CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF BELEVITSKIY v. RUSSIA

(Application no. 72967/01)

JUDGMENT

STRASBOURG

1 March 2007

FINAL

01/06/2007

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 Belevitskiy v. Russia,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr A. KOVLER,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 5 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 72967/01) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Roman Sergeyevich Belevitskiy ("the applicant"), on 20 July 2001.

2. The applicant, who had been granted legal aid, was represented before the Court by Mrs K. Moskalenko and Mrs E. Liptser, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained that he had been subjected to ill-treatment by the police officers, that the conditions of his detention amounted to inhuman treatment, that it had been unlawful and excessively long, and that he had not benefited from the fair trial guarantees.

4. On 19 October 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lives in Moscow.

A. The applicant's arrest and placement in custody

7. On 11 October 2000, at the Luzhniki market, the applicant was arrested on suspicion of drug-dealing by the operative officers I. and K. of the Ramenskiy District police station of Moscow. He was identified by a Mr E. as the person who had sold him heroin. The exact time of the arrest was disputed by the parties. The applicant maintained that he had been apprehended at about noon, the Government claimed that it had happened at 4.30 p.m.

8. At 6.50 p.m. the applicant was searched at the police station by the police officer R. in the presence of two lay witnesses (*ponyatye*). A sachet containing 0.004 g of heroin was found on him.

9. A record of the applicant's arrest was drawn up at 11.50 a.m. on the following day. On the same day the investigator ordered the applicant's placement in custody. The decision did not specify the duration of the detention period (see paragraph 51 below for relevant legal provisions).

10. On an unspecified date a confrontation between the applicant and Mr E. was arranged. Counsel for the applicant was in attendance. Mr E. confirmed his statement that he had bought heroin from the applicant.

B. Alleged ill-treatment of the applicant

11. The applicant alleged that he had been beaten by police officers at the Ramenskiy District police station on 11 October 2000. The Government denied that allegation.

12. It follows from the medical certificate of 24 October 2000 issued by the trauma department of clinic no. 8 that on 13 October 2000 at 3.10 p.m. the applicant was brought for a medical examination by the Ramenskiy District police officers. The medical examination revealed “a haematoma in the area of fourth to sixth ribs on the left side, a haematoma in the left side of the lumbar region, an abrasion in the area of the left knee joint”.

13. On 18 December 2000 a senior assistant to the Nikulinskiy District prosecutor's office issued a decision not to institute criminal proceedings in connection with the applicant's claim of ill-treatment. The reasoning of the one-page decision was founded on the statements by the police officers R., I. and K. who had taken part in the applicant's arrest and search. They

denied that they had exercised any mental or physical pressure on the applicant.

14. Counsel for the applicant contested the decision of 18 December 2000 before the deputy Moscow Town prosecutor. They submitted that the medical certificate of 24 October 2000 had been left outside the scope of the inquiry. The Moscow Town prosecutor ordered an additional inquiry.

15. On 29 March 2001 the senior assistant issued a further decision not to institute criminal proceedings. The entire reasoning read as follows:

> "During the additional inquiry, the Nikulinskiy District prosecutor's office examined the medical certificate which indicated that on 13 October 2000 [the applicant] had been brought to the medical unit where bodily injuries... had been recorded.
>
> It follows from the certificate issued by the head of the Krylatskoye District police station Mr Z. that the applicant did not have any health complaints on his placement in the investigations ward, of which he made a handwritten note in the medical register.
>
> Moreover, during the additional questioning of [the applicant] by the assistant prosecutor that took place before his placement in custody in the presence of the advocate [the name is unreadable], [the applicant] clarified that the police officers had not exercised pressure on him and that he had given the confession statement voluntarily. He had no claims against the police officers.
>
> Having examined the collected materials, I find that [the applicant's] allegations that he had been subjected to mental and physical violence by the police officers, have no objective confirmation. It is impossible to establish the circumstances in which the bodily injuries recorded in the medical certificate had been received because he did not mention these injuries to the assistant prosecutor and because [at that time] he had no visible injuries or health complaints."

C. First trial

16. On 9 December 2000 the investigation was completed and the case file was transferred to the Nikulinskiy district prosecutor's office for final approval of the charge sheet.

17. On 13 December 2000 the case against the applicant and Mr E. was submitted to the Nikulinskiy District Court of Moscow for trial.

18. On 4 January 2001 the Nikulinskiy District Court of Moscow received the case-file.

19. On 11 January 2001 the Nikulinskiy District Court of Moscow issued a pre-trial decision. The decision represented a one-page printed template, in which the dates, the applicant's and his co-defendant's names, and the charges against them were filled in by hand. The relevant part read as follows (the pre-printed part in plain script and the part written by hand in italics):

> "The Nikulinskiy District Court is competent to try the case; sufficient evidence for examination of the case has been collected; the charge sheet has been prepared in compliance with the requirements of the criminal-procedure law; there are no grounds

to revoke or vary the measure of restraint imposed on the defendant; the defendant or third parties have not lodged any motions.

Recognising that the investigation of the case has been carried out in accordance with the RSFSR Code of Criminal Procedure and that the rights of the accused *Mr E. and [the applicant]* have been respected, and that there are no obstacles to the judicial examination, the court –

HAS HELD –

To fix the hearing of the criminal case against *Mr E. and [the applicant]* ... for *23 January 2001*... with the participation of *prosecutor, counsel*.

The measure of restraint – *the same for each defendant*...”

The decision was issued in the absence of the applicant or his counsel and no copy thereof was served on them.

20. On 23 January 2001 the hearing was adjourned for one week owing to the absence of counsel for the applicant.

21. On 30 January 2001 the District Court held a preliminary hearing in the case. Counsel petitioned the court for the applicant's release pending trial. The court dismissed the request, finding as follows:

“Having heard the parties to the proceedings and submissions by the prosecutor who asked that the petition for [the applicant's] release not be granted, the court finds that there are no grounds to vary the measure of restraint imposed on [the applicant] because [the applicant] is charged with a criminal offence classified as a particularly serious offence punishable with deprivation of liberty and [because] the court has not yet completely examined the evidence collected by the prosecution.”

22. On 5 and 22 February and 5 March 2001 counsel for the applicant appealed against that decision. They submitted that the applicant had a permanent place of residence in Moscow and no criminal record and therefore there were no reasons to believe that he would abscond. They also indicated that the applicant's detention from 11 to 12 October 2000 had not been recorded or covered with any authorisation. Moreover, the applicant had been only remanded in custody for two months and, accordingly, his detention after 12 December 2000 had been unlawful.

23. On 5 March 2001 the Moscow City Court upheld the decision of 30 January 2001. It found as follows:

“Pursuant to Article 97 of the Code of Criminal Procedure, pre-trial detention in criminal cases is limited to two months.

As it appears from the available materials, the criminal case was opened on 12 October 2000 and on the same day [the applicant] was remanded in custody; on 9 December [2000] [the applicant] was transferred to the Nikulinskiy District prosecutor's office of Moscow where the case-file was sent. Accordingly, there was no violation of Article 97 of the Code of Criminal Procedure during the investigation and the arguments in the appeal to the effect that the detention after 12 December 2000 had been unlawful are not grounded on the case materials.

> Pursuant to Article 96 § 2 of the Code of Criminal Procedure, persons charged with [drug-dealing] can be remanded in custody on the sole ground of dangerousness of the offence; in this connection the court upholds the findings of the first-instance court as to the absence of grounds for varying the measure of restraint, and considers these findings to be lawful."

24. On 26 April 2001 counsel for the applicant again petitioned the trial court for his release pending trial. The request was refused. On 3 May 2001 the decision refusing the request was appealed against to the Moscow City Court. It does not appear that any response was received.

25. On 26 June 2001 the Nikulinskiy District Court extended, of its own motion, the applicant's detention by a further three months or until such time as the merits of the charges had been examined, finding that his release would "substantially impede a thorough, complete and objective examination of the case".

26. On 5 July 2001 the applicant and Mr E. were convicted of drug-related offences by the Nikulinskiy District Court of Moscow. Mr E. was relieved from the punishment by virtue of the amnesty act. The applicant was sentenced to six years and six months' imprisonment in a high-security colony.

27. On 17 October 2001 the Moscow City Court quashed the conviction on substantive and procedural grounds and remitted the case for a new trial by a different bench. The City Court directed that the applicant remain in custody, without giving any reasons for that decision.

D. Second trial

28. On 3 December 2001 the trial hearing was adjourned because Mr E. and witnesses did not appear.

29. On 18 December 2001 the hearing did not take place because the bench was involved in another criminal case.

30. On 19 December 2001 counsel for the applicant complained to the president of the Nikulinskiy District Court that, because of previous adjournments of the hearings, the request for the applicant's release had not been examined on the merits. She also pointed to inhuman conditions of the applicant's detention. It does not appear that any response was received.

31. On 10 January 2002 the hearing was adjourned because the presiding judge was ill.

32. On 21 January 2002 the court examined the request for release and dismissed it. As witnesses did not appear, the case was adjourned until 4 February 2002. On 27 January 2002 the applicant appealed against the refusal to the Moscow City Court. It does not appear that his appeal was examined.

33. On 4 February 2002 a new request for release was refused by the court. The hearing was adjourned until 12 February 2002 because of the absence of Mr E. and witnesses.

34. On 12 February, 5 and 19 March 2002 the hearings were adjourned again, as the witnesses never appeared.

35. On 17 April 2002 the court held a hearing. It heard the applicant, a witness for the defence and read out statements by witnesses who had failed to appear, including that by Mr E.

36. On 18 April 2002 the applicant was found guilty as charged and sentenced to six years and six months' imprisonment in a high-security colony and confiscation of property. As regards the applicant's allegations of ill-treatment by police officers, the court found as follows:

> "Statements by the witnesses Er. and G. [who testified] that [the applicant] was neatly dressed at the moment of his arrest, as well as the statement by the witness Ge. [who testified] that at the moment of the personal search [the applicant's] clothing was dirty and that he looked like a tramp cannot, in the court's opinion, confirm the fact that [the applicant] was subjected to physical pressure by police officers because this allegation was examined in the court hearing and found to be unsubstantiated; [this finding is] corroborated with statements by the [police officers] R., I., K., B., Mi. and Mu., and by the decision not to initiate a criminal investigation into [the applicant's] allegations...
>
> It follows from the medical certificate of 13 October 2000 that a doctor of the trauma department examined [the applicant] and found injuries... Before the court [the applicant] testified that these injuries had been inflicted on him by police officers. However, it was established in the court hearing that no physical or mental pressure had been exerted on [the applicant]; the court infers therefrom that the bodily injuries recorded on 13 October 2000 had been caused not under the circumstances described by [the applicant], but in some other way unrelated to [the applicant's] arrest and criminal proceedings against him."

37. In finding the applicant guilty of drug possession and sale, the District Court relied on the material evidence (the sachet with heroin seized from the applicant), the testimony by Mr E. corroborated by statements of the police officers and lay witnesses present during the search and the record of the confrontation between the applicant and Mr E.

38. On 8 June 2002 the applicant appealed against the conviction. He complained, in particular, that the conviction was based, to a significant extent, on his self-incriminating statements given under the pressure of police officers on the day of his arrest, as well as on the statement by Mr E. who had fled from justice and did not testify in the second trial.

39. On 9 September 2002 the Moscow City Court dismissed the appeal and upheld the conviction. It repeated verbatim the first-instance court's findings as regards the applicant's allegations of ill-treatment.

E. Conditions of the applicant's detention in remand centre IZ-77/3

40. From 11 July to 6 November 2001 and then from 23 April to 5 October 2002 the applicant stayed in remand centre no. IZ-77/3 in Moscow.

41. In 2001, the applicant was held in cells nos. 405, 406 and 706, measuring approximately 36 sq. m. It follows from the documents submitted by the Government that the exact numbers of detainees could not be established because the registers had already been destroyed, however, the design capacity of the remand centre had been exceeded by 300 per cent.

42. In 2002, the applicant was held in cells nos. 603, 602, 612. Cell 603 measured 26 sq. m and housed 21 to 37 detainees, cell 602 had 32 sq. m of floor space for 35 to 45 inmates, and cell 612 accommodated 4 to 6 persons on 9 sq. m.

43. On 3 October 2001 counsel for the applicant complained about "appalling conditions" of his detention to the Supreme Court of the Russian Federation and to the Minister of Justice.

44. On 10 October 2001 the applicant drafted a hand-written complaint to the Presnenskiy District Court of Moscow. He wrote that he had spent more than a year in overcrowded cells that swarmed with bugs and lice. He suffered from lack of fresh air that hardly penetrated through the windows covered with metal bars. A majority of his forty cell-mates were heavy smokers; the light was on round the clock and people had to sleep in shifts. The toilet was not separated from the rest of the cell and offered no privacy whatsoever. He had contracted various diseases, including scabies, "putrefaction of limbs", constant headaches and hypertension. According to the applicant, he did not send that complaint because he feared the reprisals the prison officials had threatened him with.

45. On 10 October 2001 the applicant's representative received two similar responses from the Main Prisons' Directorate of the Ministry of Justice. She was told that on arrival to the detention facility the applicant had been examined by a doctor who found him in good health. On 6 September 2001 a general practitioner gave him preventive treatment for scabies; on 12 September 2001 he was diagnosed with vegeto-vascular dystonia of normotonic type; on 25 September 2001 he received preventive treatment for scabies; on 1 October 2001 the applicant was diagnosed with atypical dermatitis. His state of health was found to be "satisfactory".

46. On 8 and 10 January 2002 the applicant's representative received responses to her further complaints. She was informed that on 11 October 2001 the applicant had sought medical assistance for pyodermatitis and received appropriate treatment. On 6 November 2001 the applicant had been moved to another prison and placed in a common cell with sixty-three other detainees. On 7 December 2001 the administration of the detention facility refused medicines brought by the applicant's mother because the medical office of the facility had had all the necessary medicines. On 20 December 2001 the applicant was diagnosed with skin itch and residual effects of pyodermatitis.

II. RELEVANT DOMESTIC LAW

A. Investigation of criminal offences

47. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP") established that a criminal investigation could be initiated by an investigator upon the complaint of an individual or on the investigative authorities' own initiative when there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could order a specific investigative action, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party. The decision was amenable to an appeal to a higher prosecutor or to a court of general jurisdiction (Article 113).

48. On 29 April 1998 the Constitutional Court of the Russian Federation held that anyone whose legitimate rights and interests had been affected by a decision not to institute criminal proceedings should have the right to appeal against that decision to a court.

B. Placement in custody and detention pending trial

49. 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). A decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96 of the CCrP).

50. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96 of the CCrP). The amendments of 14 March 2001 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.

51. After the arrest the suspect was placed in custody "pending the investigation" for an initial two-month period (Article 97 of the CCrP). Further extensions could be granted by a prosecutor.

52. Once the investigation had been completed and the defendant had received the charge sheet and finished reading the case file, the file was transferred to a trial court. From that day the defendant's detention was "before the court" (or "pending the trial"). Until 14 March 2001 the Code of Criminal Procedure set no time-limit for detention "pending 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 normally exceed six months from the date the court received the file. The time-limit did not apply to defendants charged with particularly serious criminal offences.

53. The detainee or his or her counsel or representative could challenge the detention or extension order issued by a prosecutor, to a court. The judge was required to review the lawfulness of, and justification for, the 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 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT OF THE APPLICANT

54. The applicant complained that on 11 October 2000 he had been beaten by police officers and that the authorities had not undertaken an effective investigation into his allegations of ill-treatment. He invoked Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

55. The Government submitted that the applicant had failed to exhaust domestic remedies. Firstly, he could have contested the decision not to institute criminal proceedings before the Prosecutor General of the Russian Federation. Secondly, he could have challenged the prosecutor's decision before a court of general jurisdiction.

56. The applicant pointed out that, as a result of his application to a higher prosecutor, an additional inquiry had been ordered. However, it had merely confirmed the initial findings. In these circumstances, a further hierarchical appeal to the Prosecutor General would have been ineffective. As the case against him had in the meantime gone to trial, he had chosen to ask the trial court to examine his allegations of ill-treatment in order to show that his confession statement had been obtained under duress. Thus, contrary to the Government's submission, his grievances had been examined by a court of general jurisdiction.

57. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, §§ 51-52, and *Akdıvar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, §§ 65-67).

58. The applicant's allegations of ill-treatment were considered by the prosecutor, who did not find a prima facie case of ill-treatment and, by decisions of 18 December 2000 and 29 March 2001, decided not to institute criminal proceedings. Pursuant to Article 113 of the RSFSR Code of Criminal Procedure, which was in force at the material time, these decisions were amenable to appeal to a higher prosecutor or a court of general jurisdiction (see paragraph 47 above). The Government pointed out that the applicant had not used either avenue of appeal.

59. As regards an appeal to a higher prosecutor, the Court reiterates the Convention institutions' consistent case-law, according to which a hierarchical appeal which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII, and *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, pp. 76 and 82).

60. Under the Russian Code of Criminal Procedure, an appeal to a higher prosecutor constitutes a complaint to a superior authority for the purpose of criticising shortcomings in the inquiry carried out by its subordinates. Such an appeal is in fact an information statement followed by a request to that authority to make use of its power to order an additional inquiry if it sees fit to do so. The higher prosecutor is not required to hear the complainant and the ensuing proceedings are entirely a matter between the supervising prosecutor and his subordinates. The complainant is not a party to any proceedings and is entitled only to obtain information about the way in which the supervisory body has dealt with his hierarchical appeal. It follows that an appeal to a higher prosecutor does not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such an appeal does not therefore constitute an effective remedy within the meaning of Article 35 of the Convention.

61. The position is, however, different with regard to the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment. In such cases contentious proceedings are instituted, to which the applicant and the prosecutor are parties. The Court has already found that in the Russian legal system, the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Although in these proceedings the court of general jurisdiction is not competent to pursue an independent investigation or make any findings of fact, a judicial review of a complaint has the benefit of providing a forum guaranteeing due process of law. In public and adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a prima facie case of ill-treatment and, if he has, to reverse the prosecutor's decision and order a criminal investigation.

62. In the present case the applicant did not make use of the judicial appeal option. Instead, he preferred to raise the ill-treatment issue before the trial court which determined the criminal charge against him. It remains to be seen whether he was thereby dispensed from pursuing an ordinary judicial appeal against the prosecutor's decision not to investigate the ill-treatment complaints.

63. The Court notes at the outset that the purpose of the criminal proceedings against the applicant was to find him innocent or guilty of the criminal charges levelled against him rather than to attribute responsibility for alleged beatings or afford redress for an alleged breach of Article 3 of the Convention (see *Toteva v. Bulgaria* (dec.), no. 42027/98, 3 April 2003). It is stressed by the applicant that his submissions to the trial court concerning the alleged ill-treatment were designed to demonstrate that his confession statement had been obtained by force and was therefore inadmissible evidence (see paragraph 56 above, and also *Ksenzov v. Russia*

(dec.), no. 75386/01, 27 January 2005). He did not ask that the inquiry be re-opened nor did he raise the issue of the alleged deficiencies of the investigation before the trial court, although these matters form part of his grievances under Articles 3 and 13 of the Convention.

64. Even though the trial court noted in the judgment that the applicant's injuries had not been caused in the way he described, that finding was solely relevant for determining whether his confession statement was admissible in evidence. There is no indication that the trial court's decision on admissibility of evidence would have been prejudicial for the court examining the issue as to whether his contentions raised a reasonable suspicion of ill-treatment, had the applicant availed himself of the judicial avenue of appeal against the prosecutor's decision. It follows that the remedy employed by the applicant could not, as a general rule, be regarded as a part of the normal process of exhaustion in respect of the complaints he made to the Court.

65. The Court further reiterates that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of the machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, that rule must be applied with some degree of flexibility and without excessive formalism. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant (see *Akdıvar and Others*, § 69, and *Horvat*, § 40, both cited above).

66. Persons held in custody are often in a stressful situation and also vulnerable to pressure. It might therefore be excessively burdensome to require them to pursue separate judicial proceedings aimed at obtaining redress for the breach of their rights under Article 3 of the Convention, especially if they have no legal training and cannot benefit from professional assistance. In certain circumstances, a more flexible approach in the matter of exhaustion may be called for. In the present case, however, the applicant was represented, from the pre-trial stage of the proceedings, by two counsel of his own choosing with considerable experience in criminal matters. No explanation has been offered for their failure to lodge, or advise him to lodge, a judicial appeal against the prosecutor's decision not to investigate his allegations of ill-treatment.

67. In the light of the above considerations, the Court finds that the applicant's complaints concerning the alleged ill-treatment by the police must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF DETENTION

68. The applicant complained that the conditions of detention in remand centre no. 77/3 had amounted to inhuman and degrading treatment. The Court will examine this complaint from the standpoint of Article 3 of the Convention, cited above.

A. Admissibility

69. The Government, referring to the information from the Nikulinskiy District Court and the remand centre management, pointed out that the applicant had never complained about his conditions of detention to a court or another State authority.

70. The applicant claimed that he had once attempted to send a complaint about the conditions of detention to a court, but a prison official had threatened him with reprisals and he had thought better of it. In any event, the conditions of detention were the same for all the detainees and no complaint had been able to obtain improvement of his situation.

71. The Court notes that counsel for the applicant repeatedly complained about the worrying conditions of his detention and received responses from the authorities responsible for operation of remand centre no. 77/3 (see paragraphs 43, 45 and 46 above). The domestic authorities were thereby made sufficiently aware of the applicant's situation. It is true that the applicant did not send a separate complaint to a court or a prosecutor, as suggested by the Government. However the Government did not show what redress could have been afforded to the applicant as a result of such a complaint, taking into account that the problems arising from the conditions of his detention were of a systemic nature and affected not only the applicant but the prison population in general (see *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006; and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). The Court therefore finds that this complaint cannot be rejected for the failure to exhaust domestic remedies.

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

B. Merits

73. The applicant stressed that the remand centre had been severely overcrowded and at all times he had less than one sq. m of floor space for himself. Inmates had taken turns to sleep and there had been just one sink

and one toilet for up to seventy people. The placement of the toilet had offered no privacy. There had been no ventilation and in summer the inside temperature had reached 45 degrees Celsius. Access to natural light and fresh air had been blocked by metal shields covering the windows.

74. The Government acknowledged that the facility had been overcrowded. However, it was accounted for by objective factors such as high level of crime and lack of financial resources. There had been no positive intention to humiliate the applicant or to impair his dignity. The Government submitted that the cells had been equipped with ventilation and the inside temperature had been within the established norms. The one-metre-high partition around the toilet had offered sufficient privacy.

75. The Court observes that remand centre no. IZ-77/3 was severely overcrowded during the entire period of the applicant's detention. It follows from the Government's submissions that in 2001 the centre accommodated three times as many detainees as it had been designed for, whereas in 2002 the applicant had less than one square metre of cell space for himself (see paragraphs 41 and 42 above). The applicant had to endure the crammed conditions, confined to his cell day and night, for more than ten months. Whether overpopulation was due to high crime rate, lack of resources or to other causes is immaterial for the Court's analysis, it being incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63).

76. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, in particular, *Mamedova*, cited above, § 62 et seq.; *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., 8 November 2005; *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; and *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI).

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

78. As to the Government's argument that the authorities had no intention to make the applicant suffer, the Court reiterates that although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such

purpose cannot exclude a finding of violation of Article 3 (see *Kalashnikov*, cited above, § 101).

79. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand centre no. IZ-77/3.

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

80. The applicant complained under Article 5 § 1 (c) of the Convention that his detention had been unlawful from 11 to 12 October 2000, and subsequently from 12 December 2000 to 11 January 2001. The relevant part of Article 5 § 1 reads 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..."

A. Admissibility

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

B. Merits

1. Detention from 11 to 12 October 2000

82. The Government accepted that the applicant's detention had not been recorded from the moment of his arrest on 11 October 2000 until the arrest record had been drawn up at 11.50 a.m. on 12 October 2000.

83. The Court recalls that it has already found a violation of Article 5 § 1 of the Convention in a case against Russia where the applicant's initial arrest and overnight stay at the police station were not recorded in any documents. It emphasised its constant view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave

violation of that provision (see *Menesheva v. Russia*, no. 59261/00, § 84, ECHR 2006-..., with further references).

84. In the present case the Government did not deny that the applicant's initial arrest and overnight detention had not been formally recorded in compliance with the procedural requirements of the domestic law.

85. The Court finds that the applicant's detention from 11 to 12 October 2000 was not "in accordance with a procedure prescribed by law" and was therefore incompatible with Article 5 § 1 of the Convention. Accordingly, there has been a violation of this provision.

2. Detention from 13 December 2000 to 30 January 2001

86. The Government submitted that at the material time the domestic law did not require extending the defendant's detention after the case file had been submitted to the trial court. On 11 January 2001 the trial court examined the remand matter and decided that the applicant should remain in custody.

87. The applicant pointed out that no domestic law permitted the detention to continue in the absence of appropriate authorisation. The existence of an administrative practice allowing the defendants to be held in custody until the first trial hearing, has been found by the Court incompatible with the requirements of lawfulness and legal certainty. He referred to the cases of *Ječius v. Lithuania* (no. 34578/97, ECHR 2000-IX) and *Baranowski v. Poland* (no. 28358/95, ECHR 2000-III).

88. It is not in dispute between the parties that on 12 December 2000 the initial two-month period of the applicant's detention expired and that after that date and until 11 January 2001 the applicant was kept in detention on the basis of the fact that the criminal case against him had been referred to the court competent to try the case.

89. The Court has already examined and found a violation of Article 5 § 1 of the Convention 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 submitted to the trial court. It has 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 – was incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; *Khudoyorov v. Russia*, no. 6847/02, §§ 146-148, ECHR 2005-...; *Ječius*, cited above, §§ 60-64, and *Baranowski*, cited above, §§ 53-58).

90. The Court sees no reason to reach a different conclusion in the present case. It reiterates that for the detention to meet the standard of "lawfulness", it must have a basis in domestic law. The Government,

however, did not point to any legal provision which permitted a defendant to continue to be held in custody once the authorised detention period had expired. The Russian Constitution and the rules of criminal procedure vested the power to order or prolong detention pending trial in prosecutors and courts (see paragraph 49 above). No exceptions to that rule were permitted or provided for. As noted above, in the period from 13 December 2000 to 11 January 2001 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.

91. Furthermore, the Court observes that, although the District Court upheld the pre-trial detention measure in respect of the applicant on 11 January 2001, it did not give any reasons for its decision which was but a pre-printed template. In this connection, the Court reiterates that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich*, cited above, §§ 70-71; *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002).

92. The District Court's decision did not set a time-limit for the applicant's continued detention or refer to the provisions of the Code of Criminal Procedure governing pre-trial detention, on which it was based. This left the applicant in a state of uncertainty as to the legal basis and grounds for his detention after that date. In these circumstances, the Court considers that the District Court's decision of 11 January 2001 did not afford the applicant the adequate protection from arbitrariness which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention.

93. It follows that during the period from 13 December 2000 to 30 January 2001 there was no "lawful" basis for the applicant's detention. There has therefore been a violation of Article 5 § 1 of the Convention.

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

94. The applicant complained under Article 5 § 3 of the Convention that the arrest warrant had been issued by an investigator and that he had not been tried with a reasonable time or released pending trial. Article 5 § 3 provides as follows:

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

A. Admissibility

95. As regards the applicant's complaint that his initial detention had been authorised by the investigator, the Court notes that Russia made a reservation in respect of Article 5 § 3. The reservation referred, among other things, to the provisions of the Code of Criminal Procedure, under which a person could be detained on a decision of investigative authorities without there being any requirement for judicial supervision of the detention. The Court has examined the validity of the reservation and found it compatible with the requirements of Article 57 of the Convention (see *Labzov v. Russia* (dec.), no. 62208/00, 28 February 2002).

It follows that the part of the complaint concerning the authorisation of the applicant's detention by the investigator is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

96. As regards the applicant's complaint about the excessive length of, and deficient justification for, his detention, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

97. The Government claimed that the applicant's detention had complied with the "reasonable time" requirement because the investigation into the charges had been completed within two months.

98. The applicant stressed that for determining whether the duration of his detention was reasonable, the entire period from his arrest on 11 October 2000 to his conviction on 18 April 2002 should be taken into account. The trial court did not show diligence in the conduct of the proceedings. Hearings were routinely adjourned because the judge was involved in another case or because the police officers, witnesses for the prosecution, defaulted. In any event, the justification for the detention was deficient, for the courts solely relied on the gravity of the charges against him.

99. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance. In view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent

court" (see *Panchenko v. Russia*, no. 45100/98, §§ 91 and 93, 8 February 2005, with further references). Accordingly, the applicant's detention from 5 July 2001, the date of his original first-instance conviction, to 17 October 2001, the date on which that conviction was quashed and his case remitted, cannot be taken into account for the purposes of Article 5 § 3. The Court consequently finds that the period to be taken into consideration consisted of two separate terms, the first lasting from 11 October 2000 to 5 July 2001 and the second from 17 October 2001 to 18 April 2002, and amounted to fourteen months in total.

100. The Court observes that the only ground invoked for continuing the applicant's detention was the fact that he was charged with a particularly serious criminal offence whose dangerousness alone was considered as a sufficient reason for holding him in custody (see, in particular, paragraphs 21 and 23 above).

101. As regards the domestic authorities' reliance on the gravity of the charges as the sole and decisive element, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Panchenko*, cited above § 102; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51). This is particularly true in the Russian legal system where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov v. Russia*, no. 6847/02, § 180, 8 November 2005).

102. In the present case the domestic courts refused to take into account any specific facts put forward by the applicant and his counsel in the applications for release. The courts assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have obtained the applicant's release (see, for instance, the City Court's decision cited in paragraph 23 above). The Court reiterates that any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, with further references). In the instant case the domestic authorities did not mention any concrete facts corroborating the detention orders.

103. The Court finds that by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities prolonged

the applicant's detention on grounds which cannot be regarded as "sufficient". The authorities thus failed to justify the applicant's continued detention pending trial (see *Rokhlina*, cited above, § 69).

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

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

104. The applicant complained under Article 5 § 4 that he had not been able to obtain a judicial review of the lawfulness of his detention in the period of 13 December 2000 to 30 January 2001 because that period had not been covered by any detention order and because he had not been present at the hearing on 11 January 2001. Article 5 § 4 provides as follows:

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

A. Admissibility

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

B. Merits

106. The Government submitted that the applicant and his counsel had been able to file an appeal against the Nikulinskiy District Court's decision extending his detention pending trial. The appeal court had dismissed their complaint.

107. The applicant stressed that between 13 December 2000 and 30 January 2001 there existed no detention order he could have appealed against. For the first time he was able to lodge an application for release at the hearing on 30 January 2001 which he did.

108. The Court reiterates that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty. This means that the competent court has to examine not only the compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, § 65; *Grauslys v. Lithuania*, no. 36743/97, §§ 51-55, 10 October 2000; and *Ilijkov*, cited above, § 94).

109. As the Court has found above, in the period from 13 December 2000 to 11 January 2001 the applicant's detention was not covered by any detention order (see paragraph 88 et seq. above). The applicant was not therefore able to initiate a judicial review of his detention during that period because the Russian law only permitted to lodge appeals against formal detention orders (see paragraph 53 above).

110. As regards the District Court's decision of 11 January 2001, the Court reiterates that the proceedings concerning detention issues must be adversarial and must always ensure equality of arms between the parties (see *Trzaska v. Poland*, no. 25792/94, § 74, 11 July 2000). The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, § 47).

111. It is not contested by the respondent Government that the decision of 11 January 2001 was issued in the absence of the applicant and his counsel who were denied an opportunity to expose their arguments to the court. The Court further finds that the form of that decision – a template in which the District Court's findings had been already pre-printed and merely the fields for the applicant's name and the case particulars were filled in by hand (see paragraph 19 above) – indicates that, by issuing a stereotype decision in the absence of the applicant and his counsel, the District Court failed to carry out a judicial review of the remand matter.

112. It follows that in the period from 13 December 2000 to 30 January 2001 when the applicant's application for release was for the first time examined by the trial court, the applicant was not able to take proceedings by which the lawfulness of his detention would be examined.

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

VI. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

113. The applicant complained that the criminal proceedings against him had been conducted in breach of Article 6 § 1 of the Convention which reads:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair... hearing within a reasonable time by an independent and impartial tribunal...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

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

114. The applicant claimed that he had not benefited from a fair trial within a reasonable time. He complained that the District and City Courts had presumed him guilty because they had refused his requests for release by reference to the gravity of the charges, and that the trial judge had held personal prejudice against him. His co-defendant and the witness for the prosecution Mr E. had not been heard in the second trial because he had absconded, and the trial court had read out the written statements by the police officers. Finally, the applicant complained about allegedly unfair decisions on admissibility and assessment of evidence, and inaccuracy of the trial record.

115. The Court observes that the criminal proceedings against the applicant lasted from the day of his arrest on 11 October 2000 to his final conviction on 9 September 2002, that is for one year and ten months. This period is not so long as not to comply with the “reasonable time” requirement of Article 6 § 1 of the Convention.

116. The Court reiterates that the principle of presumption of innocence prohibits the premature expression by the tribunal of the opinion that the person charged with the criminal offence is guilty before he has been so proved according to law (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 41). Although the gravity of the charges on which the domestic courts relied for extending the applicant's detention was not a “sufficient” reason for the purposes of Article 5 § 3 of the Convention (see paragraph 101 above), the wording of these decisions does not support the applicant's contention that the courts had expressed the opinion on his guilt before the end of the trial. Nor did the applicant submit any materials capable of casting doubt on impartiality of the trial judge.

117. The Court further notes that the applicant, who was assisted by a lawyer, was able to put questions directly to Mr E. both during the confrontation before the investigator and during the first trial. He could thus identify and share with the judge his apprehensions as to the witness's credibility (see *Isgrò v. Italy*, judgment of 19 February 1991, Series A no. 194-A, § 35). It is true that Mr E. defaulted during the second trial and was not available for examination. Although the new trial court was not able to take evidence from Mr E. in person, it was assisted in its task by the confrontation and trial records, whose accuracy was not disputed by the applicant's defence. Furthermore, as the trial court pointed out, the testimony by Mr E. was corroborated by statements of other witnesses, as well as by material evidence showing the applicant's involvement in drug-related offences (see paragraph 37 above).

118. Lastly, the Court has examined the remainder of the applicant's complaints under Article 6 as submitted by him. However, having regard to

all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of that provision.

119. Having regard to the above considerations, the Court considers that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

121. The applicant claimed 10,000 euros ("EUR") in respect of non-pecuniary damage, representing compensation for the unlawful and excessively long detention in appalling conditions.

122. The Government insisted that the amount claimed was excessive because the overcrowding had been caused by objective reasons.

123. The Court reiterates that it has found a combination of serious violations of the Convention guarantees. The applicant was detained without sufficient grounds in a severely overcrowded remand centre. A part of his detention was not covered with appropriate detention order and he was unable to initiate a judicial review of his detention. These violations must have caused him considerable hardship and distress. Making its assessment on an equitable basis, the Court awards the applicant the entire amount he claimed in respect of non-pecuniary damage, that is EUR 10,000, plus any tax that may be chargeable.

B. Costs and expenses

124. The applicant also claimed EUR 15,500 for the costs and expenses incurred before the domestic courts and the Court. His representatives had filed two appeals on the merits and six appeals against detention orders, attended twenty-three trial hearings before the District Court and paid him more than thirty visits in prison. They had also drafted the application form and comments on the Government's memorandum. The applicant submitted two template contracts for his representation before the Court for a total of 350,000 Russian roubles ("RUR"), and receipts for payments for legal services for a total amount of RUR 13,100.

125. The Government pointed out that it was not the Court's task to re-assess the merits of the applicant's conviction. For that reason, the expenses

incurred in the domestic criminal proceedings should not be reimbursed. In any event, only an insignificant part of the expenses was supported with documentary evidence. Furthermore, the amount of EUR 10,000 for the applicant's representation before the Court was excessive and no supporting documents had been submitted.

126. The Court accepts that in the domestic proceedings legal expenses were incurred in order to prevent the violation of the applicant's right to trial within a reasonable time or to release pending trial. To the extent that these expenses were supported with appropriate payment documents, the Court awards the applicant EUR 350, plus any tax that may be chargeable on that amount, and rejects the remainder of the claim in respect of the domestic proceedings.

127. As regards the Strasbourg proceedings, the Court notes that the applicant had been granted legal aid for his representation before it by Mrs K. Moskalenko. It does not appear that the applicant's other representative, Mrs E. Liptser, has carried out any independent work on the case. The Court therefore rejects the applicant's claim in respect of Mrs Liptser's fees (see, *mutatis mutandis*, Observer *and* Guardian *v. the United Kingdom*, judgment of 26 November 1991, Series A no. 216, § 80). Furthermore, the Court observes that the contract between the applicant and Mrs Moskalenko is a template, in which only the parties' names and the amount were filled in, whereas all the remaining fields describing the nature of legal work, the due date and other conditions, have remained blank. It appears that that template did not create a legally enforceable obligation on the applicant to pay any fee to Mrs Moskalenko. This part of the claim must also be rejected (see, *mutatis mutandis*, *Dudgeon v. the United Kingdom* (Article 50), judgment of 24 February 1983, Series A no. 59, § 22). Having regard to the above considerations, the Court rejects the applicant's claim for costs and expenses in the Strasbourg proceedings.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's deprivation of liberty and conditions of his detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand centre no. IZ-77/3 of Moscow;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the absence of a legal basis for the applicant's detention from 11 to 12 October 2000 and from 13 December 2000 to 30 January 2001;

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

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

6. *Holds*

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

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(ii) EUR 350 (three hundred fifty euros) in respect of costs and expenses in the domestic proceedings;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President