



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

FIRST SECTION

CASE OF LYUBUSHKIN v. RUSSIA

(Application no. 6277/06)

JUDGMENT

STRASBOURG

22 October 2015

FINAL

14/03/2016

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

In the case of Lyubushkin v. Russia,

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

András Sajó, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 29 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 6277/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Konstantin Gennadyevich Lyubushkin (“the applicant”), on 22 January 2006.

2. The applicant, who had been granted legal aid, was represented by Ms L. Yelisseyeva, a lawyer practising in Khabarovsk. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and had not been based on relevant and sufficient reasoning; and that the review of detention orders concerning him had not been speedy.

4. On 26 March 2007 the President of the First Section decided to give notice of the application to the Government.

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

A. Criminal proceedings against the applicant

1. Investigation

6. The applicant was born in 1967 and lives in Khabarovsk.

7. On 6 October 2004 the applicant, who was then a police officer, was arrested on suspicion of extortion. On 8 October 2004 the Khabarovsk Zheleznodorozhniy District Court (“the District Court”) remanded him in custody, finding as follows:

“There is a reasonable suspicion in the present criminal case, supported by the enclosed documents: statements by B. [the alleged victim of the extortion]; the crime scene report; the report on the marking and examination of the banknotes; the report on the search of and seizure of money from O. [a co-accused]; minutes of interviews with B., the prime suspect O., and K, a witness. When deciding on the remand matter, the court is not required to evaluate whether the existing evidence is sufficient for a finding of guilt.

[The applicant], a police officer, is suspected of having masterminded and supervised the commission of a serious crime by a criminal group which included other police officers. It follows from the statements by B. and K. that, after they had complained to the police about extortion, they continued to receive threats of physical violence from [the applicant], Sh. and Z. In these circumstances, [the applicant] must be remanded in custody because a more lenient restrictive measure cannot be imposed.”

8. On 21 October 2004 the Khabarovsk Regional Court (“the Regional Court”) upheld the decision of 8 October 2004 on appeal.

9. On an unspecified date the applicant was charged with organising and facilitating prostitution.

10. On 3 December 2004 the District Court extended the applicant’s pre-trial detention until 6 February 2005. The court noted as follows:

“Regard being had to the submissions made by the parties, the case file, and the fact that, as a police officer, [the applicant], if not in custody, might abscond, put pressure on victims and witnesses who identified him as a person who had committed a crime, or otherwise interfere with the administration of justice ... The judge does not consider that the restrictive measure imposed on [the applicant] can be replaced with a more lenient one ...”

11. On 16 December 2004 the Regional Court upheld the decision of 3 December 2004 on appeal.

12. On 4 February 2005 the District Court extended the applicant's detention until 6 April 2005 indicating as follows:

"Having studied the case file and having listened to the parties to the proceedings, the court does not discern circumstances that would justify the replacement of the restrictive measure imposed on [the applicant].

[The applicant] is charged with a serious offence. He has organised a criminal group and has been its leader. If not in custody, he can put pressure on the parties to the proceedings.

The above presumption as to the [applicant's] potential conduct is based on the information about the [applicant's] character and his *modus operandi*."

13. On 5 April 2005 the District Court extended the applicant's detention until 7 May 2005, noting as follows:

"... [The] court takes into account the seriousness of the crime [the applicant] is charged with ... The court considers that, as an active police officer able to use his position, [the] applicant might put pressure on victims and witnesses who directly identified him as an offender, or otherwise interfere with the establishment of the truth. Furthermore, the [applicant's] assertion that he is suffering from a serious disease ... cannot be taken into account by the court. No medical report has been submitted to show whether [the applicant] was fit or not for detention."

14. On 5 May 2005, the District Court extended the applicant's detention until 6 July 2005 arguing as follows:

"Regard being had to the circumstances of the case, in particular that the criminal investigation is being conducted into a group of persons and that [the applicant] is a police officer, the court concludes that he, if not in custody, might abscond, continue criminal activities, put psychological or physical pressure on the victim or witnesses, destroy evidence or, otherwise interfere with the administration of justice."

15. On 27 June 2005 the District Court extended the applicant's pre-trial detention until 28 September 2005, reiterating that the applicant might put pressure on victims and witnesses. On 12 July 2005 the Regional Court upheld this decision on appeal, but only extending the applicant's detention until 6 September 2005.

16. On 18 August 2005 the District Court extended the applicant's pre-trial detention until 28 September 2005. The court reiterated its previous reasoning that the applicant might put pressure on victims and witnesses.

17. On 5 September 2005 the applicant was charged with organisation of a criminal group, accepting bribes, and abuse of position. It appears that the charges of extortion and of organising and facilitating prostitution were dropped.

2. Trial

18. On 15 September 2005 the prosecution submitted the case against the applicant and three co-defendants to the Regional Court for trial.

19. Following a request from the prosecution, on 23 September 2005 the Regional Court allowed the return of the case file to the prosecutor on the

grounds that the defendants had not been able to study it. The court dismissed the defendants' request to release them on bail finding that "the circumstances underlying their remand in custody [were] still present" and extended their detention until 28 November 2005. On 22 December 2005 the Supreme Court of the Russian Federation upheld the decision of 23 September 2005 on appeal. In response to the applicant's argument that the maximum statutory period of pre-trial detention had expired and he should therefore be released, the court noted that, pursuant to the applicable rules of criminal procedure, the applicant could be detained for eighteen months pending investigation, owing to the seriousness of the charges against him.

20. On an unspecified date the prosecutor forwarded the case file to the court and on 24 November 2005 the Regional Court again granted the prosecutor's request and returned the case file to the prosecution for five days on the grounds that the defendants had not studied the case file in its entirety. It also extended the applicant's and his co-defendants' detention until 28 December 2005, referring to the earlier particularities justifying the defendants' remand in custody and to the fact that the case involved anonymous witnesses and victims. On 16 March 2006 the Supreme Court upheld the decision of 24 November 2005 on appeal.

21. On 20 December 2005 the Regional Court received the case file and on 27 December 2005, for a third time, it decided to return the case to the prosecutor at his request, reiterating its earlier reasoning. The court extended the defendants' detention until 28 March 2006, holding as follows:

"Since the period of detention of [the applicant], Z. and Sh. ends on 28 December 2005, this period must be extended by three months so as to remedy a violation of the rights of the defence which resulted from the impossibility for defendants and counsel to study the case-file, as well as to allow the investigator to decide subsequently on the restrictive measure in respect of those individuals."

22. On 7 March 2006 the case was re-submitted for trial.

23. On 20 March 2006 the Regional Court extended the defendants' detention until 7 September 2006. The court reasoned as follows:

"Having discussed with the parties the issue of the [defendants'] detention, regard being had to the seriousness of the charges against them, the court considers that, if not in custody, the defendants might influence the victims and witnesses, abscond or reoffend. It considers it necessary to extend the earlier imposed detention ..."

24. On 24 March 2006 the Regional Court fixed the trial date for 24 April 2006 and noted that the detention earlier imposed on the defendants should remain unchanged. On 26 May 2006 the Supreme Court upheld the decision of 24 March 2006 on appeal.

25. On 8 June 2006 the Supreme Court upheld the decision of 27 December 2005 on appeal.

26. On 11 August 2006 the Regional Court extended the applicant's detention until 7 December 2006 reiterating, in substance, its earlier reasoning.

27. On 26 October 2006 the jury delivered a not-guilty verdict in the applicant's case and on 27 October 2006 the Regional Court issued the relevant judgment and ordered the applicant's immediate release.

28. On 28 August 2007 the Supreme Court upheld the judgment of 27 October 2006 on appeal.

B. Claims for damages

1. Pecuniary damage

29. On an unspecified date the applicant brought an action for compensation for pecuniary damage resulting from the criminal prosecution. The applicant's claims included: lost income, legal fees, his lawyer's travel expenses in connection with the appeal hearing in Moscow, reimbursement of the cost of food, a television set and a refrigerator his family had sent to him while he had been in detention.

On 9 April 2008 the Regional Court granted the applicant's claims in part and awarded him 285,516 Russian roubles (RUB) for legal fees and his lawyer's travel expenses and RUB 314,634.64 for loss of income. The applicant did not appeal.

2. Non-pecuniary damage

30. On an unspecified date the applicant brought a civil claim seeking compensation for non-pecuniary damage in connection with the criminal prosecution. In particular, he alleged that he had been detained pending criminal proceedings against him in the absence of relevant evidence and sufficient reasoning. The applicant claimed RUB 2,000,000 in this respect.

31. On 8 October 2014 the Khabarovsk Tsentralniy District Court granted the applicant's claims in part and awarded him RUB 500,000. The court noted, in particular, that an acquittal in the criminal proceedings had been a catalyst for the restoration of his good name and position before the trial (реабилитация, hereinafter "rehabilitation"). Having examined the circumstances of the case, the court concluded as follows:

"... regard being had to the factual circumstances of the case, the court concludes that the [applicant's] claims should be granted in part.

In the present case, the court takes into consideration that the decisions to detain [the applicant] pending trial were authorised by court orders which were subject to review by superior courts which examined their lawfulness and the underlying reasons and upheld [said decisions] on appeal."

32. On 14 January 2015 the Regional Court upheld the judgment of 8 October 2014 on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. For a summary of the relevant domestic law provisions and practice on pre-trial detention, see *Pyatkov v. Russia* (*Pyatkov v. Russia*, no. 61767.08, §§ 48-68, 13 November 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

34. The applicant complained that his detention from 6 to 23 September 2005 had been unlawful and that this detention pending investigation had exceeded the maximum twelve-month statutory period. He relied on Article 5 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

...

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

35. The Government contested that argument. They submitted that during the period indicated the applicant had been detained on the basis of a court order of 18 August 2005. As regards the applicant’s detention during investigation, the Government argued that it had been in accordance with the statutory time-limits.

36. The applicant maintained his complaint

A. Admissibility

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

B. Merits

38. The general principles concerning the lawfulness of a person’s detention are well established in the Court’s case-law and have been

summarised in the case of *Khudoyorov* (see *Khudoyorov v. Russia*, no. 6847/02, §§ 124-25, ECHR 2005-X (extracts)).

1. The applicant's detention from 6 to 23 September 2005

39. The Court notes that on 18 August 2005 the District Court authorised the applicant's detention until 28 September 2005.

40. The court acted within its powers in making that decision and there is nothing to suggest that its action was invalid under, or counter to, domestic law. The question of whether the reasons for the decision were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3.

41. The Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 6 to 23 September 2005.

2. The applicant's detention during investigation

42. The Court observes that the applicant was detained pending investigation during the following periods: from 6 October 2004 to 15 September 2005, from 23 September to an unspecified date before 24 November 2005, from 24 November to 20 December 2005, and from 27 December 2005 to 7 March 2006.

43. It follows that the applicant was detained pending investigation for no longer than sixteen and a half months. The Court notes, in this respect, that the issue as to whether this period was in accordance with the procedure prescribed by law was subject to review by the Supreme Court of the Russian Federation which, in response to the applicant's complaints, held that the maximum period of detention imposable on him, in view of the seriousness of the charges against him, was eighteen months. The Court discerns nothing in the applicant's submissions to reach a different conclusion. The Court also notes that the applicant did not allege that the courts had acted beyond the scope of their powers or in bad faith when extending his detention pending investigation, or that they had neglected to attempt to apply the relevant legislation correctly. In such circumstances, the Court is satisfied that the applicant's detention during the period indicated was lawful.

44. Accordingly, there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention pending investigation during multiple periods between 6 October 2004 and 7 March 2006.

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

45. The applicant complained that his pre-trial detention had been in contravention of the “reasonable time” requirement set out in Article 5 § 3 of the Convention, which reads, in so far as relevant, 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.”

46. The Government considered that the applicant’s pre-trial detention had been compatible with the standards set out in the Convention. The national courts had examined the particular circumstances of the applicant’s case and considered it necessary to detain him pending the criminal proceedings against him. The fact that the court had issued collective detention orders in respect of the applicant and his co-defendants could not be interpreted as neglect of application of an individual approach to each of the defendants. There had been no differences as regards the grounds underlying the courts’ decision to detain them. The length of the applicant’s pre-trial detention had been reasonable. Lastly, the Government argued that, after the national courts had granted the applicant’s claims for non-pecuniary damage following his acquittal, he could no longer claim to be a victim of the violation of Article 5 § 3.

47. The applicant maintained his complaint.

A. Admissibility

48. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, Reports 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

49. The Court has previously examined the issue of an applicant’s victim status in respect of the complaint under Article 5 § 3 of the Convention. The Court refers in this respect to the case of *Labita* (see *Labita v. Italy* [GC], no. 26772/95, § 143, ECHR 2000-IV) in which, as in the present case, the applicant received compensation following his acquittal for unjust detention, on the basis of a provision in domestic law which afforded a right to reparation to “anyone who has been acquitted in a judgment that has become final”. In that case, the Court held that the detention was deemed to be “unjust” as a result of the acquittal and the award of compensation did not amount to a finding that the detention did not satisfy the requirements of Article 5 (*ibid.*).

50. Furthermore, in recent cases against Russia (see *Shalya v. Russia*, no. 27335/13/05, §§ 11-23, 15 March 2013, and *Shkarupa v. Russia*,

no. 36461/05, §§ 74-78, 15 January 2015) the Court found that in the rehabilitation proceedings, the Russian authorities did not have to examine, still less acknowledge, at least in substance, that the applicant's detention had been formally defective, or that it had been based on insufficient reasoning, or had exceeded a reasonable time. Furthermore, the award of compensation was subject to the fulfilment of specific conditions not required under Article 5 § 3, specifically the applicant's acquittal or the discontinuation of the proceedings. The only grounds for awarding the applicant compensation were the termination of the criminal proceedings against him rather than any alleged procedural irregularity in the pre-trial detention. These grounds for compensation did not correspond to the basis of the applicant's complaint under Article 5 § 3 and the alleged violation could not therefore be redressed in these proceedings (see also, *mutatis mutandis*, *Elgay v. Turkey*, no. 18992/03, § 32, 20 January 2009, and *Mekiye Demirci v. Turkey*, no. 17722/02, § 70, 23 April 2013).

51. The Court finds that the same reasoning applies in the present case. Although in its judgment of 8 October 2014 the District Court, when granting the applicant's claim for non-pecuniary damages, took into account the fact that the applicant had been detained pending trial, it found the applicant's detention unlawful not because it had been inconsistent with the requirements set out in Article 5 § 3 of the Convention, but because he had been acquitted. As in *Labita* (cited above, § 143) the length of the applicant's detention pending trial was taken into account in calculating the amount of compensation. However, there was no acknowledgment in the judgment concerned, either express or implied, that it had been excessive in its duration or that the decisions ordering the applicant's continued detention were not based on relevant and sufficient reasoning.

52. Accordingly, the Court considers that in the absence of such acknowledgement, the payment of compensation, *inter alia*, for the time the applicant spent in detention pending trial is not sufficient to deprive him of his status as a "victim" of a violation of Article 5 § 3 of the Convention, within the meaning of Article 34. It dismisses the Government's objection.

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

B. Merits

54. According to the Court's well-established case-law, in determining the length of pre-trial detention 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, or, possibly, when the accused is released from custody pending criminal proceedings against him (see *Idalov*

v. Russia [GC], no. 5826/03, § 112, 22 May 2012). Accordingly, the period under consideration in the present case started on 6 October 2004, when the applicant was arrested, and ended on 27 October 2006, when the judge ordered the applicant's release. It lasted, accordingly, two years and twenty-one days.

55. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant's detention relying essentially on the seriousness of the charges and using stereotyped formulae without addressing his or her specific situation (see, among many other authorities, *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012; *Romanova v. Russia*, no. 23215/02, 11 October 2011; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Gulyayeva v. Russia*, no. 67413/01, 1 April 2010; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Belov v. Russia*, no. 22053/02, 3 July 2008; and *Shukhardin v. Russia*, no. 65734/01, 28 June 2007). Similar considerations apply in the circumstances of the present case in which the Government did not submit arguments that could have allowed the Court to reach a different conclusion.

56. Having regard to its case-law in similar cases and to the facts of the present case, the Court finds that there has been a violation of Article 5 § 3 of the Convention.

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

57. The applicant further complained that the appeals he had lodged against the detention orders of 23 September, 24 November and 27 December 2005 had not been examined speedily, in contravention of Article 5 § 4 of the Convention, which 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.”

58. The Government contested that argument. In their opinion, the length of the appeal proceedings had been justified in view of the number of parties to the proceedings and the preparatory measures the court had had to take to ensure the proper consideration of the applicant's appeal.

59. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

61. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right to a swift judicial decision in those proceedings and the ordering of its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). The question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

62. The Court further considers that there is a special need for a swift decision determining the lawfulness of a period of detention pending trial, as the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

63. Turning to the circumstances of the present case, the Court observes that the applicant complained about the lack of speedy review of the detention orders of 23 September, 24 November and 27 December 2005. The applicant's appeals against those orders were examined on 22 December 2005, 16 March and 8 June 2006 respectively. It follows that it took the domestic courts eighty-nine, one hundred and twenty and one hundred and sixty-one days to schedule and hold the corresponding appeal hearings.

64. In the Court's opinion, the issues before the appellate court were not overly complex. Nor is there anything in the material before the Court to suggest that either the applicant or his counsel contributed to the length of the appeal proceedings. Moreover, the Government did not provide any relevant justification for the delays in the appeal proceedings. Accordingly, the entire length of the appeal proceedings in the present case was attributable to the authorities. The Court further reiterates that where an individual's personal liberty is at stake, it has very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia*, twenty-six days, was found to be in breach of the "speediness" requirement of Article 5 § 4).

65. Having regard to the above, the Court considers that the appeal proceedings for the review of the lawfulness of the applicant's pre-trial

detention cannot be considered compatible with the “speediness” requirement of Article 5 § 4. There has therefore been a violation of that provision.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. Lastly, the applicant complained under Article 6 of the Convention of the unfairness of the criminal proceedings against him. The Court notes that the applicant was acquitted and therefore can no longer claim to be a victim of the alleged violation. It follows that this part of the application must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

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

A. Damage

68. The applicant claimed RUB 154,000 and 240,000 euros (EUR) for pecuniary and non-pecuniary damage respectively.

69. The Government considered the applicant’s claims unsubstantiated and excessive.

70. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it observes that the applicant spent over two years in custody awaiting determination of the criminal charge against him, even though the detention not being based on sufficient grounds and his appeals lodged against the detention orders were not examined speedily. The Court notes that the applicant was awarded compensation for non-pecuniary damage as a result of his acquittal. However, that award was made on other legal grounds than those related to violations found by the Court (see paragraphs 30-32 and 51 above). Making its assessment on an equitable basis, it awards EUR 5,000 to the applicant in compensation for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant also claimed RUB 60,000 for costs and expenses incurred before the Court.

72. The Government did not comment.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that EUR 850 has already been paid to the applicant by way of legal aid. It does not consider it necessary to make any additional award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the lawfulness, length and review of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant's pre-trial detention from 6 October 2004 to 27 October 2006;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine speedily the applicant's appeals against the detention orders of 23 September, 24 November and 27 December 2005;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

András Sajó
President