CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF KALASHNIKOV v. RUSSIA

(Application no. 47095/99)

JUDGMENT

STRASBOURG

15 July 2002

FINAL

15/10/2002

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

In the case of Kalashnikov v. Russia,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr A. KOVLER, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 18 September 2001 and 24 June 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 47095/99) 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, Valeriy Yermilovich Kalashnikov ("the applicant"), on 1 December 1998.

2. The applicant complained, in particular, about his conditions of detention, the length of his detention and the length of the criminal proceedings against him.

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

4. The applicant and the Government each filed observations on the admissibility and merits (Rule 54 § 3(b)). The parties replied in writing to each other's observations.

5. A hearing on the admissibility and merits took place in public in the Human Rights Building, Strasbourg, on 18 September 2001 (Rule 54 § 4).

There appeared before the Court:

(a) *for the Government*

Mr P. LAPTEV, *Representative of the Russian Federation before the ECHR*,
Mr Y. BERESTNEV,
Mr S. VOLKOVSKY,
MR S. RAZUMOV,
MR Y. KALININ, *Advisers*;

MR K. BAHTIAROV,
MR O. ANKUDINOV,
MR V. VLASIHIN, *Experts;*

(b) *for the applicant*
Mrs K. MOSKALENKO, of the Moscow International Protection Centre
Mr N. SONKIN, of the Moscow Regional Bar *Counsel*,
Mr V. KALASHNIKOV, *Applicant.*

6. The Court heard addresses by Mr P. Laptev, Mrs K Moskalenko and Mr N. Sonkin, and the replies of Mr V. Vlasihin, Mr P. Laptev and Mrs K. Moskalenko to questions from three judges.

At the Court's request, the Government had submitted photographs of the cell in which the applicant was detained. They also provided a video recorded film of the renovated cell and nearby area, which renovation had been made after the applicant's release.

7. By a decision of 18 September 2001, the Court declared the application partly admissible.

It thereafter considered that an on-site inspection or "fact-finding mission" was not necessary, as it had sufficient material in the case-file on which to reach its conclusions. In particular, it considered that no useful purpose would be served by such an exercise because the present conditions of the cell, as shown in the video, no longer bore any resemblance to those at the time of the applicant's detention, as confirmed by the contemporary photographs.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section III.

9. The parties filed no further observations on the merits of the application.

10. On 28 December 2001 the applicant filed claims for just satisfaction under Article 41 of the Convention, on which the Government submitted comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicant was born in 1955 and lives in Moscow. At the material time he was the president of the North East Commercial Bank (*Северо – Восточный Акционерный Банк*).

12. On 8 February 1995 criminal proceedings were initiated against the applicant, the details of which are set out under sub-heading B below. On 29 June 1995 the applicant was taken into custody and, by a judgment of the Magadan City Court (*Магаданский городской суд*) of 3 August 1999, he was convicted of embezzlement and sentenced to a term of imprisonment.

A. The conditions of detention

13. From 29 June 1995 to 20 October 1999 the applicant was kept in the detention facility IZ-47/1 in the city of Magadan (Investigatory Isolation Ward No. 1 (*СИЗО-1*)). On 20 October 1999 he was sent to serve his sentence, following the City Court judgment of 3 August 1999, to the penitentiary establishment AV-261/3 in the village of Talaya. On 9 December 1999 he was transferred back to the detention facility in Magadan where he stayed until his release on 26 June 2000.

1) The applicant's submissions on the facts

14. As regards the first period of his detention in the Magadan detention facility, the applicant alleged that he had been kept in a cell measuring 17 square meters ("m²") where there were 8 bunk beds. However, it nearly always held 24 inmates; only rarely did the number fall to 18. As there were three men to every bunk, the inmates slept taking turns. The others would lie or sit on the floor or cardboard boxes waiting for their turn. It was impossible to sleep properly as the television was on around the clock and, during the day, there was much commotion in the cell. The light in the cell was never turned off.

15. The lavatory pan in the corner of the cell offered no privacy. A partition separated it from a wash stand, but not from the living area and dining table. The lavatory pan was elevated from the floor by half a meter while the partition measured 1,1 meters in height. Therefore, the person using the toilet was in the view of both his cellmates and a prison guard observing the inmates through a peep-hole in the door.

The inmates had to eat their meals in the cell at a dining table which was only a meter away from the toilet. The meals were of poor quality.

16. The cell, which had no ventilation, was stiflingly hot in summer and very cold in winter. Because of the poor quality of the air in the cell, a window had to remain open all the time. Being surrounded by heavy smokers, the applicant was forced to become a passive smoker. The applicant claims that he was never given proper bedding, dishes or kitchen utensils. He only received a quilted mattress and a thin flannel blanket from the administration, and had to borrow kitchenware from cell-mates who had received these items from relatives.

17. The cells of the detention facility were overrun with cockroaches and ants, but no attempt was made to exterminate them. The only sanitary precaution taken was that once a week the guards gave the inmates a litre of chloride disinfectant for the lavatory.

18. He contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails. During the trial from 11 November 1996 to 23 April 1997 and from 15 April 1999 to 3 August 1999, a recess was ordered so that he could be treated for scabies.

On six occasions detainees, with tuberculosis and syphilis were placed in his cell and he received prophylactic antibiotic injections.

19. The applicant submitted that he could only take a walk outside his cell one hour per day and that usually he was only able to take a hot shower twice a month.

20. Finally, the applicant stated that, following his transfer back to the same facility on 9 December 1999, the detention conditions had not materially improved. He was not provided with proper bedding, towels or kitchenware. There was no treatment available for his skin disease due to a lack of proper medication. His cell was still overrun with cockroaches and there had been no anti-infestation treatment for 5 years. However, in March-April 2000 the number of inmates in his 8-bed cell was reduced to 11.

2) The Government's submissions on the facts

21. The Government claimed that the applicant's cell measured 20,8 m². The applicant had a separate sleeping berth, bedding, kitchen utensils and access to health care. The cell was designed for 8 inmates. In connection with the general overcrowding of the detention facility, each bed in the cells was used by 2 or 3 inmates. In the applicant's cell there were 11 or more inmates at any given time. Normally the number of inmates was 14. The beds were used in turn by several prisoners on the basis of eight hour shifts of sleep per prisoner. All inmates were provided with wadded mattresses, cotton blankets and sheets.

22. The applicant's cell was equipped with a sanitary unit, including a lavatory pan and a wash stand. The lavatory pan was situated in the corner of the cell and was separated from the dwelling place by a partition - 1,1 meters high - ensuring privacy. Such standards have been set by the "Directives on Planning and Constructing Pre-Trial Detention Facilities of the USSR Ministry of the Interior", approved on 25 January 1971.

The Government submitted photographs to the Court showing the applicant's cell, which the applicant claimed had been improved slightly since the beginning of his detention. The Government also provided a video recording of the facilities after the applicant's release and their major renovation.

23. The cell had windows providing fresh air and daylight. There was no possibility to equip the cell with a ventilation system. In hot weather a window of the cell door could be opened for better ventilation. Inmates also had the opportunity to have compact fans delivered to them by relatives.

24. There was a television in the cell which belonged to the applicant who could control when to switch it on or off. Programmes were only transmitted during part of the day in the region.

25. On 11 February 1998 an inmate in the applicant's cell was diagnosed with syphilis. The inmate was immediately removed to a separate cell and underwent a complete course of treatment for the disease. The other inmates, including the applicant, who had shared the cell with this person, were subjected to appropriate preventive treatment on 26 February 1998 and to serological control measures. This was done pursuant to the "Guidelines on Medical Care for Persons Held in Pre-Trial Detention Facilities and Correctional Labour Institutions of the USSR Ministry of the Interior", approved on 17 November 1989.

In January 1999 one of the blocks in the detention facility was closed for repairs and the detainees were transferred to vacant places in other cells. The detainees who were moved to the applicant's cell stayed there for a week and some of them were ill with tuberculosis. However, in the opinion of the medical personnel, the latter did not present a danger to other inmates as these persons were undergoing out-patient medical treatment.

On 2 June 1999, an inmate who was observed to have residual tuberculosis was placed in the applicant's cell. The inmate underwent the relapse prevention treatment for a period of two months. As he did not suffer from tuberculosis in its open form, there was no danger of its transmission to other inmates.

The applicant underwent repeated fluorographic examinations which showed no abnormality of his thorax.

On 15 June 1999, an inmate who was undergoing treatment for syphilis was placed in the applicant's cell. Medical examinations performed subsequently showed negative results. Blood tests which were performed in this connection on the applicant also revealed negative results.

26. The applicant was systematically examined by the medical personnel and he received medical assistance from a dermatologist, therapeutist and stomatologist. When the applicant was diagnosed with different diseases (neurocirulatory dystonia, scabies and fungal infection) he received immediate medical care. There were recesses announced during the trial in order to provide medical treatment for the applicant.

27. The applicant could shower every 7 days and was permitted to walk outside his cell for up to 2 hours a day.

28. Finally, the Government submitted that, in order to prevent the appearance of infectious diseases, pre-trial detention facilities take prophylactic disinfection measures to secure the timely extermination of

pathogenic micro-organisms, arthoropoda and rodents, pursuant to the above-mentioned ministerial guidelines of 1989. It was conceded, however, that the infestation of detention facilities with insects was a problem.

3) Medical records and an expert report

29. According to the applicant's medical records, he had scabies in December 1996, allergic dermatitis in July and August 1997, a fungal infection on his feet in June 1999, a fungal infection on his finger nail in August 1999, mycosis in September 1999 and a fungal infection on his feet, hands and groin in October 1999. The records also state that the applicant received treatment for these medical conditions.

30. A report by medical experts issued in July 1999 stated that the applicant was suffering from neurocirculatory dystonia, astheno-neurotic syndrome, chronic gastroduodenitis, a fungal infection on his feet, hands and groin and mycosis.

B. The criminal proceedings and appeals against pre-trial detention

31. On 8 February 1995 the applicant became a suspect in the embezzlement of his bank's funds and was subjected to a preventive measure in the form of a ban on leaving a specified place. The criminal case was assigned the number 48529.

32. On 17 February 1995 he was formally charged with misappropriating 2,050,000 shares of another company.

33. On 29 June 1995, by an order of the investigator, which was approved by the prosecutor, the applicant was arrested and placed in detention on remand on the ground that he had obstructed the establishment of the truth in the criminal proceedings. In particular, it was stated in the order, with references to concrete instances, that the applicant had refused to turn over certain bank documents necessary for the investigation, he had brought pressure to bear on witnesses and had tampered with documents. The order also referred to the seriousness of the offence with which the applicant was charged.

The applicant's detention was subsequently extended by the competent prosecutor on unspecified dates.

34. On 4 July 1995, 31 August 1995 and 26 September 1995, the applicant's defence lawyer filed applications for release from custody with the Magadan City Court, which rejected them on 14 July 1995, 9 September 1995 and 4 November 1995, respectively.

35. The applicant contends that from August 1995 until November 1995 no investigative activity took place as the two investigators in charge of the case were on holiday, and the person to whom the case was temporarily assigned undertook no action.

36. On 14 December 1995 the applicant was charged with 8 additional counts relating to the embezzlement of his bank's funds.

37. On 6 February 1996 the preliminary investigation of the charges against the applicant was terminated and the case was sent to the Magadan City Court.

38. On 1 March 1996 the applicant filed with the City Court a request for his release from custody, which was refused on 27 March 1996.

39. On the same day the City Court decided to remit the case to the Magadan Regional Prosecutor for further investigation. The latter filed an appeal against the decision with the Magadan Regional Court (*Магаданский областной суд*) which, on 29 April 1996, rejected it.

40. Following an additional investigation as of 15 May 1996, the Regional Prosecutor remitted the case to the City Court on 19 June 1996.

41. In the meantime, on 16 May 1996, the applicant filed an application for release from custody with the City Court in which he stated that he was being held in poor conditions and that his health had deteriorated. His application for release was refused on 26 May 1996.

On 23 June 1996 the applicant filed another request for release.

42. On 11 November 1996 the City Court began its examination of the applicant's case. On the same day it rejected his request for release filed on 23 June 1996.

43. At the hearing on 27 December 1996 the applicant asked the City Court to release him from custody on medical grounds. He stated that there were 21 inmates in his cell with just 8 beds; there was no ventilation in the cell where everybody smoked; the television was constantly blaring and he had contracted scabies. Upon receiving a medical certificate confirming the existence of the disease, the City Court adjourned the hearing until 14 January 1997. It refused to release the applicant from custody on the grounds of the seriousness of the offence with which he was charged and the danger of his obstructing the establishment of the truth while at liberty.

44. The examination of the applicant's case by the City Court lasted until 23 April 1997.

On 7 May 1997 the case was adjourned due to the removal from office of the presiding judge for improper conduct unrelated to the applicant's case.

45. On 15 June 1997 the applicant filed another request for release, referring to the poor conditions in which he was being detained.

46. In July 1997 the applicant's case was assigned to another judge who scheduled a hearing for 8 August 1997. On that day the hearing was postponed because the defence lawyer could not attend for health reasons. The applicant's request for release was rejected on the grounds of the seriousness of the offence with which he was charged and the danger of his obstructing the establishment of the truth in the criminal case.

The applicant's further request for release from custody filed on 21 September 1997 was refused on 21 October 1997.

47. On 22 October 1997 the applicant complained to the Magadan Regional Court about his case, asking for its transfer from the City Court to the Regional Court. He also submitted a complaint to the Supreme Court of Russia (*Верховный Суд Российской Федерации*) which forwarded it to the Magadan Regional Court for examination. By letters of 31 October 1997 and 25 November 1997, the Regional Court informed the applicant that there was no reason for it to assume jurisdiction and suggested he turn to the City Court with any questions relating to his case. It also requested the City Court to take measures for the examination of the applicant's case.

48. On 21 November 1997 he made complaints to different authorities, in particular the Office of the President of the Russian Federation, the Magadan City Court, the High Qualification Board of Judges (*Высшая квалификационная коллегия судей Российской Федерации*) – a body dealing with questions of professional competence – and the Prosecutor General. In his complaints, he submitted, *inter alia*, that he was being held in appalling conditions without any decision on the substance of the charges, that he had contracted various skin diseases, that his toenails had fallen off and that he was suffering from a heart condition.

49. By letter of 5 February 1998, the president of the Magadan City Court informed the applicant that the court would resume its consideration of his case before 1 July 1998, referring to its complexity and the heavy workload of the judges.

50. On 11 February 1998 the Magadan Regional Court forwarded to the City Court 11 complaints made by the applicant, which it had received from the Prosecutor General, the Supreme Court and other authorities.

51. On 23 February 1998 the applicant commenced a hunger strike with a view to drawing the attention of the authorities to his lengthy detention and the absence of court hearings, which he continued until 17 March 1998.

52. On 1 March 1998 the applicant complained about his case to the Office of the President of Russia and to a parliamentary committee of the State Duma, requesting their assistance in the transfer of his case to the Magadan Regional Court.

53. On 3 March 1998 the Department of Justice of the Magadan Region, in response to the applicant's complaint addressed to the Ministry of Justice of Russia, stated that the court would be able to deal with his case in the second half of 1998.

54. Meanwhile, the applicant lodged a request with the Constitutional Court (*Конституционный Суд Российской Федерации*) to review the constitutionality of the provisions of Articles 223-1 and 239 of the Code of Criminal Procedure concerning time-limits for the start of trials. By letter of 10 March 1998, the Constitutional Court informed the applicant that, since the impugned provisions did not lay down any time-limits with regard to the length of detention while a case is being considered by the courts, his request could not be considered.

55. The applicant also complained to the High Qualification Board of Judges about the delay in the consideration of his case which, by letter of 30 March 1998, asked the Magadan Regional Court to investigate the matter.

56. On 2 April 1998 the applicant filed a complaint with the Supreme Court about the delay in setting the date for his trial, in which he also referred to his poor conditions of detention. A copy of his complaint was sent to other authorities. All his complaints were forwarded by the addressee institutions to the Magadan City Court for examination.

57. On 13 April 1998 the Magadan Regional Court informed the applicant that the City Court had been requested to take measures for the consideration of his case. It also stated that the case was to be tried by the City Court and that the Regional Court could only act as a court of cassation.

58. On 25 May 1998 the applicant filed a petition with the City Court asking for his case to be transferred to the Regional Court for trial.

By decision of the president of the Regional Court of 28 May 1998, the applicant's case was transferred to the Khasynskiy District Court (*Хасынский районный суд*) in order to expedite the proceedings.

59. On 11 June 1998 the applicant complained about the delay in starting court hearings to the High Qualification Board of Judges.

60. On 16 June 1998 the applicant filed a request for release from custody with the Khasynskiy District Court in which he stated that his health had deteriorated as a result of the overcrowding and the poor conditions in his cell in the detention facility.

On the same day, he sent an application to the Khasynskiy District Court asking it to transfer his case to the Magadan Regional Court. He submitted that the transfer of his case to the Khasynskiy District Court was unlawful and that its distance from the city of Magadan would hamper an objective and fair examination of his case.

61. On 1 July 1998 the applicant complained to the Regional Court that the Khasynskiy District Court had not yet set a hearing date and asked it to speed up the proceedings.

62. On 3 July 1998 the case was remitted to the Magadan City Court as the applicant had expressed his disagreement with its transfer to the Khasynskiy District Court.

63. On 8 July 1998 the applicant received a letter from the Regional Court informing him that there were no grounds for it to act as a court of first instance or to assume jurisdiction in the case.

The next day the applicant requested the City Court to release him, referring to the poor conditions of detention.

64. On 31 July 1998 the applicant complained to the High Qualification Board of Judges about the prolonged failure of the City Court to examine his case. On 19 August 1998 his complaint was transmitted to the Magadan

Regional Court with a request to provide information both on the complaint and on the work of the City Court. On 27 August 1998 the Regional Court forwarded the applicant's complaint to the City Court.

The applicant also submitted a complaint to the Magadan Regional Court about the delay in starting the trial hearings, which on 11 August 1998 transmitted the complaint to the City Court.

65. On 7 September 1998 the applicant filed another complaint with the High Qualification Board of Judges stating that all his previous complaints had been sent by the Magadan Regional Court to the City Court without any measures being taken. On 23 September 1998 the applicant's complaint was forwarded to the Magadan Regional Court with a reminder about the request for information on the reasons for the prolonged delay in examining the applicant's case. On 7 September 1998 the applicant also submitted a complaint about the delay in the proceedings to the Supreme Court.

On 5 October 1998 the applicant submitted further complaints to the Regional and High Qualification Boards of Judges.

66. On 13 November 1998 the City Court set the hearing date for 28 January 1999.

67. On 25 November 1998 the applicant complained to the High Qualification Board of Judges about the actions of the President of the Magadan City Court, apparently requesting the institution of criminal proceedings against him. On 22 December 1998 the complaint was forwarded for examination to the president of the Magadan Regional Court with a request to submit a report to the competent Qualification Board in case the applicant's allegations proved substantiated.

On 16 December 1998 the Magadan Regional Court forwarded another complaint by the applicant to the City Court.

68. On 18 January 1999 the applicant submitted to the City Court a request for release from custody.

69. On 28 January 1999 the Magadan City Court decided to send the applicant's case back to the prosecutor for further investigation due to the violation of procedural norms by the investigative authorities. These violations consisted of an incomplete presentation of the case materials to the accused at the end of the preliminary investigation, as well as an imprecise recording of file documents. The court refused the applicant's request for release having regard to the gravity of the charges against him and the danger of his obstructing the establisment of the truth while at liberty. The applicant lodged an appeal against the refusal with the Magadan Regional Court which, on 15 March 1999, dismissed it. The Regional Court however revoked the decision to send the case back to the investigative authorities as unfounded and ordered the City Court to proceed with the trial. In a separate decision, issued on the same day, it considered the lengthy delay unjustifiable in view of the fact that the case was not

particularly complex, and requested the City Court to inform it within one month of the measures taken.

70. On 17 March 1999 the applicant submitted to the City Court another request for release from custody.

On the same day he complained to the High Qualification Board of Judges about his lengthy detention without a court judgment. Five days later, the applicant submitted a similar complaint to the Regional Qualification Board of Judges.

On 5 April 1999 the applicant filed another complaint with the High Qualification Board of Judges about the prolonged delay in the proceedings.

71. On 15 April 1999 the City Court resumed its examination of the applicant's case.

At the hearing on 20 April 1999 the prosecutor requested that, in view of the length of the applicant's detention, a psychiatric evaluation of the applicant be carried out in order to determine the state of his mental health. The City Court granted this request and adjourned the hearing until 30 April 1999.

72. At the hearing on 30 April 1999 the applicant unsuccessfully applied for release from custody. He submitted that he was suffering from a lack of sleep. In his cell there were 18 inmates who had to sleep in shifts. He further argued that he could not obstruct the establishment of the truth in his case as all the investigative measures had already been taken.

The prosecutor participating in the hearing asked the City Court to request the administration of the detention facility in which the applicant was being held to provide the applicant with conditions allowing normal sleep and rest during the court hearings. The prosecutor further stated that he would submit a similar request to the prosecutor in charge of supervising detention facilities.

The applicant submits that subsequently the competent prosecutor came to his cell, acknowledged that the conditions were poor, but stated that the situation in other cells in the detention facility was no better and that there was no money to improve the conditions.

73. At the hearing on 8 June 1999 the applicant requested his release. He stated that in his cell, where there were 18 inmates, he could not prepare himself adequately to testify before the trial court. He further submitted that he had contracted scabies twice and that his bed sheets were not changed. The applicant's request was rejected.

74. At the hearing on 16 June 1999 the applicant filed another request for release, referring to the conditions of his detention. He submitted that he had a fungal infection and that his body was covered with sores caused by bites from bugs infesting his bed. He was sharing his bed with two other inmates. Inmates could shower once every two weeks. The atmosphere in the cell was stifling as everybody smoked. He was feeling unwell and suffering from a heart condition. His weight had dropped from 96 kg to

67 kg. He further submitted that he could not obstruct the examination of his case if released.

The City Court decided not to examine the request because it was apparently made outside the context of the hearing.

75. On 22 June 1999 the High Qualification Board of Judges removed the president of the Magadan City Court from office, as well as the president of the Regional Court and his two deputies, due to the delay in examining the applicant's case.

76. At the hearing before the City Court on 23 June 1999, the applicant stated that he was feeling unwell and that he could not participate. The court ordered a medical examination of the applicant by a commission of experts in order to determine whether his state of health allowed him to take part in the proceedings and whether he should be hospitalised.

In their conclusions issued on an unspecified date in July 1999, the experts found that the applicant was suffering from a number of medical conditions (see paragraph 30 above). They considered that the treatment of these conditions did not require hospitalisation and that the applicant could remain in the detention facility. They also considered that the applicant's state of health allowed him to attend the court hearings and to give testimony.

77. At the hearing on 15 July 1999, the applicant requested the trial court to release him from custody. He stated that the court had nearly concluded the examination of the evidence and that he could not obstruct the establishment of the truth. His request was refused.

78. In another ruling issued on the same day, the City Court noted that, in the period from 15 April until 15 July 1999, it had examined more than 30 applications submitted by the applicant, including repetitive applications on previously rejected motions. It noted that the applicant had stated that he would testify only if his applications were granted and considered that such a position amounted to a deliberate attempt to delay the proceedings.

79. The City Court heard 9 of the 29 witnesses who were to be summoned before it. The testimonies of 12 absent witnesses, which had been given during the pre-trial investigation, were read out in open court.

80. By a judgment of 3 August 1999, the City Court found the applicant guilty on one count and acquitted him on two of the counts contained in the indictment, which had preferred 9 separate charges. It sentenced him to 5 years and 6 months' imprisonment in a correctional colony with a general regime, his term running from 29 June 1995. The City Court considered that the preliminary investigation had been of poor quality and that the investigators had unjustifiably attempted to increase the number of counts in the indictment. It also found an infringement of procedural norms consisting, *inter alia*, of shortcomings in the presentation in due form of the relevant documents to the court. These shortcomings had had to be corrected at the trial, which had caused a delay. The court noted that, in the

course of the investigation, there had been a lack of proper procedural supervision by those in charge of the investigation and the prosecutor's office of the Magadan Region.

In a separate ruling on the same day, the City Court decided to send part of the indictment back to the prosecutor for an additional investigation. The applicant appealed against the ruling to the Supreme Court, which on 30 September 1999 found the decision lawful.

81. The City Court judgment of 3 August 1999 was open to appeal to the Regional Court within 7 days of its pronouncement. The applicant did not file an appeal in cassation as he considered that the Regional Court had contributed to his conviction and thus that an appeal had no prospects of success. On 11 August 1999 the judgment of the City Court entered into force.

82. On 11 August 1999 the applicant submitted to the director of the detention facility where he was being held a request to transfer him to the logistical services team in the same facility to serve his sentence.

83. On 25 October 1999 the applicant lodged an extraordinary appeal with the President of the Supreme Court of Russia for a review of the City Court judgment. On 11 November 1999 the appeal was dismissed.

On 30 November 1999 the applicant filed another extraordinary appeal with the Supreme Court, which rejected it on 9 June 2000.

84. On 24 September 1999, in the continuing criminal proceedings, the preventive custody measure was replaced by a ban on leaving a specified place. However, he remained in custody, serving his original sentence.

85. On 29 September 1999 the proceedings concerning the remainder of the charges were terminated on the ground that the acts committed by the applicant did not constitute a criminal offence.

On 30 September 1999, however, a new charge relating to the misappropriation of property in his capacity as the bank's president was brought against the applicant.

86. On 19 October 1999, upon completion of the preliminary investigation, the competent prosecutor approved the bill of indictment and sent the case to the Magadan City Court for trial. The bill of indictment bore the original case no. 48529 and stated that the proceedings in that case had been initiated on 8 February 1995. The applicant's trial started on 20 December 1999. By a judgment of 31 March 2000 the City Court acquitted the applicant of the new charge.

87. On 26 June 2000 the applicant was released from prison following an amnesty declared on 26 May 2000.

II. RELEVANT DOMESTIC LAW

88. A. Constitution of the Russian Federation

Point 6 (2) of Section 2

"Until criminal-procedural legislation of the Russian Federation has been brought into line with the provisions of this Constitution, the previous procedure for the arrest, detention and keeping in custody of persons suspected of committing a crime shall apply."

89. B. Code of Criminal Procedure

Article 11 (1): Personal inviolability

"No one may be arrested otherwise than on the basis of a judicial decision or a prosecutor's order."

Article 89 (1): Application of preventive measures

"When there are sufficient grounds for believing that an accused person may evade an inquiry, preliminary investigation or trial or will obstruct the establishment of the truth in a criminal case or will engage in criminal activity, as well as in order to secure the execution of a sentence, the person conducting the inquiry, the investigator, the prosecutor and the court may apply one of the following preventive measures in respect of the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or placement in custody."

Article 92 : Order and decision on the application of a preventive measure

"On the application of a preventive measure a person conducting an inquiry, an investigator and a prosecutor shall make a reasoned order, and a court shall give a reasoned decision specifying the criminal offence which the individual concerned is suspected of having committed, as well as the grounds for choosing the preventive measure applied. The order or decision shall be notified to the person concerned, to whom at the same time the procedure for appealing against the application of the preventive measure shall be explained.

A copy of the order or decision on the application of the preventive measure shall be immediately handed to the person concerned."

Article 96: Placement in custody

"Placement in custody as a preventive measure shall be done in accordance with the requirements of Article 11 of this Code concerning criminal offences for which the law prescribes a penalty in the form of deprivation of freedom for a period of more

than one year. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of freedom for a period of less than one year is prescribed by law."

Article 97: Time-limits for pre-trial detention

"A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension of up to six months from the day of placement in custody may be effected only in cases of special complexity by a prosecutor of a constituent part of the Russian Federation ...

An extension of the time-limit for such detention beyond six months shall be permissible in exceptional cases and solely in respect of persons accused of committing serious or very serious criminal offences. Such an extension shall be effected by a deputy of the Prosecutor General of the Russian Federation (up to one year) and by the Prosecutor General of the Russian Federation (up to 18 months).

No further extension of the time-limit shall be permissible, and the accused held in custody shall be releasable immediately.

The documents of a completed investigation in a criminal case shall be produced for consultation by the accused and his defence counsel not later than one month before the expiry of the maximum time-limit for remand in custody, as prescribed in the second paragraph of the present Article. In the event of the accused being unable to consult the case documents before the expiry of the maximum time-limit for remand in custody, the Prosecutor General of the Russian Federation, [or] a prosecutor of a constituent part of the Russian Federation ... may, not later than five days before the expiry of the maximum time-limit for remand in custody, apply to the judge of the "oblast", "krai" or comparable court for an extension of this time-limit.

Not later than five days from the day of receipt of the application, the judge must take one of the following decisions:

1. to extend the time-limit for remand in custody until the accused and his counsel have consulted the case documents and the case has been referred to the trial court by the prosecutor but, anyway, for not more than six months;

2. to reject the prosecutor's application and to release the person concerned from custody.

Under the same procedure, the time-limit for remand in custody may be extended, if necessary, to accede to a request by the accused or his counsel to pursue the preliminary investigation further.

If a court remits a case for further investigation when the time-limit for the accused's remand in custody has expired, but the circumstances of the case preclude any modification of the custody measure, the time-limit for the remand in custody shall be extended by the prosecutor supervising the investigation for up to one month from the date on which the case reaches him. Any further extension of the time-limit shall take

account of the time spent by the accused in custody before the referral of the case to court, and shall be effected in the manner and within the limits prescribed in the first and second paragraphs of this Article.

An extension of the time-limit for remand in custody in accordance with the present Article is subject to appeal to a court and to judicial review of its legality and justification under the procedure provided for in Articles 220¹ and 220² of the present Code."

Article 101: Cancellation or modification of a preventive measure

"A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the circumstances of the case so require. The cancellation or modification of a preventive measure shall be effected by a reasoned order of the person carrying out the inquiry, the investigator or the prosecutor, or by a reasoned court decision after the case has been transferred to a court.

The cancellation or modification, by the person conducting the inquiry or by the investigator, of a preventive measure chosen on the prosecutor's instructions shall be permissible only with the prosecutor's approval."

Article 223-1: Setting a date for a court hearing

"If the accused is kept in custody, the question of setting a date for a court hearing must be decided no later than 14 days from the seizure of the court."

Article 239: Time-limits for examination of the case

"The examination of a case before the court must start no later than 14 days from the fixing of a hearing date."

90. C. Federal Law on the Detention on Remand of Suspects and Persons Accused of Offences

According to Article 21 of this Law, applications and complaints of suspects and accused persons to State agencies, bodies of local self-government and non-governmental organisations are sent through the administration of the detention facility.

Applications and complaints addressed to a public prosecutor, a court or other State agencies supervising detention facilities for suspects and accused persons are not subject to censorship and will be forwarded to the addressee in a sealed envelope no later than the next working day.

III. RESERVATION OF THE RUSSIAN FEDERATION

91. The instrument of ratification of the Convention deposited by the Russian Federation on 5 May 1998 contains the following reservation:

"In accordance with Article 64 of the Convention, the Russian Federation declares that the provisions of Article 5 paragraphs 3 and 4 shall not prevent ... the temporary application, sanctioned by the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation, of the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence, established by Article 11 paragraph 1, Article 89 paragraph 1, Articles 90, 92, 96, 96-1, 96-2, 97, 101 and 122 of the RSFSR Code of Criminal Procedure of 27 October 1960, with subsequent amendments and additions."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

92. The applicant complained about his conditions of detention in the Magadan detention facility IZ-47/1. He invoked Article 3 of the Convention, which provides:

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

The applicant referred in particular to the overcrowding and insanitary conditions in his cell, as well as the length of the period during which he was detained in such conditions, which had an adverse effect on his physical health and caused humiliation and suffering.

93. The Government argued that the applicant's conditions of detention could not be regarded as torture or inhuman or degrading treatment. The conditions did not differ from, or at least were no worse than those of most detainees in Russia. Overcrowding was a problem in pre-trial detention facilities in general. The authorities had had no intention of causing physical suffering to the applicant or of harming his health. The administration of the detention facility took all available measures to provide medical treatment for those persons suffering from any disease and to prevent the contagion of other inmates.

94. It was acknowledged that, for economic reasons, conditions of detention in Russia were very unsatisfactory and fell below the requirements set for penitentiary establishments in other member States of the Council of Europe. However, the Government were doing their best to improve conditions of detention in Russia. They had adopted a number of task programmes aimed at the construction of new pre-trial detention facilities, the re-construction of the existing ones and the elimination of tuberculosis and other infectious diseases in prisons. The implementation of these programmes would allow for a two-fold increase of space for prisoners and for the improvement of sanitary conditions in pre-trial detention facilities.

95. The Court recalls that, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

The Court further recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

The Court has considered treatment to be "inhuman" because, *inter alia*, is was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feeling of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, the Raninen v. Finland judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821-22, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III). 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.

Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nor can that Article be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment.

Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudla v. Poland* cited above, §§ 92-94).

When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

96. In the present case, the Court notes that the applicant was held in the Magadan detention facility IZ-47/1 from 29 June 1995 to 20 October 1999, and from 9 December 1999 to 26 June 2000. It recalls that, according to the generally recognised principles of international law, the Convention is binding on the Contracting States only in respect of facts occurring after its entry into force. The Convention entered into force in respect of Russia on 5 May 1998. However, in assessing the effect on the applicant of his conditions of detention, which were generally the same throughout his period of detention, both on remand and following his conviction, the Court may also have regard to the overall period during which he was detained, including the period prior to 5 May 1998.

97. The Court notes from the outset that the cell in which the applicant was detained measured between 17 m² (according to the applicant) and 20.8 m² (according to the Government). It was equipped with bunk-beds and was designed for 8 inmates. It may be questioned whether such accommodation could be regarded as attaining acceptable standards. In this connection the Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment ("the CPT") has set 7 m² per prisoner as an approximate, desirable guideline for a detention cell (see the 2nd General Report - CPT/Inf (92) 3, § 43), i.e. 56 m² for 8 inmates.

Despite the fact that the cell was designed for 8 inmates, according to the applicant's submissions to the Court the usual number of inmates in his cell throughout his detention was between 18 and 24 persons. In his application for release from custody of 27 December 1996, the applicant stated that there were 21 inmates in his 8-bed cell. In a similar application of 8 June 1999, he referred to 18 inmates (see paragraphs 43 and 73 above).

The Court notes that the Government, for their part, acknowledged that, due to the general overcrowding of the detention facility, each bed in the cells was used by 2 or 3 inmates. Meanwhile, they appear to disagree with the applicant as to the number of inmates. In their submission there were 11 or more inmates in the applicant's cell at any given time and that normally the number of inmates was 14. However, the Government did not submit any evidence to substantiate their contention. According to the applicant, it was only in March-April 2000 that the number of inmates was reduced to 11.

The Court does not find it necessary to resolve the disagreement between the Government and the applicant on this point. The figures submitted suggest that that any given time there was 0.9-1,9 m² of space per inmate in the applicant's cell. Thus, in the Court's view, the cell was continuously,

severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention.

Moreover, on account of the acute overcrowding, the inmates in the applicant's cell had to sleep taking turns, on the basis of eight-hour shifts of sleep per prisoner. It appears from his request for release from custody on 16 June 1999, that at that time he was sharing his bed with two other inmates (see paragraph 74 above). Sleeping conditions were further aggravated by the constant lighting in the cell, as well as the general commotion and noise from the large number of inmates. The resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant.

The Court further observes the absence of adequate ventilation in the applicant's cell which held an excessive number of inmates and who apparently were permitted to smoke in the cell. Although the applicant was allowed outdoor activity for one or two hours a day, the rest of the time he was confined to his cell, with a very limited space for himself and a stuffy atmosphere.

98. The Court next notes that the applicant's cell was infested with pests and that during his detention no anti-infestation treatment was effected in his cell. The Government conceded that infestation of detention facilities with insects was a problem, and referred to the 1989 ministerial guideline obliging detention facilities to take disinfection measures. However, it does not appear that this was done in the applicant's cell.

Throughout his detention the applicant contracted various skin diseases and fungal infections, in particular during the years 1996, 1997 and 1999, necessitating recesses in the trial. While it is true that the applicant received treatment for these diseases, their recurrence suggests that the very poor conditions in the cell facilitating their propagation remained unchanged.

The Court also notes with grave concern that the applicant was detained on occasions with persons suffering from syphilis and tuberculosis, although the Government stressed that contagion was prevented.

99. An additional aspect of the crammed and insanitary conditions described above was the toilet facilities. A partition measuring 1,1 meters in height separated the lavatory pan in the corner of the cell from a wash stand next to it, but not from the living area. There was no screen at the entrance to the toilet. The applicant had thus to use the toilet in the presence of other inmates and be present while the toilet was being used by his cellmates. The photographs provided by the Government show a filthy, dilapidated cell and toilet area, with no real privacy.

Whilst the Court notes with satisfaction the major improvements that have apparently been made to the area of the Magadan detention facility where the applicant's cell was located (as shown in the video recording which they submitted to the Court), this does not detract from the wholly

unacceptable conditions which the applicant clearly had to endure at the material time.

100. The applicant's conditions of detention were also a matter of concern for the trial court examining his case. In April and June 1999 it requested medical expert opinions on the effect of the conditions of detention on his mental and physical health after nearly 4 years of detention in order to determine whether he was unfit to take part in the proceedings and whether he should be hospitalised (see paragraphs 71 and 76 above). Even though the experts answered both questions in the negative, the Court notes their conclusions of July 1999, listing the various medical conditions from which the applicant suffered, i.e. neurocirculatory dystonia, astheno-neurotic syndrome, chronic gastroduodenitis, a fungal infection on his feet, hands and groin and mycosis (see paragraph 30 above).

101. The Court accepts that in the present case there is no indication that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of violation of Article 3 (see *Peers v. Greece* cited above). It considers that the conditions of detention, which the applicant had to endure for approximately 4 years and 10 months, must have caused him considerable mental suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement.

102. In the light of the above, the Court finds the applicant's conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment.

103. Accordingly, there has been a violation of Article 3 of the Convention.

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

104. The applicant complained that his lengthy pre-trial detention violated Article 5 § 3 of the Convention, which provides as follows:

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

A. The Government's preliminary objection

105. The Government argued that the applicant's complaint should be examined in the light of the Russian reservation. It was submitted that the

reservation applied both to the period of the applicant's detention during the preliminary investigation and the court proceedings. They referred to the text of the reservation and the contents of the Articles of the Code of Criminal Procedure cited therein. In particular, Articles 11, 89, 92 and 101 of the Code (see paragraph 89 above) conferred a power on the courts to apply preventive custody measures at the trial stage up until the delivery of a judgment.

106. The applicant submitted that the Russian reservation was not applicable in the present case as the reservation did not concern the length of detention on remand. It was contended that the purpose of the reservation was to preserve the right of the prosecutor to order detention on remand and to grant extensions of such detention when necessary.

107. The Court observes that the reservation is framed to exclude from the scope of Article 5 § 3 of the Convention the temporary application of specific provisions of the Code of Criminal Procedure, mentioned in the text of the reservation, concerning the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence. The provisions lay down the conditions and modalities for the application of preventive measures, including placement in custody, and list the authorities competent to take the respective decisions.

The Court notes that the reservation refers to Article 97 of the Code of Criminal Procedure under which a person can be detained in custody for up to 18 months during the investigation of criminal offences by an order of the competent prosecutor.

Notwithstanding the reference to the time-limits of detention during the investigative stage, the Court observes that the reservation is concerned with the procedure for applying preventive custody measures, whereas the applicant's complaint relates to the length of his detention on remand and not its lawfulness.

108. The Court therefore finds that the reservation in question does not apply in the present case.

B. Merits of the complaint

1. Period to be taken into consideration

109. It was undisputed that the period to be considered began on 29 June 1995 when the applicant was placed in detention on remand.

As regards the end of the period concerned, the applicant submitted that the relevant date was 31 March 2000, when the Magadan City Court issued its second judgment in the case. The Government contended that the period ended on 3 August 1999 with the delivery of the first judgment of the City Court. They also maintained that the Court's examination of the length of the applicant's detention on remand should be limited to the period from

5 May 1998, the date on which the Convention entered into force in respect of Russia, until 3 August 1999.

110. The Court first recalls that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, the Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 23, § 9, and *Labita v. Italy* cited above, § 147). Thus, in the present case the applicant's detention on remand began on 29 June 1995, when he was arrested, and ended on 3 August 1999, when he was convicted and sentenced by the Magadan City Court. The further remand on outstanding charges did not alter the fact that, as of 3 August 1999, the applicant was serving a sentence after his conviction by a competent court, within the meaning of Article 5 § 1 (a) of the Convention.

The total period of the applicant's detention of remand amounted thus to four years, one month and four days.

111. As the period before 5 May 1998 lies outside its jurisdiction *ratione temporis*, the Court can only consider the period of one year, two months and twenty-nine days, which elapsed between that date and the judgment of the Magadan City Court of 3 August 1999. However, it must take into account the fact that by 5 May 1998 the applicant, having been placed in detention on 29 June 1995, had already been in custody for two years, ten months and six days (see, for example, *mutatis mutandis*, the Mansur v. Turkey judgment of 8 June 1995, Series A, no. 319-B, p. 49, § 51).

2. Reasonableness of the length of detention

(a) The parties' submissions

112. The applicant maintained that it was not necessary to take him into custody and to keep him in detention for an extended period of time as there was no proof that he was trying to obstruct the establishment of the truth in the case. The reasons given by the authorities to justify his detention were not relevant or sufficient.

He also submitted that his case was not particularly complex, as established by the Magadan Regional Court on 15 March 1999. Three of the nine volumes of the case-file were made up entirely of his complaints to the various authorities. The investigation involved the questioning of 29 witnesses and there were two civil plaintiffs in the case.

Finally, the applicant argued that the proceedings were not conducted with due diligence by the authorities. His lengthy detention was occasioned by the poor quality of the investigation, its unwarranted attempts to increase the number of counts in the indictment and a lack of proper control over its activities by the supervising bodies. In this respect, he referred to the

findings of the Magadan City Court on 3 August 1999 (paragraph 80 above).

113. The Government pointed out that the applicant was arrested on the ground that he had obstructed the investigation of the truth. They further regarded the period of the applicant's pre-trial detention as reasonable in view of the complexity of the case, its considerable size (9 volumes) and the large number of witnesses and victims involved.

(b) The Court's assessment

(i) Principles established by the Court's case-law

114. The Court recalls that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be examined in each case according to its special features. Continued detention can be justified in a given case 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 laid down in Article 5 of the Convention (see, among other authorities, *Kudla v. Poland* cited above, § 110).

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and any well-documented facts stated by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* cited above, § 152).

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. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, the Scott v. Spain judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and I.A. v. France judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

(ii) Application of the above principles to the present case

(α) Grounds for detention

115. During the period covered by the Court's jurisdiction *ratione temporis* the Magadan City Court, in refusing to release the applicant, relied on the gravity of the charges against him and the danger of his obstructing the establishment of the truth while at liberty (see paragraph 69 above). The Court observes that similar grounds had been cited by the City Court earlier - on 27 December 1996 and 8 August 1997 - to justify the applicant's continued detention (see paragraphs 43 and 46 above).

It further notes that the principal reason for the decision to place the applicant in detention on remand on 29 June 1995 was that he had obstructed the investigation of the case by refusing to turn over certain bank documents necessary for the investigation, he had brought pressure to bear on witnesses and had allegedly tampered with the evidence. The decision also had regard to the gravity of the charges.

116. The Court recalls that the existence of a strong suspicion of the involvement of a person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention (see, for example, the Scott v. Spain judgment cited above, p. 2401, § 78). As regards the other ground relied on by the Magadan City Court in prolonging the applicant's detention, namely the danger of obstructing the examination of the case, the Court notes that, unlike the order of the investigator of 29 June 1995, the City Court did not mention any factual circumstances underpinning its conclusions, which were identical both in 1996, 1997 and 1999. There is no reference in its rulings to any factor capable of showing that the risk relied on actually persisted during the relevant period.

117. The Court accepts that the interference with the investigation, along with the suspicion that the applicant had committed the offences with which he was charged, could initially suffice to warrant the applicant's detention. However, as the proceedings progressed and the collection of the evidence became complete that ground inevitably became less relevant.

118. In sum, the Court finds that the reasons relied on by the authorities to justify the applicant's detention, although relevant and sufficient initially, lost this character as time passed.

(β) Conduct of the proceedings

119. As regards the duration of the criminal investigation, the Court notes the findings of the domestic courts that the case was not particularly complex and that the investigation of the case had been of poor quality contributing to a delay in the proceedings (see paragraphs 69 and 80 above). The Court finds no reason to come to a different conclusion. It also observes that, according to the domestic courts, the investigators had unjustifiably

attempted to increase the number of counts in the indictment (see paragraph 80 above) - a reproach which is borne out by the fact that only one of the nine charges against the applicant was found to be substantiated in the judgment of the Magadan City Court on 3 August 1999.

120. As regards the subsequent judicial proceedings, the Court observes that there were significant delays in the proceedings before the Magadan City Court. The trial, which had began on 11 November 1996, was adjourned on 7 May 1997 due to the removal from office of the presiding judge. It did not resume until 15 April 1999, although certain procedural steps were taken in July-August 1997 (the appointment of a new judge and scheduling of a hearing), May and July 1998 (the transfer of the case to another court), November 1998 (the scheduling of a hearing), January and March 1998 (decisions on the need for further investigation).

While it is true that the hearing scheduled for 8 August 1997 had to be postponed on account of the absence of the applicant's lawyer and the applicant objected to the transfer of his case to another court - a move destined to expedite the proceedings - the Court finds that the applicant did not substantially contribute to the length of the proceedings between the two trial periods, where there was no progress in the case.

It is thus apparent that the protracted proceedings are attributable neither to the complexity of the case nor the conduct of the applicant. Having regard to the characteristics of the investigation and the substantial delays in the court proceedings, the Court considers that the authorities did not act with all due expedition.

(γ) Conclusion

121. Against the above background, the Court finds that the period spent by the applicant in detention pending trial exceeded a “reasonable time”. There has thus been a violation of Article 5 § 3 of the Convention.

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

122. The applicant complained that the criminal charges against him were not determined within a reasonable time, as required by Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Period to be taken into consideration

123. The applicant submitted that the period to be taken into account began on 8 February 1995, with the institution of the criminal proceedings

against him, and ended on 31 March 2000, when the Magadan City Court delivered its second judgment in the case.

The Government contended that the period to be considered lasted from the transmission of the applicant's case to the Magadan City Court on 6 February 1996 until the pronouncement of its first judgment on 3 August 1999.

124. The Court recalls that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term (see, among other authorities, the Corigliano v. Italy judgment of 10 December 1982, Series A no. 57, p. 13, § 34, and the Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, p. 13, § 36). It ends with the day on which a charge is finally determined or the proceedings are discontinued.

The period under consideration in the present case thus began on 8 February 1995, when the applicant became a suspect on charges of misappropriation. As regards the end of the period, the Court notes that, following the decision to discontinue the remaining charges on 29 September 1999, after the City Court judgment of 3 August 1999, a new charge was brought against the applicant on 30 September 1999 on the basis of the same set of facts. It observes that the new charge was part of the original criminal case no. 48529, which had been initiated on 8 September 1995. In these circumstances and taking account of the timing of the new charge, the Court finds that the period to be considered ended on 31 March 2000, when the City Court delivered its judgment determining the final charge.

The period under consideration, i.e. from 8 February 1995 until 31 March 2000, amounted thus to a total of 5 years, 1 month and 23 days for, in effect, one level of jurisdiction, despite numerous ancillary proceedings. While its jurisdiction *ratione temporis* only covers the period after the entry into force of the Convention with respect to Russia on 5 May 1998, the Court may take into account the state of the proceedings existing on that date (see, among other authorities, *mutatis mutandis*, the Yağci and Sargin v. Turkey judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40).

B. Reasonableness of the length of the proceedings

125. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant has also to be taken into consideration (see, among many other authorities, *Kudla v. Poland* cited above, § 124).

1. The parties' submissions

126. As to the complexity of the case, the applicant referred to the finding of the Magadan Regional Court on 15 March 1999 that the case was not particularly complex and that this could not justify the delays which had occurred.

As regards his conduct, the applicant submitted that his complaints were aimed at accelerating the proceedings. Moreover, his active co-operation with the judiciary is not required under Article 6 of the Convention, nor can his attempt to pursue legal remedies be held against him.

As to the conduct of the authorities, the applicant referred to the poor quality of the preliminary investigation and the investigative shortcomings as established by the Magadan City Court on 3 August 1999. In addition, the City Court itself breached domestic procedural law by failing to comply with the time-limits for the start of the trial stipulated in Articles 223-1 and 239 of the Code of Criminal Procedure. It was pointed out that at the trial the court questioned only nine witnesses. The applicant also referred to the removal of the judge from his case, which had nothing to do with him, and to the transfer of his case to the Khasynskiy District Court which proved ineffective in accelerating the case.

127. The Government acknowledged that the examination of the applicant's case lasted a long time, but submitted that the period was not unreasonable. It was maintained that the lengthy examination of the applicant's case was caused by its complexity and volume, as well as the need for its thorough and comprehensive investigation.

Furthermore, the applicant contributed to the length of the proceedings by filing multiple applications, including repeated requests on motions which had been previously rejected. The Government referred in this respect to the findings of the Magadan City Court of 15 July 1999 and 22 July 1999 where it was considered that the applicant's numerous requests filed during the trial amounted to a deliberate attempt to delay the proceedings. The applicant's petitions for a transfer of his case to another court between hearings also caused delay. It was pointed out that 30% of the applicant's case-file was made up of his complaints and motions.

The Government also pointed out that the period of the applicant's custody was subsumed by the term of his sentence. Therefore, the length of the applicant's detention on remand had no impact on the overall period of his confinement.

Finally, the Government stated that the authorities demonstrated a humane attitude towards the applicant by way of an amnesty, which released him earlier from his sentence, even though he had not compensated the bank and its many customers for the damage he had caused.

2. The Court's assessment

(a) Complexity of the case

128. The Court notes that the proceedings in issue, in which the applicant was the only defendant, concerned financial offences with considerable evidence, involving the questioning of a number witnesses. It observes, however, that from 7 May 1997, when the trial was adjourned, until 15 April 1999, when it resumed, no investigative measures were undertaken.

The Court observes the finding of the domestic court that the case was not so complex as to justify the delays in the proceedings (see paragraph 69 above).

It was thus not the complexity of the case or the requirements of the investigation which accounted for the length of the proceedings.

(b) Conduct of the applicant

129. The Court notes that throughout the domestic court proceedings the applicant filed numerous requests in connection with his case, both during his trial and between hearings. It recalls that Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities (see, for example, the Dobbertin v. France judgment of 25 February 1993, Series A no. 256-D, p. 117, § 43).

It observes that the applicant's applications lodged during the trial as of 15 April 1999 were found by the trial court to have been obstructive to the examination of his case. However, there is no indication that during other trial periods, i.e. from 11 November 1996 to 7 May 1997, and from 20 December 1999 to 31 March 2000, the applicant's behaviour could be said to have been in any way dilatory.

As regards the requests lodged by the applicant between hearings, the Court notes that they related mainly to the prolonged failure of the trial court to examine his case. The Court cannot find that these requests contributed to slowing down the proceedings, in particular as they remained largely without effect. While it is true that in order to expedite the proceedings the applicant's case was transferred to another court, the applicant cannot be criticised for objecting to it after the transfer had resulted in no progress in his case.

The Court also notes that once, on 8 August 1997, a hearing had to be postponed as the applicant's lawyer had failed to appear.

130. The Court considers that, whilst the applicant can be held responsible for certain delays, his conduct did not contribute substantially to the length of the proceedings.

(c) Conduct of the national authorities

131. As already mentioned above, there were significant delays in the domestic proceedings, which could not be explained by the complexity of the case or the conduct of the applicant. In particular, the case lay practically dormant before the trial court for nearly two years, *i.e.* from 7 May 1997 to 15 April 1999.

132. The Court observes that throughout the proceedings the applicant was kept in custody - a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously.

133. The Court further notes that, following the judgment of the Magadan City Court on 3 August 1999 and the decision to discontinue the remaining charges on 29 September 1999, the authorities brought a new charge against the applicant on the basis of the same set of facts, thereby contributing even further to the length of the proceedings, which had already lasted for over four and a half years at the court of first instance.

134. It considers that the authorities failed in their duty of special diligence, particularly after the entry into force of the Convention on 5 May 1998.

3. Conclusion

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. Article 41 of the Convention provides:

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

A. Pecuniary damage

137. The applicant claimed damages in respect of the following items:

(1) 130,599 US dollars ("USD") for loss of salary as the president of the North East Commercial Bank, during the period of his detention from July 1995 until 20 April 2000;

(2) USD 203,000 for loss of salary from another company which dismissed him because of his arrest;

(3) USD 500,000 for the loss of his company's property following his arrest;

(4) USD 8,600 for the loss of his automobile;

(5) USD 11,734,376 for the loss of profits on shares which he could not sell at their market value in 1995;

(6) USD 436,226 for the loss of his majority shares in a factory which was declared bankrupt in 1997.

His overall claim for pecuniary damages totalled USD 13,012,702.

138. The Government contested these claims.

139. The Court recalls that it will award monetary compensation under Article 41 only where it is satisfied that the loss or damage complained of was actually caused by the violation it has found.

As regards the claim under item (1), the Court notes that the applicant was convicted and that the period of his pre-trial detention was deducted in its entirety from the sentence. It considers therefore that the claim cannot be entertained.

As regards the remainder of the claims, the Court considers that no causal connection has been established between the damage alleged and the violations it has found.

The Court therefore rejects the applicant's claim under this head.

B. Non-pecuniary damage

140. The applicant claimed 9,636,000 French francs for non-pecuniary damage.

141. The Government submitted that the claim was excessive and that the finding of a violation would constitute sufficient satisfaction.

142. The Court considers that the length of the applicant's detention on remand in such prison conditions, as well as the length of the criminal proceedings, must have caused him feelings of frustration, uncertainty and anxiety which cannot be compensated solely by the finding of a violation.

143. Deciding on an equitable basis, the Court awards the applicant a global sum of 5,000 euros (“EUR”) in respect of non-pecuniary damage.

C. Costs and expenses

144. The applicant submitted that his expenses for the services rendered by his lawyer in the domestic proceedings amounted approximately to 40,000 USD.

145. The Government considered this claim to be unsubstantiated and excessive, given the level of lawyers' fees at the relevant time in the remote Magadan region. They further questioned the authenticity of certain documents supplied by the applicant. It was also argued that the expenses borne by the applicant in the domestic proceedings should not be reimbursed as the applicant was found guilty and sentenced to a term of imprisonment.

146. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nielsen and Johnson v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). It is apparent from the material submitted that the applicant incurred legal costs and expenses in connection with his attempts to secure his release on bail. However, he only provided partial documentary substantiation of the sum claimed. Moreover, the costs incurred did not exclusively relate to the breaches of Articles 3, 5 § 3 and 6 § 1 of the Convention.

Making an assessment on an equitable basis, the Court considers it reasonable to award the applicant the sum of 3,000 EUR under this head.

D. Default interest

147. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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

3. *Holds* that there has been a violation of Article 6 § 1 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement;

(i) 5,000 EUR (five thousand euros) in respect of non-pecuniary damage;

(ii) 3,000 EUR (three thousand euros) in respect of costs and expenses;

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

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

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

Done in English, and notified in writing on 15 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate concurring opinion of Mr Kovler is annexed to this judgment.

JPC
SD

SEPARATE CONCURRING OPINION OF JUDGE KOVLER

(Translation)

In general I share my colleagues' opinion in this case. However, having regard to the legal importance of the Court's judgment, I consider it necessary to make certain remarks.

1. The reservation made by Russia in respect of Article 5 §§ 3 and 4 of the Convention concerning the application of certain provisions of the RSFSR Code of Criminal Procedure of 27 October 1960 ("CCP"), with the subsequent amendments to the procedure for the detention on remand of suspects, extends also to Article 97 on "Custodial periods" of the CCP, mentioned in the reservation along with other provisions of the CCP. I find it difficult, therefore, to justify the Court's conclusion in paragraph 108 of the judgment that the reservation does not cover part of the applicant's pre-trial detention.

In my view, it would have been more appropriate for the Court to hold that the reservation at least extends to the period spent by the applicant in custody pending the criminal investigation. Nevertheless, it should be borne in mind that a broad construction of the text of the reservation as it applies to Article 97 of the CCP could result in certain findings that extensions of detention on remand beyond the time-limits set out in Sections 4-7 of Article 97 of the CCP are lawful: in cases where the defendant and his or her advocate cannot examine the case-file before the expiry of the maximum custody period, where the defendant and his or her advocate request further investigations or when a court remits a case for further investigations when the custody period has expired.

In other words, Russia's reservation under Article 5 §§ 3 and 4 applies not only to the procedure for remand in custody (which, by the way, is being drastically modified as of 1 July 2002 when relevant provisions of the new CCP come into force), but also to other pre-trial custody periods. In this connection, it is necessary to determine whether "detention on remand" includes the time spent in custody after the criminal case has been transferred to the trial court.

2. Russian procedural law distinguishes between two types of detention on remand: preliminary detention pending the investigation (*«за следствием»*) and preliminary detention pending trial (*«за судом»*). This difference is reflected in the law of 13 June 2001 which limited to six months the maximum length of court proceedings in criminal cases. However, in paragraph 110 of its judgment, the Court, with reference to its case-law, considered that detention on remand encompasses the whole pre-trial detention period, from the day when the individual is taken into custody until the trial court's verdict. After all, for a detainee locked up in an overcrowded prison cell, it makes little difference whether his or her

detention is considered to be pending the investigation or pending the trial, or whether it was effected before or after the Convention came into force in respect of the respondent State. This difference could, however, be of importance for the Court, if the Court were to accept that a State's margin of appreciation is relevant to the determination of the reasonableness of custody periods.

The applicant was remanded in custody pending the investigation from 29 June 1995 (the day when he was taken into custody) until 19 June 1996 (the day when the Regional Prosecutor's Office transferred the case to the Magadan City Court), i.e. eleven months and twenty-two days, which is less than the maximum period of eighteen months set out in Section 2 of Article 97 of the CCP, after which a defendant may be immediately released (Section 3 of Article 97 of CCP). This part of the applicant's detention cannot be imputed to the respondent State because it pre-dated the entry into force of the Convention in respect of Russia (incompatible *ratione temporis*).

The applicant's detention pending the court proceedings lasted until 3 August 1999, when the Magadan City Court gave its first judgment, i.e. three years one month and twenty-one days (as the Court has established in paragraph 110 of its judgment, above). One should not forget that the delay in passing verdict and, consequently, the applicant's prolonged stay in custody, was partly attributable to the applicant's challenges to judges and his requests that the proceedings be conducted by a different court, as well as to the replacement of advocates and their failure to appear, which facts the Court implicitly accepts at paragraph 130 of its judgment. This delay totalled one year and three months. It would not, of course, justify the procedural delays caused by the courts themselves, but nonetheless creates a different picture of the applicant's detention pending trial.

Finally, the remittance of the case for further investigation and the delivery by the Magadan City Court on 31 March 2000 of the second verdict extended the custody period by another seven months, in accordance with Section 7 of Article 97 of the CCP.

However, in all, the applicant spent five years, one month and twenty-three days in custody, four years, nine months and two days of which were spent in Remand Centre No. 1 at Magadan. This cannot be considered to be a reasonable custody period for the purposes of Article 5 § 3 of the Convention, despite the circumstances I have mentioned above. Pursuant to Section 8 of Article 97 of the CCP, the applicant complained several times to the courts about the lawfulness and validity of his detention. He thereby exhausted, as required by Article 35 § 1 of the Convention, all the domestic remedies available to him in this respect.

3. As regards the issues under Article 6 § 1 of the Convention (a fair and public hearing within a reasonable time), the Court has, unfortunately, in my view disregarded the fact that the applicant did not make use of his right

to lodge an appeal against the verdict of 3 August 1999; thus leaving open a question of exhaustion of domestic remedies. It is true, however, that the applicant's arguments are reinforced by the fact that this verdict was not final, given the further investigation and new verdict given on 31 March 2000.

4. Having regard to the above considerations, I consider it appropriate to concur with the opinion of my colleagues as to the violations of Articles 3, 5 § 3 and 6 § 1 of the Convention, but believe that the award of just satisfaction in paragraph 143 of the judgment should have been separately assessed in respect of the different violations found.