [his] arrest; [he] is acquainted with many witnesses in the case and can thus flee justice, put pressure on the witnesses, obstruct the course of the proceedings. [The applicant] had had no lawful sources of income before his arrest, had previously been prosecuted for unlawful dealing in firearms; he had been granted bail instead of being placed in pre-trial detention; however he is being prosecuted again for even more serious offences.
>
> The matter relating to the conditions of detention in the remand centre is outside the jurisdiction of this court."

The applicant appealed indicating that between 1999 and 2004 he had been employed by a private company in Germany; that he had obtained employment soon after his arrival in Tomsk; that all witnesses in relation to the charges against him had already been examined at the trial; that he previously had respected the bail conditions. On 14 April 2008 the Supreme Court upheld the detention order. It indicated that after the expiry of the six-month period from the date when the case had been submitted to the trial court, the latter could extend the defendant's detention pending trial. The applicant was accused of serious and very serious criminal offences. It held as follows:

> "The detention order indicates specific and real circumstances indicating that a less stringent measure of restraint would allow [the applicant] to flee justice, put pressure on the witnesses and obstruct the course of the proceedings."

25. The applicant lodged an application for release indicating, *inter alia*, that his German passport had expired; that before his arrest he had been residing at the same address where the search had been carried in 2004. On 28 April 2008 the trial judge rejected the application for release and extended the applicant's detention for three months. He relied on the same grounds as before, also referring to a forensic examination that had been ordered and completed, and to the necessity of completing the trial. The

judge rejected as false a certificate produced by the applicant in order to confirm his previous residence in the town of Tomsk.

26. It appears that two of four defendants, including the applicant and co-accused Z, were kept in detention throughout the investigation and pending the trial. Co-accused L and V were at large. Most of the charges concerned defendants L and Z.

27. On 30 July 2008 the Regional Court convicted the applicant, apparently as charged, and sentenced him to twelve years' imprisonment.

B. Criminal proceedings against the applicant

28. As indicated above (paragraph 6), the applicant was arrested on 9 December 2004 on suspicion of drug trafficking. Between December 2004 and August 2005 the investigators identified further episodes of drug trafficking. The investigations were finalised in October 2005 and from 1 November 2005 to 11 January 2006 the applicant studied the case file.

29. On 23 January 2006 the case was sent to the Tomsk Regional Court for trial. On 13 February 2006 a judge in the Regional Court decided to return the case to the prosecutor on account of a violation of the procedural rights of the applicant's co-accused. On 27 April 2006 the Supreme Court rejected an appeal by the prosecution and upheld that decision.

30. From 7 June to 9 August 2006 the applicant and his counsel again studied the case file. By an order of 16 August 2006, the Kirovskiy District Court decided that the applicant should complete his study of the case file within nine working days.

31. Eventually, the trial started on 28 November 2006. Four persons, including the applicant, were, according to the Government, tried in relation to fifty episodes of criminal activity between 2002 and 2005.

32. According to the applicant, one hearing was held in December 2006, four in January 2007, seven in February 2007, three in March 2007, two in April 2007, two in May 2007, three in June 2007, one in July 2007, one in August 2007, two in September 2007, one in October 2007, four in November 2007, three in December 2007, four in January 2008, three in February 2008, four in March 2008, one in April 2008 and one in May 2008.

33. Thirty-six persons were questioned as witnesses and voluminous written evidence was presented at the trial. On 11 September 2007 the prosecutor completed the presentation of evidence. The defence produced evidence from 2 October 2007 to 10 January 2008. On unspecified dates, the prosecutor dropped the charge of membership of a criminal gang in respect of the applicant and the charge of drug trafficking in relation to one episode. On 30 July 2008 the Regional Court convicted the applicant on the remaining charges and sentenced him to twelve years' imprisonment. The applicant appealed. On 5 March 2009 the Supreme Court of Russia

amended the trial judgment and reduced the applicant's sentence to eleven years' imprisonment.

C. Conditions of detention

34. From 10 December 2004 to 11 April 2005 the applicant was detained in Remand Centre IZ-70/1 of Tomsk. From 11 to 25 April 2005 the applicant was kept in Tomsk Prison no. 3, part of which was used as a remand centre. He maintained that, after his arrival there, his head was shaven. A body search disclosed that the applicant had been in possession of a razor blade. On 12 April 2005 the governor of the remand centre ordered his placement in a punishment cell for ten days.

35. Since 25 April 2005 the applicant has been in Remand Centre IZ-70/1.

1. The applicant's account

36. The initial description of the conditions of detention made by the applicant in his application to the Court in 2006 is as follows:

> "The applicant spent seven months in a cell measuring five square metres and designed for two persons. The toilet was not separated from the living area and offered no privacy; there was no lavatory and the table was placed next to the toilet. The following five months he spent in a cell measuring eighteen square metres together with eleven to thirteen detainees. The detainees had to sleep in shifts because the cell had only eight beds. The radio and light remained on day and night. He was allowed to take a shower once a week. Subsequently, he was detained in a cell measuring seven square metres together with three to five detainees. The cell had only three beds and the detainees had to sleep in shifts. All cells were infested with lice and bugs."

37. The applicant subsequently submitted that from 10 to 12 December 2004 he was kept in cell no. 90 housing six to eight persons. No mattresses, bedding or tableware were supplied. From 12 to 15 December 2004 he was in cell no. 33 together with another inmate. The lavatory was not separated from the living area; there was no sink so he had to wash himself using a tap above the lavatory. From 15 December 2004 to 11 April 2005 he shared cell no. 41 with another detainee. The material conditions were similar to those in cell no. 33. From 25 April to 29 June 2005 the applicant was in cell no. 41 with another person. From 29 June to 11 October 2005 he was in cell no. 280 which then housed four to eleven persons. The cell had ten beds, one of which was used to store the detainees' belongings. During the summer period the temperature in the cell reached +50 C. From 11 October to 8 December 2005 the applicant was in cell no. 267 which then housed ten to fourteen persons. The cell had nine beds, one of which was used to store the detainees' belongings. The windows were covered with metal shutters barring access to natural light. During the winter period the temperature in

the cell fell to +10 C. From 8 December 2005 to 10 January 2007 the applicant was kept in cell no. 184 which then housed three to five persons. It had three beds. From 10 January 2007 the applicant was in cell no. 183 which housed three to seven persons. The cell had six beds, one of which was used to store the detainees' belongings. The lavatory was not separated from the living area, so the person using it could be watched by other detainees and male and female wardens. The lavatory was next to a bed.

38. The applicant also indicated that there was no sink in cells nos. 33 and 41; the lavatories in cells nos. 33, 41 and 183 were not separated from the living area; the living space in cells nos. 33, 41, 267, 184 and 183 was particularly limited. The air in the cells was stuffy and filled with smoke. All cells were infested with lice, bedbugs and cockroaches. During the summer periods there were also gnats and flies, possibly because the building was next to a pigsty. The detainees had no alternative but to oppose the sanitary measures because of the difficulties of bearing the chemical odours and given the small size of the cells and lack of proper ventilation.

39. The applicant was not allowed to take a shower more than once per week. The distribution of items of hygiene started only in 2007.

40. The applicant submitted six colour photographs showing the interior of cell no. 183 situated in building no. 4 of the remand centre: a lavatory and a sink were situated next to one set of three-tier bunk beds. The lavatory had no flushing system and no lid; it was not separated in any way from the remaining space of the cell.

2. The Government's account

41. The Government submitted that according to its design capacity, the remand centre could house 1,550 inmates. Between 2004 and 2007 the number of inmates at the remand centre varied between 1,107 and 1,532 persons.

42. Between 10 December 2004 and 11 October 2005 the applicant was kept in cells nos. 33, 41, 90 and 280. From 10 to 12 December 2004 he was placed in cell no. 90 measuring 22.5 square metres and then housing six persons (including the applicant). With reference to an extract of 13 December 2004 from the relevant logbook, the Government asserted that from 12 to 15 December 2004 the applicant had been alone in cell no. 33 measuring 4.6 square metres. With reference to an extract of 16 April 2005 from the relevant logbook, the Government asserted that from 15 December 2004 to 11 April 2005 he was in cell no. 41 measuring 4.6 square metres and then housing two persons (including the applicant); from 25 to 27 April 2005 he was alone in that cell; from 27 April to 29 June 2005 he shared the cell with another inmate.

43. The applicant was also kept in cell no. 280 measuring 15.1 square metres and having ten beds. With reference to an extract of 26 September

2005 from the relevant logbook, the Government asserted that its cell population was as follows:

From 29 June to 12 July 2005 – eleven persons;
From 12 to 20 July 2005 – seven persons;
From 20 to 26 July 2005 – six persons;
From 26 to 28 July 2005 – seven persons;
From 28 to 30 July 2005 – six persons;
From 30 July to 9 August 2005 – seven persons;
From 9 to 16 August 2005 – eight persons;
From 16 to 20 August 2005 – nine persons;
From 20 to 31 August 2005 – ten persons;
From 31 August to 13 September 2005 – nine persons;
From 13 to 26 September 2005 – ten persons;
From 26 to 27 September 2005 – four persons;
From 27 September to 5 October 2005 – eleven persons;
From 5 to 11 October 2005 – ten persons.

44. Thereafter, from 11 October to 8 December 2005 the applicant was kept in cell no. 267 measuring eleven square metres and designed for nine detainees. From 8 December 2005 to 10 January 2007 he was kept in cell no. 184 measuring 8.5 square metres. From 10 January 2007 onwards he was in cell no. 183 measuring 9.4 square metres and designed for six detainees.

45. The applicant was given an individual sleeping berth, a mattress, a pillow and a blanket.

46. The cells were equipped with a lavatory, which was separated from the living area by a partition of 1.4 or 1.5 metres in height and had a screen. In each cell the applicant was afforded enough space for movement or physical exercise. He was afforded access to various commodities, such as a dining table, lavatory or sink.

47. He was allowed access to a shower once per week for no less than fifteen minutes. He made no requests for more frequent access to a shower.

48. During the relevant period(s) no bugs, cockroaches or rats had been detected in the cells. Neither had the detainees made any complaints in that respect. The appropriate sanitary measures were taken on a monthly basis.

49. The applicant was allowed a daily outdoor walk for no less than one hour. The walks were organised in the courtyards of the remand centre measuring from 22 to 43.6 square metres.

50. Radio broadcasting was accessible in the cells between 6 a.m. and 10 p.m. The volume could be increased or decreased from a point in each cell.

51. The cells were equipped with artificial lights adapted for night supervision of the inmates and for prevention of suicide. All cells were equipped with mandatory ventilation which was properly functioning at the

relevant time. The cell windows had small air vents. The metal shutters were removed from the windows in 2003.

52. The remand centre had a centralised heating system which was properly functioning, including during the autumn and winter period. The temperature in the cells did not fall below +18 C.

53. The applicant underwent regular medical checks which confirmed that he was in good physical condition and had no infection or disease.

54. According to a certificate of 26 June 2008 issued by the remand centre, a new building no. 5 was constructed in 2004; building no. 2 was renovated in 2006 and 2007, including installations of lavatories, sinks and lights; the roof of building no. 4 was repaired in 2007; and the renovation in building no. 3 was completed in 2008. According to another certificate, cells nos. 33, 41, 90, 183, 184, 267 and 280 were and remain equipped with cold water taps and lavatories separated from the living area by a partition of 1.5 metres in height and a curtain.

55. Like the applicant, the Government submitted a faxed copy of photos, one of them showing a standard toilet with a curtain; a statement countersigned by a remand centre officer stated that it was cell no. 183. The other photos suggested that similar arrangements were made in cells nos. 33, 41, 184, 261 and 280.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (CCrP)

56. Pursuant to Article 109 § 1 of the Code, detention of an accused pending investigation should not exceed two months. It may, however, be extended to six months. Further extensions to up to twelve months are possible only in relation to persons accused of serious or very serious criminal offences, in view of the complexity of the case and if there are grounds justifying detention. An investigator's request for extension must be approved by the regional prosecutor (§ 2). Further extension of detention beyond twelve months and up to eighteen months may be authorised only in exceptional circumstances in respect of persons accused of very serious offences, upon an investigator's request approved by the Prosecutor General or his deputy (§ 3). Extension of detention beyond eighteen months is prohibited and the detainee must be released, unless the court decides to extend his detention to the date when the accused has finished studying the case file and the case has then been submitted for trial (§§ 4 and 8 (1)). After the completion of the investigation, an accused kept in detention must be provided with access to the case file no later than thirty days preceding the expiry of the maximum period of detention indicated in paragraphs 2 and 3(§ 5). If such access was given later than that, the detainee must be released after the expiry of the maximum period of detention (§ 6). If the

thirty-day time-limit was complied with, but was insufficient for the accused, the investigator, with the approval of the regional prosecutor, may request the court to extend the accused's detention. Such a request should be submitted no later than seven days before the expiry of the maximum detention period (§ 7).

57. Under Article 255 of the Code, after a criminal case has been submitted for trial to a court, the latter may, on the party's request or *proprio motu*, vary or annul a measure of restraint in respect of the defendant, including placement in custody or detention pending trial. The period of detention pending trial cannot normally exceed six months from the date when the case was submitted to a court and up to delivery of a judgment in the case. However, after the expiry of that period the trial court may extend the detention of a defendant charged with a serious or very serious offence. Each extension must not exceed three months.

58. 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 and must also decide on a preventive measure in respect of the accused. 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.

B. Relevant judicial practice

59. By a ruling of 10 October 2003, the Plenary Supreme Court provided the courts with guidance on the application of international law, indicating, *inter alia*, that when deciding matters relating to detention they should take into account that under Article 5 § 3 of the European Convention, a detainee is entitled to trial within a reasonable time or to release pending trial (§ 14 of the Ruling). When deciding on the remand matter, the court should take into account the rights protected by Articles 3, 5, 6 and 13 of the Convention; when examining an application for release or a complaint about the extension of detention the courts should take into consideration the requirements of Article 3 of the Convention (§ 15).

60. By a ruling of 22 March 2005, the Constitutional Court examined various provisions of the CCrP concerning detention pending investigation and trial. It held, in particular, that a valid detention order continued to be in force within the time-limit set therein, even when the case progressed from one to another stage of proceedings (§ 3.2 of the Ruling).

C. Criminal Code

61. Any period of pre-trial detention shall count towards the sentence of imprisonment (Article 72 § 3).

D. Conditions of detention

62. Order no. 7, issued on 31 January 2005 by the Federal Service for the Execution of Sentences, deals with implementation of the "Remand centre 2006" programme. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that the conditions of his detention in Tomsk Remand Centre amounted to inhuman and degrading treatment in breach of Article 3 of the Convention. He also complained that he had been placed in a punishment cell in Tomsk Prison and that his head had been shaven. Article 3 reads as follows:

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

64. The Government considered that the applicant's complaint had concerned only his detention from 25 April 2005 onwards, while he had had no objection to the conditions of detention in the same facility from 10 December 2004 to 11 April 2005. They conceded that the conditions during both periods had been identical. However, they concluded that the applicant had not complied with the six-month rule in respect of the first period. They also contended that he had not complained about the conditions to any public authority, while being represented by counsel in the criminal proceedings. In particular, he could have lodged a claim for compensation in respect of non-pecuniary damage. The Government acknowledged the insufficiency of cell space afforded to the applicant between December 2004 and mid-October 2005. However, they contended that the applicant had been given an individual sleeping berth and bedding. They submitted that the cell-space factor was an insufficient basis on which to conclude that there had been a violation of Article 3 of the Convention as regards Tomsk Remand Centre.

As regards Tomsk Prison, the Government submitted that the applicant had been kept there from 11 to 25 April 2005. A body search disclosed that he had been in possession of a razor blade. He had therefore been placed in a punishment cell; his head had not been shaven.

65. The applicant affirmed that he was complaining about the conditions of his detention from December 2004 onwards. He submitted that he had raised the matter with the detention judge and the prosecutor present at several detention extension hearings. The applicant's mother had complained on his behalf to various public authorities such as the Regional Prosecutor's Office and the Prosecutor General's Office. However, those complaints had not been examined in substance. There had been no amelioration in the material conditions of detention; renovation works had started only in 2007.

A. Admissibility

1. Tomsk Prison no. 3

66. The Court observes at the outset that the applicant made no complaint about the material conditions of his detention in Tomsk Prison from 11 to 25 April 2005. Even assuming that he complied with the six months rule and the exhaustion requirement, it has not been established that he was subjected to any proscribed treatment there in breach of Article 3 of the Convention. Neither is the mere fact of placement in a punishment cell as a penalty for having violated prison discipline sufficient to constitute degrading or inhuman punishment (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, §§ 30-32, Series A no. 247-C). It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Tomsk Remand Centre no. 70/1

(a) Exhaustion of domestic remedies

67. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Guliyev v. Russia*, no. 24650/02, § 51, 19 June 2008, with further references).

68. The Court notes the Government's argument that the applicant failed to lodge an action before a court complaining about the allegedly appalling conditions of his detention. The Court has already on a number of occasions examined the same objection by the Russian Government and dismissed it (see *Guliyev*, cited above, § 34). The Court sees no reason to depart from that finding in the present case.

69. Thus, the Court concludes that the applicant's complaint cannot be dismissed for failure to exhaust domestic remedies.

(b) Continuing situation and six-month rule

70. The Court is satisfied that the applicant's complaint concerned his detention in the remand centre from December 2004 onwards (see paragraph 36 above). However, it further observes that the applicant's detention in this remand centre was interrupted from 11 to 25 April 2005, when he was kept in another detention facility. Having regard to the findings in paragraph 66 above and the applicable principles, the Court considers that this period was such as to bar the Court's competence by virtue of the six-month rule in respect of the complaint regarding the conditions of detention from 10 December 2004 to 11 April 2005 (compare *Benediktov*, cited above, § 31; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; and *Guliyev*, cited above, §§ 31-33; see also, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 32-37, ECHR 2007-... (extracts)).

71. Furthermore, the Court observes that the applicant lodged before the Court a complaint about the conditions of his detention while still being in the same detention facility. He also remained there after notice of the application had been given to the respondent Government. Thus, it is open to the Court to examine the conditions of the applicant's detention from 25 April 2005 onwards.

3. Conclusion on admissibility

72. The Court finds that the applicant's complaint regarding the conditions of his detention in the remand centre 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 as regards the conditions of the applicant's detention in the remand centre from 25 April 2005 onwards.

B. Merits

73. The Court observes that the parties' accounts of the conditions of detention differ. Some of the applicant's allegations are not supported by sufficient evidence and have therefore not been proved beyond reasonable doubt. However, the Court does not consider it necessary to establish the

truthfulness of each and every allegation made by the applicant. Instead, the Court will concentrate on the specific allegations that have not been disputed by the respondent Government, or those in respect of which the Government did not comment (see *Trepashkin v. Russia*, no. 36898/03, § 85, 19 July 2007). The Court will first examine the issue that lends itself to more or less precise quantification, namely the cell space afforded to the applicant during the various periods of his detention.

74. The Government provided no information as to the source of their information regarding the cell population, except for certain short periods of the applicant's detention in cells nos. 41 and 280. The Court observes, however, that it is common ground between the parties that between 25 April 2005 and 11 October 2005 the applicant was detained in conditions allowing for 1.37 to 2.51 square metres of cell space per detainee (except for several days in September 2005), including the space taken by the furniture.

75. As the Government made no submissions as to the number of persons detained with the applicant from 11 October 2005 onwards in cells nos. 267, 184 and 183, the Court will base its assessment on the numbers supplied by the applicant (see paragraphs 36 and 37 above). Therefore, the Court finds that during the relevant period he was afforded 0.78 to 1.7 square metres in those cells, including the space taken by the furniture. Moreover, the Court accepts the applicant's assertion that when the number of detainees exceeded the number of beds in the cell, he had to sleep in shifts with other detainees. Even assuming that the cells were occupied up to their design capacity, the space afforded per detainee would still be insufficient.

76. Furthermore, the applicant submitted six colour photographs allegedly showing the interior of cell no. 183. The lavatory and a sink were situated next to one of the beds; the pan had no flushing system and no lid, and was not separated in any way from the living area. The Government submitted a faxed copy of photos showing a standard toilet with a curtain. The Court will not concern itself with the way in which the applicant obtained the photographs. Its only concern is to determine whether they reflect the truth, and if so, to draw the appropriate conclusions from them (see *Mathew v. the Netherlands*, no. 24919/03, § 159, ECHR 2005-IX). The Court has no reason to doubt that the photos submitted by the applicant showed the sanitary installations in one of the cells in which he was detained and finds that the sanitary arrangements were inappropriate.

77. Nothing in the parties' submissions made in 2008 indicates that the applicant was transferred to another detention facility or that his situation was otherwise improved, except – probably – regarding sanitary installations. The Court notes with satisfaction some indications as to improvement of the general conditions of detention in various buildings of the remand centre between 2004 and 2008, as stated in the certificate of

26 June 2008 produced by the Government. However, the Court is unable to assess whether any of those improvements directly affected the applicant. Accordingly, the Court concludes that the applicant was kept in cramped conditions up to and including 2008.

78. Lastly, the Court observes that save for one hour of daily outdoor exercise, except on the days of court hearings, the applicant was confined to his cell and was not allowed any other out-of-cell activity. That factor adds to the problem of the insufficient cell space (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005, and *Khudoyorov v. Russia*, no. 6847/02, § 105, ECHR 2005-... (extracts)).

79. The Court has on many occasions found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III; *Khudoyorov*, cited above, §§ 104 et seq.; *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; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI).

80. 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 the authorities intended to humiliate or debase the applicant, the Court finds that the fact that the applicant has been kept in cramped conditions is 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 anguish and inferiority capable of humiliating and debasing him.

81. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention, which the Court considers to be inhuman and degrading within the meaning of that provision.

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

82. The applicant alleged that his detention between December 2004 and November 2006 had been unlawful for various reasons. 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...”

A. Submissions by the parties

83. The applicant argued in particular that his arrest had been unlawful. He also argued that under Article 109 § 3 of the CCrP, as in force in 2005 and 2006, the extension of the detention period beyond twelve months up to eighteen months could be allowed only with the approval by the Prosecutor General or his deputy. No such approval was sought or obtained for extending the applicant’s detention on and after 30 November 2005. The detention order of 13 February 2006 did not indicate a time-limit. There was no decision on the detention matter after the case was returned to the investigating and prosecuting authorities on 29 and 31 May 2006 respectively. An extension request was submitted too late. The remand order of 2 June 2006, which was based on that request, unlawfully extended his detention beyond the eighteen-month period of Article 109 of the Code.

84. The Government submitted that under Article 109 §§ 3 and 4 of the CCrP the maximum period of detention pending the investigation was limited to eighteen months (see paragraph 56 above). However, Article 109 § 8 (1) allowed for an extension over eighteen months if the accused and his counsel required more time to study the case file. In the present case, the regional prosecutor, acting under Article 109 § 7, had consented to apply to a court for further extensions on such grounds in November 2005 and after the return of the case file to the authorities in 2006. After the criminal case was committed for trial, the detention matter was regulated by Article 255 of the Code (see paragraph 57 above), thus limiting this period of detention to six months until the delivery of a trial judgment. However, a court could extend that period on a number of occasions, but each time for no longer than three months. The applicant’s detention from 23 January to 27 April 2006, and from 8 to 19 September 2006 were regulated by Article 255 of the Code.

B. The Court’s assessment

1. Admissibility

(a) Arrest and detention order of 10 December 2004

85. Even assuming that the applicant exhausted the domestic remedies in respect of his arrest and the detention order of 10 December 2004, he raised the related complaint before the Court only on 23 May 2006. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Detention orders of 30 November and 29 December 2005

86. The applicant alleged that the extension request, which resulted in the detention order of 30 November 2005, should have been approved by the Prosecutor General or his deputy. Article 109 § 3 of the CCrP, as in force in 2005 and 2006, did indeed require that an extension request be approved by the Prosecutor General or his deputy (see paragraph 56 above). However, the Court accepts the Government's argument that the detention order of 30 November 2005 was based on Article 109 § 7 rather than its paragraph 3. The former required that an extension request be approved by a regional prosecutor, which was done in the present case (see paragraph 10 above). Thus, the Court is satisfied that the national law was complied with in that respect. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) Detention order of 13 February 2006

87. The applicant also complained that the detention order of 13 February 2006 indicated no time-limit for his continued detention. Even assuming that the applicant exhausted the domestic remedies (see paragraph 13 above), the Court notes that this complaint was first raised in substance only in 2008, and thus was submitted out of time. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

(d) Detention order of 2 June 2006

88. The Court observes that the main thrust of the applicant's argument under Article 5 § 1 (c) of the Convention related to the detention order of 2 June 2006. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. Merits

89. 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). The words "in accordance with a procedure prescribed by law" in Article 5 § 1 do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV). Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see, among others, *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II).

90. The applicant's argument is twofold: (i) the order of 2 June 2006 allegedly extended his detention beyond the eighteen months' limit in breach of Article 109 of the CCrP; (ii) the relevant request for extension had been lodged too late and had not been approved by the Prosecutor General or his deputy. The Court observes that by 2 June 2006 the applicant had already been kept in detention for seventeen months and twenty-three days. However, the Government contended that part of that period, namely from 23 January to 27 April 2006, was covered by Article 255 of the CCrP and did not count toward the time-limits in Article 109 of the CCrP. The Court cannot accept the Government's submission for the reasons set out below.

91. The Court has on many occasions examined the peculiar feature of the Russian legal framework consisting of detention "pending investigation" and detention "pending trial", and the corresponding methods of calculating relevant periods of detention (see paragraphs 56 and 57 above) (see *Khudoyorov*, cited above, *in fine*). In such a framework, several non-consecutive periods of detention within one set of criminal proceedings can be classified as "pending investigation" or "pending trial", for instance when the trial judge returns the case to the prosecutor (see paragraph 58 above). Although the Court cannot assess as such the "lawfulness" of the applicant's detention before 2 June 2006 for the reason set out in paragraph 87 above, it will have regard to the relevant circumstances for its analysis in relation to the applicant's detention on the basis of the detention order under review.

92. In that connection, the Court notes that the earlier order of 13 February 2006 did not refer to Article 255 of the CCrP, did not set a time-limit and did not state reasons for maintaining the applicant in custody or for a periodic review of the preventive measure. The remand judge did, however, refer to Article 237 of the CCrP, which required that after receipt of the case file from the judge the prosecutor should comply with his or her instructions within five days. This was not done in the present case. In the meantime, from 13 February to 29 May 2006 the applicant's case was neither with the trial judge nor with the prosecuting authority. Thus, already at that point the applicant was placed in a situation of uncertainty as to the grounds for his continued detention.

93. On 2 June 2006 the regional court extended his detention until 29 July 2006 so that the total period of detention (under Article 109 of the CCrP), it stated, would amount to sixteen months and twenty-four days. The Court notes that the remand judge did not specify the paragraph on which he based this remand order. Even accepting that the appeal court might have remedied that shortcoming by itself referring to Article 109 § 7 of the CCrP (see paragraph 17 above), the Court is not convinced that the national courts correctly calculated the relevant term of detention. The Court considers that the applicant's detention from 9 December 2004 to 7 February 2006 was regulated under Article 109 of the CCrP (see paragraphs 11 and 60 above). His detention from 7 to 13 February 2006 was authorised under Article 255 of the Code. The Government did not substantiate their assertion concerning the applicability of Article 255 from 13 February to 27 April 2006 (see paragraph 58 above). They did, however, accept that the detention from 27 April to 2 June 2006 was covered by Article 109 of the CCrP.

94. The Court notes that neither the prosecutor's extension request nor the order itself contained any indication as to how the overall period of detention was calculated. However, this matter was of fundamental importance for the applicant who claimed that no further extension of his detention would be lawful under the CCrP. If the period from 13 February to 2 June 2006 was regulated under Article 109 of the CCrP, it meant that by the latter date the applicant had already spent seventeen months and sixteen days in detention under that provision. 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 since the national courts' reasoning was premised on the fact that the applicant's detention as extended would not exceed the eighteen months' limit.

95. In light of the foregoing considerations, the Court is not satisfied that the detention order of 2 June 2006 was based on rules which could be considered as sufficiently precise. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

96. In view of the above findings, there is no need to examine separately the applicant's remaining arguments in relation to this detention order.

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

97. 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. Submissions by the parties

98. The applicant confirmed that he had both Russian and German nationality. However, he insisted that he had a place of residence in Russia at the material time, had a stable household and was living at his wife's relatives' flat. The authorities had not displayed particular diligence, given that the case had been returned to the prosecutor on three occasions. He had been charged only in respect of five episodes, none of which concerned any alleged criminal activities after the year 2003.

99. 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 and was linked to more than thirty criminal files, including emerging episodes of criminal activity on the part of an organised group or a criminal gang. The decision to join various episodes was justified with a view to avoiding possible duplication of the proceedings. In total, the applicant and his co-accused were charged in relation to more than fifty episodes of criminal activities between 2002 and 2005 relating mainly to drug trafficking. The case file at the time of being studied by the accused was voluminous (4,500 pages). No less than one hundred persons were questioned as witnesses, including those residing or detained outside the Tomsk Region. Thirty complex forensic reports had been commissioned in the course of the proceedings. Moreover, there was a risk that the applicant would flee investigation and justice 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 Tomsk or elsewhere in Russia; that he had German nationality; and that his place of residence and that of his relatives and friends, as well as his sources of income, were all located in Germany. The courts had also had regard to the applicant's personality, in particular his involvement in drug trafficking and smuggling, and to the fact that he had set up and supervised the supply of drugs from Germany to Russia and was an active member of a criminal gang in the Tomsk Region. If at large, he could have put pressure on the co-accused or witnesses both before and during the trial. His previous criminal record (dealing in firearms) and his predisposition to criminal activity supported the argument that he could continue his criminal activities, if released. The courts had examined the arguments of the defence and had given reasoned decisions dismissing them. Less stringent preventive measures 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 authorities had displayed particular diligence in the conduct of the proceedings, while the applicant and his counsel had protracted the proceedings.

B. The Court's assessment

1. Admissibility

100. 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.

2. Merits

101. The Court observes that the relevant period of the applicant's detention started on 9 December 2004, the date of his arrest, and ended on 30 July 2008, when he was convicted. Thus, he spent three years, seven months and twenty-one days in detention before and pending trial. 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.

102. The applicant was apprehended on suspicion of procurement and attempted supply of drugs following a search in his flat and seizure of a quantity of drugs. The Court is satisfied that that suspicion was a reasonable one. For at least an initial period, 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.

103. 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.

104. In its assessment the Court does not lose sight of the fact that after the applicant had been charged in December 2004, further charges were brought in May and October 2005 on various counts of drug trafficking (see paragraphs 7 and 9 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).

105. The Government have put a special 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 commission of offences relating to drug trafficking within that organised group. The Court has previously considered that the existence of a general risk flowing from it 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 that the concerted nature of the alleged criminal activities formed the basis of the detention orders at the initial or advanced stage of the proceedings. Neither was the Court provided with any evidence which would support the Government's own submission on that point.

106. Thus, the above circumstances alone could not constitute a sufficient basis for holding the applicant for a long period of time.

107. The other grounds for the applicant's continued detention were the domestic courts' findings that the applicant could abscond, pervert the course of justice and reoffend. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete 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). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of specific facts in support of their conclusions.

(a) The danger of perverting the course of proceedings

108. 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).

109. Furthermore, the Court notes that the pre-trial investigation in respect of the applicant was completed in October 2005. Thereafter, he remained in custody for two years and nine months, of which most of the time 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 necessity 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). Moreover, the prosecution completed the presentation of evidence in September 2007 (see paragraph 33 above). Thus, it may be assumed that the witnesses testifying in relation to the charges against the applicant had been examined by that date. However, no explanation was given as to why the alleged risk persisted. The Court observes that the national courts did not specify why such risk existed in relation to the applicant and did not exist in relation to the other detained or non-detained co-accused. Only two of four defendants, including the applicant and Z, were kept in detention throughout the investigation and pending the trial. L and another person were at large while most of the charges apparently concerned defendants Z and L.

110. The Court therefore considers that, having failed to act diligently, the national authorities were not entitled to regard the circumstances of the case as justification for using the risk of collusion as a further ground for the applicant's detention.

(b) Risk of absconding

111. Throughout the period of detention the Russian courts also referred to the applicant's German 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). However, the danger of an accused absconding does not result just because it is possible or easy for him to cross the frontier: there must be a whole set of circumstances, such as, particularly, the lack of well-established ties in the country, which give

reason to suppose that the consequences and hazards of flight will seem to him to be a lesser evil than continued imprisonment (see *Stögmüller v. Austria*, judgment of 10 November 1969, § 15, Series A no. 9). It was not disputed that the applicant's German passport had expired and was not renewed. The applicant, who was also a Russian national, could only cross the Russian border with his Russian travel passport (see *Lind*, cited above, §§ 53 and 81). It appears that after his arrest the applicant had been divested of his documents, including his passport. In any event, the domestic authorities did not explain why the withdrawal of his Russian travel passport did not mitigate the risk of his absconding abroad.

112. The Court is ready to accept that the applicant did not have a place of residence in Tomsk or elsewhere in Russia, which could be qualified as "permanent" by the Russian courts. However, the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007, and *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005). As already stated, the risk of flight should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). Such risk necessarily decreases as the time spent in detention passes by for the probability that the length of detention on remand will be deducted from (or will count towards) the period of imprisonment which the person concerned may expect if convicted, is likely to make the prospect seem less awesome to him and reduce his temptation to flee (ibid.; see also paragraph 61 above).

113. In addition, the Court observes that the risk of absconding was the only reason cited by the remand judge on 20 November 2006. Even assuming that he intended to endorse the other reasons cited in previous detention orders, there was no serious attempt to establish that those reasons still obtained.

114. The Court therefore finds that the existence of the risk of absconding was not sufficiently established.

(c) Risk of reoffending

115. The domestic courts also mentioned that the applicant had previously been prosecuted for unlawfully dealing in firearms, had then been granted bail, but was "prosecuted again for even more serious offences" (see paragraph 24 above). The Court accepts that that fact may be relevant in assessing the danger of reoffending. Such a danger, 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, that the danger be a plausible one and the measure 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*, judgment of 12 December 1991, § 40, Series A no. 225). However, the national courts did not attempt to assess the relevant risk, including whether the earlier charges were comparable, either in nature or in the degree of seriousness, to the charges in the pending proceedings (ibid; see also *Popkov v. Russia*, no. 32327/06, § 60, 15 May 2008). Neither was it in dispute between the parties that those other proceedings had been discontinued and that the applicant had complied with the bail conditions.

116. Thus, the Court is not convinced that the risk of reoffending was sufficiently established.

(d) Other reasons given by national courts

117. On 31 August 2005 the detention judge extended the applicant's detention because the investigator required more time in which to receive the forensic reports, list the full charges against the applicant and three other co-accused, to allow them to study the reports and other materials in the case file and draft a bill of indictment (see paragraph 7 above). The Court considers that a mere reference to the need to carry out certain investigative measures, such as those referred to above, is not as such a relevant consideration for justifying the continued detention on remand.

118. The Court further notes that after the case had been listed for trial the applicant's detention was subject to a regular re-assessment at no longer than three-month intervals, irrespective of whether or not there was an application from the prosecution or the defence. The reasons given for keeping the applicant in detention were that the circumstances previously referred to for justifying his detention still obtained, the fact that the defendants were studying the case file or that it was then impracticable to complete the trial within the relevant period (see paragraphs 20, 22 - 24 above). As regards the first point, the Court refers to its above analysis of the pre-trial remand orders. As to the second point, the Court considers that the fact that the applicant or his counsel studied the case file at the time could not justify the continued detention. Neither is the matter of when the trial will occur a relevant reason for the purposes of Article 5 § 3: its second limb 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 (see *McKay*, cited above, § 41). Therefore in so far as the promptness of the re-trial was a reason for refusing bail and not simply an additional observation by the trial judge, the Court considers that it cannot be said to be a relevant reason for the purposes of Article 5 § 3 of the Convention (see also *Gault v. the United Kingdom*, no. 1271/05, § 20, 20 November 2007).

119. In the Court's opinion, it was not shown that the above considerations were relevant for the examination of the remand issue.

120. Having noted that, the Court observes that despite a clear indication from the Supreme Court (see paragraph 59 above), the remand courts did not assess whether the "reasonable time" requirement was complied with throughout the period of the applicant's detention and did not have regard to the applicant's allegations in respect of the conditions of detention, which the Court has found to be in breach of Article 3 of the Convention (see paragraphs 20, 24 and 81 above).

(e) Alternative preventive measures

121. Lastly, the Court emphasises 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 the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. In this connection, the Court considers that the remand orders contain no assessment of whether the danger that the applicant would avoid appearing at the trial by absconding was so substantial and persistent that it was necessary to dismiss as quite ineffective the taking of guarantees which under Article 5 § 3 may condition a grant of provisional release in order to reduce the risks which it entails. The applicant offered a deposit of up to RUB 340,000 as surety for bail. The Court is not in a position to state an opinion as to the amount of security which could reasonably be demanded. However, the omission to consider such an option or a combination of guarantees is regrettable.

(f) Conclusion

122. Although the Court does not underestimate the danger of the organised crime, especially when it concerns drug trafficking, it cannot but conclude that the detention orders in the present case do not disclose any serious attempt to examine in sufficient detail all the circumstances relevant for the remand matter. It also notes with concern that the appeal decision in relation to the extension order of 29 December 2005 referred to a Mr Sergeyev instead of the applicant and also indicated that the investigator's extension request had been approved by the Deputy Prosecutor General, which was not the case.

123. The Court concludes that by failing to refer to concrete relevant facts or consider alternative "preventive measures", the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty for a period of over three years. It is hence not necessary to

examine whether the proceedings against the applicant were conducted with due diligence during that period as such a lengthy period cannot in the circumstances be regarded as "reasonable" within the meaning of Article 5 § 3 (see also paragraph 149 below).

124. There has therefore been a violation of Article 5 § 3 of the Convention.

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

125. The applicant complained that his appeals against the detention orders of 2 June 2006 and 31 July 2007 had not been examined speedily, in breach of Article 5 § 4 of the Convention. This provision reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

126. The Government submitted that the CCrP did not set a time-limit for sending the case for examination by a court of appeal. Having received the case file, the court of appeal had to start the examination of the appeal within one month (Article 374 of the CCrP). The applicant's appeal against the detention decision of 2 June 2006 was examined on 22 September 2006. The delay was accounted for by the need to allow the other parties to submit their comments, to dispatch a large bulk of detention materials from Tomsk to Moscow and in order to ensure the applicant's counsel's presence at the appeal hearing. The appeal against the detention order of 31 July 2007 was examined within a reasonable period of time.

127. The applicant maintained his complaint.

A. Admissibility

128. 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

129. 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 *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

130. 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 concerns the speediness of the review by the appellate body of a detention order imposed by the lower court (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 would be less concerned with the speediness of the proceedings before the court of appeal if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees.

2. Application in the present case

131. On 5 June 2006 the applicant appealed against the extension order of 2 June 2006. He submitted further statements of appeal on 7, 13 and 19 June 2006. Copies of those statements were sent to the other parties to the proceedings for comment before 21 July 2006. On 26 July 2006 the detention file was dispatched from Tomsk to Moscow where the Supreme Court is situated. The latter received it on 3 August 2006. On 22 September 2006 the Supreme Court upheld the order.

132. On 31 July 2007 the Regional Court rejected the applicant's application for release and extended his detention. The applicant's counsel appealed on 8 August 2007. A copy of the statement of appeal was sent to the other parties to the proceedings for comment before 23 August 2007. The applicant submitted an additional statement of appeal on 15 August 2007. A copy of it was sent to the parties on 20 August 2007 for comment before 3 September 2007. On 4 September 2007 the detention file was dispatched to the Supreme Court, which received it on 14 September 2007. Due to a typing error in the detention order, the file had to be returned to the Regional Court, which required additional time in which to study it. On 6 December 2007 the Supreme Court upheld the order.

133. The Government have not adduced any evidence which would disclose that, having lodged those appeals, the applicant caused any

significant delays in their examination. Thus, the Court finds that the periods from 21 June to 22 September 2006 and from 3 September to 6 December 2007 are attributable to the State.

134. 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 v. Russia*, no. 7064/05, § 96, 1 June 2006; and *Khudoyorov*, cited above, §§ 198 and 204). The Court deplores the fact that the appeals against the above detention orders were examined only after a fresh detention order had been issued by the Regional Court. Although it was apparently open to the applicant to lodge applications for release during the intervening periods of time, 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).

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

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

136. 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

137. The Government submitted that the applicant had not exhausted domestic remedies because the proceedings had still been pending when the applicant lodged the application with the Court.

138. The Court reiterates that complaints concerning length of proceedings can be brought before it before the final termination of the proceedings in question (see *Chevkin v. Russia*, no. 4171/03, § 29, 15 June 2006). It follows that the Government's objection must be dismissed.

139. 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

140. The applicant indicated that the delays in 2006 were attributable to the authorities. Few hearings were held in 2007 and 2008 (see paragraph 32 above). The applicant's counsel attended all hearings, except in December 2007 due to his illness. The proceedings were delayed because the trial judge had been on leave twice in 2007 and because certain witnesses had failed to appear. Between December 2007 and March 2008 the applicant had lodged eighteen applications, none of which had resulted in an adjournment.

141. The Government submitted that the criminal case was particularly complex, in view of the number of co-accused and episodes of drug trafficking. New episodes accumulated (more than thirty) and were investigated within the proceedings pending against the applicant and another person. The latter was prosecuted in relation to more than forty episodes of drug trafficking and money laundering. The drug trafficking charges concerned criminal activities within two regions and two types of drugs. The investigation was rendered difficult by the fact that certain witnesses were living in another region; the whereabouts of some of them were difficult to establish and they retracted their earlier statements. The case was returned to the prosecutor on three occasions. The applicant and his counsel delayed the proceedings, in particular when they studied the case for the second time between June and September 2006, and lodged unsubstantiated applications at the trial. Hearings were scheduled every month.

2. The Court's assessment

142. 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 avoid that a person charged should 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.

143. The Court observes that the period under consideration in the present case began on 9 December 2004, when the applicant was arrested, and ended on 5 March 2009, when the appeal decision was issued. It follows that the criminal proceedings against the applicant have lasted for more than four years during which the applicant has 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.

144. The trial proceedings lasted from 23 January 2006 to 30 July 2008, that is for two years and nearly six months. They were followed by the appeal proceedings, which ended on 5 March 2009.

145. The Court accepts that the case revealed a certain degree of complexity; it concerned four 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.

146. 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 others, *Rokhlina*, cited above, § 88). 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. On balance, the Court finds that the applicant has not contributed significantly to the length of the proceedings.

147. On the other hand, the Court considers that certain delays were attributable to the domestic authorities, in particular those following the decisions of the judge in 2006 to return the case to the prosecutor. The Court also observes that only one fully fledged hearing was held in 2006 and that there were few hearings between April and October 2007. The Government did not substantiate their argument that certain delays were due to the fact that certain witnesses detained in other towns had to be brought to trial hearings. The appeal proceedings pended for more than seven months. Neither does the Court lose sight of the fact that throughout the proceedings the applicant remained in custody and so in cramped conditions, as the Court has held above (see paragraphs 81 and 123 above).

148. 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.

149. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

150. The applicant complained under Article 6 of the Convention that the search of his flat had been unlawful. The Court notes, however, that there is no indication that the applicant challenged the search order in the national courts. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

151. The applicant further complained under Article 6 of the Convention about the criminal proceedings, alleging in particular that he had not been given adequate time to study the case and that counsel F. had been removed from the proceedings unlawfully. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

152. Lastly, the applicant complained that he had been questioned in an intimidating environment and under threats of violence from police officers and that his defence rights had not been respected during detention hearings. The Court has examined these complaints as submitted by him. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed 30,000 euros (EUR) in respect of pecuniary damage representing loss of earnings for the period of detention pending investigation and trial. He also claimed compensation in respect of non-pecuniary damage on account of the conditions of his detention.

155. The Government submitted that the applicant should have lodged before the national courts a claim under Article 133 of the CCrP for compensation on account of unlawful detention and prosecution. He should have also claimed compensation in respect of non-pecuniary damage under Article 151 of the Civil Code.

156. The Court does not have to examine the Government's objection and whether there is a direct causal link between the violations found and the alleged pecuniary damage because the applicant's pecuniary claim is in any event unsubstantiated. The Court therefore rejects this claim.

157. On the other hand, the Court considers that the applicant must have sustained stress and frustration as a result of the violations found. It has not been established that Russian law allowed or allows reparation, even partial, in relation to those violations (see *Benediktov*, cited above, § 29, and *Korshunov v. Russia*, no. 38971/06, §§ 59-63, 25 October 2007). Making an assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

158. The applicant also claimed a lump sum of EUR 50,000 for the costs and expenses incurred at the national level, including various food supplies to the applicant from his relatives, and before the Court, including postal and translation costs. He also claimed reimbursement of the cost of his mother's flight from Germany to Russia and the amounts of several bank transfers to third persons in Russia.

159. The Government contested the applicant's claims.

160. 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 were reasonable

as to quantum. Regard being had to the information in its possession and the above criteria, the Court notes that the expenses relating to the purchase of food cannot be said to have been occasioned by the conditions of detention which led it to find a violation of Article 3 of the Convention. It therefore rejects this part of the claim. The Court rejects the remaining claim for costs and expenses in the domestic proceedings because they are unsubstantiated, not properly itemised or unrelated to the violations found. Furthermore, it is noted that the applicant made no claim in respect of lawyers' fees incurred either at the national level or before the Court. At the same time, the Court considers it reasonable to award him the sum of EUR 300 for the correspondence and translation expenses incurred in relation to the proceedings before the Court.

C. Default interest

161. 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 complaints concerning the conditions of the applicant's detention, the lawfulness of one period of detention, the length of the applicant's detention, the delays in the examination of his appeals against detention orders and the length of the criminal proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in relation to the detention order of 2 June 2006;

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 10,000 (ten thousand euros) in

respect of non-pecuniary damage, plus any tax that may be chargeable, and EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 18 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President