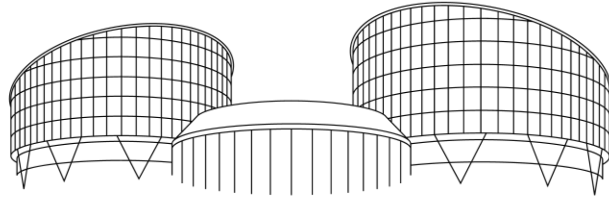

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF IDALOV v. RUSSIA

(Application no. 5826/03)

JUDGMENT

STRASBOURG

22 May 2012

This judgment is final but may be subject to editorial revision.

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

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President,*
Jean-Paul Costa,
Françoise Tulkens,
Josep Casadevall,
Nina Vajić,
Dean Spielmann,
Peer Lorenzen,
Anatoly Kovler,
Elisabeth Steiner,
Ján Šikuta,
Luis López Guerra,
András Sajó,
Mirjana Lazarova Trajkovska,
Ann Power-Forde,
Işıl Karakaş,
Guido Raimondi,
Julia Laffranque, *judges,*
and Vincent Berger, *Jurisconsult,*

Having deliberated in private on 19 October 2011 and 28 March 2012,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 5826/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Timur Said-Magomedovich Idalov (“the applicant”), on 6 February 2003.

2. The applicant, who had been granted legal aid, was represented by Ms K. Moskalenko, Ms O. Preobrazhenskaya, Ms M. Samorodkina and Ms I. Gerasimova, lawyers practising in Moscow, and by Ms N. Lisman, a lawyer practising in Boston (United States). The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation before the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman and degrading conditions in a remand prison and a courthouse; that the conditions in which he had been transported to and from the courthouse had been appalling; that he had been held in pre-trial detention for an

unreasonably long time; that the domestic courts had failed to examine his appeals against detention orders speedily and to ensure his participation in the appeal hearings; that he had been excluded from his own trial; that the criminal proceedings against him had been unreasonably long; and that the administration of the correctional facility where he had been serving a prison sentence had opened his letters from the Court.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 May 2011 a Chamber of that Section, composed of the following judges: Nina Vajić, Anatoly Kovler, Christos Rozakis, Peer Lorenzen, Elisabeth Steiner, Mirjana Lazarova Trajkovska and Julia Laffranque, assisted by Søren Nielsen, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. On 3 November 2011 Jean-Paul Costa's term as President of the Court came to an end. Nicolas Bratza succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). Jean-Paul Costa continued to sit following the expiry of his term of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4.

6. The applicant and the Government each filed written observations on the merits.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 October 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr N. MIKHAYLOV, Deputy Head of the Office of the Representative of the Russian Federation, *Counsel*,
Ms T. KOROLKOVA,
Ms Y. TSIMBALOVA, *Advisers*;

(b) *for the applicant*
Ms K. MOSKALENKO,
Ms N. LISMAN,
Ms M. SAMORODKINA,
Ms I. GERASIMOVA, *Counsel*,
Ms O. PREOBRAZHENSKAYA, *Adviser.*

The Court heard addresses by Mr Mikhaylov and by Ms Gerasimova, Ms Samorodkina, Ms Moskalenko and Ms Lisman.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1967 and is currently serving a prison sentence in correctional facility no. IK-19 in Tavda, in the Sverdlovsk region.

A. The criminal proceedings against the applicant

9. On 11 June 1999 the applicant was arrested on suspicion of abduction involving an organised criminal group and he was placed in detention. Three days later, the relevant prosecutor ordered his detention pending trial. On 18 June 1999 the applicant was officially charged.

10. On 6 January 2000 he was further charged with abduction, extortion, and illegal acquisition and possession of firearms and drugs.

11. On 10 March 2000 the case file was forwarded to the Meshchanskiy District Court of Moscow. The District Court returned the case file to the prosecutor's office, noting that the bill of indictment was not translated fully into the Chechen language.

12. On 7 April 2000 the prosecutor's office forwarded the amended bill of indictment and the case file to the District Court, which received it on 10 April 2000. A week later, it was transferred to the Kuntsevskiy District Court of Moscow.

13. The first trial hearing was scheduled for 22 May 2000, but was adjourned owing to the failure of the other defendants' counsel to appear in court, as was the following hearing, scheduled for 16 June 2000. Of three subsequent hearings, two were adjourned at the applicant's request and one owing to the failure of the victim and witnesses to appear in court.

14. By a decision of 12 September 2000 the Kuntsevskiy District Court remitted the case to the Moscow Prosecutor's Office for an additional investigation.

15. On 9 July 2001 the case file was sent to the Khamovnicheskiy District Court of Moscow for trial. The hearing scheduled for 24 August 2001 was adjourned owing to the failure of the witnesses and the applicant's counsel to appear in court. Of eight subsequent hearings scheduled between 24 August 2001 and 20 May 2002, two were adjourned because the applicant, who in the meantime had been released on bail (on 6 July 2001), failed to appear in court, three owing to the same failure on the part of the defendants, their counsel and certain witnesses and three because the presiding judge was involved in the examination of another case.

16. By a decision of 21 May 2002 the Khamovnicheskiy District Court remitted the case to the Moscow Prosecutor's Office for further investigation. On 24 July 2002, upon an appeal by the prosecutor, the

Moscow City Court quashed that decision and remitted the case to the Khamovnicheskiy District Court.

17. The first hearing after the case file was returned to the Khamovnicheskiy District Court was scheduled for 13 September 2002. It did not take place because the presiding judge was involved in the examination of another case. Of twenty-three subsequent hearings scheduled between 13 September 2002 and 3 November 2003 (the last court hearing), two did not take place because the judge was, once again, involved in the examination of another case and four because either the prosecutor or some of the defendants were ill. Requests by the parties – five by the defence, including the applicant’s counsel, and one by the prosecutor – caused another six adjournments. Nine hearings were postponed owing to the failure of several participants to appear in court. The applicant, who was back in custody at the time, did not appear on two occasions. Another adjournment occurred because the applicant’s lawyer left the courtroom without permission. One hearing was postponed for reasons not evident from the file. In February 2003 the court set aside the cases of two defendants for independent assessment and proceeded with the examination of the applicant’s case. By a decision of 29 August 2003 the court disjoined the cases against two other co-defendants.

18. All the above hearings concerned procedural issues. The first hearing on the merits of the case took place on 17 September 2003. At the beginning of this hearing the applicant repeatedly challenged the presiding judge by questioning her impartiality. The judge ordered that he be removed from the courtroom for improper behaviour. The applicant attempted to dismiss his lawyer. The judge, however, refused to recognise the dismissal and the applicant’s counsel continued to represent him. On 23 September 2003, on 4, 30 and 31 October 2003 and on 3 November 2003 the court examined witnesses and studied the documents in the file. After the completion of the evidence and when the prosecutor and the applicant’s counsel had made their submissions, the applicant was readmitted to the courtroom to make his final statement.

19. By a judgment of 24 November 2003 the Khamovnicheskiy District Court convicted the applicant of abduction, extortion and illegal acquisition and possession of firearms and drugs. It sentenced him to fifteen years’ imprisonment. The court further ordered the repayment of the bail to the applicant’s wife (see paragraph 29 below).

20. On 4 December 2003 the applicant’s counsel lodged an appeal against the trial court’s judgment. By a judgment of 18 May 2004 the Moscow City Court allowed the appeal in respect of the charge of illegal acquisition and possession of drugs for lack of evidence. It upheld in substance the conviction in respect of the other charges and reduced the sentence to ten years’ imprisonment.

21. By a decision of 27 November 2007 the Vyaznikovskiy Town Court of the Vladimir Region released the applicant on parole.

22. It appears that in July 2008 the applicant was again arrested on suspicion of having committed a criminal offence. He was subsequently convicted and is currently serving a prison sentence.

B. The applicant's detention pending investigation and trial

23. Following the applicant's arrest on 11 June 1999 (see paragraph 9 above), on 14 June 1999 the chief investigator authorised his detention pending investigation. In particular, the investigator noted that he had had regard

> "...to the fact that [the applicant] is suspected of having committed an extremely serious offence entailing a custodial sentence, and that, if released, he might abscond and, as a result, interfere with the establishment of the truth, or commit another offence."

24. By a decision of 10 August 1999 the prosecution authorities extended the detention of the applicant and his five co-accused until 11 September 1999. The grounds invoked in the extension order were the gravity of the charges against them and the potential risks of their absconding, obstructing the course of justice, putting pressure on the witness and reoffending.

25. By decisions of 31 August and 6 December 1999 of the prosecution authorities, the custodial measure, in relation to all six co-accused, was prolonged until 11 December 1999 and 11 March 2000 respectively. The wording of the decisions was identical to that used in the decision of 10 August 1999.

26. It appears that there was no formal order authorising the applicant's detention during the period between 11 March and 10 May 2000. On 10 May 2000 the Kuntsevskiy District Court of Moscow received the case-file fixed the trial for 22 May 2000 and ruled that the defendants' "measure of restraint should remain unchanged."

27. On 12 September 2000 the Kuntsevskiy District Court of Moscow, when remitting the case to the prosecutor's office, ordered that the applicant and five other defendants remain in custody. The court cited no reasons for ordering such detention. On 25 January 2001 the Moscow City Court upheld the decision of 12 September 2000 on appeal.

28. On 26 February and 23 March 2001 the prosecution authorities, having reproduced the reasoning contained in the decisions of 10 August and 6 December 1999, extended the detention of the applicant and his co-accused until 9 April and 9 July 2001 respectively.

29. On 6 July 2001 the investigator in charge ordered the applicant's release on bail. The relevant part of the decision reads:

> “In view of the completion of the investigation, [the applicant] will not be able to obstruct the course of justice and his appearance in court can be secured by bail in the amount of 100,000 roubles”.

30. By a decision of 29 October 2002 the Khamovnicheskiy District Court, during the trial proceedings, discontinued the bail and ordered the applicant’s detention. In particular, the court noted as follows:

> “As follows from the material in the case file, [the applicant] is charged with a number of very serious offences entailing a custodial sentence, [and has] repeatedly tried to delay the proceedings, which is viewed by the court as an attempt to interfere with establishment of the truth, and demonstrated insolent disrespect towards the court.”

31. On 30 October 2002 the applicant lodged an appeal against the decision of 29 October 2002. On 22 January 2003 the Moscow City Court upheld the said decision on appeal. The applicant did not attend the hearing but his lawyer was present.

32. On 24 April 2003 the District Court extended the applicant’s detention until 29 July 2003. The court referred to the gravity of the charges against the applicant. The applicant’s objection that his wife and two minor children were dependent upon him was not taken into account by the court. The applicant appealed on 25 April 2003. On 16 June 2003 the City Court, in the absence of the applicant and his lawyer, upheld the extension on appeal.

33. On 19 June 2003 the District Court further extended the applicant’s detention until 29 October 2003. The court noted as follows:

> “Having regard to the [applicant’s] strange behaviour, and his health condition and the gravity of the charges, [the court] has doubts as to the [applicant’s] ability to understand the circumstances relevant to the present case and to testify. Pursuant to the law, ... it is decisive for the correct consideration of the case to determine the [applicant’s] psychiatric and physical condition.
>
> The [applicant’s] detention expires on 29 July 2003. However, the psychiatric forensic examination requires a significant amount of time. The court considers it necessary to extend the [applicant’s] detention.”

34. The applicant lodged an appeal on 24 June 2003. On 6 August 2003 the City Court, in the applicant’s absence, quashed the detention order of 19 June 2003 and remitted the case to the trial court for examination on the merits.

35. By a decision of 13 August 2003 the District Court once again extended the applicant’s detention. The reason given was the gravity of the charges. An appeal lodged by the applicant on 14 August 2003 was dismissed by the City Court on 2 October 2003. The applicant was not present at the appeal hearing but his lawyer attended it.

36. By a decision of 28 October 2003 of the District Court, the applicant’s detention was once again extended, with reference to the gravity of the charges, until 19 January 2004. The arguments by the defence that the

applicant had a permanent place of residence in Moscow and that the examination of the case had become dilatory were not taken into account by the court. The applicant appealed on 31 October 2003. He was convicted on 24 November 2003 (see paragraph 19 above). The extension order was upheld on appeal on 12 February 2004. The applicant's lawyer participated in the appeal hearing but the applicant did not attend.

C. Conditions of the applicant's detention and his transport to and from the courthouse

1. Detention in remand prison no. IZ-77/2 in Moscow

37. The applicant was detained in remand prison no. IZ-77/2 in Moscow between 29 October 2002 and 20 December 2003. He was transferred between cells on many occasions. The Government and the applicant provided differing descriptions of the applicant's conditions of detention.

(a) The cell population

(i) The Government

38. The Government provided the following information concerning the conditions of the applicant's detention in remand prison no. IZ-77/2 in Moscow:

Cell no.	Period of detention	Surface area (in square metres)	Number of inmates	Number of beds
140	from 29 October to 1 November 2002	56.4	14	22
50	from 1 to 26 November 2002	12.0	3	6
134	from 26 November to 16 December 2002	13.5	3	5
36	from 16 December 2002 to 5 January 2003	12.2	3	6
43	from 5 to 15 January 2003	8.5	2	4
52	from 15 January to 18 February 2003	25.4	6	8
159	from 18 February to 23 April 2003	55.4	13	40
160	from 23 to 25 April 2003	56.9	14	42

159	from 25 April to 15 August 2003	55.4	13	40
298	from 15 August to 18 September 2003	12.9	3	5
141	from 18 September to 1 November 2003	56.9	14	22
155	from 1 to 13 November 2003	55.4	13	42
141	from 13 November to 20 December 2003	56.9	14	22

39. The Government further asserted that at all times while in detention the applicant had been provided with an individual sleeping place, bed sheets and cutlery.

(ii) The applicant

40. The applicant accepted the data provided by the Government as regards the cell numbers and floor surfaces of those cells in which he had been detained. He did not challenge the accuracy of the Government's submissions as concerned the number of bunk beds per cell either. However, he claimed that at all times the cells in which he had been detained were seriously overcrowded. The number of inmates per cell had exceeded its capacity by two to three times. Each cell had housed at least thirty-five persons at any given time. The applicant had never been provided with an individual sleeping place and he had to take turns with other inmates to sleep. Some people had to sleep on the floor under the beds. Apart from one hour per day of exercise, the applicant had been confined in such conditions for the rest of each day, with the exception of the rare occasions when he had met with his lawyer or the fifteen minutes per week which were set aside for showering.

(b) Frequency of outdoor exercise, size of the exercise yard and type of roof above the yard

(i) The Government

41. According to the Government, the applicant had been allowed to exercise for one hour per day. The remand prison was equipped with sixty-eight exercise yards measuring 10 square metres (sq. m) and 52.8 sq. m for small and large cells respectively. The yards were arranged in such a way as to provide the inmates with the possibility of doing physical exercise. They were equipped with benches and were sheltered from the rain.

(ii) The applicant

42. According to the applicant, the one-hour daily exercise took place in a yard measuring 30 sq. m. Thirty-five to one hundred inmates were taken to the yard at the same time. The yard was covered with metal bars and iron sheets which significantly limited access to daylight.

(c) Food and hygiene conditions in the cells where the applicant was detained

(i) The Government

43. According to the Government, the applicant could take a shower once a week. On the same occasion he received clean bed sheets. The shower facilities functioned properly without breaking down. All the inmates were provided with buckets and detergent to do laundry. The applicant received three meals a day of adequate quality.

44. The cells were equipped with natural and artificial ventilation which was in good working order. The temperature and the humidity in the cells were in compliance with the applicable housing and hygiene standards. The cells were equipped with central heating and a cold water supply. The inmates could use electric kettles or heaters to boil water.

45. The artificial lighting in the cells was in compliance with the applicable specifications and was on from 6 a.m. to 10 p.m. At night low-voltage bulbs were used to maintain lighting in the cell.

46. In cells nos. 134, 140, 141, 155, 159 and 160 the toilet was completely separated from the living area of the cell by a brick wall and a door. The distance between the toilet and the dinner table was at least two metres. The closest sleeping place was located some 1.5 m away from the toilet.

47. In cells nos. 50, 36, 43, 52 and 298 the toilet was separated from the rest of the cell by a brick wall which was 1.35 m high. The distance between the toilet and the dinner table was at least one metre. The closest sleeping place was located some 0.5 m away from the toilet.

48. The cells were disinfected once every three months or more often, if necessary. During the period of the applicant's detention in the remand prison, there had been no complaints by him alleging, for example, the presence of rats, parasites or bedbugs.

(ii) The applicant

49. The applicant contested the truthfulness of the Government's submissions in so far as the description of the sanitary conditions of his detention was concerned. According to him, the ventilation was inadequate. Most of the inmates smoked and the applicant was exposed to second-hand tobacco smoke. There was so little oxygen in the cell that the flame of a match would go out immediately. It was practically impossible to breathe.

50. The cell windows were covered with metal sheets which prevented access to daylight. As a result, the lighting in the cell was insufficient for reading.

51. An electric light was on constantly. The cells were very noisy. The cells were also dirty and needed renovation. They were infested with cockroaches, bedbugs and lice. The toilet was located near the dinner table and offered no privacy. One had to queue to use the toilet. The food provided was scarce and of little variety.

2. *Conditions of detention at and transport to and from the courthouse*

52. The Government and the applicant disagreed as to most aspects of the conditions of detention at and transport to and from the Khamovnicheskiy courthouse.

(a) The Government

53. The Government submitted the following information.

(i) Conditions of transport to and from the courthouse

54. The Department of the Interior used three types of vans for transporting defendants to and from the courthouse. The ZIL van measured 4.7 m by 2.4 m by 1.64 m and had four compartments with seating capacity for thirty-six persons. The GAZ vans measured 3.8 m by 2.35 m by 1.6 m and had three compartments with seating capacity for twenty-five persons. The vans were ventilated through an opening in the door and by vents in the roof. They were equipped with heating and lighting. The vans were cleaned daily and disinfected on a weekly basis.

55. The distance between the remand prison and the courthouse was approximately seven kilometres and the travel time did not exceed one hour.

56. On the days of the court hearings, the applicant had to get up at 6 a.m. and had breakfast. He was also provided with a lunch bag for the day spent at the courthouse.

(ii) Conditions of detention in the courthouse

57. The courthouse had six holding cells measuring 31 sq. m in total. They had adequate ventilation and lighting and had metal doors with openings for surveillance purposes. The benches were secured to the floor. There was access to sanitary facilities.

(b) The applicant

58. The applicant provided the following description of the conditions of his detention in, and transport to and from, the courthouse.

(i) Conditions of transport

59. On approximately fifteen occasions the applicant was transported from the remand prison to the courthouse and back. On those days he normally had to wake up at 5 a.m. and had no breakfast. The prison van had three compartments which measured 3.8 m by 2.35 m by 1.6 m in total. Two compartments housed twelve persons each and the third one was for single occupancy. There were usually eighteen detainees held in each of the bigger compartments. There were not enough seats for everyone and some people had to stand or sit on someone else's lap. The applicant was transported once in a single occupancy compartment on 24 November 2003 following the delivery of the verdict in his case.

60. The natural ventilation of the van through the hatches was insufficient and it was stiflingly hot in the summer. During the winter the vans were not heated when the engines were off. The floor in the van was extremely dirty. It was covered with cigarette butts, food crumbs, plastic bottles and bags of urine. It was impossible to use the toilet during the journey. The vans had no windows or internal lighting.

61. The van collected inmates from different prisons and made several stops at different courthouses. As a result, the journey from the remand prison to the courthouse for the applicant lasted between one and a half and two hours. The return journey took up to five hours. On the days of the court hearings, the applicant was not provided with any food.

(ii) Conditions of detention in the courthouse

62. The applicant submitted that the holding cells at the courthouse were overcrowded, dirty, poorly lit and unventilated. They measured no more than 5 sq. m. The applicant did not receive any food when he was held there. Nor was there a toilet in the cell. On at least two occasions, when the hearing of his case was adjourned, the applicant spent up to fifteen hours in such conditions. On other days he spent several hours in such cells before and after the hearing.

D. Alleged ill-treatment

63. The applicant alleged that on 24 November 2003 he was beaten up by the guards while he was detained at the courthouse. He attempted to bring his grievances to the attention of the trial judge but to no avail.

64. On 25 January 2004 the applicant complained to the prosecutor's office about the beating.

65. On 5 April 2004 the prosecutor did not find a prima facie case of ill-treatment and refused to institute criminal proceedings against the alleged perpetrator. The applicant did not appeal.

66. According to the applicant, on an unspecified date the decision of 5 April 2004 was quashed by a superior prosecutor who ordered an additional inquiry into his allegations. On 26 February 2007 the investigating prosecutor yet again dismissed the applicant's allegations as unsubstantiated. The applicant did not appeal.

E. The applicant's correspondence with the Court

67. The applicant alleged that certain letters from the Court had been opened by the administration of correctional facility no. IK-6 in the Vladimir Region, where he was serving a prison sentence from 2004 to 2006.

68. The Government acknowledged that the Court's letters of 8 July 2005 and 11 May 2006 addressed to the applicant had been opened by officials and stamped with the seal of correctional facility no. IK-6.

69. On 9 August 2011 the applicant asked the administration of correctional facility no. IK-19, where he was serving a prison sentence, to send certain documents, including his just satisfaction claims and application for legal aid, to his representatives before the Court. The acting head of the internal service dispatched the documents accompanied by a covering letter, stating as follows:

> "Please find enclosed the [applicant's] letter concerning a violation of his rights.
>
> ...
>
> Enclosure (11 pages).
>
> (signed)"

In the applicant's opinion, the Russian authorities, through the above acts, failed to comply with their obligations under Article 34 and interfered with his right to respect for his correspondence.

II. RELEVANT DOMESTIC LAW

A. Conditions of pre-trial detention

70. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions which satisfy sanitary and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

71. Moreover, detainees should be given, free of charge, sufficient food for the maintenance of good health in line with the standards established by the Government of the Russian Federation (section 22 of the Act).

B. Pre-trial detention and other preventive measures

72. According to the Code of Criminal Procedure of Russia (hereinafter, “the CCP”), at any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including pre-trial detention (Article 255 § 1).

73. If pre-trial detention is applied to a defendant during the judicial proceedings, its term may not normally exceed six months. However, if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3). An appeal against such a decision lies to a higher court (Articles 255 § 4).

C. Coercive powers of the court

74. Article 111 of the CCP provides that in order to ensure the proper administration of criminal proceedings, the court has the power to compel the parties to the proceedings to cooperate by means of measures such as escorting them to a courtroom or imposing fines. The former can be applied to witnesses if they fail to honour a court summons without valid reasons (Article 113). A fine can be imposed on a party in the event of his or her failure to fulfil procedural obligations (Article 117).

75. Pursuant to Article 258 of the CCP, the penalties which a judge may impose on any party, including a defendant, who acts in a manner that disturbs order in the courtroom are (1) a warning, (2) removal from the courtroom, or (3) a fine. Article 258 § 3 provides that the trial, including the parties’ closing arguments, may be conducted in the defendant’s absence. In such a case, the defendant must be brought back to the courtroom to make the final submissions. The judgment must always be delivered in the defendant’s presence.

D. Examination of appeals

76. Article 373 of the CCP provides that the appellate court’s role is to review a conviction with a view to verifying its lawfulness, validity and fairness.

77. Article 374 of the CCP provides that an appellate court must commence the examination of a criminal case within one month of receiving an appeal in the case.

78. Article 377 of the CCP provides as follows:

> “4. The appellate court may directly examine evidence, if asked to do so by the parties, in accordance with [the rules of criminal procedure applicable to the trial proceedings].

> 5. In order to substantiate or negate the arguments put forward in a statement of appeal, the parties may submit additional materials for consideration by the appellate court".

Interpreting Article 377, the Supreme Court of the Russian Federation, in Resolution no. 1 of 5 March 2004 (applicable at the material time), held that such consideration of evidence was limited to a review of the evidence already assessed by the trial court, such as the reading of witnesses' testimonies.

E. Prisoners' correspondence

79. Article 91 § 2 of the Code on the Execution of Sentences and Rule 53 of the Internal Regulations of Correctional Facilities, adopted on 3 November 2005 by Decree No. 205 of the Russian Ministry of Justice, provide that all detainees' incoming and outgoing correspondence is subject to censorship by the administration of the correctional facility, except for correspondence with courts, prosecutors, prison service officials, the Ombudsman, the public monitoring board and the European Court of Human Rights.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

80. The applicant complained about the conditions of his detention in remand prison no. IZ-77/2 in Moscow from 29 October 2002 to 20 December 2003 and on the premises of the Khamovnicheskiy District Court of Moscow. He also complained about the conditions of his transport to and from the courthouse. He referred to Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The Government

82. The Government submitted that the conditions of the applicant's detention and his transport to and from the courthouse were in compliance with the standards required under Article 3 of the Convention.

(i) Conditions in remand prison no. IZ-77/2

83. The Government's submissions concerning the period of the applicant's stay in each of the cells of the remand prison where the applicant was held, its surface, the number of beds available and the number of detainees sharing them (see paragraph 38 above) were based on the statements and reports prepared by the administration of the remand prison in July 2011, which were reproduced from the reports and statements prepared in 2007. The Government claimed that it was impossible to submit original documentation. All the official records had been destroyed on 18 August 2006 after the expiry of the statutory three-year period for their storage.

(ii) Conditions of detention in and transport to and from the courthouse

84. The Government reiterated their submissions summarised in paragraphs 54-57 above.

(b) The applicant

85. The applicant challenged the Government's arguments and submitted, in particular, the following.

(i) Conditions in remand prison no. IZ-77/2

86. The applicant submitted that the cells where he had been detained had been severely overcrowded. He pointed out that the space available to him during the whole detention period had been below the domestic standards (which specified no less than four square metres of personal space per inmate – see paragraph 70 above) and those recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT" – seven square metres per prisoner). The applicant further referred to the Court's findings in earlier cases concerning the conditions of detention in the same remand prison, no. IZ-77/2 (*Skachkov v. Russia*, no. 25432/05, § 24, 7 October 2010; *Bychkov v. Russia*, no. 39420/03, § 18, 5 March 2009; and *Ilyadi v. Russia*, no. 6642/05, § 20, 5 May 2011). In those cases the Court had found a violation of Article 3 on account of detention in overcrowded cells. Such

overcrowding, in the Court's view, constituted a structural problem in Russia.

87. As regards the data submitted by the Government about the population within the cells, the applicant challenged their reliability. He noted that the original records concerning the prison's population had been destroyed and he argued that statements made by the prison officers some five years after the relevant time had no evidentiary value. In this connection the applicant relied on the Court's reluctance in other cases to accept similar certificates, given the lapse of time involved and the lack of any original documents (he cited *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009; *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; *Belashev v. Russia*, no. 28617/03, § 52, 4 December 2008; and *Zakharkin v. Russia*, no. 1555/04, § 124, 10 June 2010).

88. The applicant also contested the truthfulness of the Government's submissions in so far as the description of the sanitary conditions of his detention was concerned.

(ii) Conditions of the applicant's detention in and transport to and from the courthouse

89. The applicant challenged the veracity of the Government's submissions as regards the conditions of his detention in and transport to and from the courthouse. In this connection he referred to the case of *Denisenko and Bogdanchikov v. Russia* (no. 3811/02, §§ 106-10, 12 February 2009), which concerned the conditions of detention at the same courthouse.

90. The applicant further referred to the report of 26 November 2003 prepared by the Head of the Moscow Department for Execution of Sentences of the Ministry of Justice (the authority in charge of all remand prisons in Moscow) following an inquiry conducted in the same year. The relevant parts of the report read as follows (as cited in *Starokadomskiy v. Russia* (dec.), no. 42239/02, 12 January 2006):

> "On leaving for the court, each prisoner receives a dry ration in his own hands and against his signature... On that day the prisoner is excluded from the food distribution list (*снимается с котлового довольствия*). The composition of the dry ration takes account of the sanitary and nutritional requirements and... includes pre-cooked first and second courses which do not require cooking and can be consumed as breakfast, lunch or dinner...
>
> Prisoners are taken out of cells after 6 a.m. – in particular, for transport to courts – but not brought back to cells until 10 p.m. The Moscow Department for Execution of Sentences controls the [resolution of] problems relating to the existing breaches perpetrated by the convoy regiment (belated return from the courts, overcrowded prison vans, use of unauthorised routes). On many occasions in 2002, the established breaches of the procedure for transport of prisoners were brought to the attention of the command of the police convoy regiment – mostly, because of belated return from the courts. Such incidents also took place in the first three months [of 2003]; in this connection on 4 March 2003 a notice about the belated return (after 10 p.m.) of

prisoners from the courts in January and February 2003, was sent to the convoy regiment. Recently there have been no incidents of return of prisoners after 10 p.m.

The assembly premises are indeed overcrowded if there are many defendants going to the courts – up to 150 persons, whereas the assembly premises are designed ... to accommodate 75 to 80 persons."

2. *The Court's assessment*

(a) General principles

91. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

92. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).

93. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

94. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained

in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005).

95. Allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) Application of these principles to the present case

(i) Conditions of detention in remand prison n. IZ-77/2 in Moscow

96. The Court notes that the parties disagreed on most aspects of the conditions of the applicant's detention. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can find a violation of Article 3 on the basis of any serious allegations which the respondent Government do not dispute (see, *mutatis mutandis*, *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

97. Firstly, the Court notes that it has recently found a violation of Article 3 on account of overcrowding in the same remand prison at around the same time as the facts in issue in this case (see *Skachkov*, cited above, §§ 50-59; *Sudarkov*, cited above, §§ 40-51; *Denisenko and Bogdanchikov*, cited above, §§ 97-100; and *Bychkov*, cited above, §§ 34-43). Overcrowding in Russian remand prisons, generally, has been a matter of particular concern to the Court. In a great number of cases, the Court has consistently found a violation of the applicants' rights on account of a lack of sufficient personal space during their pre-trial detention. The present case is no exception in this respect. In view of the foregoing, the Court accepts that the applicant was detained in severely overcrowded cells for over a year. He had an opportunity to spend just one hour a day in the exercise yard and was otherwise confined to his cell for the rest of the day.

98. Furthermore, the Court observes that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* ("he who alleges must prove") because in certain instances, such as in the present case, the respondent Government alone have access to information capable of corroborating or refuting allegations. Failure on the Government's part to submit such information without a satisfactory explanation for such a failure may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

99. In the present case the Government failed to provide any original documents to refute the applicant's allegations, claiming that they had been

destroyed after the expiry of the statutory time-limit for their storage (see paragraph 83 above). Their submissions were based on the statements of the remand prison officers made some four years after the events under consideration. Moreover, the Court cannot but note a certain discrepancy between this and other cases as far as the data submitted are concerned. For instance, in the case of *Skachkov* the Government submitted that between 11 February and 8 August 2003, cell no. 159 had accommodated twenty-two detainees (see *Skachkov*, cited above, § 18), while in the present case the national authorities affirmed that in the periods from 18 February to 23 April 2003 and from 25 April to 15 August 2003, the same cell had accommodated only thirteen inmates. The obvious inconsistency in the Government's submissions in each case cannot but undermine the credibility of the information given in respect of cell no. 159. It also reduces the weight to be attached to the information they provided in respect of the other cells.

100. In such circumstances, the documents which were prepared by the authorities several years after the period under consideration in the present case cannot be viewed as sufficiently reliable (see, among other authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009).

101. Having regard to the above, the Court considers the applicant's allegations concerning the overcrowding of the remand prison to be credible. As a result of such overcrowding, the applicant's detention did not meet the minimum requirement, as laid down in the Court's case-law, of 3 square metres per person (see, among many other authorities, *Trepashkin v. Russia (no. 2)*, no. 14248/05, § 113, 16 December 2010; *Kozhokar v. Russia*, no. 33099/08, § 96, 16 December 2010; and *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010). The inmates had to take turns to sleep, given the absence of individual sleeping places (see the applicant's allegations in paragraph 40 above). Having regard also to the fact that the applicant had to spend twenty-three hours per day in such an overcrowded cell, the Court finds that he was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in remand prison no. IZ-77/2 in Moscow from 29 October 2002 to 20 December 2003.

102. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention during the period in question.

(ii) Conditions of detention in and transport to and from the courthouse

103. The Court observes that the Government were unable to provide, apart from the description of the vans (see paragraph 54 above), any detailed information on the conditions in which the applicant was transported to and from the courthouse. Given the vans' height (approximately 1.6 metres), detainees should have been kept there only in a

seated position. However, given that the compartments in ZIL vans measured in total 11.28 sq. m and those in GAZ vans measured in total 8.93 sq. m (see paragraph 54 above), the Court does not find it conceivable that thirty-six persons in ZIL vans or twenty-five persons in GAZ vans were provided with adequate seating and space for transport under humane conditions. In view of these facts, the Court accepts as credible the applicant's allegations concerning the overcrowding in the vans, the negative effects of which increased in proportion to the duration of the journeys to and from the courthouse (see paragraph 61 above).

104. As to the applicant's detention at the courthouse, the Government have not provided any official data as to the duration of such detention or any other details on the cells in which the applicant was held. The Court therefore accepts the applicant's account (see paragraph 62 above) and finds that he was confined in cramped and inhumane conditions during his detention in the courthouse.

105. Furthermore, the Court is not convinced that the applicant received appropriate nutrition on the days of the court hearings. As can be seen from the report prepared by the domestic authorities (see paragraph 90 above), the detainees generally left the remand prison before breakfast time and were brought back after dinner time. No evidence was submitted to the effect that the applicant had received any "dry rations" or other sustenance.

106. The Court observes that it has found a violation of Article 3 of the Convention in a number of cases against Russia on account of the cramped conditions of the applicants' detention at, and transport to and from, a courthouse (see, for example, *Khudoyorov v. Russia*, no. 6847/02, §§ 118-120, ECHR 2005-X; and *Starokadomskiy v. Russia*, no. 42239/02, §§ 53-60, 31 July 2008).

107. Having regard to the material in its possession, 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.

108. The above considerations, taken cumulatively, are sufficient to warrant the conclusion that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention whilst detained at and during his transfer to and from the courthouse. There has therefore also been a violation of that provision in this regard.

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

109. The applicant complained that his pre-trial detention had been unreasonably long and that it had not been based on relevant or sufficient reasons. He relied on Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

1. *The parties’ submissions*

(a) The Government

110. Referring to the Court’s case-law (*Neumeister v. Austria*, 27 June 1968, § 6, Series A no. 8; *Bordikov v. Russia*, no. 921/03, 8 October 2009; and *Vladimir Krivonosov v. Russia*, no. 7772/04, 15 July 2010), the Government submitted that the applicant, who had lodged the application only on 6 February 2003, had failed to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention in respect of his pre-trial detention from 11 June 1999 to 6 July 2001. They accepted that, after his release on 6 July 2001, the applicant had been further detained from 29 October 2002 to 24 November 2003. However, almost one year and four months had elapsed between the two periods of the applicant’s pre-trial detention. As a consequence, his complaint about the duration of the first period of detention should be declared inadmissible as having been lodged out of time. In the Government’s opinion, the two periods could not be viewed as a consecutive whole.

(b) The applicant

111. The applicant submitted that, in view of the authorities’ aim to place him in custody by all means (allegedly because of his Chechen origin) and because of their intention to protract the proceedings and to keep him in custody for as long as possible, the two periods of his pre-trial detention should be assessed cumulatively. On both occasions he had been remanded in custody pending the same set of criminal proceedings against him.

2. *The Court’s assessment*

112. The Court reiterates that, generally speaking, when determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, among other authorities, *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7; *Labita*, cited above, §§ 145 and 147; and *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX).

113. In the instant case the applicant, having been detained for approximately two years, was then released pending trial and was at liberty

for approximately one year and four months until he was rearrested on 29 October 2002. His pre-trial detention, therefore, consisted of two separate and distinct periods: (1) from 11 June 1999 until 6 July 2001 (see paragraph 29 above) and (2) from 29 October 2002 until 24 November 2003, when he was eventually convicted by a competent court (see paragraph 19 above). The question arises as to whether he was required under the Convention to lodge his complaint concerning the length of his pre-trial detention under Article 5 § 3 within six months of being released from the first period he spent in pre-trial custody.

114. The Court observes that the applicant lodged his application on 6 February 2003, that is to say, more than six months after the end of his first period in detention. Regard being had to the circumstances of the case and in view of the parties' arguments, the Court's task is accordingly to ascertain whether the two non-consecutive periods of the applicant's pre-trial detention should be assessed cumulatively or whether his release for a significant period pending trial had the effect of starting the six-month period referred to in Article 35 § 1 in respect of this part of the applicant's pre-trial detention.

(a) The Court's case-law

115. The Court's case-law has developed along two lines of reasoning as regards the application of the six-month rule to multiple non-consecutive periods of pre-trial detention.

(i) The Neumeister *approach*

116. The issue arose first in the case of *Neumeister* (cited above), where the applicant was subjected to two periods of pre-trial detention, the first from 24 February 1961 to 12 May 1961, and the second from 12 July 1962 to 16 September 1964. The Commission considered that the six-month time-limit precluded it from expressing any opinion on whether the length of the applicant's first period of detention was "reasonable". The Court agreed with this approach. However, it added that the first period should nevertheless be "taken into account" when assessing the reasonableness of the second period. It stated as follows:

> "6. ... Admittedly the Court cannot consider whether or not the first period was compatible with the Convention; for even supposing that in 1961 Neumeister availed himself of certain remedies and exhausted them, he did not approach the Commission until 12 July 1963, that is to say, after the six-month time-limit laid down in Article 26 of the Convention had expired.
>
> That period of detention nevertheless constituted a first departure from respect for the liberty which Neumeister could in principle claim. In the event of his being convicted, this first period would normally be deducted from the term of imprisonment to which he would be sentenced (Section 55(a) of the Austrian Criminal Code); it would thus reduce the actual length of imprisonment which might be

expected. It should therefore be taken into account in assessing the reasonableness of his later detention."

(ii) The global approach

117. In subsequent cases the Court took a different approach to the calculation of the relevant period. However, it did so without giving reasons for its departure from *Neumeister*. In the case of *Kemmache v. France (no. 1 and no. 2)* (27 November 1991, Series A no. 218) the Court simply calculated the multiple periods as a whole and did not consider the question of the application of the six-month rule as it had originally done in *Neumeister*. Had the six-month rule been applied, it would certainly have precluded the examination of the first period, since the complaints were brought only on 1 August 1986 and 28 April 1989. The Court stated:

"44. The applicant underwent four periods of detention on remand: from 16 February to 29 March 1983 ..., from 22 March 1984 to 19 December 1986 ..., from 11 June to 10 August 1990 ... and from 14 March to 25 April 1991 ...

Only the first two periods, which lasted a total of two years, ten months and ten days, are to be taken into consideration in this instance: the others were subsequent to 8 June 1990, the date on which the Commission's report on the alleged violation of Article 5 para. 3 was adopted, and are the subject of new applications which are pending ..."

118. Although the Court referred to the total length of the first two periods of the applicant's pre-trial detention, it proceeded to examine separately the length of each distinct period. As regards the first period, which lasted approximately six weeks, the applicant's detention was found to be justified, whereas the length of the second period was found to have infringed Article 5 § 3 of the Convention.

119. In cases subsequent to *Kemmache*, the Court proceeded with the same approach and remained silent as to the application of the six-month rule. In *Mitev v. Bulgaria* (no. 40063/98, 22 December 2004) the Court stated:

"102. Where an accused person is detained for two or more separate periods pending trial, the reasonable time guarantee of Article 5 § 3 requires a global assessment of the cumulated period (see *Kemmache v. France (no. 1 and no. 2)*, judgment of 27 November 1991, Series A no. 218, § 44; *Mironov v. Bulgaria*, no. 30381/96, Commission report of 1 December 1998, § 67; and *Vaccaro v. Italy*, no. 41852/98, 16 November 2000, §§ 31-33)."

120. In the *Mitev* case the applicant spent three separate periods in pre-trial detention: 26 November 1992 to 11 January 1993; 26 October 1993 to 8 April 1994; and 5 August 1994 to 23 October 1997. Although the application was lodged on 23 October 1997 and the applicant had been at liberty for a significant period of time, the six-month rule was not applied:

"103. In the specific circumstances of the present case the Court need not decide whether the first period of one month and a half (26 November 1992 – 11 January

> 1993), when the applicant was detained under a separate set of charges ..., should be taken into consideration. The Court will proceed on the basis that the relevant period was at least three years and eight months (26 October 1993 – 8 April 1994 and 5 August 1994 – 23 October 1997).”

121. The Court also adopted this approach in *Kolev v. Bulgaria* (no. 50326/99, 28 April 2005), where it assessed as a whole four separate periods of detention pending trial, notwithstanding the fact that the first period had ended more than six months before the application had been lodged with the Court.

(iii) Return to the Neumeister *approach*

122. More recently, the Court has returned to the *Neumeister* approach. In several cases the Court has had regard to the application of the six-month rule in situations of non-consecutive periods of detention. The question was examined by the Court at some length in the case of *Bordikov* (cited above).

123. In that case, the applicant’s pre-trial detention consisted of four separate periods: (1) from the date of his first arrest on 20 March 1995 until his release on 23 March 1995; (2) from 29 April 1998, when he was again arrested, until 24 July 1999, when he was released on the expiry of the maximum permissible period of his detention pending investigation; (3) from 14 December 1999, when he was again detained pending trial, until 24 January 2000, when the court convicted him and sentenced him to a period of probation; and (4) from 13 September 2001, when the applicant was again arrested pending the trial *de novo*, until his conviction on 1 July 2003.

124. The first period fell outside the Court’s competence *ratione temporis.* The issue of six months arose in respect of the second and third period of the applicant’s detention. These had ended, respectively, on 24 July 1999 and 24 January 2000, and the application had not been lodged until 29 November 2002.

125. The Court observed that in previous cases no reasons had been given for considering multiple non-consecutive periods of detention cumulatively, and considered that the purpose of the six-month rule required it to follow the approach taken in *Neumeister*:

> “80. In circumstances where applicants have continued to be deprived of their liberty while the criminal proceedings were pending at the appeal stage, the Court has always regarded the multiple consecutive pre-trial detention periods as a whole and found that the six-month rule should start to run only from the end of the last period of pre-trial detention (see, among numerous authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, [16 January 2007]).
>
> 81. It appears that the Court has also adhered to this approach in some cases where an applicant’s detention pending trial before a first-instance court was not continuous, without, however, setting out explicitly the reasons why it considered such periods cumulatively (see *Letellier v. France*, 26 June 1991, § 34, Series A no. 207; *Smirnova*

v. Russia, nos. 46133/99 and 48183/99, § 66, ECHR 2003-IX (extracts); and *Mitev v. Bulgaria*, no. 40063/98, § 102, 22 December 2004).

82. On the other hand, the Court observes that in an earlier case it employed a different approach (see *Neumeister v. Austria*, 27 June 1968, § 6, Series A no. 8). In *Neumeister* the Court did not add up, or consider as a whole, two separate periods of the applicant's pre-trial detention for the purposes of calculating its length. The Court noted that it could not examine whether or not the first period of the applicant's pre-trial detention was compatible with the Convention given that he had not lodged his application until after the six-month time-limit in respect of that period had expired. The Court merely noted that it would take that period into account in assessing the reasonableness of the applicant's later detention as the first period would normally be deducted from the ensuing term of imprisonment should the applicant be found guilty and given a prison sentence (ibid.).

83. In the instant case, as in the case of *Neumeister*, the applicant's detention was broken up into several non-consecutive periods. He was released twice during the trial and awaited the determination of the criminal charges against him while at liberty. Significant periods of time elapsed between the periods of his detention. Even though the detention periods were eventually deducted from the term of the applicant's imprisonment, this fact alone does not allow the Court to regard his detention as consecutive. To find otherwise would strip the six-month rule of its meaning.

84. Accordingly, the Court finds that the part of the applicant's complaint concerning the second and third periods of his pre-trial detention, which ended on 24 July 1999 and 24 January 2000 respectively, cannot in the circumstances be examined."

Thus, in accordance with the six-month rule, only the fourth period of the applicant's pre-trial detention was examined by the Court in its assessment of his complaint under Article 5 § 3 of the Convention.

126. Following *Bordikov*, the Court found in several cases that it could not take into consideration periods of pre-trial detention which had ended more than six months before the the application had been lodged (see *Vladimir Krivonosov*, cited above, § 127; *Kovaleva v. Russia*, no. 7782/04, § 71, 2 December 2010; and *Svetlana Kazmina*, cited above, § 85).

(iv) Harmonisation of the approach to be taken

127. The Court considers, against this background, that the divergences in the case-law concerning the application of the six-month rule in the context of assessing the reasonableness of the duration of pre-trial detention call for resolution so that a uniform and foreseeable approach may be adopted in all cases, thus better serving the requirements of justice.

128. At the outset, the Court reiterates that the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests of legal certainty. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

129. In circumstances where an accused person's pre-trial detention is broken into several non-consecutive periods and where applicants are free to lodge complaints about pre-trial detention while they are at liberty, the Court considers that those non-consecutive periods should not be assessed as a whole, as was done in *Kemmache*, but separately, according to the original approach adopted in *Neumeister* and developed subsequently in *Bordikov*. This, in the Court's view, respects more fully the purposes of the six-month rule referred to above.

130. Therefore, once at liberty, an applicant is obliged to bring any complaint which he or she may have concerning pre-trial detention within six months of the date of actual release. It follows that periods of pre-trial detention which end more than six months before an applicant lodges a complaint before the Court cannot be examined, having regard to the provisions of Article 35 § 1 of the Convention. However, where such periods form part of the same set of criminal proceedings against an applicant, the Court, when assessing the overall reasonableness of detention for the purposes of Article 5 § 3, can take into consideration the fact that an applicant has previously spent time in custody pending trial.

131. The Court considers that the *Neumeister* approach faithfully respects the intention of the Contracting Parties *vis-à-vis* the six-month rule, whilst simultaneously permitting it, in the interests of justice, to have regard to prior periods of time spent in custody (in connection with the same criminal proceedings) in its assessment of the overall reasonableness of pre-trial detention. The Court adopts a similar line of reasoning in its assessment of complaints concerning the "reasonable time" requirement of Article 6. In certain cases, part of such a complaint may be inadmissible *ratione temporis* and the Court is precluded from examining a period which falls outside its competence. Nevertheless, when assessing a period which falls within its competence the Court may take into account the fact that proceedings had already been pending prior to ratification of the Convention by the respondent State concerned (see, among numerous authorities, *Kudła*, cited above, § 123).

132. The *Neumeister* approach also provides the Court with the requisite degree of flexibility to deal with a variety of situations which might arise in the context of pre-trial detention. For instance, if an applicant is repeatedly taken into custody pending trial, albeit for relatively short periods of time, the Court will not be precluded from finding that, against the background of a number of previous periods of detention, the length of the final period – though brief in itself – may nevertheless be unreasonable.

133. Finally, the *Neumeister* approach may have the added benefit of promoting the more expeditious conduct of criminal trials at domestic level. If an application for pre-trial detention is made in circumstances where previous periods of such detention are the subject matter of a complaint before this Court, domestic courts may be more likely to pay particular

attention to the time it is taking for the prosecuting authorities to bring an accused to trial. It is also more probable that, in such circumstances, they will ensure that detailed and careful scrutiny is carried out and that relevant and sufficient justification is advanced before granting any further orders permitting pre-trial detention.

(v) Application to the present case

134. In the present case, the applicant's pre-trial detention was broken into two non-consecutive periods. Initially, he was detained for approximately two years and one month pending investigation. After the investigation was completed, the authorities decided that his further detention was no longer necessary and released him. The applicant remained at liberty for approximately one year and four months. Any complaint in respect of his initial period of detention should have been brought within six months of his release.

135. Having regard to the above, the Court accepts the Government's argument and finds that the six-month rule should be applied, separately, to each period of pre-trial detention. Accordingly, the Court cannot consider whether or not the first period was compatible with the Convention. The applicant's complaint should be declared inadmissible as being lodged out of time. However, the fact that the applicant had already spent time in custody pending the same set of criminal proceedings will be taken into account by the Court in its assessment of the sufficiency and relevance of the grounds justifying his subsequent period of pre-trial detention (from 29 October 2002 until 24 November 2003), which the Court is competent to examine.

136. The Court considers that the applicant's complaint under Article 5 § 3 of the Convention in respect of his detention from 29 October 2002 to 24 November 2003 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

137. The applicant observed that the authorities had repeatedly extended his pre-trial detention. On each occasion they had referred to the gravity of the charges against him and the risk of his absconding or interfering with the administration of justice. In the applicant's opinion, the authorities had failed to show special diligence, to demonstrate that the reasons given were sufficient for each of the repeated extensions of his detention and to consider the possibility of imposing an alternative preventive measure upon him in order to ensure his appearance before the court.

138. The Government accepted that the second period of the applicant's pre-trial detention had not been based on sufficient and relevant reasons and admitted that there had been a violation of Article 5 § 3 in this regard.

2. *The Court's assessment*

(a) General principles

139. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła*, cited above, §§ 110 et seq.).

140. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, §§ 152 and 153). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

141. The responsibility falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the public interest which justifies a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

(b) Application of these principles to the present case

142. The applicant was remanded in custody on 29 October 2002. He was convicted by the trial court on 24 November 2003. Thus, the period to be taken into consideration lasted approximately one year and one month.

143. The Court observes that, initially, the judicial authorities revoked the applicant's bail on account of his attempts to protract the proceedings, which were viewed by the domestic court "as an attempt to interfere with the establishment of the truth and demonstrated insolent disrespect towards the court" (see paragraph 30 above). In this connection they also relied on the gravity of the charges against him. All the subsequent extensions of his detention were also ordered with reference to the gravity of the charges (see paragraphs 32-36 above).

144. The Court notes the suspicion that the applicant had committed the serious offences with which he had been charged and the domestic court's finding that he had attempted to interfere with the course of justice while he had been at liberty. These factors might have initially justified his detention. However, the Court is unconvinced that they could have constituted "relevant and sufficient" grounds for the applicant's ongoing detention, in particular since he had already been detained for a considerable period of time at an earlier stage.

145. As regards the further extensions of the applicant's detention, it appears that the domestic courts assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have warranted the applicant's release. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk that an accused might abscond or reoffend, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

146. The Court further notes that the domestic courts consistently failed to consider the applicant's arguments that he had a permanent place of residence in Moscow and a stable family relationship, that he had not absconded from justice and that the State's examination of the case had become dilatory.

147. The Court has frequently found a violation of Article 5 § 3 of the Convention where the domestic courts have extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-XII; *Khudoyorov*, cited above, §§ 172 et seq.;

Dolgova v. Russia, no. 11886/05, §§ 38 et seq., 2 March 2006; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko*, cited above, §§ 91 et seq.; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX; *Tretyakov v. Ukraine*, no. 16698/05, § 59, 29 September 2011; and *Vasilkoski and Others v. "the former Yugoslav Republic of Macedonia"*, no. 28169/08, § 64, 28 October 2010).

148. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially and routinely on the gravity of the charges, the authorities extended the applicant's detention pending trial on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration.

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

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

150. The applicant complained of a violation of his rights set out in Article 5 § 4 of the Convention on two grounds. Firstly, he alleged that his appeals against the decisions of the Khamovnicheskiy District Court of 29 October 2002 and 24 April, 19 June, 13 August and 28 October 2003 had not been decided "speedily". Secondly, he complained that he had not been afforded an opportunity to be present at the appeal hearings of 22 January, 16 June, 6 August and 2 October 2003 and 12 February 2004.

Article 5 § 4 reads as follows:

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

A. Admissibility

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

B. Merits

1. Whether the appeals on the lawfulness of the applicant's detention were decided "speedily"

(a) The parties' submissions

152. The Government conceded that the applicant's appeals had not been considered "speedily" and admitted that there had been a violation of Article 5 § 4 of the Convention in the present case, except as regards the appeal proceedings in respect of the detention order of 28 October 2003 where, in the Government's view, the appeal had been examined within nine days following its receipt by the appellate court.

153. The applicant maintained his complaint with regard to all the appeals.

(b) The Court's assessment

154. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). The question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

155. The Court further considers that there is a special need for a swift decision determining the lawfulness of a detention in cases where a trial is pending, as the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

156. Turning to the circumstances of the present case, the Court observes that the applicant lodged five appeals against the detention order of 29 October 2002 and its four subsequent extensions on 24 April, 19 June, 13 August and 28 October 2003. These appeals were lodged by the applicant on 30 October 2002, 25 April, 24 June, 14 August and 31 October 2003 and examined by the appellate court on 22 January, 16 June, 6 August and 2 October 2003 and 12 February 2004 respectively. It follows that it took the domestic courts eighty-three, fifty-two, forty-three, forty-six and one hundred and four days to schedule and hold the respective appeal hearings.

157. In the Court's opinion, the issues before the appellate court were not overly complex. Nor is there anything in the material before the Court to suggest that either the applicant or his counsel contributed to the length of the appeal proceedings. Moreover, the Government did not provide any

justification for the delays in the appeal proceedings and admitted, with one exception (the grounds for which are not obvious), that the delays were unreasonable. Accordingly, the entire length of the appeal proceedings in the present case was attributable to the authorities. The Court further reiterates that where an individual's personal liberty is at stake, it has very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered a time-period of seventeen days in deciding on the lawfulness of the applicant's detention to be excessive, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia,* twenty-six days, was found to be in breach of the "speediness" requirement of Article 5 § 4).

158. Having regard to the above, the Court considers that the appeal proceedings for the review of the lawfulness of the applicant's pre-trial detention cannot be considered compatible with the "speediness" requirement of Article 5 § 4. There has therefore been a violation of that provision.

2. Absence of the applicant from the appeal hearings concerning the lawfulness of his pre-trial detention

(a) The parties' submissions

159. The applicant submitted that, despite his requests to that effect, he had never been presented with an opportunity to participate in the appeal proceedings concerning his pre-trial detention. On 16 June 2003 neither the applicant nor his lawyer had attended the hearing. The applicant's counsel had been present at the appeal hearings on 22 January, 6 August and 2 October 2003 and 12 February 2004. Nevertheless, the applicant's attendance would have been necessary in order to enable him to give satisfactory information and proper instructions to his counsel (the applicant cited *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000). In such circumstances, the applicant contended that he had been deprived of an effective review of the lawfulness of his detention, as required by Article 5 § 4.

160. The Government agreed that the applicant had not been afforded the opportunity to participate in the appeal hearings and admitted that there had been a violation of Article 5 § 4 in this respect.

(b) The Court's assessment

161. The Court reiterates that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of

liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). Although it is not always necessary for the procedure under Article 5 § 4 to be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

162. Turning to the circumstances of the present case, the Court observes that the applicant was absent from the appeal hearings on 22 January, 16 June, 6 August and 2 October 2003 and 12 February 2004. The hearing on 16 June 2003 took place in the absence of the applicant's representative. Furthermore, there is nothing in the material before the Court to suggest that the appellate court even considered the question whether the applicant had been summoned to the hearing and whether his personal participation was required for the effective review of the lawfulness of his continued detention.

163. The Court further notes that the Government have acknowledged that the authorities' failure to ensure the applicant's participation in the appeal proceedings for the review of the lawfulness of his detention amounted to a violation of Article 5 § 4 of the Convention (see paragraph 160 above).

164. Having regard to its established case-law on the issue and the circumstances of the present case, the Court does not see any reason to hold otherwise. The fact that the applicant was unable to participate in the appeal proceedings on 22 January, 16 June, 6 August and 2 October 2003 and 12 February 2004 amounted to a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

165. The applicant complained under Article 6 of the Convention about his exclusion from the trial and the length of the criminal proceedings against him.

Article 6, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time ...
>
> ..."

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

...”

A. Admissibility

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

B. Merits

1. The applicant’s exclusion from the trial

(a) The parties’ submissions

(i) The applicant

167. The applicant submitted that the court’s decision to remove him from the courtroom during the trial had been unlawful and lacked any foundation. He further suggested that it had been, in fact, an attempt at retaliation for his earlier challenge to the judge. The applicant had discharged his lawyer, as he was entitled to do, but the court had refused to recognise the discharge. As a result, the applicant had not been represented by a lawyer of his own choosing as provided for in Article 6 § 3 (c). Furthermore, because of his exclusion from the courtroom, he had been unable to confront the witnesses on whose testimonies his conviction had been based. This fact amounted to a violation of Article 6 § 3 (d).

(ii) The Government

168. The Government pointed out that the applicant had been removed from the courtroom for repeatedly disruptive behaviour and for showing disrespect towards the trial judge. They admitted that the applicant’s exclusion from the trial had not been compatible with the requirements of Article 6 §§ 1 and 3 (c) and (d) of the Convention.

(iii) The Court's assessment

169. As the requirements of paragraph 3 of Article 6 of the Convention constitute specific aspects of the right to a fair trial guaranteed under paragraph 1, the Court will examine the applicant's complaints under these provisions taken together (see, among other authorities, *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

170. While it is of capital importance that a defendant in criminal proceedings should be present during his or her trial, proceedings held in the absence of the accused are not always incompatible with the Convention if the person concerned can subsequently obtain from a court which has tried him a fresh determination of the merits of the charge, in respect of both law and fact (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 82, ECHR 2006-II).

171. The proceedings as a whole may be said to have been fair if the defendant was allowed to appeal against the conviction *in absentia* and entitled to attend the hearing in the court of appeal entailing the possibility of a fresh factual and legal determination of the criminal charge (see *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

172. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Furthermore, it must not run counter to any important public interest (see, among other authorities, *Sejdovic*, cited above, § 86).

173. The Court has also held that before an accused can be said to have, through his conduct, waived implicitly an important right under Article 6 of the Convention, it must be shown that he could reasonably have foreseen the consequences of his conduct in this regard (see *Jones*, cited above).

174. The Convention leaves Contracting States a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the standards required under Article 6 were met. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial (see *Sejdovic*, cited above, § 83).

175. Turning to the circumstances of the present case, the Court notes that during the trial the applicant was excluded from the courtroom for improper behaviour. The judge directed that the applicant should be brought back to the courtroom at the end of the trial to make his final submissions. As a result, all the evidence, including, but not limited to, the testimony of the witnesses, was examined in his absence (see paragraph 18 above).

176. The Court considers at the outset that it is essential for the proper administration of justice that dignity, order and decorum be observed in the courtroom as the hallmarks of judicial proceedings. The flagrant disregard by a defendant of elementary standards of proper conduct neither can nor should be tolerated (see *Ananyev v. Russia*, no. 20292/04, § 44, 30 July 2009).

177. The Court can accept that the applicant's behaviour might have been of such a nature as to justify his removal and the continuation of his trial in his absence. However, it remained incumbent on the presiding judge to establish that the applicant could have reasonably foreseen what the consequences of his ongoing conduct would be prior to her decision to order his removal from the courtroom (see *Jones*, cited above).

178. The Court discerns nothing in the material in its possession to suggest that the judge had either issued a warning or considered a short adjournment in order to make the applicant aware of the potential consequences of his ongoing behaviour in order to allow him to compose himself. In such circumstances, the Court is unable to conclude that, notwithstanding his disruptive behaviour, the applicant had unequivocally waived his right to be present at his trial. His removal from the courtroom meant that he was not in a position to exercise that right. The judge proceeded to examine the evidence in his absence and it does not appear that she made any inquiries as to whether the applicant would agree to conduct himself in an orderly manner so as to permit his return to the trial.

179. Accordingly, the Court must determine whether the appeal court redressed the violation of the applicant's right to participate in the trial hearing at first instance (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86; and *Hermi v. Italy* [GC], no. 18114/02, §§ 58-60, ECHR 2006-XII).

180. The Court observes that in Russia the jurisdiction of appellate courts extends both to legal and to factual issues. The City Court thus had the power to review the case and to consider additional arguments which had not been examined in the first-instance proceedings. Both the applicant and his lawyer attended the appeal hearing and were able to plead the case before the appellate court. Further, the appellate court had the possibility of reviewing the evidence which had been taken at trial. However, it was not open to the applicant or his counsel to obtain a re-examination of that evidence or, for example, to cross-examine those witnesses who had testified against him while he was absent from the trial (see paragraph 78 above). In such circumstances, the appeal hearing did not cure the defects of the trial. In the Court's view, the only possible means of redressing the defects of the trial proceedings would have been for the appellate court to quash the verdict in its entirety and to refer the matter back for a hearing *de novo*. By not doing so, the appellate court failed to redress the violation of the applicant's right to a fair trial.

181. Lastly, the Court observes that the Government have admitted that the applicant's exclusion from the trial during the taking of evidence constituted a violation of his rights guaranteed by Article 6 §§ 1 and 3 (c) and (d) (see paragraph 168 above). The Court sees no reason to hold otherwise.

182. Accordingly, there has been a breach of Article 6 §§ 1 and 3 (c) and (d) of the Convention.

2. *Length of proceedings*

(a) The parties' submissions

(i) The applicant

183. The applicant submitted that the length of the criminal proceedings against him had been excessive. The hearing of the case had been adjourned repeatedly without valid reasons. He himself had been unable to appear in court on only two occasions, while he had been undergoing medical treatment. The fact that the case had been considered by courts at two levels of jurisdiction did not dispense the authorities from their duty to organise their legal systems in such a way as to ensure that the "reasonable time" requirement was met.

(ii) The Government

184. The Government submitted that the length of the criminal proceedings against the applicant had been reasonable. The case had been complex, as the charges had been brought against six defendants and the material in the case file had been substantial (ten volumes). Most of the adjournments had been justified and necessary. The court had had to postpone the hearing of the case owing to the failure of the defendants, their counsel or witnesses to appear. One of the defendants had been seriously ill.

185. Moreover, the applicant himself had contributed to the length of the proceedings. Indeed, on certain occasions he or his lawyer had failed to appear. He had also repeatedly asked to have additional witnesses questioned. The Government further conceded that some of the delays in the proceedings had been caused by the judge's schedule and the prosecutor's illness. Nevertheless, in the Government's opinion, the judicial authorities had not been inactive when dealing with the case. They had made the necessary arrangements to ensure the witnesses' and other parties' presence in the courtroom and to provide the applicant with an interpreter's assistance.

(b) The Court's assessment

186. The Court reiterates that the reasonableness of the length of the 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, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

187. The Court observes that the applicant was arrested on 11 June 1999. It takes this date as the starting point of the criminal proceedings. The final judgment in the case was rendered on 18 May 2004. Accordingly, the proceedings against the applicant lasted approximately four years and eleven months, which spanned the investigation stage and consideration of the applicant's case by the courts at two levels of jurisdiction.

188. The Court accepts that the proceedings against the applicant involved a certain degree of complexity. The applicant was charged with abduction, extortion and illegal acquisition and possession of firearms and drugs as part of an organised group. The prosecution was brought against six defendants.

189. As regards the applicant's conduct, the Court notes that out of approximately forty hearings the trial court held, eleven adjournments were attributable to the applicant. On seven occasions either the applicant or his counsel failed to appear in court. In 2003, that is, during the third year of the trial, the applicant's counsel asked for adjournments on three occasions in order to obtain the attendance of additional witnesses. Admittedly, it was in the applicant's best interests to obtain that evidence in order to take full advantage of the resources afforded by national law to ensure his best possible defence in the criminal proceedings. However, the Court is not convinced that the applicant made use of that opportunity with due diligence. There is nothing in the applicant's submissions to explain why he was unable or unwilling to request the examination of those witnesses at an earlier stage in the proceedings (see, *mutatis mutandis*, *Pavlov v. Russia* (dec.), no. 29926/03, 1 October 2009).

190. As regards the conduct of the authorities, the Court is satisfied that they demonstrated sufficient diligence in handling the proceedings. The investigation stage was completed in one year and eight months. The appeal proceedings lasted approximately six months. The trial hearings were held regularly and the adjournments, owing to the trial judge's conflict of schedule or the witnesses' or other parties' failure to appear, did not have a significantly adverse effect on the length of the proceedings.

191. Making an overall assessment of the complexity of the case, the conduct of the parties and the total length of the proceedings, the Court considers that the latter did not go beyond what may be considered reasonable in this particular case.

192. There has accordingly been no violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

193. The applicant complained under Articles 8 and 34 of the Convention that an officer of the correctional facility where he had been serving a prison sentence had opened the Court's letters of 8 July 2005 and 11 May 2006 addressed to him.

The Court considers that this complaint should be examined only under Article 8 which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

B. Merits

1. The parties' submissions

195. The Government did not deny that the letters of 8 July 2005 and 11 May 2006 had been opened by the administration of the correctional facility and acknowledged the violation of the applicant's right to respect for his correspondence.

196. The applicant maintained his complaint.

2. The Court's assessment

197. According to the Court's case-law, the opening of one letter is sufficient to disclose an interference with the applicant's right to respect for his correspondence (see *Narinen v. Finland*, no. 45027/98, § 32, 1 June 2004).

198. It is not disputed by the parties that on two occasions the correctional facility's officials unsealed the Court's letters to the applicant dated 8 July 2005 and 11 May 2006.

199. Having regard to the foregoing, the Court considers that the censorship of the letters amounted to an “interference” by a public authority, within the meaning of Article 8 § 2, with the exercise of the applicant’s right to respect for his correspondence.

200. Such an interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and, furthermore, is “necessary in a democratic society” to achieve them (see, among many other authorities, *Labita,* cited above, § 179).

201. The Court notes that Article 91 § 2 of the Russian Code on the Execution of Sentences, as in force at the material time, expressly prohibited the censorship of detainees’ correspondence with the European Court of Human Rights (see paragraph 79 above). It follows that the censorship of the letters at issue was not “in accordance with the law”.

202. There has therefore been a breach of Article 8 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

203. Lastly, the applicant alleged that he had been beaten up while detained at the courthouse (see paragraphs 63-66 above), that his detention between 10 June 1999 and 6 July 2001 had been unlawful, that the detention order of 19 June 2003 had not been in compliance with the law, that his conviction had been based on inadmissible evidence, that the trial court was not an independent and impartial tribunal established by law, that the publication of articles about his case in the media had violated the principle of the presumption of innocence, that his original application dispatched in 2000 had not been received by the Court, that his letter of 9 August 2011 addressed to his representatives before the Court had been opened by the administration of the correctional facility where he was serving a prison sentence, that his possessions had been stolen during a search and that he had been subjected to discrimination on account of his ethnic origin. He referred to Articles 3, 5, 6, 8 and 14 of the Convention and Article 1 of Protocol No. 1.

204. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

205. 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

206. The applicant claimed 283,820 euros (EUR) in respect of non-pecuniary damage.

207. The Government considered the applicant’s claims excessive and incompatible with the Court’s case-law.

208. The Court observes that it has found a combination of serious violations in the present case. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,150 in respect of non-pecuniary damage, plus any tax that may be chargeable on this sum.

B. Costs and expenses

209. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court.

210. The Government submitted that the applicant had not actually incurred the costs and expenses claimed and that nothing should be awarded to him under this head.

211. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for instance, *Belziuk v. Poland*, 25 March 1998, § 49, *Reports* 1998-II). In the present case, regard being had to the documents in its possession, to the above criteria and to the fact that legal aid has been granted to the applicant, the Court considers it reasonable to award the sum of EUR 2,500 in respect of the proceedings before it.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant’s detention and his transport to and from the courthouse, the length of the applicant’s pre-trial detention between 29 October 2002 and 24 November 2003, the length and fairness of the proceedings for the

review of the lawfulness of his detention, the applicant's exclusion from the trial, the length of the criminal proceedings against him and the opening of the Court's letters of 8 July 2005 and 11 May 2006 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-77/2 in Moscow from 29 October 2002 to 20 December 2003;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the holding cell at the Khamovnicheskiy District Court in Moscow and of the conditions of his transport between the prison and the courthouse;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention between 29 October 2002 and 24 November 2003;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine speedily the applicant's appeals against the detention orders of 29 October 2002 and 24 April, 19 June, 13 August and 28 October 2003;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's absence from the appeal hearings of 22 January, 16 June, 6 August and 2 October 2003 and 12 February 2004 concerning the lawfulness of his detention;

7. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention as regards the applicant's exclusion from the trial;

8. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings against the applicant;

9. *Holds* that there has been a violation of Article 8 of the Convention on account of the opening of the Court's letters of 8 July 2005 and 11 May 2006 addressed to the applicant;

10. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 7,150 (seven thousand one hundred and fifty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on this sum;
(ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on this sum to the applicant;

(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;

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

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 22 May 2012.

Vincent Berger
Jurisconsult

Nicolas Bratza
President