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

FIRST SECTION

CASE OF MAMEDOVA v. RUSSIA

(Application no. 7064/05)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

23/10/2006

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 Mamedova v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 7064/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Olga Vagidovna Mamedova, on 6 January 2005.

2. The applicant was represented before the Court by Mr M. Ovchinnikov and Mr F. Bagryanskiy, lawyers practising in Vladimir. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The application was allocated to the First 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.

4. On 21 June 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Vladimir, Russia.

A. Criminal proceedings against the applicant

1. Applicant's arrest and placement in custody

7. On 20 July 2004 a criminal investigation into a financial fraud allegedly committed by the applicant in conspiracy with another person, was opened.

8. On 22 July 2004 the applicant's flat was searched and she was informed about the suspicion against her.

9. On 23 July 2004 the applicant was arrested and charged with large-scale fraud, an offence under Article 159 § 3 of the Russian Criminal Code.

10. On 24 July 2004 the Frunzenskiy District Court of Vladimir ordered the applicant's detention on the ground that she was suspected of a serious criminal offence and that she would abscond because her accomplice had already absconded. She could also destroy evidence because some documents had not yet been seized.

11. On 26 July 2004 the applicant sent her notice of appeal. She asked for a more lenient preventive measure and petitioned the court to take into account that she was charged with a financial crime, that she had no criminal record, had a permanent place of residence and employment in Vladimir, family ties, a stable way of life and two minor children aged four and three. If she wished, she could have absconded after the search in her flat. The fact that she had not fled from justice proved that she had no such intention. She also complained about inhuman conditions of her detention and sought leave to appear before the appeal court.

12. On 10 August 2004 the Vladimir Regional Court upheld the detention order of 24 July 2004, finding that it had been lawful, sufficiently reasoned and justified. In the Regional Court's view, the District Court had correctly assessed the applicant's "character" and other materials presented by the prosecutor. The appeal hearing took place in the presence of the prosecutor who repeated the arguments advanced before the District Court and two counsels for the applicant. The applicant's request for leave to appear in person was refused because her arguments were clearly set out in her notice of appeal and did not require additional clarifications.

2. Extension of detention until 23 November 2004

13. On 22 September 2004 the Frunzenskiy District Court extended the applicant's detention until 23 November 2004. The court grounded its decision on the gravity of the charge against the applicant and on the possibility that she could abscond or obstruct justice.

14. On 27 September 2004 the applicant appealed. She complained that the decision of 22 September 2004 was not sufficiently motivated, that the court did not take into account her individual situation, that the conditions of her detention were inhuman. She asked for release on bail.

15. The appeal hearing was scheduled for 19 October 2004. On that day the hearing was adjourned because the applicant had not been brought to the courthouse.

16. On 3 November 2004 the Vladimir Regional Court found that there were no reasons to vary the preventive measure and upheld the decision of 22 September 2004.

3. Extension of detention until 23 December 2004

17. On 22 November 2004 the Frunzenskiy District Court extended the applicant's detention until 23 December 2004, finding as follows:

> "... it is necessary to carry out many investigative actions with [the applicant's] participation.
>
> [The applicant] is charged with a serious criminal offence. Besides, the prosecution submitted documents showing that, once released, [the applicant] can flee from justice and interfere with the establishment of the truth.
>
> The court sees no reasons to vary or cancel the preventive measure applied to [the applicant]."

18. On 1 December 2004 the applicant lodged a notice of appeal. On 27 December 2004 the Vladimir Regional Court upheld the decision. It found that the decision had been lawful and sufficiently reasoned.

4. Extension of detention until 23 January 2005

19. On 22 December 2004 the Frunzenskiy District Court extended the applicant's detention until 23 January 2005 with reference to the gravity of charges and the need for a further investigation. The court also mentioned that the applicant could abscond, obstruct justice or re-offend.

20. On 27 December 2004 the applicant appealed. She referred, in particular, to inhuman conditions of her detention and asked for release on bail.

21. On 1 February 2005 the Vladimir Regional Court upheld the decision of 22 December 2004. In particular, the appeal court noted that "conditions of detention could not be taken into account when deciding on an extension of detention".

5. Extension of detention until 20 March 2005

22. On 21 January 2005 the Frunzenskiy District Court extended the applicant's detention until 20 March 2005. The reasoning was similar to that in the decision of 22 December 2004.

23. On 24 January 2005 the applicant lodged her points of appeal. She submitted that she had already spent six months in custody and that a further extension was permitted under the domestic law only if the case was particularly complex. The prosecution failed to show that her case was particularly complex. Nor did they prove that she intended to abscond or interfere with the establishment of the truth. The prosecution searched the applicant's flat and office and seized all the papers; for that reason she could not destroy any evidence. The applicant asked the court to take account of her personal situation – her being a mother of two minor children with a permanent place of residence and employment in Vladimir - and inhuman conditions of her detention on remand. She complained that she had not been afforded an opportunity to study the materials submitted by the prosecution in support of their request for extension.

24. On 22 February 2005 the Vladimir Regional Court upheld the decision of 21 January 2005. The appeal court endorsed the reasoning of the first-instance court. It further held:

> "The opinion of [the applicant's] lawyer that when considering the extension of detention it is necessary to take into account the conditions of detention in remand centres has no basis in the domestic law...
>
> The rules of criminal procedure (Arts. 108, 109 of the Russian Code on Criminal Procedure) do not provide for disclosure of the materials submitted by the prosecution in support of a request for extension. Nor do they require that the court should hear the opinion of the parties concerning [those materials]."

6. Extension of detention until 20 May 2005

25. On 18 March 2005 the Frunzenskiy District Court ordered the extension of the applicant's detention until 20 May 2005. It held that the applicant was charged with a serious criminal offence, that it was necessary to conduct an additional investigation and that there were no reasons to vary the preventive measure.

26. On 24 March 2005 the applicant lodged her appeal. On 19 April 2005 the Vladimir Regional Court upheld the decision.

7. Extension of detention until 20 June 2005

27. On 19 May 2005 the Frunzenskiy District Court extended the applicant's detention until 20 June 2005. It held that the extension was "objectively justified" because of the complexity of the case, the gravity of

the charge and the risk of the applicant's absconding or her interfering with the establishment of the truth.

28. On 27 May 2005 the applicant appealed. She repeated the arguments set out in the points of appeal of 24 January 2005 and added that her father was seriously ill. On 21 June 2005 the Vladimir Regional Court rejected the appeal.

8. Extension of detention until 20 July 2005

29. On 17 June 2005 the Frunzenskiy District Court extended the applicant's detention until 20 July 2005. It referred to the complexity of the case (the case-file comprised 13 binders), the need for a further investigation, the gravity of the charge and the risk of the applicant's absconding or interfering with the establishment of the truth.

30. On 28 July 2005 the Vladimir Regional Court upheld the decision on appeal.

9. Further extensions of the applicant's detention and her release

31. On 14 July 2005 the investigation was completed and the applicant was committed for trial. The applicant's lawyers petitioned the court for her release.

32. On 19 July 2005 the Leninskiy District Court of Vladimir fixed the first hearing for 2 August 2005 and ordered that the applicant should remain in custody.

33. On 2 August 2005 the Leninskiy District Court established that the case was not ready for consideration on the merits because the applicant had not had sufficient time to study the case file and remitted the case for additional investigation. It ordered that the applicant should meanwhile remain in custody.

34. On 4 August 2005 the acting prosecutor of Vladimir varied the preventive measure. The applicant was released but ordered not to leave the town.

B. Conditions of the applicant's detention

35. The applicant was held in detention facility no. IZ-33/1 in the Vladimir Region.

1. Number of inmates per cell

36. According to a certificate of 11 August 2005 from the facility administration, produced by the Government, the applicant was kept in four cells described as follows: cells nos. 73 and 74 (22 m², 18 bunks, 15 inmates on average), cell no. 69 (24 m², 21 bunks, 14 inmates on average) and cell

no. 70 (25 m², 15 bunks, 10 inmates on average). The Government submitted that the applicant had at all times had a separate bunk.

37. The applicant did not dispute the cell measurements and the number of bunks. She disagreed, however, with the number of inmates asserted by the Government. According to her, from July 2004 to March 2005 she was held in cell no. 73 together with 15 to 22 inmates; from 2 to 4 March 2005 she was kept in cell no. 69 which accommodated 14 detainees; thereafter and until 18 May 2005 she shared cell no. 74 with up to 20 inmates; in the night of 18 May 2005 she stayed in cell no. 70 with 10 other inmates; and on 19 May 2005 she was transferred back to cell no. 74 that accommodated up to 20 detainees. In cells nos. 73 and 74 she did not always have a separate bunk.

2. Sanitary conditions and installations, temperature and water supply

38. The Government, relying on a certificate of 11 August 2005 from the facility administration, submitted that all cells were equipped with a lavatory pan. The pan had no cover but it was separated from the living area by a one-metre-high brick wall and an additional curtain of 1.2 metre in height. Once a week the inmates were provided with detergent (soda and chlorine). The dining table was situated three meters away from the pan. The inmates were allowed to take a shower once a week. The cells were naturally ventilated through the windows and the door vent. Fans were provided on request. There were no running hot water available but detainees were permitted to use immersion heaters. Besides, hot water for laundry and boiled drinking water was distributed. Once a week inmates were provided with clean bedding, towels and kitchenware. The cells were equipped with fluorescent lamps which functioned during day and night.

39. The applicant disagreed with the Government's description and submitted that the sanitary conditions were unsatisfactory. The cells swarmed with insects, rats and mice. Inmates had to do their laundry indoors, creating excessive humidity in the cells. There was no artificial ventilation system. A fan was provided only in June 2005. The windows were covered with thick metal bars that blocked access to natural light. The artificial light was never switched off disturbing the applicant's sleep.

40. The applicant contested the Government's description of the toilet facilities. The pan was cleaned infrequently and it was very dirty and stinky. What is more, it had no cover: inmates stuck a plastic bottle in the hole in order to prevent smells from spreading. No curtains were provided and inmates had to hang a sheet which did not offer sufficient privacy. No toilet articles were distributed, save for 100 g of soda and chloride and 33 g of laundry soap per week.

41. The applicant was allowed to take a shower once a week. The entire cell was afforded fifteen minutes to shower, although there was only four shower heads. Soap was distributed after a shower. It was extremely cold in

the shower room in winter. On the court days or on the days of family visits the applicant missed her chance to take shower.

3. Outdoor exercise

42. The Government submitted that the applicant had an hour-long walk daily.

43. The applicant conceded that an hour-long walk was organised every day. However, on shower days inmates were not allowed to go outdoors. The entire cell population was often left indoors as collective punishment for a disciplinary offence committed by one inmate. The exercise yards were fenced by brick walls of 2.5 metre in height with bars on the top. They were covered with a metal roof with a one-meter gap between the roof and the top of the walls. In summer it was extremely hot and stifling inside because the sun heated the roof. Most of yards measured 9 m², up to 10 people were brought into the yard at once.

II. RELEVANT DOMESTIC LAW

44. Since 1 July 2002 criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the "CCrP").

45. "Preventive measures" or "measures of restraint" (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

46. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, re-offend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

47. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

48. After arrest the suspect is placed in custody "pending the investigation". The maximum permitted period of detention "pending the investigation" is two months but it can be extended for up to eighteen months in "exceptional circumstances" (Article 109 §§ 1-3). The period of detention "pending the investigation" is calculated to the day when the prosecutor sent the case to the trial court (Article 109 § 9).

49. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial"). The

period of detention "during the trial" is calculated to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

50. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide the appeal within three days after its receipt (Article 108 § 10).

III. RELEVANT INTERNATIONAL INSTRUMENTS

51. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

> "10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to ... minimum floor space, lighting, heating and ventilation...
>
> 11. In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
>
> 12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
>
> 13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower... at least once a week in a temperate climate.
>
> 14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all time.
>
> 15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness...
>
> 19. Every prisoner shall... be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

21. (1) Every prisoner... shall have at least one hour of suitable exercise in the open air daily if the weather permits."

52. The relevant extracts from the 2nd General Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) read as follows:

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate... Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard... It is also axiomatic that outdoor exercise facilities should be reasonably spacious...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners."

53. The relevant extracts from the CPT's 10th General Report, governing conditions of detention of women [CPT/Inf (2000) 13], read as follows:

"21. ...in all Council of Europe member States, women inmates represent a comparatively small minority of persons deprived of their liberty. This can render it very costly for States to make separate provision for women in custody, with the result that they are often held at a small number of locations (on occasion, far from their homes and those of any dependent children), in premises which were originally designed for (and may be shared by) male detainees. In these circumstances, particular care is required to ensure that women deprived of their liberty are held in a safe and decent custodial environment...

30. The Committee also wishes to call attention to a number of hygiene and health issues in respect of which the needs of women deprived of their liberty differ significantly from those of men.

31. The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance.

The failure to provide such basic necessities can amount, in itself, to degrading treatment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained that the conditions of her detention in detention facility no. IZ-33/1 were in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

55. The Government argued that the applicant had not exhausted domestic remedies available to her. In particular, she did not complain about the conditions of her detention to the Vladimir Regional prosecutor's office or to the Department for supervision of the lawfulness of administration of criminal punishment of the General Prosecutor's office (*Управление по надзору за законностью исполнения уголовных наказаний Генеральной Прокуратуры РФ*), or to a court.

56. The applicant submitted that she raised a complaint about poor conditions of detention at every court hearing. She consistently mentioned inhuman conditions in every notice of appeal. However, the courts either ignored her complaints or responded that "the conditions were the same for all". She did not complain to the prosecutor's office because such an application was not an effective remedy. Prosecutors were present at the court hearings, they heard her complaining and had an opportunity to read her notices of appeal. However, they remained passive and did not take any measures to remedy the situation.

57. The Court notes that the applicant repeatedly complained about the degrading conditions of her detention to the trial and appeal courts. Those complaints were also brought to the prosecutor's attention. The Court therefore considers that the authorities were thereby made sufficiently aware of the applicant's situation. It is true that she did not lodge separate complaints with the courts, prosecutor's office or other State agencies as suggested by the Government. However the Government did not demonstrate what redress could have been afforded to the applicant by those authorities, taking into account that the problems arising from the conditions of her detention were apparently of a structural nature and did not only concern her personal situation (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). The Court therefore finds that this complaint cannot be rejected for the failure to exhaust domestic remedies.

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

B. Merits

1. The parties' submissions

59. The Government acknowledged that the cells had been overpopulated because maintenance works had been carried out in the facility. The overcrowding could have caused some discomfort in the applicant, however the authorities had no intention of humiliating her. The conditions of her detention were otherwise satisfactory. She had an individual bunk and bedding at all times, the sanitary and hygienic norms were met. She could exercise daily. In sum, the conditions of the applicant's detention were compatible with Article 3.

60. The applicant challenged the Government's description of conditions in detention facility no. IZ-33/1 as factually untrue. She drew the Court's attention to the fact that the Government had not indicated the exact number of inmates but only mentioned the average number. In fact, the number of inmates per cell had been greater than that suggested by the Government and she had not always had a bed for herself. Maintenance works in the facility was a lame excuse for housing her in overpopulated premises. In addition, cells were dark, cold, stuffy, infested with parasites. Toilet facilities were filthy and stinky and offered no privacy. Bedding was dirty and ragged. There was no running hot water, drinking water was not provided. The food was of extremely low quality. There was no real opportunity for outdoor exercise because the exercise yards were overcrowded and also covered with metal roofs that severely limited access to fresh air.

2. The Court's assessment

61. The parties have disputed the actual conditions of the applicant's detention in facility no. IZ-33/1 of the Vladimir region. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the respondent Government, for the following reasons.

62. The parties have in principle agreed that the cells in facility no. IZ-33/1 were overpopulated. In cells nos. 69, 73 and 74 inmates were afforded less than 2 m² of personal space. For more than a year the applicant was

confined to her cell day and night, save for one hour of daily outdoor exercise.

63. Whether overpopulation was due to maintenance works or to other causes is immaterial for the Court's analysis, it being incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties.

64. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

65. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. That the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in her the feelings of fear, anguish and inferiority capable of humiliating and debasing her.

66. As to the Government's argument that the authorities had no intention to make the applicant suffer, the Court reiterates that 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 *Kalashnikov*, cited above, § 101; *Peers*, cited above, § 74).

67. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. IZ-33/1.

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

68. The applicant complained of a violation of her right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons. She relied on Article 5 § 3 of the Convention which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

70. The Government submitted that the applicant's detention was based on sufficient reasons. She was remanded in custody because she was suspected of aggravated fraud which is a serious criminal offence. There were reasons to believe that she would abscond because her accomplice and the father of her two minor children had fled. She could destroy evidence and impede the establishment of the truth which intention was confirmed by records of her telephone conversations with an unidentified person. The applicant warned the person about the forthcoming police raid and urged him or her to destroy documents and to delete computer files. Those records were examined by the courts. The applicant's detention was extended because her case was a complex one and there was a need for further investigation. Moreover, the investigation was hampered by the applicant who refused to testify, to give samples of her handwriting and signature and did not agree to recording of her voice sample. There was also a risk of her re-offending, influencing witnesses, threatening them, forging evidence or obstructing the investigation in some other way.

71. The applicant did not contest that her initial placement into custody had been justified. Her complaint focused on the excessive length of the detention. There were no "relevant and sufficient" reasons to hold her in custody for such a long period. The case was not a complex one. She made use of the right not to incriminate herself, and her refusal to give evidence or handwriting, signature and voice samples could not justify her detention. She could not be held responsible for the fact that her co-accused had gone into hiding. The Government's allegation that she could abscond was hypothetical and was not supported by any evidence.

On the contrary, had she fled, she would have to part with her minor children and loose her job. As she was arrested on the day following the search at her flat, she had plenty of time to abscond if she so wished. She could not destroy evidence because her home and office had been searched and all documents were seized and attached to the case file. As to the records of telephone conversations, they were not examined by the domestic courts and the courts did not refer to them in detention orders. There was also no evidence that she would re-offend.

2. *The Court's assessment*

72. The applicant was taken in custody on 23 July 2004. On 4 August 2005 she was released. Thus, the period to be taken into consideration lasted slightly more than a year.

73. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of her involvement in the commission of a large-scale fraud. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

74. Examining the lawfulness of, and justification for, the applicant's continued detention the district and regional courts persistently relied on the gravity of the charges as the main factor for the assessment of the applicant's potential to abscond, obstruct the course of justice or re-offend. However, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001). This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial control of the issue whether collected evidence supported a reasonable suspicion that the applicant had committed the imputed offence (see *Rokhlina v. Russia*, no. 54071/00, § 66, 7 April 2005).

75. It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of concrete facts in support of their conclusions that the applicant could abscond, obstruct justice or re-offend. The Court reiterates in this respect that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only

permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina,* cited above, § 67; *Ilijkov*, cited above, §§ 84-85).

76. The domestic courts gauged the applicant's potential to abscond by reference to the fact that her accomplice had gone into hiding. In the Court's view, the behaviour of a co-accused cannot be a decisive factor for the assessment of the risk of the detainee's absconding. Such assessment should be based on personal circumstances of the detainee. In the present case, the domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that she presented a persistent flight risk. The applicant, on the other hand, constantly invoked the facts mitigating the risk of her absconding. However, the domestic courts devoted no attention to discussion of the applicant's arguments that she had no criminal record, had a permanent place of residence and employment in Vladimir, a stable way of life, two minor children, and that her father had been seriously ill. They did not address the fact that the applicant had had an opportunity to flee after the search of her flat but she had remained at the investigator's disposal. In these circumstances, the Court finds that the existence of the risk of flight was not established in the present case.

77. The Court further emphasises that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring the appearance of the accused at trial when deciding whether he or she should be released or detained. Indeed, the provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

78. In the present case, during the entire period of the applicant's detention the authorities did not consider the possibility of ensuring her attendance by the use of a more lenient preventive measure, although many times the applicant's lawyers asked for her release on bail or under an undertaking not to leave the town – "preventive measures" which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings (see paragraph 45 above). Nor did the domestic courts explain in their decisions why alternatives to the deprivation of liberty would not have ensured that the trial would follow its proper course. This failure is made all the more inexplicable by the fact that the new Code of Criminal Procedure expressly requires the domestic courts to consider less restrictive domestic measures as an alternative to custody (see paragraph 47 above).

79. The only other ground for the applicant's continued detention was the domestic courts' finding that the applicant could destroy evidence, obstruct justice or re-offend. The Court accepts that at the initial stages of the investigation the risk of interference with justice by the applicant could justify keeping her in custody. However, after the evidence had been

collected, that ground became irrelevant. Moreover, the domestic authorities gave no reasons why they believed that there was such a risk. The Government referred to the records of the applicant's telephone conversations and submitted that she could intimidate witnesses or forge evidence. The Court reiterates that it is not its task to take the place of the national authorities who ruled on the applicant's detention and to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003; *Labita*, cited above, § 152). These circumstances were referred to for the first time in the proceedings before the Court and the domestic courts never mentioned them in their decisions.

80. The Court further observes that the decisions extending the applicant's detention had no proper regard to her personal situation. In most decisions the domestic courts used the same summary formula and stereotyped wording. The District Court's decisions of 19 July and 2 August 2005 gave no grounds whatsoever for the applicant's continued detention. It only noted that "the applicant should remain in custody". It is even more striking that by that time the applicant had already spent a year in custody, the investigation had completed and the case had been referred for trial.

81. It is also peculiar that in the decision of 22 February 2005 the Regional Court held that it was not required to hear the parties' opinion concerning the materials submitted by the prosecutor in support of the request for an extension. In this connection the Court recalls that Article 5 § 3 obliges the "officer" to hear himself the accused, to examine all the facts militating for and against pre-trial detention and to set out in the decision on detention the facts upon which that decision is based (see *Hood v. the United Kingdom* [GC], no. 27267/95, § 60, ECHR 1999-I; *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, § 31). Therefore, the extension of the applicant's detention without hearing her opinion, giving her an opportunity to comment on the materials submitted by the prosecutor and having proper regard to her arguments in favour of the release is incompatible with the guarantees enshrined in Article 5 § 3 of the Convention.

82. Finally, the Court observes that at no point in the proceedings did the domestic authorities consider whether the length of the applicant's detention had exceeded a "reasonable time". Such an analysis should have been particularly prominent in the domestic decisions after the applicant had spent many months in custody, however the reasonable-time test has never been applied.

83. Having regard to the above, the Court considers that by failing to address concrete facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "relevant and sufficient". In those circumstances it is not necessary to examine

whether the case was complex and whether the proceedings were conducted with "special diligence". However, in the present case the Court cannot but disagree with the Government's assertion that the applicant's refusal to testify slowed the proceedings down and generated delays which were attributable to her. The applicant was not obliged to co-operate with the authorities and she cannot be blamed for having taken full advantage of her right to silence (see, *mutadis mutandis*, *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66; *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, § 42). It was incumbent on the prosecutors to collect evidence and conduct the investigation in such a way that ensures the applicant's trial within a reasonable time. The Court is not convinced by the Government's argument that the delays in the investigation were attributable to the applicant.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

85. The applicant complained under Article 5 § 4 of the Convention that she had not been permitted to take part in the appeal hearing of 10 August 2004. She further complained that the courts did not review speedily her appeals against the detention orders of 22 September, 22 November and 22 December 2004, and 21 January 2005. Article 5 § 4 reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

1. Absence from the appeal hearing of 10 August 2004

87. The Government submitted that the refusal of the applicant's leave to appear had been compatible with the domestic law which restricted the right to appear before the appeal court to persons who had been convicted or acquitted. In any event, the applicant's arguments were clearly set out in her

points of appeal and did not call for additional clarifications. The applicant's lawyers were present at the appeal hearing, which ensured respect for the defence's rights. The Government added that the applicant had been present at the appeal hearing of 3 November 2004 and that she did not seek leave to appear at subsequent hearings.

88. The applicant conceded that her lawyers had taken part at the hearing of 10 August 2004. She maintained nevertheless that her presence had been required because she planned to describe the appalling conditions of her detention to the court. She argued that the practice adopted by the domestic courts forced her to choose between personal attendance and legal representation. Although the leave to appear at the hearing of 3 November 2004 was indeed granted, that fact only proved that the courts treated her requests in an arbitrary manner. She did not seek leave to appear at subsequent hearings because of inhuman conditions of transport to the courthouse.

89. The Court recalls that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 154-B, § 65). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-...., with further references). The proceedings must be adversarial and must always ensure equality of arms between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Trzaska v. Poland*, no. 25792/94, § 74, 11 July 2000). The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, § 47).

90. The Court observes that on 10 August 2004 the applicant's appeal against the initial detention order was examined. The appeal hearing was attended by a prosecutor and counsel for the applicant, but not the applicant herself, despite her request to that effect.

91. The Court notes at the outset the applicant sought leave to appear before the appeal court in order to plead her release on the grounds intimately linked to her personal situation. She planned, firstly, to describe the appalling conditions of her detention, of which her counsel did not have first-hand knowledge. Only the applicant herself could describe the conditions and answer the judges' questions, if any. Moreover, it was her

first opportunity to bring this matter to the attention of the domestic courts, for she could not have advance knowledge of the conditions of detention at the hearing of 24 July 2004 when she had been remanded in custody. Secondly, it appears that the appeal court founded its reasoning on its assessment of the applicant's "character". It did so on the basis of written documents without questioning the applicant in person and affording her an opportunity to describe her personal situation. The Court finally notes that it was for the first time that the appeal court examined the facts arguing for and against her placement in custody. Given the importance of the first appeal hearing, the appeal court's reliance on the applicant's character, and her intention to plead release on account of the particular conditions of her detention, her attendance was required to give satisfactory information and instructions to her counsel (see *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000).

92. In view of the above, the Court considers that the refusal of the request for leave to appear at the appeal hearing of 10 August 2004 deprived the applicant of an effective control of the lawfulness of her detention required by Article 5 § 4 of the Convention.

93. There has therefore been a violation of Article 5 § 4 of the Convention.

2. *Speediness of review*

94. The Government submitted that the applicant's appeals were examined within the time-limits established in the domestic law.

95. The applicant stressed that her right to liberty was at stake and that she was detained in inhuman conditions. Therefore, a speedy review of her appeals was essential.

96. The Court notes that it took the domestic courts thirty-six, twenty-six, thirty-six, and twenty-nine days to examine the applicant's appeals against the detention orders (see paragraphs 14, 18, 20, and 23 above). Nothing suggests that the applicant, having lodged the appeals, caused delays in their examination. The Court considers that these four periods cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where the review proceedings which lasted twenty-three days were not "speedy").

97. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

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

A. Damage

99. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government considered that the claim was excessive and unsubstantiated. The finding of a violation would in itself constitute sufficient just satisfaction.

101. The Court notes that it has found a combination of grievous violations in the present case. The applicant spent a year in custody, in inhuman and degrading condition. Her detention was not based on sufficient grounds. Her appeal against the initial detention order was examined in her absence. Finally, on various occasions she was denied the right to have the lawfulness of her detention examined speedily. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 16,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

102. Relying on documentary evidence and the lawyers' timesheets, the applicant claimed EUR 6,150 for her representation by Mr Ovchinnikov and EUR 1,750 for her representation by Mr Bagryanskiy who had spent 123 and 35 hours respectively for the preparation of the application form, observations and just-satisfaction claims. It was agreed between the applicant and her representatives that their work would be remunerated at the rate of EUR 50 per hour.

103. The Government considered the amounts claimed by the applicant to be excessive. They submitted that the applicant had not shown that her representatives had indeed spent that amount of time preparing the application.

104. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in facility no. IZ-33/1 in the Vladimir Region;

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

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the refusal of leave to appear at the appeal hearing of 10 August 2004;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the length of proceedings on the applicant's appeals against the detention orders of 22 September, 22 November and 22 December 2004, and 21 January 2005;

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
(i) EUR 16,000 (sixteen thousand euros) in respect of non-pecuniary damage;
(ii) EUR 4,500 (four thousand five hundred euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint concurring opinion of Mr C.L. Rozakis and Mrs N. Vajić is annexed to this judgment.

C.R.
S.N.

CONCURRING OPINION OF JUDGES ROZAKIS AND VAJIĆ

We have voted together with the other judges of the Chamber for a violation of Article 5 § 4 of the Convention in the circumstances of this case, because we considered that the applicant did not have the opportunity to appear in person before the appeal court "in order to plead her release on the grounds intimately linked to her personal situation" (paragraph 91 of the judgment. See also paragraph 12 of the facts of the case). Given the fact that the appeal court attached particular importance to the applicant's character, her appearance in person could have assisted the appeal court to assess with more clarity this issue, and could have given the opportunity to the applicant to defend her position effectively (See, *mutatis mutandis*, Grauzinis v. Lithuania, paragraph 34).

We have still strong doubts concerning the second limb of the Chamber's argumentation, when it considers that the applicant's appearance in person was also indispensable, in order for her to be in a position to explain the appalling conditions of her detention, "of which her counsel did not have sufficient knowledge" (ibid). We think that complaints of a person about conditions of detention, although they may establish a ground of invocation and/or violation of Article 3 of the Convention, do not enter into the ambit of protection of Article 5, paragraph 4, which entitles everyone who is deprived of his liberty by arrest or detention to take proceedings "by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if detention is not lawful".

Although the use of the words "lawfulness" and "lawful", in the context of a detention, may be considered as covering also situations where the conditions of detention are violating internal law or the Convention itself, still the case-law of the Strasbourg Court has never interpreted that provision in this manner. The terms "lawfulness" and "lawful" have been constantly interpreted as to include only procedural guarantees contained in national law or the Convention, and not the substantive conditions of detention. After all, the examination of the lawfulness is not an abstract exercise, but is linked to the demand of the release of a detained person, if the detention proves not to be lawful; and we very much doubt that the consequence of a judicial decision, in the event that the conditions of detention are not in conformity with internal or international standards, is the release of a detained person. Obviously such a complaint, if accepted by the courts, could lead to a change of the conditions of detention, but not to a release. Hence an invocation of these conditions by a detained person cannot constitute a ground for the applicability of Article 5 paragraph 4,

although, admittedly it falls under the protection of other articles of the Convention.