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**SUMMARY OF THE  
CASE OF CASE OF KALASHNIKOV v. RUSSIA  
JUDGMENT OF THE EUROPEAN COURT OF  
HUMAN RIGHTS  
ISSUED ON 15 JULY 2002**

**June 2005**

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## NON OFFICIAL SUMMARY OF THE CASE

### CASE OF KALASHNIKOV v. RUSSIA

*(Application no. 47095/99)*

JUDGMENT

STRASBOURG

15 July 2002

## 1. EDITED TEXT OF THE JUDGMENT

### 1.1 Statement of facts

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.

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

The applicant was born in 1955 and lives in Moscow. At the material time he was the president of the North East Commercial Bank. On 8 February 1995 criminal proceedings were initiated against the applicant on suspicion of involvement in money fraud. In the beginning, it was decided to apply the signature for not leaving a place as a preventive measure against him. On 17 February 1995 he was charged for embezzlement of the funds of another entity. On 29 June 1995 by order of the investigator he was put under detention on remand as the preventive measure on the basis that he could obstruct the disclosure of the truth of the investigation of the criminal case. In particular, the decision of detention on remand mentioned that the Applicant refused to submit to the body of investigation many banking documents necessary for investigation, that he bear pressure on the witnesses and that he obstructed the documents and facts of the case. The decision referred also to the level of seriousness of the crime as one of the basis for putting the Applicant under detention on remand. In February 4, 1995, the Applicant was charged for 8 counts for illegal bank transactions by the money deposited on his own account.

The pre-trial investigation of the case was finished in March 1, 1996 and the criminal case was transferred to the First Instance Court of the City of Magadan. After examination of the materials of this case, this court took decision to send the case back to the pre-trial investigation body with the request to re-investigate the case. The pre-trial investigation body re-considered the case and sent it back to the same court. The trial of the case started in 11 November 1996. During the trial the Applicant filed two motions to the judge requesting to replace the detention as preventive measure with other type of preventive measure provided under Criminal Procedure Law. The motion was made on the basis of the bad living conditions of the detention facility, as well as on the basis of deterioration of his health. The court denied both motions. In December 27, 1996 the Applicant submitted another motion about changing the preventive measure. In this time the basis of the motion were the same as above; the conditions of the detention facility and the deteriorating health conditions. The

court again refused the motion on the basis of the seriousness of the crime, including the possibility that the Applicant would prevent the disclosure of the truth under liberty.

The trial in Magadan city court continued until 23 April 1997. The trial investigation of the case was suspended after one month due to the fact that the presiding judge was removed from the office for the reasons not connected with this case. On 15 June 1997 the applicant filed another request for release, referring to the poor conditions in which he was being detained. 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.

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 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. From November 1997 the Applicant sent numerous complaints to different authorities, including the Staff of the President of Russia, the High Qualification Board of Judges and the Office of the Prosecutor General of Russia. In his complaints he mentioned about inhuman conditions of detention, about his health and about unreasoned refusal of his motions to pre-trial and trial bodies concerning his requests to replace the detention of remand with other preventive measure. He complained that the replacement of the preventive measure would not effect the investigation of the case on the basis that all facts of the case had already been established, the witnesses questions and the necessary documents provided to the court. Therefore, his release form custody would not harm the further investigation of the case. In February 5, 1998 the Chairman of the Regional Court of Magadan informed Applicant that the trial of the case would resume in July 1, 1998. The letter also indicated that the extensive delay was caused by the complexity of the case and the big workload of the judges.

In February 23, 1998 the Applicant went on hunger strike in order to bring the attention of authorities to the unjustified length of trial proceedings of his case. The hunger strike continued until March 17. In the same month the Applicant sent the second letter to the Staff of the President of Russia, including to State Duma (the Russian Parliament) requesting for support to transfer his case to the Regional Court of Magadan for further trial. The Applicant was of the opinion that the City Court of Magadan was not doing effective investigation of his case. The regional Justice Department of Magadan informed Applicant in March 3 that the court would not be able to resume the hearing of his case until the second half of 1998. The Applicant applied the Constitutional Court of Russia requesting for Constitutional review of Articles 223-1 and 239 of the Criminal Procedure Code of Russia. The mentioned articles are about procedural time limits of trial proceedings. The Constitutional Court replied in March 10, 1998 by informing 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.

After numerous letters of complaint to different judicial and executive bodies, including the Supreme Court and the Judges High Qualification Board, the Chairman of the Regional Court of Magadan finally replied in May 1998 that a decision was taken to transfer the Applicant's case to Khasinski First Instance court for further trial investigation. It was mentioned that the transfer of the case was done for the purpose of expediting the trial proceedings. On 11 June 1998 the applicant complained about the delay in starting court hearings in Khasinski court to the High Qualification Board of Judges. The case had been transferred to this court two months ago for the purpose of expedition of the case while the hearings had not started yet. 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. During July of 1998 the Applicant sent several motions and complaint letters to High Qualification Body of Judges complaining against the lengthy trial proceedings and against keeping him under detention on remand on unjustified basis.

In November 13, 1998 the Magadan City Court took decision to schedule the hearing in January 28, 1999. During this hearing the court took decision to send the case back to the prosecutor office for additional investigation due to various due process violations during pre-trial investigation stage by pre-trial bodies. The Applicant complained against this decision to the Magadan Regional Court. The complaint was based mainly on unreasonable length of proceedings. The Regional Court revoked the decision of the First Instance Court for sending the case to pre-trial body and instructed it to resume the hearings. During the same day the Magadan Regional Court took another decision that the length of the proceedings in the first instance court was delayed on the basis of unfounded reasons and that the reference to the complexity of the case as the basis for lengthy trial. During this period the Applicant made two more motions to the trial court for release from detention on remand and for replacing the detention with other preventive measure (signature for not leaving the place). However, the trial court refused both of the motions.

In April 15, 1999 the City Court of Magadan resumed the hearings. During the hearing of April 20, 1999 the prosecutor motioned the court to carry out medical examination of the Applicant in order to find out whether the latter was in position to stand the trial. The motion was admitted. During the April 30 trial the Applicant filed another motion for release from detention and replacing the preventive measure. The prosecutor motioned the court to instruct the administration of the detention facility to improve the detention conditions of the Applicant. The Applicant had later informed the court that after the request, the prosecutor who was authorized to exercise supervisory functions over the detention facility had visited him in the detention cell and examined the conditions of detention and admitted that the conditions were indeed very bad. However, he mentioned during his private conversation with the Applicant that the conditions could not be improved due to lack of necessary funding.

In June 8 trial hearing the Applicant again filed a motion to replace the detention with other preventive measure. He informed in his motion that there were 18 other inmates living in the same detention cell and that he was therefore not able to prepare for trial hearings. In another hearing in the same month the Applicant filed another motion with the same request

of release and replacement of detention by another preventive measure. The basis for bringing motion were always the same; the bad conditions of detention and worsening health conditions. In particular, he informed 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 Magadan City Court took decision to leave the motions without examination on the basis that the motions were made in connection with the facts and on the basis of the arguments that were outside of the context of the hearings.

In June 22, 1999 the High Qualification Board of Judges removed from the office the Chairman of the Regional Court of Magadan and his two Deputies on the basis of unduly delays of the proceedings. In June 23 hearings the Applicant informed that was not able to participate in hearings due to his feeling unwell. The Court order to carry out medical examination of the Applicant in order to establish whether there was necessity to hospitalise the Applicant and whether he could remain under detention. It was established that that the Applicants health seriously deteriorated, however, there was no necessity for hospitalisation. It was also concluded that the Applicant was in position to attend hearings and give testimonies and that he could stay under detention.

In July 15 hearing the Applicant again filed a motion with the same request and bringing the same reasons for release. He specifically pointed on the fact that the court had almost finished the investigation and that he would no longer be in a position to hinder the investigation of the case or obstruct the establishment of the truth by being in liberty. However, this motion was also denied. In a separate decision taken on the same day the trial court ruled that between the period from April 15 and July 15 of 1999 the court had examined around 30 applications of the Applicant, including such requests where the context was repeated and where similar decisions taken by court. It was also indicated in this decision that the Applicant had mentioned that he would testify only if his motions were admitted and that the manner in which the court conducts hearings was aimed in deliberately prolonging the proceedings. The court heard 9 witnesses out of originally listed 29 who would be able to be summoned to court in the past. The testimonies of other 12 witnesses were read during the hearing.

By the ruling made in 3 August 1999 the trial court decided only one of the charges against the Applicant founded and dismissed other charges against him, each of which were made on 9 counts. The court sentenced the Applicant to five year and six months imprisonment in the labour camp of general regime. Further, the court counted the beginning of the sentence from June 29, 1995. The court ruled that the pre-trial investigation was made with shortcomings and that the investigators made attempts to unduly increase the number of charges against Applicant in the indictment. The court also mentioned that due process violations took place in submitting the necessary documents to court in a proper way and that those violations had to be eliminated during the trial proceedings and that this fact caused the delay of proceedings. It was also mentioned that the bodies exercising supervision over the pre-trial investigation, including the prosecutor office of Magadan, had violated criminal procedural norms of exercising in due form the supervision over the proceedings. This court took another decision in the same day by which it decided to separate a portion from the case and send it to the prosecutor office for secondary investigation. This decision was appealed by

Applicant to the Supreme Court, which took decision in September 30, 1999 to declare the subject decision unlawful.

Under law, the decision of the City Court could be appealed in seven days after promulgation. However, the Applicant didn't appeal it by finding it ineffective on the basis that the Regional Court of Magadan had contributed in his conviction and lengthy proceedings. On the basis of the following contention the Applicant found the appeal would be ineffective. Thus, in August 11, 1999 the decision of Magadan City Court came into effect.

In October 25, 1999 the Applicant applied the Chairman of the Supreme Court of Russia requesting to review the judgment of the City Court of Magadan. The application was denied. In the next month the Applicant reapplied the same court by the similar request. The second application again was denied.

In September 24, 1999 it was decided to change the preventive measure by signature not to leave the place of residence. However, despite this decision the Applicant continued to be left under detention in serving the sentence term. In September 29, 1999 the proceedings initiated in respect of other charges was discontinued on the basis of absence of the element of crime in the actions of the Applicant. However, in September 30, 1999 new charges were brought against Applicant for misappropriation of funds acting in capacity as the chairman of bank. In October of the same year the prosecutor office finished the investigation of the case and transferred the case to Magadan City Court. The indictment had the same case number as the original case of the Applicant – No.48529. It was mentioned in the indictment that the case criminal case was initiated in February 8, 1995. The trial on the basis of the new charges started in December 1999. In March 31, 2000 the Magadan City Court decided to cancel the case on the basis of the lack of charges against Applicant. In May 26, 2000 the Government of Russian Federation declared general amnesty, on the basis of which the Applicant was released in January 31, 2000.

## **1.2 Relevant Domestic Law**

### 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.”*

### Code of Criminal Procedure

#### 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 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.*

#### 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.”*

### **1.3 Reservation of the Russian Federation**

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.”*

#### 1.4 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 unsanitary 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 m<sup>2</sup> (according to the applicant) and 20.8 m<sup>2</sup> (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 m<sup>2</sup> per prisoner as an approximate, desirable guideline for a detention cell (see the 2<sup>nd</sup> General Report - CPT/Inf (92) 3, § 43), i.e. 56 m<sup>2</sup> 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 at any given time there was 0.9-1.9 m<sup>2</sup> 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 cramped and unsanitary 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 unsanitary 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.

### **1.5 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.”*

#### **1.5.1. 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.

## 1.5.2 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 begun 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.

## 1.6 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.”

### 1.6.1 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).

### 1.6.2. 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.

### **1.6.3. 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.

#### **1.6.4. 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.