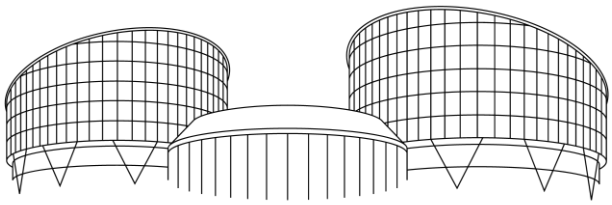

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZENTSOV AND OTHERS v. RUSSIA

(Application no. 35297/05)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

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

In the case of Zentsov and Others v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 35297/05) 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 three Russian nationals, Mr Aleksey Sergeyevich Zentsov ("the first applicant"), Ms Lira Nikolayevna Guskova ("the second applicant") and Mr Ivan Fedorovich Drozdov ("the third applicant"), on 14 June 2005.

2. The applicants were represented by Mr D. Agranovskiy and Ms E. Liptser, lawyers practising in Elektrostal, Moscow Region, and Moscow respectively. 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 applicants alleged, in particular, that they had been detained in appalling conditions pending criminal proceedings against them and that their pre-trial detention had been unreasonably long.

4. On 9 March 2009 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 first applicant was born in 1982 and lives in Novosibirsk. The second applicant was born in 1982 and lives in Kazan. The third applicant was born in 1984 and lives in Roshal, Moscow Region.

A. Background information

6. The applicants are members of the National Bolsheviks Party.

7. On 14 December 2004 a group of about forty members of the National Bolsheviks Party occupied the waiting area of the President's administration building in Moscow and locked themselves in an office on the ground floor.

8. They asked for a meeting with the President, the deputy head of the President's administration and the President's economic adviser. They handed out leaflets through the windows featuring a printed letter to the President which listed ten ways in which he had allegedly failed to comply with the Constitution and which called for his resignation.

9. The intruders stayed in the office for an hour and a half until the police broke down the locked door and arrested them. They did not offer any resistance to the authorities.

B. The criminal proceedings against the applicants

10. On 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicants' detention on the ground that they were suspected of an especially serious criminal offence.

11. The applicants were charged, on 21 December 2004, with the attempted violent overthrow of State power (Article 278 of the Criminal Code) and the intentional destruction and degradation of others' property in public places (Articles 167 § 2 and 214).

12. By separate decisions of 8, 9 and 11 February 2005 the Zamoskvoretskiy District Court of Moscow extended the applicants' detention until 14 April 2005 on the basis of the gravity of the charges. The court also found that the second applicant had no registered place of residence in Moscow or the Moscow region, and therefore there was a possibility that she might abscond or interfere with the investigation. In respect of the third applicant the court held that his permanent place of residence in the Moscow region, ongoing studies at a university in Moscow, previously clean criminal record and good character references were

insufficient to warrant his release, given the gravity of the charges laid against him.

13. On 16 February 2005 the applicants' charge was amended to that of participation in mass disorder, an offence under Article 212 § 2 of the Criminal Code.

14. By separate but identically worded decisions of 7 April 2005 the District Court granted the prosecution's request for an extension of the applicants' detention until 14 July 2005, for the following reasons:

> "The court takes into account that the case involves forty defendants who have just started, together with their counsel, to study the case file which comprises twelve volumes ... Moreover, the prosecution needs additional time in order to prepare the bill of indictment ...
>
> Having regard to the fact that [the first and the second applicants] are not registered with a permanent place of residence in Moscow or the Moscow region and taking into account the gravity of the charges and the prosecutor's arguments that [the applicants], once released, might flee from justice, the court considers that [the applicants] should remain in custody. "

15. On appeal, counsel for the applicants asked for their release as they had no previous criminal record, had good character references and a permanent place of residence and were in employment or studying at the university. He further submitted that the applicants did not require much time to study the case file. At the appeal hearing before the Moscow City Court the applicants confirmed that they had finished studying the case file.

16. On 11 May 2005 the Moscow City Court upheld the decisions of 7 April 2005, finding that they had been lawful, sufficiently reasoned and justified.

17. The investigation was completed on 7 June 2005 and thirty-nine persons, including the applicants, were committed for trial.

18. On 20 June 2005 the Tverskoy District Court of Moscow scheduled the preliminary hearing for 30 June 2005 and held that all the defendants should meanwhile remain in custody.

19. On 30 June 2005 the District Court held a preliminary hearing. It rejected the defendants' requests for release, taking into account their character, young age, frail health, family situation and stable way of life. However, it found, referring to the gravity of the charges, that "the grounds on which the preventive measure [had been] previously imposed still persist[ed]" and that "the case file gave sufficient reasons to believe that, once released, the defendants would flee or interfere with the trial". It therefore ordered that all the defendants should remain in custody pending trial.

20. The applicants lodged applications for release. On 27 July 2005 the District Court rejected these requests, finding that their detention was lawful and justified.

21. On 10 August 2005 the applicants filed new applications for release. On the same day the District Court rejected the requests. It held:

> "The court takes into account the defence's argument that an individual approach to each defendant's situation is essential when deciding on the preventive measure.
>
> Examining the grounds on which ... the court ordered and extended the detention of all the defendants without exception ... the court notes that these grounds still persist today. Therefore, having regard to the state of health, family situation, age, profession and character of all the defendants, and to the personal guarantees offered on their behalf by certain private individuals and included in the case file, the court concludes that, if released, each of the applicants might abscond or obstruct the course of justice in some other way...
>
> In the court's view, in these circumstances, having regard to the gravity of the charges, there are no grounds for varying or revoking the preventive measure in respect of any defendant ..."

22. On 8 December 2005 the District Court found the applicants and their co-defendants guilty of participation in mass disorder. It gave each applicant a suspended sentence of three years and released them all on probation.

C. Conditions of detention

1. The conditions of detention in remand prison no. IZ-77/2 in Moscow

23. The first and third applicants were held in remand prison no. IZ-77/2 in Moscow.

(a) The description provided by the Government

24. The Government provided the following description of the conditions of detention in respect of the first and third applicants.

(i) The cell population in respect of the first applicant

25. As regards the number of inmates sharing a cell with the first applicant, the Government relied on a number of excerpts from the prison population register in respect of fourteen days and the certificates prepared by the remand prison administration in April 2009.

Period of detention	Cell number	Cell area (square metres)	Cell capacity/Number of inmates
From 16 to 17 December 2004	150	57.9	14/14
From 17 December 2004 to 14 January 2005	125	10.0	5/2-5-5-5

Period of detention	Cell number	Cell area (square metres)	Cell capacity/Number of inmates
From 14 January to 24 February 2005	14	8.8	Not indicated/2
From 24 February to 1 September 2005	2	54.1	22/13-17-27-35-39
From 1 September to 8 December 2005	150	57.9	14 (22 in December 2005)/14 (21 in December 2005)

(ii) The cell population in respect of the third applicant

26. As regards the number of inmates sharing a cell with the third applicant, the Government relied on a number of excerpts from the prison population register in respect of four days and the certificates prepared by the remand prison administration in April 2009.

Period of detention	Cell number	Cell area (square metres)	Cell capacity/Number of inmates
From 16 to 26 December 2004	281	11.8	5/5
From 26 to 30 December 2004	288	12.5	Not indicated/3
From 30 December 2004 to 14 January 2005	144	56.4	Not indicated/14
From 14 January to 3 February 2005	39a	11.0	6/5-6
From 3 to 12 February 2005	23	10.3	4/5
From 12 to 25 February 2005	39a	11.0	Not indicated/3
From 25 February to 11 March 2005	23	10.3	Not indicated/2
From 11 to	617	9.2	Not indicated/2

Period of detention	Cell number	Cell area (square metres)	Cell capacity/Number of inmates
23 March 2005			
From 23 to 29 March 2005	139	55.9	Not indicated/13
From 29 March to 13 May 2005	617	9.2	Not indicated/2
From 13 May to 26 July 2005	23	10.3	Not indicated/2
From 26 July to 8 December 2005	15	8.4	4/2

(iii) Other aspects of the conditions of detention in respect of the first and third applicants

27. According to the Government, the first and third applicants were each provided with their own bed and bedding, a mug, a dish and a spoon.

28. The lighting in the cells was in compliance with applicable standards. At night low-voltage bulbs were used to maintain lighting for surveillance purposes. The cells were serviced by a ventilation system in good working order. The inmates were allowed exercise for one hour per day in the prison yard. The cells were regularly disinfected.

(b) The description provided by the first and third applicants

29. The first and third applicants contested the Government's submissions. According to them, the cells where they were detained were overcrowded at all times and infested with insects. The toilet had only been separated by a screen from the living area of the cell and did not offer any privacy. The applicants had been allowed to take a ten-minute shower once a week. The food was scarce and no medicine, other than aspirin and other analgesics, was available. The applicants had been permitted a walk for about an hour per day. The exercise yard was sheltered and measured 15 square metres in area. No books or newspapers had been available.

2. The conditions of detention in remand prison no. IZ-77/6 in Moscow

30. The second applicant was detained in remand prison no. IZ-77/6 in Moscow. According to the Government, she was held in cells nos. 202 and 204 which measured 131.1 and 131.3 square metres respectively. Cell no. 202 was equipped with forty-four beds and housed thirty-one inmates. Cell no. 204 was equipped with forty-two beds and housed from twenty-nine to thirty-two inmates. The second applicant had been provided with bed sheets, soap and personal hygiene products. The ventilation system

in the cells had been in good working order. Additional access to fresh air was possible through the windows. The cells were disinfected once a month.

31. According to the second applicant, the cells were infested with cockroaches and crickets. The toilet was separated from the living area of the cell by a screen – one metre in height – which did not offer any privacy. She had been allowed to take a ten-minute shower once a week. The food was of poor quality. No books were available. The inmates received one periodical a month behind publication.

II. RELEVANT DOMESTIC LAW

32. For a summary of the relevant domestic provisions governing conditions and length of pre-trial detention, see the cases of *Dolgova v. Russia*, no. 11886/05, §§ 26-31, 2 March 2006, and *Lind v. Russia*, no. 25664/05, §§ 47-52, 6 December 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicants complained that they had been detained in appalling conditions in remand prisons nos. IZ-77/2 and IZ-77/6 in Moscow 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."

34. The Government contested that argument. Relying on the certificates prepared by the administration of the remand prisons and statements made by remand prison officers dated April 2009, they asserted that the conditions of the applicants' detention had been in compliance with the standards required by Article 3. As regards the applicants' allegations of overcrowding, the Government submitted excerpts from the prison population registers showing the number of inmates per cell recorded on several days at random.

35. The applicants maintained their complaint.

A. Admissibility

36. As regards the second applicant, the Court notes that she did not describe the conditions of her detention in much detail. Nor did she challenge the description of the conditions submitted by the Government who asserted that the personal space accorded to her exceeded four square

metres (see paragraph 30 above). In such circumstances, the Court considers, on the basis of the information provided by the parties, that the conditions of the second applicant's detention did not reach the threshold of severity to fall within the ambit of Article 3 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

37. As regards the complaint in respect of the first and third applicants, the Court finds that it 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

38. The general principles concerning the conditions of detention are well established in the Court's case-law and have been summarised as follows (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012):

> "139. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> 140. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).
>
> 141. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).
>
> 142. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the

applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005)."

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

40. Firstly, the Court notes that it has already found a violation of Article 3 as regards a complaint of overcrowding in the same remand prison – IZ-77/2 – during the same period (see *Lind*, cited above, §§ 42 and 58-63). Overcrowding in Russian remand prisons, generally, has been a matter of concern to the Court. In a great number of cases, the Court has found a violation of the applicants' rights on account of the lack of sufficient personal space accorded them during their pre-trial detention (see *Lind*, cited above, § 60).

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

42. The Court takes cognisance of the data submitted by the Government to challenge the applicants' contention. However, the Court notes that the information submitted by the Government is incomplete. The Government submitted excerpts from the remand prison population register in respect of fourteen and four days only as regards the first and third applicants respectively. No explanation as to how the samples had been chosen was provided. While the Court accepts that on some days the number of inmates in the aforementioned cells where the applicants were detained was indeed below the capacity they were designed for and that the cells were not overcrowded, it cannot accept the Government's assertion that there was no overcrowding in respect of the remaining period of almost twelve months which the applicants spent in detention. Furthermore, the Court cannot but notice that even the excerpts from the register show that on certain occasions the number of inmates sharing the cells with the first and third applicants exceeded the number of sleeping places available. Nor does the

Court lose sight that for weeks the personal space afforded to the applicants were below three square metres (see paragraphs 25 and 26 above).

43. As regards the certificates prepared by the remand prison administration in April 2009, the Court notes that those documents were prepared more that three years after the applicants had been detained. In this connection, it observes that on numerous occasions it has held that documents prepared by the authorities after a considerable period of time has passed since the relevant events took place cannot be viewed as sufficiently reliable (see, among other authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). These considerations hold true in the present case in respect of the certificates prepared by the remand prison's administration and presented by the Government to substantiate their submissions on the issue.

44. Having regard to the above, the Court does not accept that the Government have fully substantiated their argument that the number of the inmates sharing the cells where the applicants were detained did not exceed the capacity they were designed for. Accordingly, the Court agrees with the first and third applicants that the cells in the remand prison where they were detained were overcrowded. As a result of such overcrowding, the first and third applicants' 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). Having regard also to the fact that the first and third applicants were compelled to spend twenty-three hours per day in such overcrowded cells, the Court finds that, between 16 December 2004 and 8 December 2005, they were subjected to inhuman and degrading treatment in breach of Article 3 of the Convention in remand prison no. IZ-77/2 in Moscow.

45. 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 applicants' detention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

46. The applicants complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain them. Referring to Article 5 § 3, they complained of a violation of their right to a trial within a reasonable time and alleged that the orders for their detention had not been founded on sufficient reasons.

The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. 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."

47. The Government contested that argument. They submitted that the applicants' pre-trial detention had been in compliance with the requirements set forth in Article 5 of the Convention.

48. The applicants maintained their complaint.

A. Admissibility

49. As regards the applicants' complaint that their detention was unlawful, the Court notes that on 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicants' placement in custody because of the gravity of the charges laid against them. Their detention was subsequently extended on several occasions by the domestic courts.

50. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (see *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-X).

51. The Court finds that the applicants' detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

52. As regards the applicants' complaint of a violation of their right to trial within a reasonable time or to release pending trial, the Court finds that it 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. General principles

53. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. 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 were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

54. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to ensure his release once the continuation of his detention has ceased to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30-32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8).

55. It is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005; and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

2. Application to the present case

56. The applicants were placed in custody on 14 December 2004. On 8 December 2005 the trial court convicted them of a criminal offence and

immediately released them on probation for three years. The period of custody to be taken into consideration accordingly lasted almost twelve months.

57. The Court observes that the applicants were apprehended on the premises on which the impugned offences had allegedly been committed. It accepts therefore that their detention could have initially been warranted by a reasonable suspicion of their involvement in these offences. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify extending the applicants' detention and whether they displayed "special diligence" in the conduct of the proceedings.

58. While the investigation was pending the domestic courts consistently relied on the gravity of the charges as the main factor for the assessment of the applicants' potential to abscond, reoffend or obstruct the course of justice. They did not demonstrate the existence of concrete facts in support of their conclusions.

59. The Court has repeatedly held that, although the severity of the sentence handed down is a significant element in the assessment of the risk of an accused absconding or reoffending, the need to extend detention cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, § 51, Series A no. 207; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81).

60. This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial examination of whether the evidence collected supported a reasonable suspicion that the applicant had committed the imputed offence. Indeed, the initial charge of the violent overthrow of State power, which was a particularly serious criminal offence according to the domestic classification, had been accepted by the District Court on 8, 9 and 11 February 2005 without any inquiry having been carried out, although this was later amended to a lesser charge of participation in mass disorder (see paragraphs 12 and 13 above). Nevertheless, when the same court extended the applicant's pre-trial detention on 7 April 2005 (see paragraph 17 above), its reasoning remained unaffected by such re-classification (compare *Dolgova*, cited above, § 42).

61. After the case had been submitted for trial in June 2005 the trial court used the same summary formula to refuse the applications for release and extend the pre-trial detention of forty persons, notwithstanding the defence's express request that each detainee's situation be dealt with individually. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the

grounds for detention in respect of each detainee is incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dologova*, cited above, § 49). By extending the applicants' detention by means of collective detention orders the domestic authorities gave no real consideration to their individual circumstances. It is even more striking that the extension order of 20 June 2005 only stated that all defendants should remain in custody without giving any grounds whatsoever for their continued detention.

62. The Court further observes that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This provision of the Convention enshrines not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Jabłoński*, cited above, § 83). In the present case the authorities never considered the possibility of ensuring the applicants' attendance by the use of a more lenient preventive measure.

63. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the basis of the gravity of the charges and using formulaic reasoning without addressing concrete facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 106 et seq., ECHR 2006-XII.); *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova* , cited above, §§ 38 et seq.; *Khudoyorov* , cited above, §§ 172 et seq.; *Rokhlina*, cited above, §§ 63 et seq.; *Panchenko* , cited above, §§ 101 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 65 et seq., ECHR 2003-IX).

64. The Court further notes that it has previously examined similar complaints lodged by the applicants' co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Dolgova*, cited above, §§ 38-50, and *Lind*, cited above, §§ 74-86). Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

65. In view of the above, the Court considers that by failing to address concrete facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicants' detention on grounds which, although "relevant", cannot be regarded as "sufficient". In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicants claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government submitted that the applicants' rights had not been infringed and no compensation should be awarded to them. In any event, they considered the applicants' claim excessive.

70. The Court observes that the applicants spent almost a year in custody with their detention having been based on insufficient grounds. The first and the third applicants were detained in inhuman and degrading conditions. Making its assessment on an equitable basis, it awards EUR 6,000 to each of the first and third applicants and EUR 2,000 to the second applicant, plus any tax that may be chargeable thereon.

B. Costs and expenses

71. The applicants did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

72. 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 detention of the first and third applicants and the excessive length of the applicants' 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 on account of the conditions of detention in respect of the first and third

applicants in remand prison no. IZ-77/2 in Moscow from 16 December 2004 to 8 December 2005;

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, 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 settlement:

(i) EUR 6,000 (six thousand euros) to each of the first and third applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President