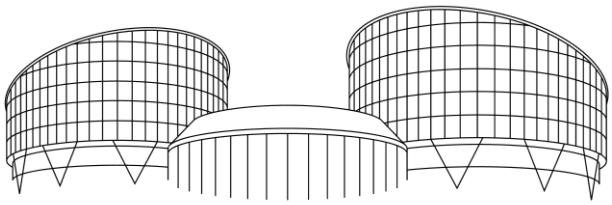

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF GOROVOY v. RUSSIA

*(Application no. 54655/07)*

JUDGMENT

STRASBOURG

27 June 2013

**FINAL**

27/09/2013

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

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

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 June 2013,

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

# PROCEDURE

1. The case originated in an application (no. 54655/07) 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 Sergey Nikolayevich Gorovoy ("the applicant"), on 15 October 2007.

2. The applicant, who had been granted legal aid, was represented by Ms O. Druzhkova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of the length of his detention without sufficient reason and in appalling conditions.

4. On 27 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and is serving a prison sentence in Kemerovo Region.

## A. Criminal proceedings against the applicant

6. On 5 December 2004 Ch. complained that a group of men had tried to extort 7,000,000 Russian roubles from him. On the same date the prosecutor's office opened an investigation in respect of S. and four other unidentified persons.

7. Following the applicant's failure to appear for questioning, on 14 January 2005 the prosecutor put his name on the wanted persons' list.

8. On 29 January 2005 the applicant was arrested on a train going to Moscow. He was, *inter alia*, suspected of having participated in the attempt of extortion.

9. On 31 January 2005 the Naberezhniye Chelny Town Court remanded the applicant in custody pending investigation. In particular, the court noted as follows:

> "[The applicant] is suspected of having committed a crime which entails a custodial sentence exceeding two years, and the court considers that there are sufficient grounds to believe that, if released, he may abscond, given that he is not domiciled in Naberezhniye Chelny, that he was apprehended after his name had been put on the wanted persons' list, that he may threaten the witnesses and other parties to the criminal proceedings, and that he may destroy evidence or otherwise interfere with the administration of justice. [He] might continue his criminal activities, since the crime he is suspected of was committed before the period of the suspended sentence imposed on him earlier had expired. This fact is confirmation that [the applicant] persistently engages in unlawful behaviour."

10. On 11 February 2005 the Supreme Court of the Republic of Tatarstan upheld the decision of 31 January 2005 on appeal.

11. On 25 March 2005 the Town Court extended the applicant's detention until 29 April 2005. The court noted as follows:

> "According to the court order of 31 January 3005, [the applicant], if released, may abscond (he was apprehended after his name had been put on the wanted persons' list), threaten witnesses, destroy evidence or continue criminal activities.
>
> To date the above circumstances have not changed. [The applicant] is charged with a particularly serious criminal offence.
>
> Under such circumstances ... [the applicant's] detention should be extended ..."

12. On 15 April 2005 the Supreme Court upheld the decision of 25 March 2005 on appeal.

13. On 26 April 2005 the District Court extended the applicant's detention until 29 July 2005. The court noted, in particular, as follows:

> "... [the applicant] is charged with a particularly serious criminal offence which entails a custodial sentence exceeding two years. This case is of extreme complexity. The circumstances underlying the court's decision to remand the applicant in custody still remain ... [The applicant] may abscond or commit new crimes."

14. On 10 June 2005 the Supreme Court upheld the decision of 26 April 2005 on appeal.

15. On 22 June 2005 the applicant was formally charged with participation in the attempt of extortion, membership of a criminal gang and illegal possession of firearms.

16. On 13 July and 19 October 2005 the Town Court extended the applicant's detention until 30 October 2005 and 29 January 2006 respectively. In both decisions the court noted as follows:

> "... [the applicant] is charged with particularly serious criminal offences which are a danger to public order and entail a custodial sentence exceeding two years. The present criminal case is of high complexity. The circumstances underlying the [applicant's] remand in custody still remain. A number of investigative activities involving [the applicant] are pending. [The applicant] might abscond, commit new criminal offences and interfere with administration of justice ... "

17. On 27 January 2006 the Town Court extended the applicant's pre-trial detention until 29 April 2006. The court noted as follows:

> "[The applicant] is charged with grievous and particularly grievous criminal offences. He might abscond and continue criminal activities.
>
> In view of the above, the defence's request to replace remand in custody with an alternative measure of restraint is dismissed."

18. On 12 April 2006 the Town Court extended the applicant's detention until 30 June 2006. The court noted as follows:

> "[The prosecutor's request to extend the applicant's detention] should be granted. [The applicant] is charged with particularly grievous criminal offences. The arguments of the defendant and his counsel that the investigative authorities have been inactive for a long time cannot justify the dismissal of the [prosecutor's] request."

19. On 1 June 2006 the investigator established that the applicant was not involved in extortion and discontinued the criminal proceedings in that respect.

20. On 14 June 2006 the prosecutor's office completed the criminal investigation. The applicant remained in custody. However, no detention order covering the period from 1 July to 27 October 2006 was submitted.

21. On 17 July 2006 the applicant and fourteen other defendants started reading the case file, which consisted of thirty-nine volumes. By 19 January 2007 the applicant had read eighteen volumes.

22. On 27 October 2006 the Town Court extended the applicant's detention until 30 January 2007. The court noted as follows:

> "[The court] discerns no grounds to release [the applicant]. [The applicant] is charged with extremely serious criminal offences which attract a custodial sentence of more than two years.
>
> [The applicant] may abscond, continue criminal activities, interfere with administration of justice."

23. On 19 January 2007 the Town Court set the end-date for the applicant's study of the case file for 10 February 2007. The applicant appealed, alleging that the Town Court had failed to specify the exact

number of working days allocated for his study of the case file. On 6 February 2007 the Supreme Court upheld the decision of 19 January 2007 on appeal.

24. On 25 January 2007 the Town Court extended the applicant's detention until 30 April 2007. The court noted as follows:

> "The [prosecutor's] request should be granted. [The applicant] is charged with extremely serious criminal offences. He might abscond or interfere with the administration of justice. [The court] discerns no circumstances justifying the [applicant's] release."

25. On 24 March 2008 the Town Court extended the detention of all the defendants, including the applicant. The court noted as follows:

> "The defendants are charged with extremely serious criminal offences ... To date the circumstances underlying their remand in custody still remain. They might abscond, continue with their criminal activities, or interfere with the administration of justice. Accordingly, the defendants cannot be released."

26. According to the applicant, he appealed against all the orders remanding him in custody. The Supreme Court upheld all of them on appeal.

27. On 15 September 2008 the Town Court found the applicant guilty of membership of a criminal gang and illegal possession of firearms and sentenced him to twelve years' imprisonment. On 12 November 2009 the Supreme Court of Russia upheld the applicant's conviction on appeal.

## B. Conditions of the applicant's detention in the temporary detention centre in Naberezhniye Chelny

### *1. The period of the applicant's detention in, the temporary detention centre in Naberezhniye Chelny, and the levels of occupation there*

28. The Government submitted the following information as regards the applicant's detention in the temporary detention centre in Naberezhniye Chelny:

| Year | Month |
|---|---|
| 2005 | 31 January to 2 March |
| | 23 March to 1 April |
| | 22-29 April |
| | 25-27 May |
| | 20-29 June |
| | 1-15 and 20-22 July |
| | 5-24 August |
| | 9-19 and 26-30 September |
| | 14-21 October |
| | 2-11, 14-18 and 23-30 November |
| | 12-21 December |

| Year | Month |
|---|---|
| 2006 | 18 January to 3 February |
| | 10-17 April |
| | 15-24 May |
| | 2-7 and 14-21 June |
| | 17-26 July |
| | 16-25 August |
| | 22 September to 2 October |
| | 20-30 October |
| | 27 November to 6 December |
| | 25-27 December |
| 2007 | 12-26 January |
| | 12-21 February |
| | 2-6 March |
| | 30 March to 6 April |
| | 16-28 April |
| | 16-18 May |
| | 15-18 June |
| | 23-30 July |
| | 12-14 September |
| | 26 September to 1 October |

29. The Government provided data on cell numbers and measurements. The applicant did not contest the accuracy of the information submitted by the Government. He too reported on the cell population in respect of the cells where he had been detained. The parties' submissions on the issue can be summarised as follows:

| Cell no. | Cell surface area (sq. m) (as indicated by the Government and not contested by the applicant) | Number of sleeping places (as indicated by the Government and not contested by the applicant) | Number of inmates (as indicated by the applicant) |
|---|---|---|---|
| 1 | 18.7 | 3 | 11-17 |
| 2 | 12.4 | 2 | 8-10 |
| 3 | 12.0 | 2 | 8-10 |
| 4 | 6.81 | 2 | According to the applicant, he was not detained in those cells. |
| 5 | 18.7 | 3 | |
| 6 | 12.3 | 6 | |
| 7 | 11.9 | 6 | |
| 8 | 12.8 | 4 | |
| 9 | 19.3 | 10 | |
| 10 | 18.7 | 10 | |
| 11 | 12.7 | 6 | |
| 12 | 18.9 | 3 | 10-15 |

| Cell no. | Cell surface area (sq. m) (as indicated by the Government and not contested by the applicant) | Number of sleeping places (as indicated by the Government and not contested by the applicant) | Number of inmates (as indicated by the applicant) |
|---|---|---|---|
| 13 | 12.5 | 6 | 8-10 |
| 14 | 19.3 | 10 | 11-17 |
| 15 | 12.1 | 6 | 8-10 |
| 16 | 19.6 | 3 | 11-17 |
| 17 | 12.3 | 4 | According to the applicant, he was not detained in those cells. |
| 18 | 11.5 | 6 | |
| 19 | 6.9 | 2 | |
| 20 | 11.9 | 6 | |
| 21 | 11.7 | 6 | |
| 22 | 20.2 | 4 | 11-17 |

30. The Government were unable to submit the information concerning the individual cell population in view of the lack of the relevant records. Nor could they provide any data in respect of the period prior to 25 October 2005 in view of the destruction of the relevant records due to the expiration of the statutory time-limit prescribed for their storage. As regards the overall temporary detention centre population from 2 November 2005 to 2 October 2007, they provided the following data, which was not contested by the applicant:

| Period of the applicant's detention | Temporary detention centre population |
|---|---|
| 2-11 November 2005 | 91 (on one occasion) to 138 |
| 14-18 November 2005 | 90 (on one occasion) to 141 |
| 23 November to 21 December 2005 | 121 to 168 |
| 18 January to 3 February 2006 | 131 to 180 |
| 10-17 April 2006 | 117 to 179 |
| 15-24 May 2006 | 130 to 180 |
| 2-21 June 2006 | 97 to 148 |
| 17-26 July 2006 | 118 to 152 |
| 16-25 August 2006 | 102 (on one occasion) to 170 |
| 22 September to 2 October 2006 | 50 (on one occasion) to 159 |
| 20-30 October 2006 | 130 to 178 |
| 27 November to 6 December 2006 | 105 (on one occasion) to 170 |
| 25-27 December 2006 | 131 to 164 |
| 12-26 January 2007 | 109 (on one occasion) to 176 |
| 12-21 February 2007 | 91 (on one occasion) to 175 |
| 2-6 March 2007 | 119 to 158 |
| 30 March to 6 April 2007 | 90 to 132 |
| 16-28 April 2007 | 90 to 168 |

| Period of the applicant's detention | Temporary detention centre population |
|---|---|
| 16-18 May 2007 | 110 to 142 |
| 15-18 June 2007 | 140 to 166 |
| 23-30 July 2007 | 130 to 168 |
| 12-14 September 2007 | 114 to 178 |
| 26 September to 2 October 2007 | 95 to 142 |

31. According to the applicant, the cells in the detention centre were overcrowded at all times and the inmates had to take turns to sleep. The applicant did not have an individual sleeping place. On some days inmates suffering from tuberculosis, hepatitis, Aids, and scabies were placed in the same cell with him. Some of the inmates had lice.

*2. General conditions of detention*

**(a) The Government's submissions**

32. The Government submitted a report of 15 July 2010 prepared by the Ministry of the Interior of the Tatarstan Republic on the inspection of the temporary detention centre in Naberezhniye Chelny, where the applicant had been detained. The report contained the following description of the temporary detention centre:

> "[The temporary detention centre] was commissioned in 1977. It is located in a two-storey brick building ... Prior to refurbishment it had twenty-two cells on the second floor, with a maximum capacity of 110 inmates ...
>
> Each cell had a toilet located in the corner at least 1.5 m away from the dining table and the nearest sleeping place. They were separated by a 120-cm brick screen, ensuring partial privacy ... Each cell had a dining table ... All the windows were covered with two layers of metal bars ... The cells were lit with a 100-watt bulb ...
>
> A full refurbishment of the temporary detention centre in Naberezhniye Chelny was started in mid-June 2008 ...
>
> Some inmates received bedding and bed sheets from their relatives because of the shortage of it in the centre. The inmates could have a shower at least once a week. Bed linen was changed whenever possible ...
>
> Given that the regulations governing the operation of the temporary detention centres do not require daily registration of the number of inmates in each cell, it is impossible to specify the exact number of inmates detained with the applicant in each cell of the temporary detention centre, or to indicate the cell numbers where the applicant was detained ...
>
> The average daily population of the temporary detention centre during the periods of the [applicant's] detention was 137, that is 1.2 times its maximum capacity. This overcrowding was due to extensive criminal investigations of the activities of organised criminal gangs, which were thirty to forty strong ...
>
> Inmates of temporary detention centres are provided with three meals a day. They may also receive food from their relatives in accordance with the statutory norms ... The temporary detention centre did not refuse to accept food parcels for the inmates."

> There are three exercise areas measuring 2.5-3.5 square metres located within the territory of the temporary detention centre. The exercise areas are surrounded by metal screens ... While the applicant was an inmate in the temporary detention centre the inmates were allowed daily outdoor exercise for at least an hour ...
>
> 10. All inmates received medical assistance from a paramedic. If necessary, they received medical care at other medical institutions ... During the period of his detention in the temporary detention centre, [the applicant] consulted [the paramedic] on twelve occasions ... ”

**(b) The applicant’s submissions**

33. According to the applicant, the cells in the temporary detention centre were not ventilated. Because of the metal bars on the windows there was no access to daylight in the cells. They were lit with a 60-watt bulb. Because of the lack of sufficient lighting in the cells, it was impossible to read or work there.

34. The distance between the toilet and the closest sleeping place was 0.5 metres. In some cells there was no toilet, but only a hole in the floor. The brick wall separating the toilet from the living area of the cell did not ensure sufficient privacy, and the person using it could be seen by other inmates.

35. The cells were infested with bedbugs, cockroaches, flies and mice. The administration of the centre took no measures to exterminate them. The food was of poor quality.

36. The applicant was confined to the cell twenty-four hours a day with no opportunity for outdoor exercise. He received no newspapers or magazines. He was allowed one shower a week. During the summer only cold showers were available.

37. On 24 November 2006 the prosecutor’s office informed the applicant of the results of the inquiry conducted in response to his complaint about the conditions of detention in the temporary detention centre. In part, they acknowledged the problems raised by the applicant in his complaint. In particular, they noted that the number of inmates detained in the centre exceeded its designed capacity. They further admitted that the centre building required extensive repairs in order to bring it into compliance with applicable standards. They confirmed that the inmates received only one meal a day, and that it was impossible to arrange outdoor exercise for the inmates because they were so numerous. Nevertheless, the prosecutor did not discern any reasons to take action against the management of the temporary detention centre.

## II. RELEVANT DOMESTIC LAW

38. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences, in effect, as amended, since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are

held in remand prisons (Article 8). They may be transferred to temporary detention facilities if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or court-house is not feasible because of the distance between them. Such detention in a temporary detention facility may not exceed ten days a month (Article 13). Temporary detention facilities in police stations are designated for the detention of persons arrested on suspicion of a criminal offence (Article 9).

39. According to the Internal Regulations for Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be four square metres (paragraph 3.3 of the Regulations). It also made provision for cells in temporary detention facilities to be equipped with a table, toilet, water tap, shelf for toiletries, drinking water tank, radio and rubbish bin (paragraph 3.2 of the Regulations). Furthermore, the Regulations made provision for detainees to have outdoor exercise for at least one hour a day in a designated exercise area (paragraphs 6.1, 6.40, and 6.43 of the Regulations).

## III. RELEVANT INTERNATIONAL DOCUMENTS

40. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ... However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.
>
> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

# THE LAW

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

41. The applicant complained that he had been detained in appalling conditions in the temporary detention centre in Naberezhniye Chelny in contravention 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."

42. The Government contested that argument. They considered that the conditions of the applicant's detention had been compatible with the requirements set forth in the Convention. They conceded that the cells where the applicant had been detained were overcrowded, that the applicant had received only one meal a day, and that he had not had an opportunity for outdoor exercise.

43. The applicant maintained his complaint. He asserted that he had been detained in appalling conditions falling short of international and domestic standards.

### A. Admissibility

44. The Court observes that the applicant was detained in the temporary detention centre in Naberezhniye Chelny during multiple periods between 31 January 2005 and 1 October 2007. At the end of each period the applicant was transferred to another detention facility pending the criminal proceedings against him. Those regular interruptions in the applicant's detention in the temporary detention centre do not prevent the Court from treating such detention as a "continuing situation". In the Court's opinion, it would be excessively formalistic, in the circumstances of the case, to insist that the applicant lodge a new complaint after the end of each of the multiple periods of his detention at the same remand prison (see, *mutatis mutandis*, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

45. Accordingly, the Court concludes that, by introducing the complaint on 15 October 2007, the applicant complied with the six-month criterion. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

46. Article 3 of the Convention, as the Court has observed on many occasions, enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

47. Turning to the circumstances of the present case, the Court observes that the parties disagreed as to certain aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent Government did not refute.

48. In this connection the Court takes into account the Government's admissions that during the period under consideration the temporary detention centre in Naberezhniye Chelny had been overcrowded. The number of the detainees had exceeded its maximum capacity. According to the information provided by the Government, on the average the personal space allocated per one inmate did not exceed 2.28 square metres (see paragraph 30 above).

49. As a result of such overcrowding, the applicant's detention did not meet the minimum requirement as laid down in the Court's case-law (see, among many other authorities, *Trepashkin v. Russia* (no. 2), no. 14248/05, § 113, 16 December 2010; *Kozhokar v. Russia*, no. 33099/08, § 96, 16 December 2010; and *Svetlana Kazmina v. Russia*, no. 8609/04, § 70, 2 December 2010). The inmates had to take turns to sleep, given the absence of individual sleeping places. The Court notes that the applicant was held at the temporary detention centre for 300 days. Admittedly, he was not confined to his cell on the days of the court hearings. Nevertheless, for over 200 days the applicant was held in an overcrowded cell for practically twenty-four hours a day, without an opportunity to take outdoor exercise.

50. Regard being had to the above, the Court finds that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the

Convention on account of the conditions of his detention in the temporary detention centre in Naberezhniye Chelny during the period between 31 January 2005 and 1 October 2007.

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

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

52. The applicant complained that the length of his pre-trial detention had not been justified by relevant or sufficient reasons. He relied on Article 5 § 3 of the Convention, which reads as follows:

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

### A. Admissibility

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

### B. Merits

#### *1. The parties' submissions*

54. The Government asserted that the length of the applicant's pre-trial detention had been justified in view of the complexity of the case. They further considered that the applicant had deliberately procrastinated in his study of the case file, having contributed to the length of his pre-trial detention. Lastly, they noted that the whole period of the applicant's pre-trial detention had been offset against the prison sentence imposed on him.

55. The applicant maintained his complaint. He considered that the domestic courts, when extending his pre-trial detention, had failed to take into account the particular circumstances of his case. They had kept extending his pre-trial detention on the basis of a standard formula, without providing any evidence to justify their findings that if released he could abscond or interfere with administration of justice. At no time had the courts considered the possibility of using alternative measures of restraint to ensure the applicant's presence at the trial. Lastly, he argued that the national authorities had failed to demonstrate "special diligence" when bringing his case to trial. In particular, there had been significant periods of inaction on

the part of the investigating authorities. The trial had lasted from 11 September 2007 to 15 September 2008. During that period, the trial court had held fifty-eight hearings, thirty-three of which had not lasted more than two hours a day and the remainder had lasted four hours a day.

*2. The Court's assessment*

**(a) General principles**

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

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

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

**(b) Application of these principles to the present case**

59. The applicant was remanded in custody on 29 January 2005. He was convicted by the trial court on 15 September 2008. Thus, the period to be taken into consideration lasted three years and seven and a half months.

60. The Court accepts that the reasonable suspicion that the applicant committed the offences he had been charged with, being based on cogent evidence, persisted throughout the trial leading to his conviction. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicant's placement in detention and whether they displayed "special diligence" in the conduct of the proceedings.

61. The inordinate length of the applicant's pre-trial detention - three years and seven and a half months - is a matter of serious concern for the Court. It considers that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in pre-trial detention for such a long time.

62. When extending the applicant's pre-trial detention, the domestic authorities referred to the gravity of the charges against him. In this respect they noted that he might interfere with the administration of justice, put pressure on the witnesses or other parties to the proceedings, or destroy evidence. They also cited the risk that he would abscond or continue with criminal activities, in view of his prior criminal record.

63. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

64. The Court accepts that in cases concerning organised crime and involving numerous accused, the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. All these factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with acting in a criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account. There is no indication in the present case that the domestic courts had in any way checked whether the applicant had indeed made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any

other way. In such circumstances the Court has difficulty accepting the argument that there was a risk of interference with the administration of justice. Furthermore, such a risk was bound to decrease gradually as the trial proceeded and the witnesses were interviewed (compare *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006) The Court is not therefore persuaded that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

65. Another ground for the applicant's detention was the risk that he would abscond. Admittedly, given the applicant's history, the authorities' finding that there was a risk that he would abscond was not unjustified. Nevertheless, at no point during the three years and seven and a half months that the applicant was awaiting determination of the criminal charges against him did the courts' reasoning evolve to the point where it sought to check whether that risk still persisted or whether it could be avoided by bail or other alternatives.

66. Similarly, the Court is not convinced that the domestic authorities' findings that he might interfere with justice, put pressure on witnesses or other parties to the proceedings, or destroy the evidence, were sufficiently established. The Court observes that the domestic authorities failed to provide any clarification as to which of the acts the applicant was likely to commit amounted to interference with justice. When reasoning that he should be detained pending trial to minimise that risk, the courts did not refer to any matters which had allowed them to draw such an inference. There is nothing in the materials in the Court's possession to indicate that the applicant had ever tried, in particular, to put any pressure on witnesses during either the pre-trial investigation or the trial. In any event, it appears that the domestic authorities had sufficient time to take statements from witnesses in a manner which could have excluded any doubt as to their veracity and would have eliminated the necessity to continue the applicant's deprivation of liberty on that ground (see, for similar reasoning, *Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007). The Court therefore considers that the national authorities were not entitled to regard the circumstances of the case as justification for using the risk of putting pressure on witnesses as a further ground for the applicant's detention.

67. Lastly, the Court observes that all the court orders extending the applicant's detention issued within the period under consideration were stereotypically worded in the same summary form.

68. Having regard to the above, the Court considers that by relying essentially on the gravity of the charges and by failing to substantiate their finding by pertinent specific facts or to consider alternative "preventive measures", the authorities extended the applicant's detention on grounds

which, although "relevant", cannot be regarded as sufficient to justify its duration of three years and seven and a half months. In these circumstances it would not be necessary for the Court to examine whether the domestic authorities acted with "special diligence".

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

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. Lastly, the applicant complained under Article 5 § 1 (c) of the Convention that his pre-trial detention had been unlawful and under Article 6 § 3 (b) of the Convention that the domestic courts had set a time-limit for his study of the case file.

71. Having regard to all the material in its possession and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 115,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government considered the applicant's claim to be excessive and in contradiction with the Court's case-law.

75. The Court observes that the applicant was detained in appalling conditions for almost a year in contravention of Articles 3 of the Convention. The length of his pre-trial detention, which lasted three years and seven and a half months, was not justified. The Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. However, the Court accepts the Government's argument that the specific amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

### B. Costs and expenses

76. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

### C. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention in the temporary detention centre in Naberezhniye Chelny and the length of his pre-trial detention admissible and the remainder of the application inadmissible;

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

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

4. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President