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

FIRST SECTION

CASE OF ALEKSANDR MAKAROV v. RUSSIA

(Application no. 15217/07)

JUDGMENT

STRASBOURG

12 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Aleksandr Makarov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 15217/07) 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 Aleksandr Sergeyevich Makarov ("the applicant"), on 14 March 2007.

2. The applicant was represented by Mr I. Trubnikov, a lawyer practising in Tomsk. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of appalling conditions of his detention and of excessive length of his detention.

4. On 3 September 2007 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. Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

5. On 17 September 2008 the Court invited the parties, under Rule 54 § 2 (a) of the Rules of Court, to submit additional information concerning the applicant's continued detention after 6 December 2007.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1946 and lived in Tomsk until his arrest.

A. Institution of criminal proceedings and the applicant's arrest

8. In July 1996 the applicant was elected to the position of mayor of Tomsk. In 2000 he was re-elected.

9. In 2006 two co-owners of a private company complained to the Tomsk Regional Department of the Federal Security Service ("the FSB") that the applicant's relative, Ms E., had attempted to extort 3,000,000 Russian roubles (RUB) from them by threatening to destroy their real estate and prevent them from rebuilding. According to the co-owners, following their refusal to pay, the applicant annulled the Tomsk mayor's decision of 26 September 2005 by which their company had been provided with a plot of land and granted that plot of land to his relative, Ms E. By a letter of 15 September 2006 the applicant had also ordered the Head of the Tomsk Town Land Committee to demolish the company's property situated on that land. The Government provided the Court with a copy of the co-owners' complaint registered by the FSB on 5 December 2006.

10. On 6 December 2006 the office of the Tomsk Regional Prosecutor, acting on the complaint from the co-owners and the results of the preliminary investigative actions performed by the FSB, instituted criminal proceedings against the applicant, suspecting him of having abused his position and having aided and abetted aggravated extortion. On the same day the applicant was arrested and placed in the Tomsk Town temporary detention facility.

11. The applicant felt ill and was immediately transferred to the Scientific Research Cardiology Institute ("the Institute"), where he was diagnosed with ischemic heart disease, unstable stenocardia, impaired cardiac function, chronic pancreatitis, chronic cholecystitis and bronchitis.

12. On 8 December 2006 a commission of medical experts from the Institute issued a report finding the applicant fit to participate in the pre-trial investigation. The commission also concluded that the applicant could remain in custody on condition that urgent medical assistance was to be provided to him if necessary.

B. The applicant's detention

1. Authorisation of the applicant's detention (decisions of 8 December 2006)

13. A senior investigator from the office of the Tomsk Regional Prosecutor asked the Sovetskiy District Court of Tomsk to authorise the applicant's detention.

14. On 8 December 2006 the District Court found that the prosecution had to submit additional evidence in support of their request, and granted a seventy-two-hour extension to keep the applicant in police custody. The District Court noted that the applicant should remain under arrest until 6.07 p.m. on 11 December 2006. The relevant part of the decision read as follows:

> "At the hearing the acting head of the department... of the Tomsk Regional Prosecutor's Office, Ms K., applied for a seventy-two-hour extension to keep [the applicant] in custody pending the submission of additional evidence, namely the suspect's identification documents – a copy of the suspect's passport – in support of the request.
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> The suspect, [the applicant], disagreed with the request and stated that there were no grounds for extending his detention.
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> The suspect's lawyers also disagreed with the request and explained that [the applicant] had no intention to abscond, he had a permanent place of residence and his arrest was unlawful, as there were no grounds for his arrest as required by Article 91 of the Code of Criminal Procedure of the Russian Federation. In these circumstances they asked for the request to be dismissed.
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> Having heard the submissions of the parties to the proceedings and having examined the material in the criminal case file, the court grants the extension...
>
> By virtue of Article 108 § 7 of the Code of Criminal Procedure of the Russian Federation, a court has the right to grant an extension on request. If the court considers that the arrest was lawful and justified, [it] may grant a seventy-two-hour extension from the moment when the court decision has been taken to allow a party to submit additional evidence in support of [the claim] that the application of a measure of restraint such as detention is justified or unjustified.
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> Having examined the material in the case file, the court finds that [the applicant's] arrest was lawful and justified.
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> By virtue of Article 91 of the Code of Criminal Procedure of the Russian Federation, an investigating authority, an investigator or a prosecutor has the right to arrest a person suspected of having committed a criminal offence which is punishable by imprisonment, if one of the following conditions is satisfied:
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> (1) that person has been caught committing a crime or immediately after having committed a crime;
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> (2) victims or eyewitnesses have identified that person as the perpetrator of a criminal offence; or
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> (3) obvious traces or signs of a criminal offence have been discovered on that person or his clothes, or with him or in his house.

> As follows from the record of [the applicant's] arrest, he was arrested on 6 December 2006 on suspicion of having committed criminal offences under Article 91 § 1 (2) of the Code of Criminal Procedure of the Russian Federation because the victims had identified him as the perpetrator of the offences. There were no violations of criminal procedural law.
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> On 6 December 2006, at 9.05 a.m., that is before the arrest, criminal proceedings were instituted against the identified person – [the applicant] – on suspicion of offences under Article 33 § 5, Article 163 § 3 (b) and Article 285 § 2 of the Criminal Code of the Russian Federation.
>
> Having regard to the foregoing, the court considers it lawful and justified to grant a seventy-two-hour extension..."

15. Several hours later the prosecution provided the District Court with additional evidence (a copy of the applicant's passport, the report of the medical expert commission showing the state of the applicant's health, and documents confirming that he was the mayor of Tomsk) in support of its request for authorisation of the applicant's detention.

16. Acting upon the additional information provided by the prosecution, the District Court on the same day authorised the applicant's detention on the grounds that he was charged with serious criminal offences, he had several places of residence and he was liable to abscond and pervert the course of justice. The District Court noted that the applicant was suspected of having abused his position as mayor and that consequently, if released, he could have influenced witnesses who worked in the mayor's office and could have destroyed evidence. It also relied on the report by the medical commission, which had concluded that the applicant was fit to participate in the criminal proceedings and to remain in custody.

17. On 11 December 2006 the District Court suspended the applicant from his position as mayor of Tomsk.

18. On 18 December 2006 the Tomsk Regional Court upheld the decisions of 8 December 2006 by which the District Court had granted a seventy-two-hour extension to keep the applicant in police custody and had authorised his detention. The Regional Court endorsed the reasons given by the District Court.

19. Later in December other two criminal cases were launched against the applicant. On 25 December 2006 he was additionally charged with aggravated abuse of position and illegal business activities. In particular, the prosecution suspected that in 1997, abusing his powers as the mayor of Tomsk, the applicant had unlawfully obtained 30% of the shares in a large wholesale company and approximately 33% of the shares in another public company.

2. Extension of the applicant's detention until 6 May 2007 (detention order of 5 February 2007)

20. On 30 January 2007 the Tomsk Regional Prosecutor asked the Sovetskiy District Court to extend the applicant's detention for an additional three months, arguing that the applicant was charged with serious criminal offences and that he was liable to influence witnesses, destroy evidence, pervert the course of justice and abscond. The prosecutor relied on information provided by the Tomsk Regional FSB Department, according to which the applicant wanted to leave Russia and move to a member State of the European Union, possibly Poland or the Czech Republic. A letter from a deputy head of the Tomsk Regional FSB Department was enclosed. The relevant part of the letter read as follows:

> "Thus, according to the available information, [the applicant] has asked his daughter Ms Y. to resign from [her position] in the law-enforcement bodies and to sell quickly the immovable property she owns, including a house..., and has advised her to leave Russia with her children as soon as possible.
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> At the same time, [the applicant] is taking steps to pervert the course of the investigation using his connections with the authorities in Tomsk and the Tomsk Region. In particular, [the applicant], with the help of his relatives and confidants, has influenced officials of the [Tomsk] Town Council who are acting as witnesses in criminal case no. 2006/4500, including by making threats to use physical force against them and their family members. Moreover, he is actively using negative information damaging to the reputation of senior officials and employees of the Tomsk mayor's office, the Tomsk Regional Administration and members of the Tomsk Town Council.
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> Furthermore, ... on orders from [the applicant], his confidants and close relatives visited Moscow and had several meetings with high-ranking officials, including those in the Office of the President of the Russian Federation, and with intermediaries who have connections with corrupt officials in law-enforcement bodies who may discontinue the criminal proceedings against him in return for money. As a result of those meetings, presumably, [the applicant's] confidants reached an agreement concerning the provision of consultative, administrative and legal assistance in their efforts to secure [the applicant's] release.
>
> The available information supports the conclusion that, if released, [the applicant] will have real opportunities to obstruct the course of justice."

21. At the same time the applicant's lawyers lodged an application with the Sovetskiy District Court for the applicant's release. They argued that the applicant had a permanent place of residence in Tomsk, that his family also lived in Tomsk, that he did not have any immovable property outside Tomsk and that he did not have a passport to travel. Furthermore, he had been registered as a candidate for the forthcoming parliamentary elections in the Tomsk Region and had deposited RUB 900,000, approximately 26,000 euros (EUR) to be registered as a candidate. The lawyers insisted that the applicant did not intend to abscond, arguing that there was no evidence that his relatives had sold property or had bought foreign currency.

They also pointed out that he was sixty-one years old and seriously ill and that he needed special medical treatment and a particular diet which could not be provided in a detention facility.

22. On 5 February 2007 the District Court accepted the prosecutor's request and extended the applicant's detention until 6 May 2007. The relevant part of the decision read as follows:

> "Thus, [the applicant] is currently suspended from his position as mayor of Tomsk; however, by virtue of Article 114 of the Code on Criminal Procedure of the Russian Federation, this measure is temporary and does not entail dismissal from the position or loss of social and employment status and personal authority over certain groups of individuals and officials who may be questioned as witnesses in the course of the criminal proceedings. In particular, [the applicant's] former subordinates may act as witnesses in the criminal investigation.
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> ...
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> When on 8 December 2006 the court chose a measure of restraint, [it] noted that there was evidence supporting the conclusion that the defendant might abscond; that evidence did not cease to exist after the examination of the question of the application of the measure of restraint. Thus, [the fact that the applicant has] a permanent place of residence and the family (wife, children, grandchildren) in one town, [and that he does not have] immovable property and bank accounts outside Tomsk cannot serve as an independent ground excluding the possibility of the defendant's absconding or perverting the course of the investigation. [The applicant] can also participate in the election campaign while outside his electoral district.
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> There is no evidence that the state of [the applicant's] health has deteriorated since he has been in custody. According to the conclusions of the complex forensic medical examination no. 342-Uzh, [the applicant] has several chronic conditions, including...; however, taking into account those diseases, he may be detained on condition that urgent special medical assistance is provided."

23. On 1 March 2007 the Tomsk Regional Court upheld the decision of 5 February 2007, endorsing the reasons given by the District Court.

24. On 26 April 2007 the applicant was charged with bribery and an additional two counts of aggravated abuse of position. In particular, the prosecution alleged that he had bought a municipal plot of land, paying a tenth of its value as had been estimated by the Tomsk Town Land Committee, and that he had received RUB 300,000 as a bribe.

3. Extension of the detention until 6 September 2007 (order of 4 May 2007) and request for a medical examination

25. On 25 April 2007 the applicant's counsel, Mr K., asked a senior investigator from the office of the Tomsk Regional Prosecutor to authorise a medical examination of the applicant by three particular specialists in view of the fact that the authorised period of his detention was to expire on 6 May 2007 and he was continuously complaining of severe back and stomach pain and the lack of adequate medical assistance.

26. Three days later the senior investigator dismissed the request on the ground that the applicant had undergone treatment in a prison hospital from 8 December 2006 to 12 January 2007 and that he had on numerous occasions been examined by groups of prison doctors who had found him fit to participate in the investigation.

27. On 4 May 2007 the Sovetskiy District Court extended the applicant's detention until 6 September 2007 on the grounds that he was charged with serious criminal offences, that he could have influenced witnesses – his former subordinates – using his official powers and that he was liable to pervert the course of justice and abscond. The District Court also found that the applicant's state of health was stable and he was fit to remain in detention. According to the Government, in its decision to extend the applicant's detention the District Court had relied on information provided by the Tomsk Regional FSB Department. The FSB officials alleged that the applicant's relatives "were actively selling immovable and other property belonging to the mayor's family" and "were using proceeds to buy large sums of foreign currency for a subsequent move to foreign countries".

28. On 31 May 2007 the Tomsk Regional Court upheld the decision of 4 May 2007, finding no grounds for the applicant's release.

4. Extension of the detention until 6 December 2007 (decision of 3 September 2007)

29. In July and August 2007 criminal proceedings were instituted against the applicant pertaining to three other counts of abuse of position, two counts of aggravated bribery, possession of drugs and aiding and abetting fraud.

30. On 23 August 2007 the applicant was served with a bill of indictment comprising accusations on all charges. Four days later the pre-trial investigation was completed and the applicant and his lawyers began studying the case file.

31. On 3 September 2007 the Sovetskiy District Court extended the applicant's detention until 6 December 2007. The relevant part of the decision read as follows:

> "As it follows from the case file materials, [the applicant] is charged with serious and particularly serious criminal offences and the case is very complex, which is confirmed by the substantial volume of the materials (approximately thirty-five volumes) and the necessity for the defendant and his lawyers to study the file...
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> It also follows from the case file materials that the measure of restraint was chosen for [the applicant] correctly, in accordance with Article 97 of the Russian Code of Criminal Procedure, which is based on the particular seriousness of the charges, [and] the presence of the possibility for the defendant to use his official powers to prevent the establishment of the truth.

> The grounds for the application of such [a measure of restraint] did not cease to exist; [they] did not change and the new grounds, showing that it is necessary to apply another measure of restraint, did not emerge.
>
> Taking into account the materials of the case file and having regard to the official and material status of the defendant, the court has grounds to consider that, if released, [the applicant] as the head of the municipality might apply pressure to the witnesses, and [he] might also escape from the investigating authorities, including by leaving the Russian Federation.
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> A temporary suspension from the office does not mean the dismissal from the position, the loss of social and official status, [the loss] of personal authority over particular groups of private individuals and officials who may be questioned as witnesses in the case during the pre-trial investigation or in a court.
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> ...
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> The [fact] that [the applicant] does not have a travel passport or medical insurance for a foreign State cannot serve as evidence that it is impossible for him to leave the Russian Federation.
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> [The facts that the applicant] has a permanent place of residence, [and] the family (spouse, children and grandchildren) living within the same town, [that he] does not have immovable property or bank accounts in foreign States cannot on their own serve as an independent ground excluding a possibility of the defendant's absconding the investigation and trial or his liability to pervert the course of the investigation.
>
> According to a medical certificate, [the applicant's] state of health allows his detention in a temporary detention facility.
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> ...
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> While extending the detention, the court takes into account the absence of prior convictions, the defendant's state of health, the presence of the permanent places of residence and work, [his] age, however, taking into account the above stated, [the court] does not find any ground permitting a change of the measure of restraint applied to [the applicant]."

32. On 27 September 2007 the Tomsk Regional Court upheld the decision of 3 September 2007, noting that the District Court had not relied exclusively on the gravity of the charges against the applicant, and that it had taken into account other relevant information, such as the likelihood that applicant would abscond and pervert the course of justice by threatening witnesses and victims and prompting them to withdraw or change their statements.

5. Extension of detention until 6 March 2008 (detention order of 3 December 2007)

33. On 3 December 2007 the Tomsk Regional Court extended the applicant's detention for an additional three months, until 6 March 2008, to allow the defendants to finish studying the case file. The Regional Court held that the grounds for the applicant's arrest, that is the gravity of the charges against him and his liability to abscond, pervert the course of justice and reoffend, were still applicable and that they warranted the exceptional

duration of the detention for more than twelve months, in spite of the arguments advanced by the defence and the personal surety offered on the applicant's behalf by the Archbishop of the Tomsk Region. Furthermore, the Regional Court noted that the case file contained information pertaining to the applicant's attempts to influence a victim, Mr L., and a witness, Mr B., and his alleged attempts to pervert the course of the investigation.

34. The applicant and his lawyers appealed, arguing that the Regional Court had failed to indicate any instance when the applicant had attempted to influence witnesses or victims. They insisted that the prosecution authorities had not presented any evidence of the applicant's alleged attempts to influence the course of the investigation or of his liability to abscond or reoffend.

35. On 11 February 2008 the Supreme Court of the Russian Federation upheld the decision of 3 December 2007, noting that "at the time of the arrest [the applicant] was the mayor of Tomsk and he was charged with serious criminal offences pertaining to his office." The Supreme Court also agreed with the Regional Court that additional time was necessary for the parties to finish reading the sixty-one volumes of the case file.

6. Extension of the detention until 6 June 2008 (detention order of 3 March 2008)

36. On 3 March 2008 the Tomsk Regional Court extended the applicant's detention until 6 June 2008. The reasoning was identical to the one given in the decision on 3 December 2007, save for one detail: the Regional Court mentioned that in 2007 the applicant's relatives had bought large amounts of foreign currency. In addition, the Regional Court noted the exceptional duration of the applicant's detention, holding as follows:

> "While extending [the applicant's] detention on the grounds prescribed by Article 109 § 7 of the Russian Code of Criminal Procedure, the court also notes that the suspect has been in custody for more than a year.
>
> However, the court, relying on Article 109 § 3 of the Russian Code of Criminal Procedure, considers that the particular complexity of the criminal case, the seriousness of the charges against [the applicant], [his] social and official status, the presence of circumstances which allow to conclude that, if released, [the applicant] is liable to abscond and pervert the course of justice represent the exclusive grounds warranting the extension of [the applicant's] detention for more than twelve months."

37. On 21 April 2008 the Supreme Court of the Russian Federation upheld the decision of 3 March 2008, endorsing the reasons given by the Regional Court.

7. Listing of the first trial hearing and extension of the detention until 20 November 2008 (decision of 3 June 2008)

38. On 3 June 2008 the Tomsk Regional Court held a preliminary hearing in the case. It examined and granted a number of requests lodged by

the applicant, his co-defendant and their lawyers, including a request for a jury trial and exclusion of certain items from evidence. By the same decision the Regional Court extended the applicant's detention for an additional six months, until 20 November 2008, noting that the measure of restraint had been correctly chosen and that "the grounds for detention had not changed". The Regional Court also held that the applicant could influence witnesses who worked in the Tomsk Mayor's office and that he had several places of residence, thus being liable to abscond.

39. On 18 August 2008 the Supreme Court of the Russian Federation upheld the decision, finding that the Regional Court had correctly identified the grounds for the extension of the detention and had issued a reasoned decision.

40. It appears that the trial proceedings are still pending and the applicant remains in custody.

C. Conditions of the applicant's detention

1. Medical assistance

41. On 8 December 2006 the applicant, having had an initial diagnosis of ischemic heart disease and unstable stenocardia, was admitted to the hospital in the Tomsk Town temporary detention facility. The Government provided a detailed description of the treatment administered to the applicant, including the type and frequency of medical procedures, type and dose of medicine. They also furnished a copy of the applicant's medical record and medical certificates.

42. As it follows from the presented documents, on the day of his admission to the prison hospital the applicant was submitted to five electrocardiographic examinations. It was established that he was not suffering from an acute heart condition. On 11 December 2006 the applicant was examined by a medical commission comprising nine specialists in various fields of medicine. The commission concluded that the applicant suffered from encephalopathy of the first and second degree aggregated by cervicalgia and accompanied by a syndrome of moderate pain; chronic pancreatitis and chronic cholecystitis in the state of remission. The treatment was prescribed. A week later the applicant was again examined by the commission with the participation of two cardiologists from the Tomsk Regional Clinical Hospital. The diagnosis of ischemic heart disease was confirmed. The doctors concluded that the applicant's state of health was stable and that he did not need permanent medication. On 20 and 21 December 2006 the applicant did not consent to an examination by a neurologist. On 11 January 2007 he refused to have blood taken for a complete biochemical analysis. On the same day a group of three doctors examined the applicant, finding that he could be discharged from the

hospital because his health was satisfactory and he was able to take part in investigative actions, including those performed outside the detention facility. On 19 January 2007 the applicant was examined by a medical commission comprising two surgeons, a therapist, a neurologist and an expert in ultrasound examinations from the Tomsk Regional Somatic Hospital. They confirmed the applicant's diagnosis and set up a schedule for treatment. The applicant received etiotropic and pathogenic treatment in the facility medical department.

43. As it follows from the information provided by the Government, the applicant remains under constant medical observation by a number of specialists in various fields of medicine, undergoing regular medical check-ups, including ultrasonic scanning, electrocardiographic examinations and blood tests. The applicant's state of health is considered "stable [and] satisfactory".

2. Number of inmates per cell, sanitary conditions, facilities and food

44. The parties did not dispute the measurements of the cells and the number of inmates detained together with the applicant. As it follows from their submissions, on 12 January 2007 the applicant was placed in cell no. 214 which measured 9.5 square metres and had four sleeping places. He was detained alone. From 1 February to 23 May 2007 the applicant was kept in cell no. 26 which measured 9.2 square metres and was equipped with a two-tier metal bunk. He shared the cell with another detainee. Since 23 May 2007 the applicant has been detained in cell no. 251, measuring 11.5 square metres and having two two-tier metal bunks. From 23 May to 27 September 2007 the cell accommodated two detainees. Since 27 September 2007 the applicant has been sharing the cell with two inmates.

45. It was likewise undisputed that each cell had a window measuring 70 centimetres in width and 90 to 95 centimetres in length. The windows were not covered with metal shutters, but there were two layers of metal vertical and horizontal lattices on the outer and inner sides of each window. Openings between the metal bars, measuring 20 square centimetres between the external lattices and 16 square centimetres between the internal lattices, brought natural light in the cells. According to the applicant, the lighting was clearly insufficient, as the metal bars blocked access to natural light and fresh air. The applicant claimed that insufficient lighting had impaired his eyesight. His condition was further exacerbated by the fact that he suffered from myopathy and increased intraocular pressure possibly coupled with glaucoma. He experienced severe headaches and became extremely tired if he attempted to work or read. The Government submitted that the size, location and number of windows allowed inmates to read and work in natural lighting. The cells were constantly lit with electric incandescent lighting: 100-watt bulbs during the daytime and 40-watt bulbs at night. The

Government stressed that the lighting was in accordance with sanitary norms.

46. According to the Government, the detention facility was equipped with a central heating system. Each cell had a two- or three-unit heating device. In a certificate issued on 13 November 2007, the facility director noted that the temperature in the cells during the heating season "depended on the provision of the heat by the town heating system, according to the temperature chart". The Government, relying on the information provided by the facility administration, further stated that the average temperature in the cells was 20 degrees Celsius in winter and 23 degrees Celsius in summer. The applicant averred that the Government did not indicate the year for which the average temperature had been measured. He argued that it was extremely hot in summer and cold in spring and winter.

47. The parties further submitted that the windows in the cells had a casement. Inmates could open the casement to bring in fresh air. Each cell had a ventilation system. According to the Government, the applicant was also allowed to have a private fan. The latter fact was disputed by the applicant, who pointed out that an extract from a log, presented by the Government and showing his personal belongings, did not bear his signature against the last line, where the private fan was mentioned, although he had confirmed receipt of all other items with a signature.

48. Each cell was equipped with a lavatory pan, a sink, a tap for running water and wooden desk. A smaller cell had a wooden bench. The lavatory pan was placed in the corner of the cell. The Government produced black and white photos of the cells where the applicant had been detained. The photos showed that the lavatory pan was separated from the living area by a tiled brick partition. As it follows from a certificate issued on 13 November 2007 by the facility director, the height of the partitions varied from 145 to 165 centimetres. The applicant submitted that the partition afforded no privacy, as it had been only installed on the one side of the lavatory pan. The pan could still be seen by inmates lying on the bunks and warders standing near the cell door. The applicant further pointed out that inmates were not provided with cleaning fluids for the sanitary equipment.

49. The applicant was allowed to take a shower once a week for a minimum of fifteen minutes. The applicant asserted that it was difficult to maintain personal hygiene, particularly in summer when it was extremely hot. He could also take a one-hour walk in a small concrete facility courtyard. The applicant insisted that the courtyard was so small that he could not do any physical exercises although the prison doctor had prescribed him therapeutic exercises to alleviate back pain caused by osteochondrosis.

50. At all times the applicant had an individual sleeping place and he was provided with bedding. The applicant argued that the bedding, in particular a mattress, did not satisfy his needs. Relying on medical

certificates and his medical record, the applicant submitted that he suffered from osteochondrosis of the vertebral column with the primary localisation in the lumbar spine. Prison doctors who had examined the applicant on two occasions recommended that the applicant should be provided with a special board which could be placed under the mattress to provide support for his back. The recommendation was not fulfilled. As a result the applicant suffered from severe back pain. In particular, the pain was so severe that on four occasions in March, April and May 2007 a prison doctor prescribed him painkillers. Furthermore, the applicant pointed out that the distance between the lower and upper tiers of the bunks was only 65 centimetres. The applicant was thus forced to bend when seated, experiencing additional back pain.

51. The Government, relying on the information provided by the director of the facility and copies of entries to facility logs, further stated that the applicant was given dietetic food "in accordance with the norms established for detainees undergoing medical treatment". Medical personnel checked the quality of the food and made entries to that effect in logs. On a number of occasions the applicant refused to eat facility food. However, during the entire period of his detention he received 308 food parcels from his relatives and on thirty-seven occasions he bought food from a facility shop. The applicant submitted that the chronic diseases, that is chronic cholecystitis and pancreatitis, from which he suffered required dietary management which could not be met by normal diet alone. The food prepared in the facility did not correspond to the distinctive nutritional needs and was not intended for the dietary management of those diseases. For example, during two first weeks of his detention he was served fried potatoes and boiled fat, which had been expressly prohibited for the applicant.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

52. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

B. Complaint to a prosecutor

53. Sections 22 and 27 of the Prosecution Authority Act (Federal Law no. 2202-1 of 17 January 1992) establish a list of prosecutors' official powers, including rights to enter premises, to receive and study materials and documents, to summon officials and private individuals for questioning, to examine and review complaints and petitions containing information on alleged violations of individual rights and freedoms, to explain avenues of protection of those rights and freedoms, to review compliance with legal norms, to institute administrative proceedings against officials, to issue warnings about impermissibility of violations and to issue reports pertaining to elimination of the discovered violations.

54. Section 24 provides that a prosecutor's report pertaining to elimination of the discovered violations is served on an official or a body, which has to examine the report without delay. Within a month specific measures aimed at the elimination of the violation should be taken. The prosecutor should be informed about the measures taken.

C. Placement in custody and detention

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

1. Preventive measures

56. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 98 of the new CCrP).

2. Authorities ordering detention

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

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

3. Grounds for remand in custody

58. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or

trial or obstruct the establishment of the truth or reoffend (Article 97 § 1 of the new CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99 of the new CCrP). A defendant should not be remanded in custody if a less severe preventive measure is available.

4. Time-limits for detention

(a) Two types of remand in custody

59. The Code makes a distinction between two types of remand in custody: the first being "during investigation", that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being "before the court" (or "during trial proceedings"), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

(b) Time-limits for detention "during investigation"

60. After arrest the suspect is placed in custody "during investigation". The maximum permitted period of detention "during investigation" is two months but this can be extended for up to eighteen months in "exceptional circumstances". Extensions are to be authorised by judicial decisions, taken by courts of ascending levels. No extension of detention "during investigation" beyond eighteen months is possible (Article 109 § 4 of the new CCrP).

61. The period of detention "during investigation" is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9 of the new CCrP).

62. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 109 § 8 (1) of the new CCrP).

(c) Time-limits for detention "before the court"/"during judicial proceedings"

63. From the date the prosecutor refers the case to the trial court, the defendant's detention is classified as "before the court" (or "during judicial proceedings").

64. The new CCrP provides that the term of detention "during judicial proceedings" is calculated from the date the court received the file up to the date on which the judgment is given. The period of detention "during judicial proceedings" may not normally exceed six months, but if the case

concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

5. Time-limits for trial proceedings

65. The new CCrP empowers the judge, within fourteen days of receipt of the case file, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

66. The duration of the entire trial proceedings is not limited in time.

67. The new CCrP provides that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

III. RELEVANT INTERNATIONAL DOCUMENTS

68. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

> "b. temporary holding facilities for criminal suspects (IVS)
>
> 26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.
>
> The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.
>
> ...
>
> 45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.
>
> When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.
>
> ...

> The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).
>
> ...
>
> 125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".
>
> In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

69. The applicant complained that the conditions of his detention in the Tomsk Town temporary detention facility were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

70. The Government submitted that the applicant had failed to exhaust domestic remedies as he had never applied to a prosecutor, an ombudsman or a court. They pointed out that it was the prosecutor's direct responsibility to "restore individual rights which had been violated". The applicant could have effectively exercised his right and applied to a prosecutor who, in his turn, could have conducted an inquiry and, if the complaints were considered plausible, could have introduced "a representation regarding

removal of the discovered violations". The Government cited examples of allegedly successful complaints by inmates to prosecutors' offices in the Kaluga, Novosibirsk, Vladimir and Khabarovsk Regions of the Russian Federation. For instance, the Government stressed that as a result of the efficient work of the Kaluga Regional prosecutor's office the number of complaints lodged with it by inmates had decreased from 100 in the first half of 2006 to 61 in the first half of 2007. At the same time, only 13.1% of the complaints lodged with the Kaluga Regional prosecutor's office in 2007 were considered well-founded in comparison to 18% of complaints found to be well-founded in 2006.

71. The Government further asserted that an avenue of lodging a civil action was also opened to the applicant. In the Government's opinion, the effectiveness of that avenue was unquestionable. They indicated that a number of individuals had received compensation for "improper" conditions of their detention in the Perm Region, the Tatarstan and Mariy El Republics. The Government did not provide the Court with copies of the above-mentioned judgments.

72. In the last line of arguments supporting the non-exhaustion assertion, the Government noted that the applicant was able to complain to a court. In August 2007 a court accepted his complaint about the facility administration's refusal to allow him to have a refrigerator in the cell. At the same time the court dismissed his requests for an additional medical examination by independent experts and for receipt of an unlimited number of parcels from his relatives on the ground that the impugned limitations were rooted in the domestic legal norms.

73. In alternative, the Government submitted that, if the Court were to find that the applicant had made use of domestic remedies his complaint should in any event be dismissed because it was manifestly ill-founded. In particular, the Government insisted that every aspect of the applicant's detention was in compliance with every existing legal norm. He was provided with adequate medical assistance and dietetic food. He was detained in satisfactory sanitary conditions in cells which were not overcrowded. The applicant had a sleeping place at all times.

74. The applicant averred that his complaints to prosecution authorities would not have afforded him any redress, as the criminal proceedings against him had been instituted and the measure of restraint had been chosen by the same authorities. Furthermore, the applicant considered that a complaint to any domestic authority would not have any prospect of success, as the situation in which he had found himself for the last two years was identical to the situation of other detainees. The problem was general in nature and did not only concern him personally, although his situation was further aggravated by his poor state of health. The applicant asserted that it was unreasonable to expect an improvement of his situation when the

authorities insisted that every aspect of his detention was in compliance with legal norms.

75. The applicant further submitted that the detention conditions were particularly harsh on him, taking into account his state of health. For instance, although the food was described as "dietetic", it did not correspond to the applicant's diagnosis and the Government did not argue otherwise. Fearing agonising stomach pain, the applicant was forced to refuse the food provided by the facility and had to ask his relatives to provide him with dietetic food. The large number of parcels which he received was an additional argument to support his allegation of "improper" food ration. The applicant further complained that the use of a lavatory pan was degrading as it was necessary to do so in the sight of the other cell occupants and warders. The applicant also asserted that the cell windows had a disorientating effect as the rows of lattices blocked access to natural light. In addition, the electric lighting in the cells was continuously on, resulting in deterioration of the applicant's eyesight. The applicant maintained his complaints pertaining to the remaining aspects of his detention.

B. The Court's assessment

1. Admissibility

76. As to the Government's objection of non-exhaustion, the Court reiterates that in other relevant cases regarding the conditions of detention it has found that the Russian Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see, for example, *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, and *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). The Court also reiterates its finding made in the context of a complaint under Article 13 of the Convention that in Russia there have been no domestic remedies whereby an applicant could effectively complain about the conditions of his or her detention (see *Benediktov v. Russia*, no. 106/02, § 30, 10 May 2007).

77. The Court, however, does not lose sight of the fact that in those cases against Russia the focal point for the Court's analysis and ensuing conclusion that no effective remedy was available was linked to the applicants' allegations of overcrowding beyond the design capacity and of a shortage of sleeping places. This is not the situation in the present case. In this connection, the Court reiterates that it has jurisdiction in every case to assess in the light of the particular facts whether any given remedy appears to offer the possibility of effective and sufficient redress within the meaning

of the generally recognised rules of international law concerning the exhaustion of domestic remedies (see *Denisov c. Russia* (dec.), no. 33408/03, 6 May 2004). The Court considers it necessary to examine whether in the particular circumstances of the present case avenues of remedy relied on by the Government could have been regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention.

(a) General principles

78. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity -, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

79. Under Article 35 of the Convention, normally recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). Article 35 also requires that the complaints made before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

80. Furthermore, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate

and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

81. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot*, cited above, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it 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 applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

(b) Application of the general principles to the present case

82. The Court notes that the Government listed three possible avenues of exhaustion which could have been employed by the applicant, in particular a complaint to a prosecutor, an application to an ombudsman and a civil action for damages.

83. The Court observes, firstly, that, as a general rule, an application to an ombudsman cannot be regarded as an effective remedy as required by Article 35 of the Convention (see *Lentinen v. Finland* (dec.), no. 39076/97, 14 October 1999, and, *mutatis mutandis*, *Leander v. Sweden*, 26 March 1987, §§ 80-84, Series A no. 116; and *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, Decisions and Reports (DR) 52, p. 235). The Court sees no reason to reach a different conclusion in the present case. It reiterates that for a remedy to be considered effective it should be capable of providing redress for the complaint. That means that the powers and procedural guarantees possessed by an authority, which have been relied on by the Government as a remedy, are relevant in determining whether the remedy is effective. It was undisputed by the parties that an ombudsman lacked the power to render a legally binding decision. The Court, therefore, finds that recourse to an ombudsman, an organ which may merely supervise administration of detention facilities, does not constitute an effective domestic remedy within the meaning of Article 35 of the Convention.

84. The Court notes the further argument by the Government that a complaint to a prosecutor could have provided the applicant with redress for the alleged violation of his rights. However, the Court is not convinced by

the list of allegedly successful inmates' complaints to various prosecutors presented by the Government (see paragraph 70). Apart from the fact that the Government neither provided the Court with copies of the inmates' complaints and prosecutors' decision taken upon them nor explained in detail the nature of those complaints and clarified the measures taken by the prosecution authorities, the Court is not persuaded that by issuing "a representation regarding removal of discovered violations" a prosecutor was capable of remedying directly the state of affairs arising of the conditions of the applicant's detention (compare with *Civet v. France* [GC], no. 29340/95, § 43, ECHR 1999-VI, and *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

85. The Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint of inhuman and degrading treatment is whether the applicant could have raised that complaint before a prosecutor in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). The Court notes that the Government did not explain how a "representation" by a prosecutor could have offered the aforementioned preventive or compensatory redress or both for allegations of the conditions of detention which had been contrary to Article 3 of the Convention (see, for similar reasoning, *Ostrovar v. Moldova* (dec.), no. 35207/03, 22 March 2005). Accordingly, the Court does not consider that the Government have discharged the burden upon them of proving that a complaint to a prosecutor was capable of providing redress in respect of the applicant's Convention complaint.

86. The Court further reiterates the Convention institutions' consistent case-law, according to which a hierarchical complaint 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). The same logic is applicable in the present case. It was undisputed by the parties that under Russian law a prosecutor is not required to hear the complainant and the ensuing proceedings are entirely a matter between the supervising prosecutor and the supervised body. 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 complaint. It follows that a complaint to a prosecutor does not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such a complaint does not therefore constitute an effective remedy within the meaning of Article 35 of the Convention.

87. As to the third avenue allegedly open to the applicant, the Court notes that the Government, without providing any further explanation, suggested that an action for damages lodged with a court could have been an effective remedy in the applicant's case for his complaints about the poor conditions of his detention. The Government did not make any reference to any legal norm on the possibility of lodging an action seeking damages for treatment already suffered as a result of the conditions of detention, or on the possibility of such an action being preventive of further sufferings. At the same time, without providing copies of respective court judgments, the Government supplied three examples from domestic practice showing that by using the means in question it was possible for the applicant to obtain compensation for damage. In this connection, the Court observes that in the absence of documents supporting the Government's assertion, it is unable to identify the relevance of the impugned judgments to the issue of the effectiveness of an action for damages as a remedy in the circumstances of the present case. Furthermore, in the Court's view, the three cases cited by the Government do not suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy (see, for a similar approach, *Horvat*, cited above, § 44).

88. In any event, the Court does not lose sight of the Government's argument that every aspect of the conditions of the applicant's detention, including the lighting, food, medical assistance, sanitary conditions, etc., complied with applicable legal regulations. The Court finds it questionable whether, in a situation where domestic legal norms prescribed such conditions of the applicant's detention, the applicant would have been able to argue his case before a court or even state the cause of action to pass the admissibility stage (see *Guliyev v. Russia*, no. 24650/02, § 55, 19 June 2008, and *Valašinas v. Lithuania* (dec.), no. 44558/98, 4 March 2000). In other words, the Court has strong doubts that the applicant would have had a realistic opportunity to apply effectively to a court.

89. This conclusion is not altered by the fact that on one occasion the applicant was able to challenge successfully the facility administration's decision not to permit him to have a refrigerator in the cell. To the contrary, the Court observes that the applicant's ability to obtain a favourable court decision in that particular case supports the above finding that a civil action for damages did not offer the applicant sufficient prospects of success. As it follows from the Government's submissions, the domestic court annulled the facility administration's refusal on the ground that it did not comply with the legal norms. At the same time in the two other cases in which the applicant attempted to challenge the facility administration's actions, the courts, in dismissing the applicant's complaints, explicitly relied on the fact that the impugned limitations on the applicant's rights were established legally (see paragraph 72 above). The approach adopted by the Russian courts seems unduly formalistic. It allows a large number of cases, such as

the applicant's, where the conditions of detention result from legal regulations, to be dismissed. Thus, as a result of that stance of the courts, an action to a court offers no prospect of success and could be considered theoretical and illusory rather than adequate and effective in the sense of Article 35 § 1 of the Convention.

90. In the light of the foregoing, the Court concludes that the Government did not point to any effective domestic remedy by which the applicant could have obtained redress for the allegedly inhuman and degrading conditions of his detention. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

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

2. Merits

92. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of 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,* cited above, § 44, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although 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).

93. The Court further reiterates that in certain cases the lack of personal space afforded to detainees in Russian remand prisons was so extreme as to justify, in its own right, a finding of a violation of Article 3 of the Convention. In those cases applicants usually disposed of less than three sq. m of personal space (see, for example, *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia,* no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia,* no. 62208/00, § 44, 16 June 2005). By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of physical conditions of detention as being relevant for its assessment of compliance

with that provision. Such elements included, in particular, the opportunity to use the toilet in private, availability of ventilation, access to natural light or air, adequacy of heating arrangements, and compliance with basic sanitary requirements. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007; and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III).

94. Turning to the facts of the present case, the Court observes that the applicant has spent more than two years in the Tomsk Town temporary detention facility. Although there was no allegation of overcrowding beyond the design capacity or of a shortage of sleeping places (see, by contrast, *Grishin v. Russia*, no. 30983/02, § 89, 15 November 2007, and *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI), the conditions in the detention facility were nevertheless extremely cramped. Although the Court does not lose sight of the fact that for the first two weeks of the detention the applicant was held alone in a 9.5-sq.-m cell and that for the remaining period he was detained together with one or two detainees in cells measuring 9.2 or 11.5 sq. m., thus having 4.1 to 3.8 sq. m. of the living area, the Court is particularly mindful of the fact that since 27 September 2007 he has been afforded less than four square metres of living space. Furthermore, part of the cell surface was occupied by one or two metal two-tier bunks serving as beds for the occupants. The rest of the space was taken up by a wooden desk and bench (in a smaller cell), a tap and a cubicle in which a lavatory pan was situated. As it appears from the black and white photos of the cells submitted by the Government, that arrangement left inmates with literally no free space in which they could move.

95. The applicant's situation was further exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day in the small facility courtyard, leaving him with twenty-three hours to endure every day without any kind of freedom of movement. In this connection, the Court does not overlook the fact that the applicant was prescribed physical exercise by a prison doctor to reduce his back pain.

96. The Court further observes that the windows in the cells in which the applicant was held were small and covered with two horizontal and vertical layers of thick lattices leaving small cubicles in between. This arrangement significantly reduced the amount of daylight that could penetrate into the cell and cut off fresh air. The Court is not convinced that the opening of a little casement could bring in fresh air. It appears that the cells were ventilated through a ventilation shaft. However, as it appears from the documents submitted by the Government, the applicant did not have a

portable fan. It therefore appears that for more than two years the applicant had to spend a considerable part of each day practically confined to his bed in a cell with poor ventilation and no window in the proper sense of the word (compare *Peers*, cited above, § 75).

97. It is also of particular concern for the Court that although a partition was installed between the living area and the lavatory pan, it did not offer privacy to a detainee using the toilet as he could still be seen by other inmates sitting on the bunks or by warders (compare with *Grishin v. Russia*, no. 30983/02, § 94, 15 November 2007). Furthermore, the Court notes the applicant's argument, which was not disputed by the Government, that inmates were not provided with cleaning fluids for the lavatory pan.

98. Having regard to the cumulative effect of those factors, the Court finds that the fact that the applicant, being afforded no privacy and experiencing a lack of personal space, was obliged to live, sleep and use the toilet in poorly lit and ventilated cells for more than two years, must have caused him distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

99. Furthermore, while in the present case it cannot be established that the heating, food or sanitary conditions in the facility were unacceptable from the standpoint of Article 3, the Court nonetheless notes other regrettable aspects of the applicant's detention, undisputed by the parties, namely limited access to the shower and absence of a sleeping arrangement appropriate for the applicant's state of health (see paragraph 50 above). The Court considers that those factors also had a debilitating effect on the applicant (see *Melnik v. Ukraine*, no. 72286/01, § 107, 28 March 2006). In addition, the Court observes that the applicant was diagnosed with several serious diseases while in detention. Although this fact in itself does not imply a violation of Article 3, given, in particular, the fact that the applicant did not argue that the diseases had been acquired during the detention and the fact that he received adequate treatment and that his condition was considered to be stable or even satisfactory, the Court finds that these aspects are relevant in addition to other factors of the conditions of detention, to show that the aggravating impact which these conditions had on the applicant went beyond the threshold tolerated by Article 3 of the Convention (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005, with further references; *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005; and, mutatis mutandis, *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005).

100. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the Tomsk Town temporary detention facility, which the Court considers to be inhuman within the meaning of this provision.

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

101. The applicant complained that his detention was excessively long. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which provides:

> "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..."

A. Submissions by the parties

102. The Government submitted that the applicant's arrest was based on a reasonable suspicion that he had committed criminal offences. The victims' written complaints, their detailed account of events and results of ensuing preliminary operative investigative actions supported the "reasonableness" of the suspicions against the applicant.

103. As to subsequent extensions of the applicant's detention, the Government stressed that the criminal case under consideration had a very specific feature. In particular, after the criminal proceedings against the applicant had been instituted on the initial charges of abuse of position and aggravated extortion, a number of new accusations were brought against the applicant and, accordingly, new sets of criminal proceedings were initiated. Each additional set of the criminal proceedings necessitated the applicant's detention. The Government pointed out that the domestic courts had not relied solely on the gravity of the charges. While authorising further extensions of the applicant's detention, the courts also took into account his liability to abscond and pervert the course of justice. In the Government's view, the applicant's release could also endanger public order.

104. In a further line of argument, the Government attempted to substantiate each ground relied on by the domestic courts. In particular, they submitted that the applicant was a man of substantial financial resources. Although in December 2006, during searches in his office and housing premises which belonged to him, police officers seized RUB 36,000,000; only a month later he paid an electoral deposit of RUB 900,000. The applicant owned a private enterprise and had shares in other companies. He also owned a car and several houses and plots of land.

105. The Government insisted that the applicant was likely to abscond, relying on the fact that his relatives were selling property and buying foreign currency. In the Government's opinion, they intended to leave Russia. The Government supported the domestic courts' findings that the facts that the applicant did not own property outside Russia, that he did not have medical travel insurance, that he did not speak any foreign language, that his family lived in Tomsk and that he had immovable property in Tomsk, did not exclude the possibility of his absconding.

106. The Government further argued that the applicant, as mayor of Tomsk, could have influenced witnesses, employees of the Tomsk Town mayor's office and his former subordinates. According to the Government, that assertion was corroborated by victims' complaints and statements enclosed in the criminal case file. After the victims had refused to comply with the applicant's co-defendants' extortion demands, the employees of the mayor's office, on direct orders from the applicant, wrote letters to the victims threatening them with the demolition of their property. Furthermore, a number of witnesses complained to the courts that the applicant's relatives and confidants, using threats and exerting pressure, had urged them to change their statements.

107. In addition, the Government, relying on the Court's findings in the case of *Letellier v. France* (26 June 1991, Series A no. 207), stressed that the applicant's case had been widely publicised and had drawn an extensive reaction among the Tomsk town population. Accordingly, in the Government's view, the applicant's release could have endangered public order and even threatened the applicant's own well-being.

108. In conclusion, the Government asserted that, while authorising the extensions of the applicant's detention, the domestic courts had taken into account the medical expert opinions and other relevant medical data confirming that the applicant's state of health permitted his detention.

109. The applicant averred that any objective observer could see that there was no "reasonable" suspicion of his having committed the criminal offences he was charged with. Furthermore, the institution of new rounds of criminal proceedings on its own could not warrant an extension of detention. Otherwise, authorities would be able to lock a person up for an indefinite period merely by instituting new criminal proceedings against him.

110. The applicant further argued that at no point in the proceedings had the domestic courts taken his financial situation into account, as there is no reference to that issue in any detention order. The courts also took at face value the information provided by the FSB to the effect that his relatives were selling property and buying foreign currency. They did not check that information.

111. The applicant found it peculiar that the domestic courts had not accepted the following arguments raised by his lawyers in favour of his release: his poor state of health and the need to undergo expensive medical treatment which he would not be able to afford outside Russia; his age; his permanent place of residence in Tomsk; his ten-year employment as the Tomsk mayor; his family's permanent residence in Tomsk and absence of any relatives living outside Tomsk; ownership of property only in the Tomsk Region; his lack of knowledge of any foreign language; lack of a valid passport for travel; and his participation in the forthcoming parliamentary elections.

112. As to the alleged threats made by his relatives and confidants, the applicant stressed that none of those individuals had been questioned by the investigating authorities as to their possible involvement in such illegal activities, and no criminal proceedings had been instituted against them. The applicant pointed out that the Government, while relying on statements by victims and witnesses, who had allegedly been threatened, did not provide the Court with copies of those statements. Furthermore, the applicant noted that the pre-trial investigation had ended, the witnesses' statements and other evidence had been collected and there was no longer any risk that justice would not be served.

113. In order to challenge the last Government's argument concerning the alleged danger to public order, the applicant stressed that the domestic courts had not relied on that argument in any of the detention orders and that such an argument could not, in any event, serve as a ground for detention under the Russian Code of Criminal Procedure.

114. Finally, the applicant noted that at no point in the procedure had the domestic courts considered an alternative measure of restraint prescribed by the Russian Code of Criminal Procedure, such as bail, a written undertaking not to leave the town, house arrest or personal surety.

B. The Court's assessment

1. Admissibility

115. 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.

2. Merits

(a) General principles

116. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

117. 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 require him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

118. The Court further observes that it falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable length of time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

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

120. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases the Court must establish whether the other grounds given by the judicial authorities continue 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, § 153).

(b) Application of the general principles to the present case

121. The Court notes that the applicant has been held in custody since 6 December 2006. A pre-trial detention of this length – over two years – is a matter of concern for the Court. It observes that since 6 December 2006 the domestic courts extended the applicant's detention a number of times. In their decisions they consistently relied on the gravity of the charges as the main factor and on the applicant's potential to abscond, pervert the course of justice and reoffend.

122. As regards the courts' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *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). 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 whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X).

123. The other grounds for the applicant's continued detention were the domestic courts' findings that the applicant could abscond, pervert the course of justice and reoffend. The Court reiterates that 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). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of specific facts in support of their conclusions.

(i) The danger of absconding

124. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that he had been charged with serious criminal offences, thus facing a severe sentence. 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 absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and reoffending or make it appear so slight that it cannot justify detention pending trial (see *Letellier*, cited above, § 43, and *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005).

125. In its decision of 5 February 2007 the Sovetskiy District Court for the first time relied on the information provided by the Tomsk Regional FSB Department and concluded that the applicant was planning to abscond, urging his relatives to sell property and buy foreign currency (see paragraphs 20-22 above). In every subsequent detention order the judicial authorities relied heavily on the applicant's potential to abscond, given the information provided by the FSB. The Court understands the authorities' concerns the first time they received the relevant information. It

acknowledges that in view of the gravity of the accusations against the applicant and the seriousness of the information submitted by the FSB officials, the judicial authorities could justifiably have considered that an initial risk of the applicant's absconding had been established.

126. The Court, however, cannot overlook the fact that the information from the FSB officials was not supported by any evidence (copies of sale-purchase contracts, State certificates showing change of ownership, bank records confirming the purchase of currency, and so on). The Court accepts that the extension of the applicant's detention may initially have been warranted for a short period to provide the prosecution authorities with time to verify the information presented by the FSB officials and to adduce evidence in support. However, with the passage of time the mere availability of the information, without any evidence to support its veracity, inevitably became less and less relevant, particularly so when the applicant persistently disputed his ability to abscond, alleging that no property had been sold or foreign currency bought and referring to his age, poor health, lack of a valid passport for travel or medical insurance and the fact that he had no relatives and did not own property outside the Tomsk Region to confirm that there was no danger of his absconding (see, by contrast, *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A).

127. In this connection, the Court considers that the domestic authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons, supported by evidentiary findings, for holding him in custody (see, for similar reasoning, *Musuc v. Moldova*, no. 42440/06, § 45, 6 November 2007). The Court does not find that the domestic courts executed that obligation in the present case. It is a matter of serious concern for the Court that the domestic authorities applied a selective and inconsistent approach to the assessment of the parties' arguments pertaining to the grounds for the applicant's detention. While deeming the applicant's arguments to be subjective and giving no heed to relevant facts which mitigated the risk of his absconding, the courts accepted the information from the FSB officials uncritically, without questioning its credibility.

128. The Court further reiterates that the judicial authorities also cited the fact that the applicant had several places of residence in the Tomsk Region in support of their finding that he was liable to abscond. In this respect, the Court reiterates that the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007). The Court further observes that the authorities did not indicate any other circumstance to suggest that, if released, the applicant would abscond. Even though, as the Government submitted, other facts that could have warranted the authorities' conclusion about his potential to abscond may have existed, they were not mentioned in the detention orders and it is not the Court's task to establish such facts and

take the place of the national authorities who ruled on the issue of detention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006). The Court therefore finds that the existence of such a risk was not established.

(ii) The danger of perverting the course of justice

129. As to the domestic courts' findings that the applicant was liable to pervert the course of justice, the Court notes that at the initial stages of the investigation the risk that an accused person may pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes irrelevant (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006). The Court observes that the domestic courts linked the applicant's liability to obstruct justice to his status as the mayor of Tomsk and the fact that a number of witnesses in the criminal case were his former subordinates working for the Tomsk mayor's office. The domestic courts also mentioned the threats that the applicant's relatives and confidants allegedly made against victims and witnesses.

130. In this connection, the Court is mindful that the applicant's employment status was a relevant factor for the domestic courts' findings that there was a risk of tampering with witnesses. At the same time, it does not lose sight of the fact that the applicant was suspended from his position as mayor of Tomsk immediately after his arrest and that his release would not have led to his being reinstated in that position. Therefore, the Court entertains doubts as to the validity of that argument to justify the applicant's continued detention. Furthermore, the Court reiterates that for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant's detention, it did not suffice merely to refer to his official authority. They should have analysed other pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant's personality, his behaviour before and after the arrest and any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed at falsification or destruction of evidence or manipulation of witnesses (see *W.*, cited above, § 36, Series A no. 254-A).

131. In this respect, the Court observes that it was not until 3 December 2007 that the Tomsk Regional Court for the first time supported its conclusion of the risk of collusion by making reference to the alleged attempts to tamper with witnesses committed by the applicant's relatives. In particular, the Regional Court held that the case file contained information pertaining to the applicant's alleged attempts to influence a victim, Mr L., and a witness, Mr B. (see paragraph 33 above). The Court notes in the first place that it is unable to assess the reliability and relevance of the information which gave rise to that finding of the Regional Court as the Government did not submit copies of the respective documents enclosed in the criminal case file. As to the text of the decision of 3 December 2007,

apart from a bald reference to the threats which the applicant's relatives and confidants allegedly made against the witnesses, the Regional Court did not mention any specific facts warranting the applicant's detention on that ground.

132. However, more fundamentally, the Court finds it striking that relying on certain information, the domestic court did not provide the applicant with an opportunity to challenge it, for example, by having those witnesses examined (see, for comparison, *Becciev v. Moldova*, no. 9190/03, §§ 73-76, 4 October 2005), or at least by serving him with copies of their complaints or statements. It appears, and the Government did not argue otherwise, that the applicant was not even notified of the nature and content of the submissions lodged by the prosecution authorities to corroborate their assertion of witness manipulation. Moreover, the Court finds it peculiar that being informed of the intimidation, harassment or threats of retaliation against witnesses, the prosecution authorities did not institute criminal proceedings or at least open a preliminary inquiry into those allegations. The Court observes, and the parties did not dispute that fact, that the domestic authorities did not take any actions against either the applicant or his relatives and confidents, that they were never subject to any form of investigation and were not even questioned about the alleged attempts to manipulate witnesses. The Court is therefore not convinced that the domestic authorities' findings of the applicant's liability to pervert the course of justice had sufficient basis in fact.

133. Furthermore, the Court notes that the pre-trial investigation in respect of the applicant was completed at the end of August 2007 (see paragraph 30 above). He remained in custody for an additional eighteen months during which the proceedings were pending before the trial court. It thus 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, having failed to act diligently, the national authorities were not entitled to regard the circumstances of the case as justification for using the risk of collusion as a further ground for the applicant's detention.

(iii) The danger of reoffending and the preservation of public order

134. In a number of the detention orders the domestic courts cited the likelihood that the applicant would reoffend as an additional ground justifying his continued detention. In this connection, the Court observes that the judicial authorities did not mention any specific facts supporting their finding that there existed a risk of the applicant's reoffending. Furthermore, the Court does not share the national authorities' opinion that

in a situation when all charges against the applicant, save for one, were brought against him in respect of his actions as the mayor of Tomsk and he was suspended from that position, there was a real danger of the applicant committing new offences.

135. In their submissions to the Court, the Government relied on another ground which, in their opinion, necessitated the applicant's detention. In particular, they emphasised the need to protect public order from the disturbance which could have been caused by the release of the applicant. Although that ground was never relied on by the domestic courts, the Court nevertheless considers it necessary to address the Government's argument.

136. The Court has already held on a number of occasions that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see *Letellier*, cited above, § 51).

137. In the present case these conditions were not satisfied. Apart from the fact that Russian law does not list the notion of disturbance to public order among permissible grounds for detention of accused persons, the Court notes that the Government relied on the alleged danger to public order from a purely abstract point of view, relying solely on the gravity of the offences allegedly committed by the applicant. They did not provide any evidence or indicate any instance which could show that the applicant's release could have posed an actual danger to public order.

(iv) Alternative measures of restraint

138. The Court further emphasises 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 the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. In this connection, the Court does not lose sight of the fact that the applicant offered a guarantee by the Archbishop of Tomsk Region to ensure his release. However, that

guarantee was rejected without due consideration (see paragraph 33 above). Furthermore, the Court finds it particularly striking that the applicant was kept in custody for nine months, from September 2007 to June 2008, for the sole purpose of studying the case file. However, at no point did either the Regional Court or the Supreme Court, which examined the issue of the lawfulness of the applicant's detention during that period, consider having recourse to such alternative measures or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

139. The Court does not lose sight of the Government's argument about the applicant's financial resources, implying that bail could not secure his attendance. Although the Court has already noted that the domestic courts did not consider bail and that it would not substitute for the domestic authorities in their task of identifying and considering factors justifying the applicant's detention (see paragraph 128 above), the Court nevertheless considers it worth noting that bail may only be required as long as reasons justifying detention prevail. When such reasons do prevail, the amount of the bail must be "assessed principally in relation to the person concerned, his assets... in other words to the degree of confidence that is possible that the prospect of loss of security in the event of his non-appearance at a trial will act as a sufficient deterrent to dispel any wish on his part to abscond" (see *Neumeister v. Austria*, 27 June 1968, p. 40, § 48, Series A no. 8).

(v) Conclusion

140. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial.

141. Having regard to the above, the Court considers that by failing to refer to concrete relevant facts or consider alternative "preventive measures", the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty for a period of over two years. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period as such a lengthy period cannot in the circumstances be regarded as "reasonable" within the meaning of Article 5 § 3 (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

143. The applicant further complained under Articles 2 and 5 of the Convention that the conditions of his detention posed a serious threat to his life and that his detention was unlawful.

144. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione materiae*, it finds that the evidence discloses no 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 being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. 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

146. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

147. The Government asserted that the applicant's claims should be dismissed. In the Government's opinion, a finding of a violation of the applicant's rights would constitute sufficient and just satisfaction.

148. The Court notes that it has found several violations in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration, caused by inhuman conditions of his detention and the fact that he has spent a long period in custody without relevant and sufficient grounds, cannot be compensated for by a mere finding of a violation. Making its assessment on equitable bases, it awards the applicant the sum claimed in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

149. The applicant did not seek reimbursement of costs and expenses and this is not a matter which the Court is required to examine on its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

150. 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 complaint concerning the conditions of the applicant's detention in the Tomsk town temporary detention facility and an alleged violation of the applicant's right to trial within a reasonable time or release pending trial 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 8,000 (eight thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President