CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KHUDOYOROV v. RUSSIA

(Application no. 6847/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

12/04/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khudoyorov v. Russia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr A. KOVLER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 6847/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Tajikistan, Mr Doniyor Toshpulotovich Khudoyorov, on 29 January 2002.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr F. Bagryanskiy and Mr M. Ovchinnikov, lawyers practising in Vladimir, Mrs K. Moskalenko, a lawyer with the International Protection Centre in Moscow, and Mr W. Bowring, a London lawyer. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his detention in facility no. OD-1/T-2 and conditions of transport to and from the courthouse had been incompatible with Article 3 of the Convention, that his pre-trial detention had been unlawful after 4 May 2001 and also excessively long, that his applications for release filed after 28 April 2001 had not been considered "speedily", if at all, and that the length of the criminal proceedings had been excessive.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 13 February 2004 the Section President decided to grant priority to the application under Rule 41 of the Rules of Court.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 22 February 2005, the Court declared the application partly admissible.

8. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

9. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1965. On 17 August 1998 he arrived in Russia from Tajikistan. He stayed in Vladimir at his cousin's flat.

A. The applicant's arrest and the search of the flat

11. On 22 January 1999 the applicant was arrested on suspicion of the unlawful purchase and possession of drugs. A search was carried out in the flat where he was staying.

B. The applicant's detention pending investigation

12. On 30 January 1999 the applicant was charged under Article 228 § 1 of the Criminal Code with the unlawful purchase and possession of 3 grams of hashish. He pleaded not guilty and indicated that he did not need an interpreter because he had studied in Leningrad.

13. On 12 March and 5 April 1999 the applicant's detention was extended until 11 July 1999.

14. On 4 June 1999 the Leninskiy District Court of Vladimir refused the applicant's request for release on bail. It found that the applicant's detention had been extended in accordance with the law and that no grounds for releasing him could be established. The applicant did not appeal to the Regional Court.

15. On 30 June and 2 September 1999 the applicant's detention was extended until 21 December 1999.

16. On 2 December 1999 the acting Prosecutor General approved the extension of the applicant's detention until 21 June 2000. The applicant appealed to the Leninskiy District Court, which on 28 December 1999 dismissed the appeal, finding that the applicant had been charged with an

particularly serious criminal offence and had resided in Vladimir only temporarily, his permanent residence being in Dushanbe, Tajikistan, so that there was good reason to suspect that he would abscond if released. The applicant did not appeal against that decision to the Regional Court.

C. First remittal of the case for additional investigation

17. On 21 June 2000 the supervising prosecutor approved the bill of indictment and the case against the applicant and twenty co-defendants was sent to the Vladimir Regional Court for trial.

18. On 23 June and 17 July 2000 the applicant requested the Vladimir Regional Court to review the lawfulness of his detention on remand.

19. On 18 July 2000 the Vladimir Regional Court ordered the case to be remitted for an additional investigation because the bill of indictment had not been translated into the Tajik language, even though seven of the defendants were Tajik. The court held that the applicant and his co-defendants should remain in custody.

20. On 24 July 2000 the prosecution appealed against the decision but subsequently withdrew their appeal. On 30 August 2000 the case was returned to the Vladimir Regional Court for examination on the merits.

D. Second remittal of the case for additional investigation

1. Reinstatement of the decision of 18 July 2000

21. On 23 November 2000 the Vladimir Regional Court ordered the case to be remitted for an additional investigation because the rights of some of the defendants had been unlawfully restricted. The prosecution appealed.

22. On 28 February 2001 the Supreme Court of the Russian Federation quashed the decision of 23 November 2000. It found that, after the case had been remitted for an additional investigation on 18 July 2000, the prosecution had not remedied the defects identified by the Regional Court. In particular, the prosecution had not arranged for translation of the bill of indictment or checked that the interpreter had the requisite skills. In view of these procedural defects, the Supreme Court held that all the subsequent judicial decisions had been unlawful and remitted the case to the Regional Court for implementation of the decision of 18 July 2000.

2. Additional investigation

(a) Extension of the applicant's detention for one month (until 4 May 2001)

23. On 4 April 2001 the case was remitted to the prosecutor of the Vladimir Region for an additional investigation. On the same day a deputy

prosecutor of the Vladimir Region extended the applicant's detention on remand by one month, until 4 May 2001.

(b) Extension of the applicant's detention for three months (until 4 September 2001)

24. On 19 April 2001 the prosecutor of the Vladimir Region applied to the Vladimir Regional Court for an order extending the applicant's detention. The applicant lodged objections in which he alleged, *inter alia*, that the prosecution had thus far failed to perform any additional investigation.

25. On 28 April 2001 the Vladimir Regional Court established that the bill of indictment had been translated into Tajik and that on 18 April 2001 the defendants and their lawyers had begun their examination of the case file. Noting the gravity of the charges against the applicant, his Tajik nationality and absence of a permanent residence in Vladimir, the Regional Court further remanded him in custody until 4 September 2001.

26. On 4 and 17 May 2001 the applicant appealed against the decision of the Vladimir Regional Court.

(c) Quashing of the decision to extend the applicant's detention until 4 September 2001

27. On 8 August 2001 the Supreme Court established that one of the applicant's co-defendants had not been provided with an interpreter into Uzbek and that the applicant and other co-defendants had had no access to the materials examined by the Regional Court. It held as follows:

> "The defects of the court hearing described above and the curtailing of the defendants' statutory rights... are substantial violations of the rules of criminal procedure, which could have affected the judge's conclusions; the decision [of 28 April 2001] must therefore be quashed and the materials of the case relating to the extension of the defendants' pre-trial detention must be referred for a new judicial examination. During the new examination of the prosecutor's request, the above defects shall be remedied... and the arguments by the defendants and their counsel, including those concerning the lawfulness of their detention, shall be reviewed... The preventive measure [imposed on, in particular, the applicant] shall remain unchanged".

By an interim decision of the same date, the Supreme Court refused the applicant leave to appear at the appeal hearing.

(d) Second examination of the request for an extension of the applicant's detention until 4 September 2001

28. On 11 September and 30 November 2001 the Vladimir Regional Court adjourned hearings in order to afford the defendants additional time in which to read the case-file.

29. On 27 February 2002 the Vladimir Regional Court upheld a challenge by the applicant against the presiding judge.

30. On 11 and 13 March, 12 April, 17 and 18 June 2002 hearings were adjourned because of the absence of several lawyers, including the applicant's counsel.

31. On 15 August 2002 the Vladimir Regional Court again granted the prosecutor's request (of 19 April 2001) for an extension of the defendants' detention on remand until 4 September 2001. It found that it was necessary for the applicant to remain in custody because he was a national of Tajikistan, was not registered as resident in Vladimir, and had been charged with a serious criminal offence. The court also referred to certain "conclusions" contained in the prosecutor's application to the effect that the applicant might abscond or obstruct justice. The content of these "conclusions" was not disclosed.

32. On 23 September 2002 the applicant lodged an appeal against the decision of the Vladimir Regional Court. He claimed that the contested decision was "unlawful and unconstitutional" and requested leave to appear in person at the appeal hearing.

33. On 23 January 2003 the Supreme Court upheld the decision of 15 August 2002, finding as follows:

> "The judge came to a well-justified conclusion that the defendants... could not be [released pending trial]. The judge had regard to the fact that these persons were charged with serious and particularly serious criminal offences, he considered the information on their character and all the circumstances to which the prosecutor had referred in support of his application...
>
> The fact that the above-mentioned decision on the prosecutor's application was [only] made after the defendants had spent that length of time in custody... is not a ground for quashing the decision of 15 August 2002 because the first judicial decision on this matter was quashed in accordance with the law and the prosecutor's application of 19 April 2001 was remitted for a new examination. The subsequent progress of the criminal case is, under these circumstances, of no relevance to a decision on the prosecutor's application."

By an interim decision of the same date, the Supreme Court refused the applicant's request for leave to appear because the defendants' arguments were clearly set out in their grounds of appeal and their lawyers were present at the hearing while the prosecutor was not.

E. Third remittal of the case for additional investigation

1. Preparation for the trial

34. Meanwhile, on 4 September 2001 the additional investigation was completed and the case sent to the Vladimir Regional Court. On or about that date the applicant asked the court to order his release pending the trial.

35. On 9 January 2002 the Vladimir Regional Court fixed the first hearing for 5 February 2002 and held that the applicant should remain in custody pending trial:

> "[The court] did not establish any grounds... to amend or revoke the preventive measure imposed on the accused given the gravity of the offence with which the defendants are charged. Furthermore, the fact that the court decision extending the detention on remand of several defendants in order to afford them [time] to examine the case materials was quashed on appeal is of no legal significance. [In its decision of 8 August 2001] the Supreme Court did not revoke the preventive measure, the case was referred to the [trial] court without delay and no other grounds for amending the preventive measure were established."

36. On 11 February 2002 the applicant lodged an appeal against the decision. He complained, in particular, that his detention was unlawful because it had significantly exceeded the maximum eighteen-month period permitted by law, that the conditions in which he was detained were poor and that he had been ill-treated by police officers, both at the time of his arrest and subsequently. He alleged that his notice of appeal had never been dispatched to the Supreme Court.

37. On 5 February 2002 the hearing was adjourned until 26 February because three defendants had failed to appear. On 15 February 2002 the applicant prepared an appeal against the decision to adjourn the hearing; in the notice of appeal, he also repeated the points he had raised in his appeal of 11 February. He again stated that his notice of appeal had not been sent to the Supreme Court.

2. Decision to remit the case for additional investigation

38. On 13 March 2002 the Vladimir Regional Court established that the case was not ready for consideration on the merits because of a series of procedural defects: in particular, several defendants had not had sufficient time to study the case file, one defendant had not been provided with interpretation facilities into Uzbek, and the applicant had not been informed in good time of the expert examinations. The court remitted the case for an additional investigation and remanded the defendants in custody "in the light of the gravity and dangerous nature of the offences".

39. On 11 April 2002 the prosecution appealed against the decision of 13 March and the applicant did likewise on 29 April. The applicant submitted, in particular, that the domestic law did not permit extensions of detention "during the investigation" beyond the maximum period of eighteen months which had expired, in his case, on 4 April 2001.

40. On 28 May 2002 the case-file was forwarded to the Supreme Court for examination of the issue of detention on remand.

3. Quashing of the decision to remit the case for additional investigation

41. On 8 August 2002 the Supreme Court refused, in an interim decision, the applicant's request for leave to appear, holding that his position had been clearly and exhaustively stated in the grounds of appeal.

42. On 12 September 2002 it examined the appeals lodged by the prosecutor, the applicant and his co-defendants and found that the defence rights had not been impaired. On this ground it quashed the decision of 13 March 2002 and instructed the Vladimir Regional Court to proceed with the trial. It held that the applicant and his co-defendants should remain in custody because "there were no legal grounds to amend the preventive measure given the gravity and dangerous nature of the offences".

43. On 7 October 2002 the case-file was returned to the Vladimir Regional Court.

F. Further extensions of the applicant's detention pending trial and his release from custody

44. On 18 November 2002 the Vladimir Regional Court extended the applicant's detention on remand until 3 December 2002. It found as follows:

> "The case was referred to the Vladimir Regional Court on 2 September 2001; on 13 March 2002 it was decided to remit the case for additional investigation. On 12 September 2002 the Supreme Court quashed that decision on appeal by the prosecutor. Thus, the defendants have remained in custody for 8 months and 16 days, starting from the date of the case's referral and excluding the period between [the end of the] examination on the merits and the quashing of the decision [of 13 March 2002] on appeal.
>
> Regard being had to the fact that the defendant is charged with serious and particularly serious criminal offences, in order to secure the examination of the case and the enforcement of the conviction [*sic*], there are no grounds to [release the applicant]. Under these circumstances, pursuant to Article 255 § 3 of the Russian Code of Criminal Procedure, the defendant's detention on remand is extended for an additional three months".

45. On 4 December 2002 the Vladimir Regional Court granted a further extension of the applicant's detention for three months, that is to say until 3 March 2003 [the decision mistakenly indicates 2002]. The grounds invoked by the court were identical to those set out in the decision of 18 November 2002.

46. On 22 and 26 November and 5 December 2002 the applicant's lawyers lodged appeals against the decisions of 18 November and 4 December with the Supreme Court. They submitted, in particular, that the six-month period of the applicant's detention which had started from the moment the case was referred for trial, had expired on 2 March 2002 but had been extended only two months and sixteen days later, on 18 November. Therefore, the applicant's detention from 13 March to 12 September 2002 had not been covered by any detention order: the prosecution had not assumed responsibility for the case, whilst the courts considered that the case had been remitted for an additional investigation and held the prosecution accountable for the applicant's detention.

47. On 3 March, 28 May, 28 August and 27 November 2003 and 27 February 2004 the Vladimir Regional Court authorised further extensions of detention in respect of the applicant and 12 co-defendants, on each occasion for a period of three months. The reasons given in the decisions of 3 March, 28 May and 28 August 2003 were identical to those given in the decisions of 18 November and 4 December 2002 (see above). The decisions of 27 November 2003 and 27 February 2004 referred to the gravity of the charges and the existence of "sufficient reasons to believe that the defendants would abscond".

The applicant submitted appeals against each of these decisions.

48. Between May 2003 and 15 March 2004 the trial proceeded. On 19 April 2004 the parties began their final submissions.

49. On 28 May 2004 the Vladimir Regional Court, by an interim decision, held that the applicant's detention on remand was not to be extended because the prosecution had reduced the charges against him. He appears to have been released from custody the same day.

50. On 21 March 2005 the Supreme Court examined the applicant's and/or his co-defendants' appeals against the decisions of 18 November and 4 December 2002, 3 March, 28 May, 28 August and 27 November 2003 and 27 February 2004 extending their detention on remand.

The Supreme Court quashed the decisions of 18 November and 4 December 2002 and 3 March 2003 on the ground that they had been given by an incomplete formation: a single judge instead of a three-judge panel. As regards the applicant's situation, it further held:

> "Since the judge's decision has been quashed because of a breach of the rules of criminal procedure, the court will not examine the arguments in the appeals alleging that the extension of the [applicant's] detention was unlawful on other grounds. The matter will not be remitted for a new examination because [the applicant] has been acquitted."

The Supreme Court upheld the other decisions, finding that the Regional Court had correctly referred to the gravity of the charges and the existence of sufficient grounds to believe that the defendants would abscond during the trial.

G. Discontinuation of the criminal proceedings

51. On 18 June 2004 the Vladimir Regional Court, by an interim decision, dismissed the charges of participation in an organised criminal enterprise and running an opium den against the applicant after they were withdrawn by the prosecution.

52. By another interim decision of the same date, the court dismissed a charge against the applicant in respect of one incident of drug possession because of a recent change in the Russian criminal law that had decriminalised possession of negligible amounts of drugs.

53. Finally, by a judgment of the same date, the court acquitted the applicant of the remaining drug-trafficking charges because his involvement in the commission of the offences could not be proven. Some of his co-defendants were convicted and sentenced to various terms of imprisonment.

54. On 21 March 2005 the Supreme Court of the Russian Federation upheld, on appeal, the above judgment and decisions of the Vladimir Regional Court.

H. Decisions of the Constitutional Court

55. On 10 December 2002 the Constitutional Court examined the applicant's complaint concerning his exclusion from the proceedings before the Supreme Court and confirmed that the applicant should have had the right to appear in person and plead his case before the court if a prosecutor was present.

56. On 15 July 2003 the Constitutional Court issued decision (*определение*) no. 292-O on the applicant's complaint about the *ex post facto* extension of his "detention during trial" by the Regional Court's decision of 18 November 2002. It held as follows:

> "Article 255 § 3 of the Code of Criminal Procedure of the Russian Federation provides that the [trial court] may... upon the expiry of six months after the case was sent to it, extend the defendant's detention for successive periods of up to three months. It does not contain, however, any provisions permitting the courts to take a decision extending the defendant's detention on remand once the previously authorised time-limit has expired, in which event the person is detained for a period without a judicial decision. Nor do other rules of criminal procedure provide for such a possibility. Moreover, Articles 10 § 2 and 109 § 4 of the Code of Criminal Procedure expressly require the court, prosecutor, investigator... to release anyone who is unlawfully held in custody beyond the time-limit established in the Code immediately. Such is also the requirement of Article 5 §§ 3 and 4 of the European Convention... which is an integral part of the legal system of the Russian Federation, pursuant to Article 15 § 4 of the Russian Constitution..."

57. On 22 January 2004 the Constitutional Court delivered decision no. 66-O on the applicant's complaint about the Supreme Court's refusal to permit him to attend the appeal hearings on the issue of detention. It held:

> "Article 376 of the Code of Criminal Procedure regulating the presence of a defendant remanded in custody before the appeal court... cannot be read as depriving the defendant held in custody... of the right to express his opinion to the appeal court, by way of his personal attendance at the hearing or by other lawful means, on matters relating to the examination of his complaint about a judicial decision affecting his constitutional rights and freedoms..."

I. Conditions of the applicant's detention and in which he was transported

1. The applicant's detention in facility no. OD-1/T-2

58. From 16 February 2000 to 28 May 2004 the applicant was held in detention facility no. OD-1/T-2 of the Vladimir Region (*учреждение ОД-1/Т-2 УИН МЮ РФ по Владимирской области*), known as "Vladimirskiy Tsentral". He stayed in various cells in wings nos. 3 and 4, built in 1870 and 1846, respectively.

(a) Number of inmates per cell

59. According to a certificate issued on 22 April 2004 by the facility director, and which the Government have produced, the applicant was kept in eight cells described as follows: cell no. 4-14 (12.1 square metres, 6 bunks, average population 4 to 6 inmates), cell no. 4-13 (12.3 sq. m, 6 bunks, 5 to 7 inmates), cell no. 4-9 (23.4 sq. m, 13 bunks, 13 to 20 inmates), cells nos. 3-3, 3-53, 3-54, 3-51 and 3-52 (35 to 36 sq. m, 16 bunks, 12 to 18 inmates).

60. The applicant did not dispute the cell measurements or the number of bunks. He disagreed, however, with the figure given by the Government for the number of inmates. According to him, between February and December 2000 he stayed in cell no. 4-9 that housed 18 to 35 inmates and between December 2000 and May 2004 he was kept in cells measuring approximately 36 sq. m, together with 20 to 40 other detainees. After the new Code of Criminal Procedure came into effect on 1 July 2002, the number of inmates in his cell dropped to between 15 and 25. Given the lack of beds, inmates slept in eight-hour shifts. They waited for their turn sitting on the concrete floor or on a stool if one was available.

In support of his statements the applicant produced written depositions by three former cellmates, Mr Abdurakhmon Kayumov, Mr Sergey Gunin and Mr Yan Kelerman. They stated, in particular, that in 2003-2004 cell no. 3-52 had housed 20 to 30 inmates (Mr Kayumov's deposition) or even 25 to 35 (Mr Gunin's deposition), as had cells nos. 3-51 and 3-53. They also testified that they and the other detainees had slept in turns.

(b) Sanitary conditions and installations

61. The Government, relying on a certificate of 8 April 2004 from the facility director, submitted that the "sanitary and anti-epidemic condition of the facility remained satisfactory, including... in the cells where [the applicant] had been held". Another certificate of 20 April 2004 showed that "the cells... were equipped with [a lavatory pan] placed no more than 10 cm above the floor and separated by a partition of 1.5 m in height with

additional curtains". Running tap water was available and detainees were permitted to use immersion heaters.

62. The applicant conceded that there had been no outbreaks of contagious diseases or epidemics. Apart from that, the sanitary conditions were wholly unsatisfactory. Prisoners infected with tuberculosis, hepatitis, scabies and the human immunodeficiency virus (HIV) were occasionally held in his cell. The cells were infested by lice, bed-bugs, flies, mosquitoes, cockroaches, rats and mice, but the facility administration did not provide any repellents or insecticides. Detainees were not given any toiletries, such as soap, toothbrush, toothpaste or toilet paper, apart from 100 grams of caustic soda once a week and two plastic bottles of bleach (1.5 litres each) every two or three months. Cells had no ventilation systems. In winter they were cold and in summer it was hot, stuffy and excessively damp inside.

63. The applicant challenged the Government's description of the toilet facilities as factually untrue. The cast-iron pan was raised on a pedestal about 50-80 cm high and separated from the living area from one side with a one-metre-high partition. The person using the toilet was in full view of other inmates. No curtains were provided; occasionally the inmates hung a sheet but wardens tore it down and disciplined those responsible. What is more, the lavatory pan had no seat or cover: inmates stuck an empty plastic bottle in the hole in order to prevent smells from spreading. The dining table was fixed to the floor just a few metres from the pan. His description was corroborated by written depositions by former cellmates, Mr Kayumov, Mr Gunin, Mr Kelerman and Mr Sergey Kalenik, and four colour photos showing the lavatory pan and the dining table from various angles.

(c) Food

64. The Government asserted that "the applicant was fed in accordance with the established legal norms". It appears from an undated certificate signed by the facility director that his daily diet consisted of 100 g of meat, 100 g of fish, 100 g of groats, 20 g of pasta, 20 g of salt, 1 g of tea [*sic*], 0.5 kg of potatoes, 0.25 kg of vegetables, 0.55 kg of bread.

65. The applicant submitted that the food was of an extremely low quality. Many a meal only contained so-called *balanda*, a soup-like mix of millet, barley and pasta without any fat. Meat was replaced with a soya substitute. No fresh vegetables were given, occasionally the evening meal included cooked beetroot, sauerkraut or pickled cucumbers. Salt and tea were never distributed. Written depositions by four of the applicant's former cellmates confirmed these submissions.

(d) Outdoor exercise

66. The parties agreed that the applicant had been entitled to a daily walk of about one hour. The applicant indicated, however, that he was not able to go outdoors on days when there were court hearings.

67. The Government did not describe the outdoor conditions. The applicant, and four former cellmates in written depositions, portrayed the following picture of the exercise yards: The yards were closed premises measuring 12, 26 or 40 sq. m. The opening to the sky was covered with a metal roof with a one-metre gap between the roof and the top of the walls. In summer it was extremely hot and stifling inside as the sun heated the roof. The walls were coated with so-called *shuba*, a sort of abrasive concrete lining, designed to prevent detainees from leaning on the walls. The entire cell population was brought to the yard at once; occasionally it was impossible to move around, let alone to exercise, because of the sheer number of prisoners.

(e) Other issues

68. According to the applicant, metal blinds that prevented natural light getting into the cells were only removed on 28 December 2002 after a delegation that included a representative of the Council of Europe had paid a visit to Vladimir detention facilities. The Government did not contest that information.

(f) Contact with the outside world

69. The applicant's relatives were not permitted to see him throughout the pre-trial investigation. After the trial began, he was allowed four short visits by his wife, children, sister and brother. At these meetings the applicant and his parents were prohibited from talking in any language other than Russian. The applicant was likewise prohibited from corresponding with his relatives other than in Russian: the facility administration refused to dispatch or hand over letters written in Tajik.

70. The Government explained that these restrictions had been due to the lack of a staff interpreter from Tajik in the facility.

2. Conditions of the applicant's transport to and from the courthouse

71. The applicant was transported from the remand centre to the Vladimir Regional Court for hearings on 205 occasions; of these hearings, 185 concerned the charges against him and 20 applications for extensions of detention. The applicant offered the following description of these days, which was corroborated by written depositions from four former cellmates.

72. On the day of the hearing he was woken up at 4 or 5 a.m. At about 8 a.m. he was taken from his cell to the so-called “assembly cell”, together with other detainees who had a hearing on that day. Each “assembly cell” measured 9.2 to 9.9 sq. m and housed 10 to 20 prisoners. “Assembly cells” had no ventilation system and the air was soon heavy with smoke. At about 9 or 9.30 a.m. the applicant was taken to a van.

73. The prison van had one collective compartment designed for four prisoners and six individual compartments of one sq. m. It was designed to carry ten prisoners. However, it transported between 15 and 20 and on one occasion 27 detainees. The applicant was put in an individual compartment together with another prisoner. Owing to the lack of space, one of them would sit on the bench and the other on his lap. The route to the Vladimir Regional Court took one hour and the van called at other facilities on its way.

74. The applicant did not normally arrive back at the prison until 6 or 8 p.m. During the day he received no food or outdoor exercise and was liable to miss out on the shower he was allowed periodically.

75. The Government submitted that the applicant had been transported in special prison vans that met the standard requirements. The route from facility no. OD-1/T-2 to the Vladimir Regional Court was eight kilometres long and took thirty minutes.

II. RELEVANT DOMESTIC LAW

76. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, "the old CCrP"). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

A. Preventive measures

77. "Preventive measures" or "measures of restraint" (*меры пресечения*) include an undertaking not to leave a town or region, personal security, bail and detention on remand (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention on remand

78. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

Under the old CCrP, a decision ordering detention on remand could be taken by a prosecutor or a court (Articles 11, 89 and 96).

The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

C. Grounds for ordering detention on remand

79. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or re-offend (Article 89 of the old CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

80. Before 14 March 2001, detention on remand was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were "exceptional circumstances" in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment or if they had previously defaulted or had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

D. Time-limits for detention on remand

1. Two types of detention on remand

81. The Codes distinguished between two types of detention on remand: the first being "pending the investigation", that is while a competent agency – the police or a prosecutor's office – investigated the case, and the second "before the court" (or "during the trial"), that is while the case was being tried in court. Although there was no difference in practice between them (the detainee was held in the same detention facility), the calculation of the time-limits was different.

2. Time-limits for detention "pending the investigation"

82. After arrest the suspect is placed in custody "pending the investigation". The maximum permitted period of detention "pending the investigation" is two months but it can be extended for up to eighteen months in "exceptional circumstances". Extensions were authorised by prosecutors of ascending hierarchical levels (under the old CCrP) but must now be authorised by judicial decisions taken by courts of ascending levels (under the new CCrP). No extension of detention "pending the

investigation" beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

83. The period of detention "pending the investigation" is calculated to the day when the prosecutor sent the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

84. Access to the file materials is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case-file, a judge, on a request by a prosecutor, may grant an extension of detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

85. Under the old CCrP, the trial court had the right to remit the case for an "additional investigation" if it established that procedural defects existed that could not be remedied at the trial. In such cases the defendant's detention was again classified as "pending the investigation" and the relevant time-limit continued to apply. If, however, the case was remitted for an additional investigation, but the investigators had already used up all the time authorised for detention "pending the investigation", a supervising prosecutor could nevertheless extend the detention period for one additional month starting from the date he received the case. Subsequent extensions could only be granted if the detention "pending the investigation" had not exceeded eighteen months (Article 97).

3. Time-limits for detention "before the court"/"during the trial"

86. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial").

87. Before 14 March 2001 the old CCrP set no time-limit for detention "during the trial". On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention "during the trial" could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or on a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

88. The new CCrP establishes that the term of detention "during the trial" is calculated from the date the court received the file and to the date the judgment is given. The period of detention "during the trial" may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

E. Proceedings to examine the lawfulness of detention

During detention "pending the investigation"

89. Under the old CCrP, the detainee or his or her counsel or representative could challenge the detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required to review the lawfulness of and justification for a detention or extension order no later than three days after receipt of the relevant papers. The review was to be conducted *in camera* in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the detainee's release (Article 220-1).

An appeal to a higher court lay against the judge's decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (see paragraph 96 below) (Article 331 *in fine*).

90. Under the new CCrP, an appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention on remand. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10).

During the trial

91. Upon receipt of the case-file, the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 222 § 5 and 230 of the old CCrP, Articles 228 (3) and 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP). If the application was refused, a fresh application could be made once the trial had commenced (Article 223 of the old CCrP).

92. At any time during the trial the court may order, vary or revoke any preventive measure, including detention on remand (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberations room and signed by all the judges in the formation (Article 261 of the old CCrP, Article 256 of the new CCrP).

93. An appeal against such a decision lies to the higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

F. Time-limits for trial

94. Under the old CCrP, within fourteen days after receipt of the case-file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for an additional investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court having jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). The trial must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

95. The duration of the trial is not limited in time.

96. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days of its receipt. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this time-limit could be extended by up to two months (Article 333). No further extensions were possible.

The new CCrP establishes that the appeal court must start the examination of the appeal no later than one month after its receipt (Article 374).

III. RELEVANT INTERNATIONAL INSTRUMENTS

97. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

> "10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation...
>
> 11. In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
>
> 12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
>
> 13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature

suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

45... (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited..."

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

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

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

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

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

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

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing

facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

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

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

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

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

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

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

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

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

99. The applicant complained that the conditions of his detention in facility no. OD-1/T-2 "Vladimirskiy Tsentral" and transport to and from the courthouse were in breach of 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. Conditions of detention in facility no. OD-1/T-2

1. The parties' submissions

100. The Government submitted that, while in facility no. OD-1/T-2 the applicant had had at all times no less than 2 sq. m for himself. He had been assigned an individual bunk and given bedding. The sanitary conditions were satisfactory, there was running tap water and detainees could use their own immersion heaters. The applicant had had at least one hour of outdoor activity daily and the food was in compliance with the applicable standards. The applicant had been permitted to talk to his relatives, and to correspond with them, in Russian because there was no staff interpreter from Tajik and because the law did not provide for the presence of an interpreter during parental visits. The applicant had not complained of harassment by or threats from other detainees or the facility wardens.

101. The applicant challenged the Government's submissions as factually inaccurate. He indicated that the number of inmates per cell had been significantly greater than that suggested by the Government, that cells were infected with parasites and excessively humid. The placement and partitioning of the lavatory pan offered no privacy whatsoever and contributed to a further infestation of the cell. The quality of food was wholly unsatisfactory. There was no real opportunity for outdoor exercise because the exercise yards were overcrowded and also covered with metal roofs that severely limited access to fresh air. The applicant submitted that the conditions of his detention fell foul of paragraphs 12, 15 and 20 (1) and (2) of the Standard Minimum Rules for the Treatment of Prisoners (cited above). He considered that the requirement to speak in Russian to his small children who spoke only Tajik had been degrading and humiliating. He finally indicated that, upon his release, he had been diagnosed with several diseases, such as hypertension and prostatitis, that had been contracted during his detention.

The Court's assessment

102. As the Court has held on many occasions, 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 (*Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity 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 (*Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

103. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his 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 (*Valašinas*, cited above, § 102; *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). When assessing conditions of detention, one must consider their cumulative effects as well as the applicant's specific allegations (*Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The duration of detention is also a relevant factor.

104. The Court notes that in the present case the parties have disputed the actual conditions of the applicant's detention at facility no. OD-1/T-2 of Vladimir. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the respondent Government, for the following reasons.

105. The main characteristic, which the parties have agreed upon, are the measurements of the cells. The applicant claimed that the cell population severely exceeded their design capacity; the Government produced a certificate from the facility director showing that at times the number of inmates was greater than that of the available bunks (cells nos. 4-13, 4-9, 3-3, 3-51, see paragraph 59 above). It follows that the detainees, including the applicant, had to share the sleeping facilities, taking turns to rest. In smaller, 12 or 24 sq. m cells in wing no. 4 where the applicant was kept until December 2000, inmates were afforded less than 2 sq. m of personal space, and in the larger capacity dormitories of wing no. 3, where the applicant stayed until his release in May 2004, detainees had less than 3 sq. m of personal space, even when the cell was filled below its design

capacity. The parties also agree that, save for one hour of daily outdoor exercise, for the remainder of the day the applicant was locked in the cell which contained all the facilities used by prisoners on a daily basis, such as the washbasin, lavatory and eating utensils. The applicant was held in these conditions for more than four years and three months.

106. In this connection the Court notes that in the *Peers* case even a much bigger cell (7 sq. m for two inmates) was considered a relevant factor in finding a violation of Article 3, albeit in that case the problem of space was coupled with an established lack of ventilation and lighting (*Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). The present situation is also comparable with that in the *Kalashnikov* case, where the applicant was confined to a space measuring less than 2 sq. m. In that case the Court held that such a degree of overcrowding in itself raised an issue under Article 3 of the Convention (*Kalashnikov v. Russia*, no. 47095/99, §§ 96-97, ECHR 2002-VI). By contrast, in other cases no violation of Article 3 was found, as the restricted space for sleeping was compensated for by the freedom of movement enjoyed by the detainees during the day-time (*Valašinas*, cited above, §§ 103 and 107; *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

107. The Court considers the lack of space to be the focal point of its analysis. The fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so little personal space was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse within him feelings of anguish and inferiority capable of humiliating and debasing him (*Peers* and *Kalashnikov*, cited above, *loc. cit.*; see also the CPT's 11th General Report, § 29). These feelings were further exacerbated by the inordinate length of his detention.

108. Furthermore, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, heating, lighting or sanitary conditions in the facility were unacceptable from the standpoint of Article 3, the Court notes with concern that the lavatory had no flush system, that until December 2002 the cell windows were covered with metal shutters blocking access to fresh air and natural light (cf. CPT's 11th General Report, § 30) and that the applicant was only permitted to talk to his close relatives in a language they did not master, which made contact with his family more difficult. The Government did not suggest that such restrictions were based on security concerns of an appreciable nature (cf. CPT's 2nd General Report, § 51). These aspects combined with the lack of personal space show that the applicant's detention conditions went beyond the threshold tolerated by Article 3 of the Convention.

109. The Court therefore finds that there has been a violation of Article 3 of the Convention as regards the conditions of the applicant's detention in facility no. OD-1/T-2.

B. Conditions of transport between the facility and the courthouse

1. The parties' submissions

110. The Government submitted that the conditions of transport were compatible with domestic standards and that the convoy service personnel had not committed any breaches of applicable laws.

111. The applicant claimed that the conditions of transport between the detention facility and the Vladimir Regional Court were inhuman and degrading. "Assembly cells" and passenger compartments were severely overcrowded and gave no access to natural light or air. He was not given food or drink for the entire day and the cumulative effect of these conditions was mental and physical exhaustion. In his view, such conditions were incompatible with paragraph 45 (2) of the Standard Minimum Rules for the Treatment of Prisoners.

2. The Court's assessment

112. The Court reiterates that 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).

113. The Court notes that the only account of the conditions of transport from the remand facility to the Vladimir Regional Court is that furnished by the applicant. His account is corroborated by the written statements of four former cellmates. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

114. It is true that in the present case the applicant was not able to take exact measurements of the prison-van compartments or obtain certificates showing the occupancy level. However, the Government could have readily submitted details in support of their contentions, but did not do so and gave no reasons for withholding such information. In fact, they confined themselves to asserting that the conditions were compatible with applicable standards and that the travel time was half as long as that claimed by the

applicant. No copy of the standards or regulations on prison vans was submitted. In these circumstances the Court will examine the merits of the complaint on the basis of the applicant's submissions.

115. The applicant submitted that on the days of court hearings he was transported to the courthouse by a prison van in which he shared a 1 sq. m "individual" compartment with another prisoner. He received no food during the entire day and missed out on outdoor exercise and on occasions the chance to take a shower.

116. The Court has not previously examined the compatibility of transport conditions as such with the requirements of Article 3 of the Convention (however, as regards handcuffing and/or blindfolding of detainees during transport, see *Öcalan v. Turkey* [GC], no. 46221/99, §§ 182-184, ECHR 2005-...; and *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, §§ 56-59). It will therefore seek guidance from the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT).

117. As regards the transport of prisoners, the CPT has considered individual compartments measuring 0.4, 0.5 or even 0.8 sq. m to be unsuitable for transporting a person, no matter how short the duration (see CPT/Inf (2004) 36 [Azerbaijan], § 152; CPT/Inf (2004) 12 [Luxembourg], § 19; CPT/Inf (2002) 23 [Ukraine], § 129; CPT/Inf (2001) 22 [Lithuania], § 118; CPT/Inf (98) 13 [Poland], § 68). In the present case the individual compartments in the prison van (measuring one sq. m) would not appear to have been in breach of the CPT's standards, assuming that the design capacity was not exceeded and that they were sufficiently lit, ventilated and heated and equipped with adequate seating and fixtures that would prevent prisoners from losing their balance when the vehicle moves (cf. CPT/Inf (2002) 36 [Slovenia], § 95).

118. However, the applicant had to share the individual compartment with another detainee, the two men taking turns to sit on the other's lap. The above-mentioned CPT's findings suggest that it would not have found that situation acceptable. The Court likewise considers that the placement of two prisoners in a one sq. m compartment with only one seat was unacceptable. The Government claimed that the journey took only thirty minutes, but the applicant said that the van called at other facilities on the way. As the detainees remained inside the van during that time, it would be appropriate to base the assessment on the applicant's submission that the journey lasted up to one hour. In any event, the Court finds that such transport arrangements are impermissible, irrespective of the duration.

119. The Court observes that the applicant had to endure these crammed conditions twice a day, on the way to and from the courthouse and that he was transported in that van no fewer than 200 times in four years of detention. On those days he received no food and missed outdoor exercise. It is also relevant to the Court's assessment that the applicant continued to

be subjected to such treatment during his trial or at the hearings of applications for his detention to be extended, that is when he most needed his powers of concentration and mental alertness.

120. The Court finds that the treatment to which the applicant was subjected during his transport to and from the Vladimir Regional Court exceeded the minimum level of severity and that there has been a violation of Article 3 of the Convention.

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

121. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand was not lawful. The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

1. The parties' submissions

122. The applicant contended that on 8 August 2001 the Supreme Court had quashed the extension order of 28 April 2001 as unlawful and remitted the issue of his detention for re-examination; accordingly, his detention from 28 April 2001 onwards was not "lawful" within the meaning of Article 5 § 1. After the case was sent for trial on 4 September 2001, it took the Regional Court more than four months – instead of the fourteen days required by the old CCrP – to hold the first hearing and examine the request for release. The decision of 9 January 2002 was deficient in its reasoning: the applicant was remanded in custody solely on account of the gravity of the charges against him. The applicant further submitted that neither the Regional Court's decision of 13 March 2002 nor the Supreme Court's decision of 12 September 2002 had addressed the arguments for or against his release. He indicated that on 12 September 2002 the Supreme Court had heard the appeal for thirty minutes only. The applicant complained that on 18 November 2002 the Regional Court had extended his detention retrospectively to cover the preceding 2 months and 15 days and that a similar retrospective extension had been made on 4 December 2002 in respect of the previous day.

123. The Government averred that the entire term of detention was compatible with the domestic procedural rules and free from arbitrariness.

On 28 April 2001 the Vladimir Regional Court had authorised the applicant's detention until 4 September 2001 so as to afford him additional time to read the case file. On 8 August 2001 the Supreme Court quashed that decision on procedural grounds and held that the applicant should remain in custody. From 4 September 2001 to 9 January 2002 the Vladimir Regional Court examined the applicant's case. From 13 March to 7 October 2002 the case was examined by the Supreme Court of the Russian Federation. In the Government's opinion, the Russian rules of criminal procedure did not require the applicant's detention to be extended during the latter period. On 12 September 2002 the Supreme Court returned the case file to the Vladimir Regional Court which received it on 7 October 2002. By that time the new CCrP had come into effect, and a new hearing was scheduled for 18 November 2002. On the latter date the applicant's detention was extended until 3 December 2002.

2. The Court's assessment

(a) General principles

124. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

125. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Scope of the Court's review

126. In its decision of 22 February 2005 on the admissibility of the present application, the Court declared admissible the applicant's complaints

concerning the lawfulness of his detention on remand after 4 May 2001. The most recent period of detention which the applicant complained about ended on 4 December 2002.

Accordingly, the Court will examine the lawfulness of the applicant's detention on remand from 4 May 2001 to 4 December 2002.

(c) Detention on remand from 4 May to 8 August 2001

127. The Court observes that on 28 April 2001 the Vladimir Regional Court, on a request by a prosecutor, extended the applicant's detention until 4 September 2001. On 8 August 2001 the Supreme Court quashed the decision because of substantial violations of the rules of criminal procedure and ordered a re-examination of the issue of detention. On 15 August 2002 the Regional Court reconsidered the request and ordered the applicant's detention from 4 May to 4 September 2001.

128. The issue to be determined is whether the detention in that period was "lawful", including whether it complied with "a procedure prescribed by law". The Court reiterates that a period of detention will in principle be lawful if carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Convention organs have consistently refused to uphold applications from persons convicted of criminal offences who complain that their convictions or sentences were found by the appellate courts to have been based on errors of fact or law (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 42).

129. In the present case the Court will consider whether the detention order of 28 April 2001 constituted a lawful basis for the applicant's detention until it was quashed on 8 August 2001. The mere fact that the order was set aside on appeal did not in itself affect the lawfulness of the detention in the preceding period. For the assessment of compliance with Article 5 § 1 of the Convention the basic distinction has to be made between ex facie invalid detention orders – for example, given by a court in excess of jurisdiction or where the interested party did not have proper notice of the hearing – and detention orders which are prima facie valid and effective unless and until they have been overturned by a higher court (*Benham*, cited above, §§ 43 and 46; *Lloyd and Others v. the United Kingdom*, nos. 29798/96 et seq., §§ 108, 113 and 116, cf. also § 83, 1 March 2005).

130. It has not been alleged that on 28 April 2001 the Regional Court acted in excess of its jurisdiction. Indeed, as a matter of domestic law, it had the authority to examine the prosecutor's application for an extension of the applicant's detention and to grant a further extension, not exceeding six months, until such time as the applicant had finished reading the file and the case had been sent for trial (see paragraph 84 above).

131. Furthermore, the Court finds that applicant's detention on the basis of the order of 28 April 2001 cannot be said to have been arbitrary as the court gave certain grounds justifying the continued detention on remand. The sufficiency and relevance of these grounds will be discussed below from the standpoint of Article 5 § 3 of the Convention.

132. It has not therefore been established that, in issuing the detention order of 28 April 2001, the District Court acted in bad faith, or that it neglected to attempt to apply the relevant legislation correctly. The fact that certain flaws in the procedure were found on appeal does not in itself mean that the detention was unlawful (see *Gaidjurgis v. Lithuania* (dec.), no. 49098/99, 16 January 2001; *Benham*, cited above, § 47; cf. also *Bozano v. France*, judgment of 18 December 1986, Series A no. 111, § 59).

133. In these circumstances, the Court finds that there was no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 4 May to 8 August 2001.

(d) Detention on remand from 8 August to 4 September 2001

134. The Court notes that on 8 August 2001 the Supreme Court, having quashed the Regional Court's decision, held that the preventive measure imposed on the applicant "should remain unchanged". The Government maintained that the Supreme Court's decision constituted a "lawful" basis for the applicant's detention after 8 August 2001.

135. The Court notes that in several cases against Lithuania it found that the trial court's decision to maintain a preventive measure "unchanged" had not, as such, breached Article 5 § 1 in so far as the trial court "had acted within its jurisdiction... [and] had power to make an appropriate order" (*Ječius*, cited above, § 69; *Stašaitis v. Lithuania* (dec.), no. 47679/99, 28 November 2000; *Karalevičius v. Lithuania* (dec.), no. 53254/99, 6 June 2002). In the *Stašaitis* judgment it noted, however, that "the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1" (*Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002).

136. The Court observes that the Supreme Court did not give any reasons for its decision to remand the applicant in custody. Nor did it set a time-limit either for the continued detention or for a re-examination of the issue of detention by the Regional Court. As it happened, the Regional Court did not give a new decision until more than one year later, on 15 August 2002, and the Supreme Court upheld that decision in the final instance in January 2003. Leaving aside the concurrent developments in the applicant's case (discussed below), it transpires that for more than a year the applicant remained in a state of uncertainty as to the grounds for his detention after 8 August 2001. The Supreme Court's failure to give reasons for its decision was made all the more regrettable by the fact that the

applicant had by then spent two years and six months in custody without a valid judicial decision setting out the grounds for his detention in detail.

137. In these circumstances, the Court considers that the Supreme Court's decision of 8 August 2001 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1.

138. It remains to be determined whether the Regional Court's decision of 15 August 2002, as upheld on appeal on 23 January 2003, could have constituted a "lawful" basis for the applicant's detention from 8 August to 4 September 2001.

139. As noted above, the decision of 15 August 2002 was issued more than a year after the detention period authorised therein had lapsed. The Government did not indicate any domestic legal provision that permitted a decision to be taken authorising a period of detention retrospectively. On the contrary, the general habeas corpus provisions required the director of the remand centre to release any detainee once his statutory detention period had expired without any order being made for its extension (Article 11 of the old CCrP).

140. Such has been also the view of the Russian Constitutional Court, which found that Russian law did not contain "any provisions permitting the court to take a decision extending the defendant's detention on remand [some time] after once the previously authorised time-limit has expired, in which event the person is detained for a period without a judicial decision" (see paragraph 56 above).

141. It follows that the applicant's detention, in so far as it had been authorised by a judicial decision issued in respect of the preceding period, was not "lawful" under domestic law.

142. Furthermore, the Court considers that any *ex post facto* authorisation of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness. Permitting a prisoner to languish in detention on remand without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases.

143. The Court therefore considers that there was a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 8 August to 4 September 2001.

(e) Detention on remand from 4 September 2001 to 9 January 2002

144. The Court further notes, and it has not been disputed by the parties, that between the date of expiry of the authorised detention period on 4 September 2001 and the Vladimir Regional Court's subsequent decision of

9 January 2002 on the application for release, there was no decision – either by a prosecutor or by a judge – authorising the applicant's detention. It is also common ground that in that period the applicant was held in detention on the basis of the fact that the criminal case against him had been referred to the court competent to deal with the case.

145. The Government maintained that the detention was lawful because it complied with the substantive and procedural provisions of the rules of criminal procedure. The Regional Court was not required to extend the applicant's detention or otherwise validate it.

146. The Court has already examined and found a violation of Article 5 § 1 in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been lodged with the court competent to try the case (see *Baranowski*, cited above, §§ 53-58; *Ječius*, cited above, §§ 60-64). It held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (*ibid.*).

147. The Court sees no reason to reach a different conclusion in the present case. Admittedly, unlike the Polish law at the relevant time which set no time-limit for the detention after a bill of indictment had been lodged with the court (see *Baranowski*, §§ 31-35, in particular, the last paragraph of the Polish Supreme Court's resolution of 6 February 1997), the Russian rules of criminal procedure set a time-limit. Within fourteen days of receipt of the file the court has to determine whether the case is ready for trial and, if so, fix the hearing date and order the defendant's release or continued detention (see paragraphs 91 and 94 above). Thus, detention without an order was limited to fourteen days maximum, at least in theory.

148. The Court, however, is not persuaded that the existence of the time-limit in Russian law does in fact distinguish the present case from the *Baranowski* and *Ječius* cases.

149. Firstly, for the detention to meet the standard of "lawfulness", it must have a basis in domestic law (see paragraph 124 above). The Government, however, did not point to any legal provision which permitted an accused to continue to be held once the authorised detention period had expired. The Court notes that under the Russian Constitution and rules of criminal procedure the power to order or prolong detention on remand was vested in prosecutors and courts (see paragraph 78 above). No exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. As noted above, during the relevant period there was neither a prosecutor's order nor a judicial decision authorising the applicant's

detention. It follows that the applicant was in a legal vacuum that was not covered by any domestic legal provision.

150. Furthermore, as in the present case, in which the Vladimir Regional Court took more than four months to decide on a preventive measure, the fourteen-day time-limit was not complied with in practice. The Government did not offer any explanation for the delay.

151. It follows that during the period from 4 September 2001 to 9 January 2002 there was no valid domestic decision or other "lawful" basis for the applicant's detention on remand. By itself, the fact that the case had been sent to the court for trial did not constitute a "lawful" basis, within the meaning of Article 5 § 1 of the Convention, for the applicant's continued detention. There has thus been a violation of Article 5 § 1 of the Convention in respect of that period.

(f) Detention on remand from 9 January to 13 March 2002

152. The Court notes that on 9 January 2002 the Vladimir Regional Court fixed the date for the trial to commence and rejected the applicant's application for release. It remanded the applicant and his co-defendants in custody because of the gravity of the charges against them.

The trial court acted within its powers in making that decision and there is nothing to suggest that it was invalid or unlawful under domestic law. The question whether the reasons for the decision were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3. In the *Stašaitis* decision (cited above) the Court accepted that a similar decision by a trial court was compatible with the requirements of Article 5 § 1 of the Convention. There is nothing in the present case to warrant a different conclusion.

153. The Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 9 January to 13 March 2002.

(g) Detention on remand from 13 March to 12 September 2002

154. The Court notes that on 13 March 2002 the Vladimir Regional Court identified certain procedural defects and returned the case to the prosecution for them to be remedied. It extended the applicant's detention for an indefinite period. The applicant appealed, arguing, in particular, that the investigators had already used up all the time permitted for detention "pending the investigation" and no further extensions were permissible. On 12 September 2002 the Supreme Court quashed the Regional Court's decision on procedural grounds, without examining the applicant's arguments pertaining to the lawfulness of his detention.

155. The Court observes that the rules on detention at the time permitted up to eighteen months' detention "pending the investigation", plus up to six months when authorised by a judicial decision if the defendants needed

more time to study the file, and an additional month when authorised by a supervising prosecutor if the case was returned for an additional investigation (see paragraphs 82-85 above).

156. Turning to the present case, the Court notes that the eighteen months' detention "pending the investigation" expired on 4 April 2001[1]. The prosecutor then authorised an additional month of custody until 4 May 2001 and thereafter the trial court exercised its right to grant a further four-month extension until 4 September 2001. It follows that the authorities exhausted the legal possibilities for extending the applicant's detention "pending the investigation". In these circumstances, no further extension appears to have been possible under domestic law.

157. The Government did not indicate any legal provision that permitted a defendant to be held in custody after the expiry of the above time-limits. The Court notes that the Regional Court's decision of 13 March 2002 was extremely laconic with regard to the issue of detention and made no reference to any legal provision which would have permitted the applicant's further detention. It follows that the decision did not offer sufficient protection from arbitrariness and failed to satisfy the standard of "lawfulness" required under Article 5 § 1 of the Convention.

158. The Court therefore finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 13 March to 12 September 2002.

(h) Detention on remand from 12 September 2002 to 18 November 2002

159. The Court notes that on 12 September 2002 the Supreme Court instructed the Regional Court to proceed with the trial and confirmed that the defendants should remain in custody. It follows that from that date onwards, the applicant's detention was "during the trial".

It is relevant here to recall that on 13 March 2002, the final day of the applicant's previous period in detention "during the trial", the applicant had already been in that type of detention for six months and several days (starting from the date the case was referred for trial in September 2001). At that time this situation was not unlawful under domestic law because the six-month time-limit for detention "during the trial" in the old CCrP did not apply to defendants who, like the applicant, were charged with particularly serious crimes (see paragraph 87 above).

However, by the time of the Supreme Court's decision of 12 September 2002 ordering the applicant's continued detention "during the trial", the new CCrP was already effective. After the expiry of the initial six months it

1. The applicant was taken into custody on 22 January 1999 and by 4 April 2001 had already spent 2 years, 2 months and 13 days in detention. However, the detention "pending the investigation" did not include the period from 21 June 2000 to 28 February 2001 when the case was technically "before the [trial] court".

required the trial court to issue a separate decision extending the detention "during the trial" (see paragraph 88 above).

160. The Government claimed that the applicant's detention was covered by the Supreme Court's decision up to 7 October 2002, on which date the case-file reached the Regional Court, and thereafter by the fact that the first hearing had been fixed for 18 November 2002. Accepting, for the sake of argument, the Government's explanation, the Court considers that in such eventuality the applicant's detention after 7 October 2002 would have been incompatible with Article 5 § 1 of the Convention because the Supreme Court's decision of 12 September 2002 would have ceased to apply and no other order for detention had been issued. In this connection the Court refers to its findings in paragraphs 146-151 above in respect of a similar period of detention and notes that the new CCrP regrettably inherited from the old CCrP the lack of clear rules governing the detainee's situation after the case had been sent for trial.

161. In any event, the Government's explanation does not satisfy the Court. It observes that on 18 November 2002 the Regional Court extended the applicant's detention "for a further three months, until 3 December 2002". This formula implies, by converse implication, that the trial court did not consider either the Supreme Court's decision of 12 September 2002 or the fact that it had received the file on 7 October 2002 as valid grounds for the applicant's detention and that it felt itself obliged to provide a different basis for his detention during the preceding two months and three weeks.

162. In the Court's view, the Regional Court's decision of 18 November 2002 amounted to an acknowledgement of the fact that the applicant's detention in the preceding period had lacked a sufficiently clear legal basis. The applicant was not therefore afforded sufficient protection from arbitrariness to satisfy the requirements of Article 5 § 1 of the Convention. The Regional Court's decision of 18 November 2002 could not remedy the lack of a "lawful" basis in the preceding period as it is incompatible with both domestic law and the Convention guarantees to issue a detention order with retrospective effect (see paragraphs 139-142 above). In any event, the decision of 18 November 2002 was subsequently quashed by the Supreme Court because of the Regional Court's failure to conform to the procedural requirements (see below).

163. The Court finds, accordingly, that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 12 September to 18 November 2002.

(i) Detention on remand from 18 November to 4 December 2002

164. The Court notes that on 18 November 2002 the Vladimir Regional Court, sitting in a single-judge formation, authorised the applicant's detention on remand until 3 December 2002. The applicant alleged, in particular, that his detention from midnight on 3 December to 4 December

2002, when the Regional Court granted a further extension, had been covered by any detention order and had therefore been unlawful.

165. The Court reiterates that, for detention to be "lawful" within the meaning of Article 5 § 1, it has to conform to both the substantive and procedural rules of the domestic law (see paragraph 124 above).

The Court notes that the Regional Court's detention order of 18 November 2002 was quashed by the Supreme Court on 21 May 2005 because it had been given by an incomplete formation, in breach of the domestic rules of criminal procedure. This indicates that the court, sitting in a single-judge formation, did not have jurisdiction to order the applicant's continued detention and that the order of 18 November 2002 was null and void *ab initio* (see paragraph 129 above).

It follows that the decision of 18 November 2002 could not have formed a "lawful" basis for the applicant's detention on remand after that date.

166. In the absence of any other decision that could have served as a "lawful" basis for the applicant's detention in the period to 4 December 2002, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 18 November to 4 December 2002.

3. Summary of the findings

167. The Court has found no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 4 May to 8 August 2001 and from 9 January to 13 March 2002.

168. The Court has found a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 8 August 2001 to 9 January 2002 and from 13 March 2002 to 4 December 2002.

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

169. The applicant complained under Article 5 § 3 of the Convention that his detention on remand had been excessively long. Article 5 § 3 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..."

1. The parties' submissions

170. The Government submitted that it had been necessary for the applicant to remain in custody because he was a foreign national charged with a particularly serious criminal offence. He had no permanent residence

in the Russian Federation and thus would have been liable to abscond if released.

171. The applicant responded that the decisions extending his detention were identically worded and more often than not did not state any concrete reason as to why it was necessary to hold him in custody.

2. The Court's assessment

(a) Principles established in the Court's case-law

172. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

It 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 examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita*, cited above, § 152).

173. The arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

174. The 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, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (*Labita*, cited above, § 153).

(b) Application of the principles to the present case

175. The applicant's detention on remand lasted from 22 January 1999, when he was taken in custody, to 28 May 2004, when he was released. The total duration of the detention thus amounted to five years, four months and six days. However, the Court does not lose sight of the fact that in the periods from 8 August 2001 to 9 January 2002 and from 13 March 2002 to 4 December 2002 the applicant's detention was not in accordance with Article 5 § 1 of the Convention.

176. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in drug-trafficking. As noted in the District Court's decision of 28 December 1999, at that stage of the proceedings the need to ensure the proper conduct of the investigation and to prevent the applicant from absconding – having regard to his foreign nationality and permanent residence outside Russia – could justify keeping him in custody.

177. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, the domestic authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding him in custody.

The Government submitted that the courts had gauged the applicant's potential to abscond by reference to his foreign nationality and lack of permanent residence in Russia. However, contrary to the Government's submission, after the case had been sent for trial for the first time in June 2000, these particular reasons were not cited in any valid extension order.

178. The Court further notes that at no point in the proceedings did the domestic authorities consider whether the length of the applicant's detention had exceeded a "reasonable time". Such an analysis should have been particularly prominent in the domestic decisions after the applicant had spent more than two years in custody and all the detention periods permitted by the domestic law had expired (see paragraphs 156 et seq. above).

179. After the trial started, the Regional Court extended the applicant's detention seven times. The first three extensions were subsequently quashed by the Supreme Court on the ground that they had been given by the incomplete bench. All the decisions cited the gravity of the charges as the main ground for the continued detention. The two most recent decisions additionally mentioned "sufficient reasons to believe that the defendants would abscond".

Moreover, five decisions – dated between 18 November 2002 and 28 August 2003 – referred to the need "to secure... the enforcement of the conviction". The Court notes that this ground for detention is only provided for in Article 5 § 1 (a) which governs detention of a person "after conviction by a competent court". However, in the present case the applicant had not been convicted and the domestic courts' reliance on that ground amounted to

a prejudgment of the merits of the case, leaving a conviction as the only possible outcome of the trial.

180. The Court accepts that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding. In view of the seriousness of the accusation against the applicant the authorities could reasonably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial review of the issue whether the evidence that had been obtained supported a reasonable suspicion that the applicant had committed the alleged offence. Indeed, the Court observes that the applicant was only released from custody after the prosecution had applied to his acts a different characterisation in law. Further, less than a month after his release the prosecution decided to drop most of the charges and the trial court acquitted the applicant of those that remained.

181. As regards the existence of a risk of absconding, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko*, cited above, § 106; *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 43). In the present case the decisions of the domestic authorities gave no reasons why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding to be decisive. The domestic decisions merely hinted at the existence of "sufficient grounds to believe that the defendants would abscond", without saying what those grounds actually were. The Court finds that the existence of such a risk was not established.

182. The Court finally observes that during the entire period of the applicant's detention on remand, the authorities did not consider the possibility of ensuring his presence at trial by the use of other "preventive measures" – such as conditional bail or an undertaking not to leave the town – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings (see paragraph 77 above).

183. In that context, the Court would emphasise that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring his appearance at trial when deciding whether a person should be released or

detained. Indeed, the provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

184. Given that the applicant's trial would not be able to begin for a considerable time owing to events wholly unrelated to his conduct (see paragraph 188 below), the authorities should either have considered having recourse to such alternative measures or at minimum explained in their decisions why such alternatives would not have ensured that the trial would follow its proper course. This failure is made all the more inexplicable by the fact that the new CCrP expressly requires the domestic courts to consider less restrictive "preventive measures" as an alternative to custody (see paragraph 80 *in fine* above).

185. In sum, the Court finds that the domestic courts' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial, such as his deteriorating health and family connections in the region. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify extensions of detention: the Regional Court reproduced the same one-paragraph text verbatim in five decisions between 18 November 2002 and 28 August 2003 and a slightly modified version in two later decisions.

186. Moreover, in the present case the Court observes an established practice of issuing collective extension orders, that is judicial decisions extending the period of detention of several co-defendants at the same time, thereby ignoring the personal circumstances of individual detainees. In the Court's view, this practice is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permitted the continued detention of a group of persons (including the applicant), without a case-by-case assessment of the grounds or compliance with the "reasonable-time" requirement in respect of each individual member of the group.

187. Having regard to the above, the Court considers that by failing to address concrete facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "relevant and sufficient".

188. That finding would, as a rule, absolve the Court from having to determine whether the national authorities displayed "special diligence" in the conduct of the proceedings. However, in the present case the Court cannot but note that delays in the proceedings were more than once occasioned by failings on the part of the authorities. Thus, the trial court was unable to begin the examination of the case in earnest from June 2000

to April 2001 because the prosecution persistently failed to arrange for a translation of the bill of indictment into Tajik, the language spoken by seven of the defendants. After that defect had been rectified, the domestic courts were unable to agree whether other procedural shortcomings had irreparably impaired the defence rights and this led to a further delay from March to September 2002. Furthermore, on each occasion the file was returned to the Regional Court, it took a considerable amount of time – ranging from one and a half to four months – merely to fix the hearing date. Having regard to these circumstances, the Court considers that the domestic authorities failed to display "special diligence" in the conduct of the proceedings.

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

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

190. The applicant complained under Article 5 § 4 of the Convention that he had not been permitted to take part in the appeal hearings and that the courts had not pronounced "speedily" on the lawfulness of his detention. 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."

1. The parties' submissions

191. As regards the proceedings on his appeal against the Regional Court's decision 28 April 2001, the applicant contended that it had taken the Supreme Court seventy-two days to fix the first appeal hearing, which was by no means a "speedy" review. After the hearing of 9 July 2001 had had to be adjourned, the next hearing was not fixed until almost a month later, which could not be considered sufficiently "speedy" either. The applicant claimed that the Supreme Court's persistent refusals to permit his attendance at the appeal hearing had been in breach of the decisions of the Russian Constitutional Court on his complaints (see paragraphs 56 and 57 above).

192. As regards the "speediness" of the review, the Government submitted that there had been "objective reasons" for the length of the proceedings, such as the failure of the applicant's counsel to attend hearings, his repeated requests for adjournments and his appeals to the higher court. As to the applicant's presence before the appeal court, the refusal to permit the applicant's attendance had been consistent with Article 335 of the CCrP, which restricted the right to appear before the appeal court to persons who had been convicted or acquitted.

2. The Court's assessment

(a) Principles established in the Court's case-law

193. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take 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 ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, § 28; *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per instance may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

(b) Appeal against the judicial decision of 28 April 2001

194. The Court notes that on 4 and 17 May 2001 the applicant appealed against the Regional Court's decision of 28 April 2001 extending his detention on remand. After that decision had been quashed on appeal and the matter had been reconsidered by the Regional Court the Supreme Court gave a final decision on 23 January 2003. In these proceedings the Supreme Court twice refused the applicant leave to appear before it; the applicant's lawyer was, however, present.

195. The Court notes that the proceedings that followed the applicant's appeal against the Regional Court's decision of 28 April 2001 lasted more than one year and eight months until the final decision of the Supreme Court. Even though the Government offered an explanation for some of the delays, they did not explain, for example, why it had taken the Supreme Court more than five months to examine the appeal against the Regional Court's second decision, whereas, under domestic law, any appeal should have been examined within two months maximum (see paragraph 96 above). The Government did not indicate the reasons for the Supreme Court's failure to abide by that time-limit.

In any event, the Court considers that no exceptional circumstances could justify such inordinate delays in proceedings concerning the lawfulness of detention.

196. The Court finds therefore that there has been a violation of Article 5 § 4 of the Convention on account of the length of the proceedings on the applicant's appeal against the Regional Court's decision of 28 April 2001. In the light of this finding, the Court does need not to determine whether the refusal of leave to appear also entailed a violation of Article 5 § 4.

(c) Application for release of 4 September 2001

197. The Court notes that, once the case was sent for trial on 4 September 2001, the applicant immediately lodged an application for release, which the Regional Court examined and rejected on 9 January 2002.

198. The Court observes that under the domestic law in force at the time the trial court was required to decide an application for release within fourteen days after receipt of the case file (Articles 223 and 223^{1} of the old CCrP, see paragraphs 91 and 94 above). The Government did not explain why that provision had not been complied with in the applicant's case.

The Court considers that a period of 125 days cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially as the legal basis for the applicant's detention had shifted.

199. Accordingly, the Court finds that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine the applicant's application for release of 4 September 2001 "speedily".

(d) Appeals against the judicial decision of 9 January 2002

200. The Court notes that on 9 January 2002 the trial court extended the applicant's detention pending trial. On 5 February 2002 it adjourned the hearing because of the absence of three defendants. On 11 and 15 February 2002 the applicant lodged appeals against these decisions and the notice of appeal of 15 February repeated the points that had been raised in the notice of appeal dated 11 February.

201. The applicant contended, and this was not contested by the respondent Government, that the registry of the Regional Court had omitted to send his notices of appeal to the Supreme Court.

202. The Court finds therefore a violation of Article 5 § 4 of the Convention on account of the manifest failure of the domestic authorities to examine the applicant's appeals against the extension order of 9 January 2002.

(e) Appeal against the judicial decision of 13 March 2002

203. The Court notes that on 29 April 2002 the applicant appealed against the trial court's decision of 13 March 2002 that had resulted in his

detention being extended. The appeal was not examined by the Supreme Court until 12 September 2002. The Supreme Court refused the applicant's request for leave to appear in person.

204. For the same reasons as above, the Court considers that a period of 134 days was incompatible with the "speediness" requirement of Article 5 § 4 of the Convention and that there has been a violation of that provision.

(f) Appeals against the decisions of 18 November and 4 December 2002

205. The Court notes that on 22 and 26 November and 5 December 2002 the applicant appealed against the decisions of 18 November and 4 December 2002 extending his pre-trial detention. He initially alleged that the Supreme Court had chosen not to examine his appeals. On 21 March 2005, after the case had been declared admissible, the Supreme Court quashed the decisions of 18 November and 4 December 2002 on procedural grounds. However, the applicant maintained that the Supreme Court's order quashing the decision of 4 December 2002 was made on his co-defendants' appeals only, not his appeal of 5 December 2002.

206. The Court considers, firstly, that the examination of an appeal more than two years after it was lodged obviously failed to meet the "speediness" requirement of Article 5 § 4. It need not, however, determine whether the applicant's appeal of 5 December 2002 was considered because the Supreme Court expressly refused to take cognisance of any arguments concerning the substantive aspects of the lawfulness of the applicant's detention or to remit that matter for consideration by a lower court. Such a refusal clearly infringed the applicant's right to take proceedings by which the lawfulness of his detention would be decided.

207. The Court finds that there has been a violation of Article 5 § 4 of the Convention on account of the failure to consider the substance of the applicant's appeals against the judicial decisions of 18 November and 4 December 2002.

3. Summary of the findings

208. The Court has found a violation of Article 5 § 4 of the Convention on account of:

– the length of proceedings on the applicant's appeal against the decision of 28 April 2001;

– the failure to examine "speedily" his application for release of 4 September 2001 and his appeal against the decision of 13 March 2002;

– the failure to examine his appeals against the extension order of 9 January 2002;

– the failure to consider the merits of his appeals against the decisions of 18 November and 4 December 2002.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

209. The Court, of its own motion, raised the question whether the length of the criminal proceedings against the applicant was compatible with the "reasonable-time" requirement of Article 6 § 1 of the Convention, which provides, in the relevant part, as follows:

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

1. The parties' submissions

210. The Government submitted that the length of the proceedings had been reasonable, having regard to the volume of the case (22 binders), the large number of defendants (21) and witnesses (over 100), the use of interpreters, consistent failures by the defendants' counsel, including the applicant's lawyer, to attend hearings and their repeated requests for adjournments on various grounds.

211. The applicant contended that only 12 of the binders concerned the merits of the charges, while the others only included procedural documents. The investigators had "artificially inflated" the volume of the case-file because they had charged all the defendants with serious criminal offences without a sufficient factual basis. In the applicant's view, the prosecution's decision to drop a number of the charges during the final pleadings and his acquittal by the court of the remainder confirmed that allegation. Contrary to the Government's submissions, the actual number of witnesses was 61, each of whom was called to the witness stand for fifteen minutes only. As to the interpreters, it was precisely because of the domestic authorities' failure to make interpretation available in good time that it had become necessary to return the case for an additional investigation with the resultant delay in the proceedings. As to the lawyers' conduct, the applicant indicated that on extremely rare occasions the case had been adjourned due to his lawyer's absence and, in any event, he had consented to the continuation of the proceedings without his lawyer's presence.

212. The applicant submitted that the domestic authorities' conduct had caused the most significant delays in the proceedings: copies of procedural decisions had been handed over to the defendants several weeks after the expiry of the time-limits. It had taken the trial court 96 days to fix the first hearing and the interval between hearings had sometimes been as long as 27 days. The time it had taken for the case file to be transferred between the Vladimir Regional Court and the Supreme Court was excessive, ranging from 25 to 40 days. Finally, between 10 July 2003 and 15 March 2004 the trial could have fixed a tighter schedule of hearings so as to avoid delays that had ranged from two to ten days.

2. The Court's assessment

213. The period to be taken into consideration in the present case began on 22 January 1999 when the applicant was taken into custody. It ended on 21 March 2005 when the Supreme Court handed down the appeal decisions. The proceedings thus lasted six years and two months.

214. The Court acknowledges that the case was of a certain complexity as it concerned a substantial number of drug-related offences allegedly committed by more than twenty defendants. The need to use interpreters to and from the Uzbek and Tajik languages was a further complicating factor. However, in the Court's view, the complexity of the case does not suffice, in itself, to account for the length of the proceedings.

215. The Government's submissions about the persistent absence of counsel were not sufficiently detailed – they omitted to indicate the dates of absences or, at least, the number of times counsel had been absent – or supported by evidence, such as excerpts from the trial record. The Court considers therefore that their allegation that the delays were mainly attributable to the applicant's own conduct has not been made out.

216. On the other hand, the Court finds that the main cause of the delays was the conduct of the domestic authorities: on three occasions the trial court had to return the case to the pre-trial stage to enable the investigators to remedy the breaches of the defendants' rights, such as the absence of translation, which made consideration of the merits impossible. In this context the Court refers to its finding under Article 5 § 3 of the Convention that the domestic authorities failed to act with the necessary diligence in conducting the applicant's proceedings (see paragraph 188 above). That finding is likewise valid in respect of the length of the criminal proceedings as such.

217. Having regard to the foregoing, the Court considers that the length of the proceedings did not satisfy the "reasonable-time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

218. 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. Pecuniary damage

219. The applicant claimed 14,700,000 US dollars (USD) representing capital losses during the period he was detained. He submitted that, as a

result of the unlawful seizure of his company's documents and seal by the Russian law-enforcement authorities, he had lost control of his business and had been exposed to substantial financial liabilities as his company had defaulted on a bank loan. The applicant also claimed USD 6,938.10 for loss of earnings during five years of detention.

220. The Government contested the existence of a causal link between the alleged violations and the loss of capital, as the decision to prefer criminal charges against the applicant was not the subject of the Court's review in the present case. They also exposed calculation errors in the applicant's claims.

221. The Court shares the Government's view that there has been no causal link between the violations found and the claimed pecuniary damage (see *Stašaitis*, cited above, § 96; *Ječius*, cited above, § 106). Consequently, it finds no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

222. The applicant sought compensation in the sum of 50,000 euros (EUR) or such other sum as the Court considered just.

223. The Government considered that a finding of a violation would constitute sufficient just satisfaction. They also submitted that, owing to his acquittal, the applicant was entitled to redress at the domestic level.

224. The Court notes that it has found a combination of particularly grievous violations in the present case. The applicant, who was never convicted of any criminal offence, spent more than five years in custody, in inhuman and degrading conditions and was frequently transported to and from the courthouse in the conditions which were likewise inhuman and degrading. His detention was unlawful for more than a year and, when "lawful", was not based on sufficient grounds. Finally, on various occasions he was denied the right to have the lawfulness of his detention examined speedily. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the entire amount claimed by the applicant under this head, plus any tax that may be chargeable on it.

C. Costs and expenses

225. The applicant claimed EUR 2,000 for his representation by Mr Bagryanskiy, EUR 2,000 for his representation by Ms Gulakova and a further 1,000 British pounds (GBP) for the preparation of just-satisfaction claims by Mr Bowring.

226. The Government submitted that the applicant had been represented in the proceedings before the Court by Mr Bagryanskiy, Mr Ovchinnikov

and Ms Moskalenko. The case file does not contain any documents signed by either Ms Gulakova or Mr Bowring. In any event, they considered the amounts claimed by the applicant excessive.

227. The Court notes, firstly, that the applicant was granted EUR 701 in legal aid for his representation by Mr Bagryanskiy. As the applicant did not justify having incurred any expenses exceeding that amount, the Court makes no award under this head. As regards the preparation of the claim for just satisfaction, the Court notes that on 2 June 2005 the President refused Ms Gulakova's request for leave to act on behalf of the applicant. It is true that Mr Bowring's name was printed at the bottom of the claims, however, he did not sign the claims and there is no indication that the applicant has paid any sums to Mr Bowring. Accordingly, the Court makes no award in respect of legal costs and expenses.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. OD-1/T-2 (“Vladimirskiy Tsentral”);

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transport from the remand facility to the courthouse and back;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 4 May to 8 August 2001 and from 9 January to 13 March 2002;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 8 August 2001 to 9 January 2002 and from 13 March 2002 to 4 December 2002;

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

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of proceedings on the applicant's appeal against

the decision of 28 April 2001, on his application for release of 4 September 2001, and on his appeal against the decision of 13 March 2002;

7. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the failure to examine the merits of the applicant's appeals against the extension order of 9 January 2002 and against the decisions of 18 November and 4 December 2002;

8. *Holds* that there has been a violation of the "reasonable-time" requirement of Article 6 § 1 of the Convention;

9. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President