



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

THIRD SECTION

CASE OF SMIRNOVA v. RUSSIA

(Applications nos. 46133/99 and 48183/99)

JUDGMENT

STRASBOURG

24 July 2003

FINAL

24/10/2003

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 Smirnova v. Russia,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEŖEN,
Mr B. ZUPANČIČ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA,
Mr A. KOVLER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 6 February and 3 July 2003,

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

PROCEDURE

1. The case originated in 2 applications (nos. 46133/99 and 48183/99) 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 two Russian nationals, Ms Yelena Pavlovna Smirnova and Ms Irina Pavlovna Smirnova (“the applicants”), on 9 November 1998 and 31 October 1998 respectively.

2. The applicants alleged that their pre-trial detention and the investigation of the criminal case against them had been too long. The first applicant also complained about a withholding of her identity paper by investigating authorities.

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

4. The Chamber decided to join the proceedings in the applications (Rule 43 § 1).

5. By a decision of 3 October 2002, the Court declared the applications partly admissible.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 February 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr P. LAPTEV, Representative of the Russian Federation in the European Court of Human Rights,	<i>Agent,</i>
Mr Y. BERESTNEV	<i>Counsel,</i>
Mr O. ANKUDINOV,	
Ms E. KRYUCHKOVA,	
Mr S. RAZUMOV,	
Mr V. VLASIKHIN,	<i>Advisers;</i>

(b) *for the applicants*

Ms L. ANSTETT-GARDEA,	<i>Counsel,</i>
Ms A. MACE,	<i>Adviser.</i>

The Court heard addresses by Mrs Anstett-Gardea and Mr Laptev.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants, Ms Yelena Pavlovna Smirnova (“Y.S.”) and Ms Irina Pavlovna Smirnova (“I.S.”) are twin sisters. They are Russian nationals, who were born in 1967 and live in Moscow.

A. Criminal proceedings

Charges. First detention of Y.S.

8. On 5 February 1993 criminal proceedings were initiated against the applicants on suspicion of defrauding a Moscow bank on a credit matter. The prosecution's case was that the applicants acted together to obtain a loan in the bank on the security of a flat which did not in fact belong to them.

9. On 26 August, according to the applicants, on 27 August 1995, according to the Government, Y.S. was arrested and remanded in custody. Several days later, on 31 August 1995, she was charged with large-scale concerted fraud.

10. On 5 September 1995 the proceedings against I.S. were discontinued.

11. Following Y.S.'s arrest, her lawyer lodged an application for release with the Tverskoy District Court of Moscow. On 13 September 1995 the court held that it was too late to examine the application for release as by that time the preliminary investigation had finished.

12. On 26 March 1996 the investigating authorities sent Y.S.'s case to the Tverskoy District Court for trial.

13. On 21 March 1997 the Tverskoy District Court found that the evidence gathered against Y.S., although serious, did not embrace all offences possibly committed by her. The court also found that the proceedings against I.S. should not have been stopped because there had been evidence of her involvement in the offence too. It was decided to remit the case against Y.S. for further investigation. The court of its own motion re-instituted criminal proceedings against I.S. and joined them to Y.S.'s case. It was furthermore ordered that Y.S. should stay in detention, and that I.S., at large at the moment, should be imprisoned as soon as the police established her whereabouts.

14. Both applicants lodged appeals against the decision of 21 March 1997, but on 23 July 1997 the Moscow City Court disallowed them.

15. Since I.S. continued to hide from the investigating authorities, it was decided to sever her case from that of her sister and to stay it. The term of Y.S.'s detention was extended.

First release of Y.S.

16. On 9 December 1997 the Lyublinskiy District Court of Moscow ordered that Y.S. should be released from custody because the extension of her detention had been unlawful and because of her poor health. She was released conditionally under the undertaking not to leave her permanent residence.

17. On 15 December 1997 the case against Y.S. was for the second time sent to the Tverskoy District Court for trial.

First detention of I.S.

18. On 30 March 1999, the police arrested I.S. and took her into custody. The proceedings against her were resumed.

Second detention of Y.S.

19. The second examination of the case against Y.S. by the Tverskoy District Court took place on 31 March 1999. The court noted that I.S. had by that time been arrested, and that given close factual links between the offences imputed to the sisters, the proceedings against them should be joined. The court also noted that Y.S. had not had sufficient opportunity to familiarise herself with the prosecution file before the hearing. As a result,

the case against Y.S. was joined to that against I.S. and remitted for further investigation.

20. On the same day Y.S. was imprisoned on the ground of the gravity of the accusation.

21. The decision of 31 March 1999 became final on 13 May 1999 after it had been upheld on appeal by the Moscow City Court.

First release of I.S.

22. On 29 April 1999 the Lyublinskiy District Court granted I.S.'s application for release from custody because the investigating authorities had not submitted convincing material to justify her continued detention. The investigating authorities appealed against this decision, and on 19 May 1999 the Moscow City Court allowed the appeal. However, by that time I.S. had already left the prison.

23. On 20 May 1999 the Tverskoy District Court considered that the case against I.S. should be returned to the investigating authorities to be joined with the case against Y.S.

Second detention of I.S.

24. On 3 September 1999, I.S. was arrested and detained.

Second release of both applicants

25. On 2 October 1999 Y.S. was released from prison because the investigation had finished and because the detention period set by the General Prosecutor's Office had expired.

26. Shortly afterwards, on 7 October 1999, I.S. was also released. Both applicants signed an undertaking not to leave their permanent residence.

Trial. Third detention of Y.S. and I.S.

27. On 29 October 1999 the investigating authorities handed over the case file they had prepared to the Tverskoy District Court. On 10 November 1999 the judge who had accepted the case for consideration ruled that the applicants should be remanded in custody pending trial in view of the gravity of the accusations and "the applicants' character".

Proceedings before the Constitutional Court. Third release of I.S.

28. On 14 January 2000 the Constitutional Court examined an application lodged earlier by I.S. The court ruled that Article 256 of the Code of Criminal Procedure was unconstitutional as far as it empowered criminal courts to initiate of their own motion criminal prosecution of third persons not being party to the original proceedings, to apply measures of restraint and to order further investigations. The court held that by initiating

criminal proceedings the courts in essence assumed prosecutorial functions in violation of the principle of the separation of powers.

29. Based on the judgment of the Constitutional Court, on an unspecified date, the acting president of the Moscow City Court lodged an application for supervisory review of the applicants' case.

30. On 24 February 2000 the Presidium of the Moscow City Court granted the application. The decisions of 21 March and 23 July 1997 were quashed in respect of I.S. The decision of 31 March 1999 was quashed in respect of both applicants. The decisions of 13 and 20 May and 10 November 1999 were also quashed. The case against the applicants was sent for further investigation. I.S. was released, but her sister remained in prison.

Third release of Y.S.

31. On 20 March 2000 the Prosecutor of the Tverskoy District re-instituted criminal proceedings against I.S. The case against I.S. was joined to that of Y.S.

32. On 20 April 2000 the investigation of the applicants' case was finished. On 25 April 2000 the prosecution file and indictment were submitted to the Tverskoy District Court. The same day, Y.S. was released because of the expiry of the custody period.

Trial. Fourth detention of Y.S. and I.S. Their release

33. The examination of the applicants' case was scheduled for 9 June 2000. However, the hearing did not take place because the applicants had failed to appear even though they had been several times summoned for the service of the indictment.

34. The hearing was adjourned until 22 August 2000 but it again failed to take place since the applicant had not appeared before the court.

35. As the applicants persistently avoided the court proceedings and did not live at their permanent address, on 28 August 2000 the Tverskoy District Court ordered their arrest. The proceedings were stayed until the applicants were arrested.

36. On 12 March 2001 the applicants were arrested and detained. The court proceedings resumed and on 24 September 2001 the court extended the custody period for a further three months.

37. On 9 January 2002 the Tverskoy District Court found the applicants guilty and sentenced Y.S. to eight years' imprisonment with forfeiture of her estate, and I.S. to six years' imprisonment with forfeiture of her estate.

38. On 9 April 2002 the Moscow City Court annulled the judgment, closed the proceedings and discharged the applicants from serving the sentence under the statute of limitations.

39. The applicants were released in the courtroom.

B. Proceedings concerning Y.S.'s passport

40. When the investigating authorities were arresting Y.S. on 26 August 1995, they withheld her national identity paper – the “internal passport”. The passport was enclosed in the case file at the Tverskoy District Court. Y.S. made several unsuccessful attempts to recover the document, filing complaints to courts and prosecutors of various instances.

41. The lack of passport made Y.S.'s everyday life difficult. In December 1997 and April 1998 the Moscow Social Security Service and a law firm both refused to employ her because she did not have a passport. In December 1997 a Moscow clinic informed Y.S. that free medical care could only be provided to her if she presented an insurance certificate and her passport. For the same reason, in April 1998 the Moscow Telephone Company refused to install a telephone line in Y.S.'s home. On 2 June 1998 the Moscow City Notary Office notified Y.S. that she needed to verify her identity, for example, with a passport, if she wished to obtain notarial acts. On 10 December 1998 Y.S. was refused the registration of her marriage. On 19 March 1999 she was stopped by a police patrol for an identity check. As she was unable to produce the passport, she was taken to a police station and had to pay an administrative fine.

42. On 29 April 1998 the Office of the Moscow Prosecutor requested the Tverskoy District Court to return the passport.

43. On an unspecified date the President of the Tverskoy District Court informed Y.S. that the passport could be made available to her for certain purposes. But it should nonetheless remain in the case file because otherwise the authorities would not be able to tell Y.S. from her twin sister, who was in hiding.

44. On 29 June 1998 the President of the Tverskoy District Court confirmed that the passport should be retained in the case file.

45. On 31 March 1999 a police patrol came to the applicants' home to escort Y.S. to a court hearing. Both applicants were at home. Perplexed by their almost identical appearance, the police demanded that the applicants identify themselves or produce identity papers. Having met a refusal, and knowing that I.S. was also being looked for by the police, the patrol decided to arrest both applicants and took them to a police station.

46. On 6 October 1999, the investigation officer in charge of Y.S.'s case returned the passport to her.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure of 1960

Article 11 (1) - Personal inviolability

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

Article 89 (1) - Application of preventive measures

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

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

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

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

Article 96 - Placement in custody

“Placement in custody as a preventive measure shall be effected in accordance with the requirements of Article 11 of this Code concerning criminal offences for which the law prescribes a penalty in the form of deprivation of freedom for a period of more than one year. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of freedom for a period of less than one year is prescribed by law.”

Article 97 - Time-limits for pre-trial detention

“A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further

extension 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 subject 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)."

Article 101 - Cancellation or modification of a preventive measure

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

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

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

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

Article 239 - Time-limits for examination of the case

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

B. Laws concerning national identity papers

Section 1 of the Rules regarding the passport of a citizen of the Russian Federation adopted by the Decree of the Russian Government No. 828 of 8 July 1997 provides that the passport of a citizen represents the basic document proving the citizen's identity on the territory of Russia.

Pursuant to Section 5, the passport shall contain information about the citizen's residence, liability to military service, marital status, minor children, issue of other identity documents.

Section 21 provides that the passport of convicted persons and persons remanded in custody shall be seized by investigating authorities or a court and adduced to the case file. When the citizen is released, the passport shall be returned.

Article 178 of the Code of Administrative Offences of 1984 establishes that residing without a valid passport or residential registration shall be punishable with an official warning or a fine.

The Moscow Government Decree No. 713 of 17 July 1995, concerning the rules of residential registration, establishes a fine of up to five times the minimum wage if residential registration cannot be shown, and up to fifty times the minimum wage in case of repeated violations.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

47. Article 5 of the Convention provides, as far as relevant:

“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;

...

3. 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. Arguments of the parties

1. The applicants

48. The applicants submitted that there had been no good reasons to justify their repeated remand in custody.

49. First, there had been no risk that they would abscond. They only had one residence and their only income came from jobs in Moscow. Since the applicants received much correspondence from Russian authorities and international organisations, they needed to stay at home most of the time. The applicants were law-abiding citizens because they worked as lawyers and valued their reputation. The applicants' moral condition was undermined by years of criminal prosecution, arrests and interrogations. Besides, Y.S. suffered from a serious disease – Schonlein-Henoch (weak capillaries). The applicants wished the case to be tried as soon as possible.

They had never before absconded from justice, and all their arrests took place either at their permanent residence or in court when they appeared for hearings.

50. Secondly, there had been no risk that the applicants would interfere with the course of justice. They did not destroy documents or any other evidence, nor did they put pressure on the victims of the alleged offence.

51. Thirdly, the detention was not necessary for prevention of further crimes. The applicants' personalities and lack of past criminal record in no way suggested that they might engage in criminal activities.

52. Lastly, there had been no grounds to suspect that the applicants' release could lead to disturbance of public order.

53. Furthermore, the detention was in fact the State's reprisal for the applicants' appeals to international organisations, including the Court, because it coincided with important procedural events. By placing the applicants in custody the State intended indirectly to punish them since the conditions of detention were inadequate and since Y.S. spent in prison significantly more than 18 months permitted by law.

2. The Government

54. The Government stressed that the complaint is partly outside the Court's competence *ratione temporis* as far as it concerns the detention before 5 May 1998 – the date when the Convention came into force in respect of Russia.

55. The Government further submitted that the authorities had to detain the applicants because they fled from justice and violated the conditions of bail in that they did not inform the investigating authorities of their moves. They did not appear for trial even though they knew that their case would soon be tried. The taking of the applicants into custody was in accordance with the domestic law. It was mainly justified by the risk that the applicants may flee, for example, abroad. The applicants' systematic hindering of the investigation accounted for the lengthy detention. Besides, by its decision of 9 April 2002 the Moscow City Court discharged the applicants from serving the sentence, and this decision was by itself a just satisfaction for the time spent in prison.

B. The Court's assessment

1. General principles

56. Article 5 § 1 (c) of the Convention must be read in conjunction with Article 5 § 3 which forms a whole with it (see *Ciulla v. Italy*, judgment of 22 February 1989, Series A no. 148, § 38).

57. In examining the length of detention undergone subsequent to the date of entry of the Convention into force, the Court takes account of the stage which the proceedings had reached. To that extent, therefore, it may have regard to the previous detention (see *Ventura v. Italy*, no. 7438/76, Commission decision of 9 March 1978, Decisions and Reports (DR) 12, p. 38).

58. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see, as a classic authority, *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 24-25, § 12; *Yagci and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 52).

59. The Convention case-law has developed four basic acceptable reasons for refusing bail: the risk that the accused will fail to appear for trial (see *Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, § 15); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff*, cited above, § 14) or commit further offences (see *Matznetter v. Austria*, judgment of 10 November 1969, Series A no. 10, § 9) or cause public disorder (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51).

60. The danger of absconding cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify pre-trial detention. In this context regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, § 33 with further references).

61. The issue of whether a period of detention is reasonable cannot be assessed in abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified 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 (see *W. v. Switzerland*, cited above, § 30).

62. 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 examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts

mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Letellier*, cited above, § 35).

63. Arguments for and against release must not be “general and abstract” (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, § 44).

64. Where a suspect is on remand, he is entitled to have his case given priority and conducted with special diligence (see *Matznetter*, cited above, § 12).

2. Application to the present case

65. The Court notes that the applicants' discharge from serving the sentence does not deprive them of their status of victims of the alleged Convention breaches, since no acknowledgement of the breaches was made by the Government (see *Dalban v. Romania*, judgment of 28 September 1999, *Reports of Judgments and Decisions* 1999-VI, § 44).

66. The Court now needs to determine the period of the applicants' detention which it may take into consideration.

Y.S. was detained four times: from 26 August 1995 to 9 December 1997; from 31 March to 2 October 1999; from 10 November 1999 to 25 April 2000; and from 12 March 2001 to 9 April 2002. In sum, this gives 4 years, 3 months and 29 days. Since the Convention came into force in respect of Russia on 5 May 1998, of this period only 2 years and 15 days fall within the Court's competence *ratione temporis*.

I.S. was also detained four times: from 30 March to 29 April 1999; from 3 September to 7 October 1999; from 10 November 1999 to 24 February 2000; and from 12 March 2001 to 9 April 2002. In sum this gives 1 year, 6 months and 16 days.

67. In the majority of cases under Article 5 § 3 the Court dealt with the situation where the authorities refused for a long uninterrupted time to release a suspect from remand custody. The present case differs in that the Court must examine not only whether the total time the applicants spent in custody was reasonable, but also whether the repetitiveness of the detention complied with Article 5 § 3.

68. The time of the applicants' detention is not short in absolute terms. Nevertheless, the Court cannot rule out the possibility that it might have been justified in the circumstances.

69. But to reach such a conclusion the Court would first need to evaluate the reasons given by the domestic authorities to justify the detention. And it is these reasons that appear insufficient.

70. Indeed, the decisions which the Court has at its disposal are remarkably terse and do not describe in detail characteristics of the applicants' situation. The decision of the Tverskoy District Court of 31 March 1999 only referred to the seriousness of the charge against Y.S. to

justify her detention. The decision of 10 November 1999 referred to the applicants' "character" without explaining what the character actually was and why it made the detention necessary. Likewise, on 28 August 2000 the Tverskoy District Court ordered the applicants' detention because they had persistently failed to appear for trial without giving specific details or considering any alternative measures of restraint.

71. In other words, the repeated re-detaining of the applicants in the course of one criminal investigation on the basis of insufficiently reasoned decisions amounts to a violation of Article 5 §§ 1 and 3.

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

72. The applicants alleged that the criminal proceedings against them lasted unreasonably long in breach of Article 6 § 1 of the Convention which provides, as far as relevant, as follows:

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

A. Arguments of the parties

1. *The applicants*

73. The applicants submitted, firstly, that neither the facts nor the legal aspects of their case were complex. The number of defendants and witnesses was small, and their interrogation should not have taken much time.

74. Secondly, the applicants did their best to quicken the proceedings. They filed more than 100 complaints demanding the fastest resolution of the case. The applicants had no interest in dragging out the proceedings because that would prolong their remand in custody and because they did not consider themselves guilty. Their conduct corresponded to the requirements set forth in the Convention case-law to "show diligence in carrying out the procedural steps relating to [them], to refrain from using delaying tactics and to avail [themselves] of the scope afforded by domestic law for shortening the proceedings" (see *Unión Alimentaria Sanders SA v. Spain*, judgment of 7 July 1989, Series A no. 157, § 35).

75. By contrast, the State authorities unreasonably delayed the investigation. Their case remained virtually static for nine years.

The investigating authorities acted indolently. After the case had been remitted to them for further investigation, they idled for several years. The authorities delayed the proceedings under various formal pretences such as consolidation and severance of cases, remittal for further investigation etc.

The investigators many times threatened the applicants with a five-year pre-trial detention if they did not stop complaining.

The first hearing of the case was fixed for six months after the case had been submitted to the court. At the first hearing the judge did not start the examination of the merits of the case but postponed it for another three and a half months. The subsequent hearings were also delayed without good reason.

The length of the proceedings was also in breach of domestic law.

76. Much was at stake for the applicants. During the proceedings they spent a considerable time in prison. They risked losing their property in case of an unfavourable sentence. The applicants could not find a good job because of the recurring arrests and because nobody wanted to employ persons known to be under trial. They had to stop their studies in the Calgary and Moscow universities, their professional careers suffered. The prosecution and detention affected their privacy, health and reputation.

2. The Government

77. The Government submitted that the proceedings had to be adjourned whilst the applicants were in hiding. The court had to spend its time on the decision to detain the applicants instead of considering the merits of the charge. In sum, Y.S. was on the wanted fugitive list for 2 years, 2 months and 6 days; her sister – for 2 years, 9 months and 15 days.

78. When in March 2001 the Tverskoy District Court received the case for trial, it could not proceed because Y.S. a number of times asked for extra time to study the case file. Y.S.'s lawyer did not appear for hearings. Y.S. overwhelmed the court with her numerous complaints and motions, often unsubstantiated. The court nonetheless had to spend its time on answering them.

79. The Government concluded that the length of the proceedings was mainly caused by the applicants' unwillingness to submit themselves to justice.

B. The Court's assessment

1. General principles

80. In examining the length of the proceedings undergone subsequent to the date of entry of the Convention into force, the Court takes account of the stage which the proceedings had reached. To that extent, therefore, it may have regard to the previous proceedings (see *Ventura*, cited above).

81. Periods for which the applicant was on the run should be excluded from the overall length of the proceedings (see *Girolami v. Italy*, judgment of 19 February 1991, Series A no. 196-E, § 13).

82. The reasonableness of the length of 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 (see, among many other authorities, *Kemmache v. France*, judgment of 27 November 1991, Series A no. 218, § 60).

83. Where a person is kept in detention pending the determination of a criminal charge against him, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, § 24).

2. *Application to the present case*

84. The Court first needs to determine the period of the proceedings which it may take into consideration.

In respect of Y.S., the proceedings began on 5 February 1993 when the authorities started the criminal investigation of her activity. They ended on 9 April 2002 with the appeal judgment of the Moscow City Court. They have therefore lasted in total 9 years, 2 months and 4 days. Of this period only 3 years, 11 months and 4 days fall within the Court's jurisdiction *ratione temporis*. The period from 28 August 2000 to 12 March 2001 (6 months and 15 days) should be excluded from the total period because during this period Y.S. was unlawfully at large. The period to be taken into consideration is therefore 3 years, 4 months and 19 days.

In respect of I.S., the proceedings also began on 5 February 1993. They were discontinued on 5 September 1995 and resumed on 21 March 1997. On 24 February 2000 the proceedings were discontinued for a second time, and for a second time resumed on 20 March 2000. They ended on 9 April 2002 with the appeal judgment of the Moscow City Court. The overall length of the proceedings was 7 years, 6 months and 23 days. Of this period only 3 years, 10 months and 9 days fall within the Court's jurisdiction *ratione temporis*. Furthermore, since from 21 March 1997 to 30 March 1999 and from 28 August to 12 March 2001 I.S. was unlawfully at large, these periods should be excluded. So then, the period to be taken into consideration is 2 years, 5 months and 27 days.

85. As to the complexity of the case, the Court agrees with the applicants that the charges they faced were not particularly complex. The investigation of the offence imputed to the applicants – credit fraud and misappropriation of others' property – if carried out diligently, should not have taken years.

86. As to the applicants' conduct, the Court is not convinced that the applicants were always willing to submit to the courts' jurisdiction since both of them absconded for months from the investigating authorities.

Furthermore, filing dozens of complaints – even well-grounded – may unnecessarily distract the authorities from concentrating on the main issues.

87. As to the conduct of the authorities, the Court finds that there have been significant periods of inactivity on their part which find no convincing justification. The initial investigation lasted from February 1993 to March 1996. The first examination of the case took place on 21 March 1997, almost one year after the investigation had been finished. The second examination of the case took place on 31 March 1999, two years after the first one. The final trial took place on 9 January 2002, almost three years after the second one. The decision of the Constitutional Court, on the one hand, remedied the situation in connection with the charge brought unlawfully against I.S., yet on the other hand, caused another delay in the proceedings. Furthermore, by giving sparsely reasoned recurring decisions to detain and release the applicants the authorities aroused in them a sense of insecurity and mistrust towards justice thereby indirectly urging them to abscond.

88. Accordingly, in all the circumstances of the present case, the Court considers that the length of the proceedings fails to satisfy the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

89. Y.S. alleged that the withholding of her identity paper, a document essential for everyday living in the country, amounted to a violation of Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Arguments of the parties

1. The applicant

90. Y.S. submitted that a Russian citizen holding no passport is impaired in his rights to a degree amounting to an interference with his private life. The law requires that a person who wishes to find employment, receive free medical care, receive mail, marry, vote, use notarial services, install a telephone line, save money by buying foreign currency or travel by train or aeroplane must be able to produce a passport. Furthermore, not having a

passport is in itself an administrative offence. The applicant could do none of the above, and in March 1999 she was fined for not holding a passport.

91. Y.S. further submitted that the interference was not in accordance with the law. According to the law, State authorities may withdraw a passport only after final conviction. The passport must be returned once the citizen is released. Secondary legislation gives the prosecuting authorities and courts the additional right to withdraw the passport of unconvicted prisoners for the period of their pre-trial detention. However, in this case too, the passport must be returned to the citizen as soon as he or she is released.

92. The withholding of the passport did not serve the interests of national security because the charges of fraud were not amongst crimes undermining fundamental principles of Constitutional system or State security. National security would not have suffered, had the applicant been able to find a job, go to a clinic, marry etc. Nor was the applicant's offence a threat to public safety. And, in any event, without a passport Y.S. would have been able to threaten public safety had she so wished, as well as if she had the document. The withholding of the passport could not improve the economic well-being of the country, lead to public disorder or crime. It did not serve the interests of protecting health or morals or the rights and freedoms of others. It was not necessary in a democratic society either.

93. The only reason the authorities gave for keeping the passport in the case file was their own convenience of telling Y.S. from her twin sister. This reason was not only beyond the law but also beyond common sense as it is not clear how attaching the passport to the case file could make her identification easier.

2. The Government

94. The Government submitted that the Tverskoy District Court needed to keep the passport in the case file because the sisters had several times used their similar appearance to confuse the investigating authorities. The police report of 31 March 1999 serves as an example. The authorities even had to check the applicants' fingerprints in order to tell them from one another. The court was ready to make the passport available to Y.S. for certain crucial purposes and informed her about it, but she never came to collect the passport. The court issued a certificate of withdrawal which could have temporarily replaced the passport, but Y.S. refused to collect it too.

B. The Court's assessment

1. Whether Article 8 is applicable

95. The Court has a number of times ruled that private life is a broad term not susceptible to exhaustive definition (see, as a recent authority, *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-...). It has nevertheless been outlined that it protects the moral and physical integrity of the individual (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, §§ 22-27), including the right to live privately, away from unwanted attention. It also secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his personality (see *Brüggeman and Scheuten v. Germany*, no. 6959/75, Commission's report of 12 July 1977, Decisions and Reports (DR) 10, p. 115, § 55).

96. The Court notes that Y.S.'s passport was seized on 26 August 1995 and returned on 6 October 1999. Y.S. has not substantiated any concrete event which happened after 5 May 1998 – the day when the Convention became effective in respect of Russia – and which would as such constitute, at least arguably, a disrespect of her private life. However, the interference with Y.S.'s private life is peculiar in that it allegedly flows not from an instantaneous act, but from a number of everyday inconveniences taken in their entirety which lasted till 6 October 1999. Therefore, the Court has the temporal jurisdiction over Y.S.'s situation, at least as regards the period subsequent to 5 May 1998.

97. The Court finds it established that in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant's private life (see, *mutatis mutandis*, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 77, ECHR 2002-VI).

2. Whether the interference was “in accordance with the law”

98. The principal issue is whether this interference was justified under Article 8 § 2, notably whether it was “in accordance with the law” and “necessary in a democratic society”, for one of the purposes enumerated in that paragraph.

99. The Court recalls that the phrase “in accordance with the law” requires, in the first place, that the measure complained of must have some basis in domestic law (see *Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82, § 66).

100. The Government have not shown that the non-return of Y.S.'s passport upon her release from remand custody had any basis in domestic law. There has, accordingly, been a violation of Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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.”

102. The applicants claimed compensation for the non-pecuniary damage suffered by them and reimbursement of their pecuniary losses and their legal costs and expenses. The Government contested these claims.

A. Non-pecuniary damage

103. The applicants claimed 350,000 US dollars (USD) in respect of non-pecuniary loss. They underlined the emotional distress they suffered as a consequence of repeated and unjustified detention on remand, often in overcrowded and unsanitary prison cells. Their health declined so badly that they cannot enjoy an active life, they feel unhappy and miserable. According to medical reports, they would not be able to give birth to healthy children. The applicants were not able to find steady well-paid jobs because employers knew that the applicants could have been arrested at any time and because persons under investigation are generally disliked. The applicants' professional careers crashed, they could not pursue their studies, and seeing others' success makes them suffer. Remand in custody deprived them of their privacy, their good name and reputation were damaged.

104. The Government argued that the taking of the applicants into custody was legitimate, therefore any claims arising from it should be dismissed. But even if the Court found a violation, such a finding would constitute sufficient just satisfaction in itself because the applicants never served their sentence.

105. The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, § 96). This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered injury requiring financial compensation. In the present case, it is reasonable to assume that the applicants suffered distress, anxiety and frustration exacerbated by the repeated detention on remand and unreasonable length of the proceedings.

Furthermore, Y.S. suffered frustration over not being able to engage fully in her everyday life due to the confiscation of her passport.

106. Deciding on an equitable basis, the Court awards 3,500 euros to Y.S. and 2,000 euros to I.S.

B. Pecuniary damage

107. The applicants claimed that they have sustained significant materials losses as a direct result of their pre-trial detention and criminal prosecution, including a salary loss of USD 253,530. They also claimed USD 9,050 as compensation for the damage for their property inflicted by police officers during their arrests and USD 5,000 as compensation for necessities passed by I.S. to Y.S. whilst the latter was in prison.

108. The Government argued that there is no causal connection between the violations established and any damage. They underlined that the periods of the applicants' pre-trial detention were deducted from the final sentence, and that even though the sentence was later set aside it was so only on technical grounds. The Government also argued that the applicants had not proved that they lost their employment or that it was because of the actions of the authorities. The applicants had not proved that the damage to their property was caused by the police or that they had paid the repair bill. Neither had they proved that I.S. bought necessities for Y.S.

109. The Court concludes, on the evidence before it, that the applicants have failed to show that the pecuniary damage pleaded was actually caused by the protracted length of their detention and trial. Furthermore, the entire period of pre-trial detention was deducted from the sentence (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 91).

110. Consequently, the Court finds no justification for making an award to the applicants under that head.

C. Costs and expenses

111. The applicants claimed USD 19,300 for legal expenses arising out of the domestic proceedings and USD 18,737 plus EUR 9,807.20 for legal expenses arising out of their application to this Court. They also claimed USD 1,004 for medical and security bills.

112. The Government argued that the applicants had not shown that the expenses had been incurred in connection with the violations alleged; that there were not enough documents to prove that the applicants had actually paid the lawyers' bills; and that the bills themselves were inflated. The Government also emphasised that even though the Council of Europe had granted to the applicants legal aid due to their poverty, they were able, for some reason, to afford the legal services of an expensive American law firm.

113. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for example, *Nielsen and Johnson v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). It may be concluded from the material submitted that the applicants incurred legal costs and expenses in connection with their attempts to secure their release on bail. However, they only provided partial documentary substantiation of the sum claimed.

114. Taking into account the legal aid paid by the Council of Europe, the Court awards EUR 1,000 for legal costs and expenses.

D. Default interest

115. 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. *Holds* that there has been a violation of Article 5 §§ 1 and 3 of the Convention in respect of both applicants;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both applicants;
3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the first applicant;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) to the first applicant EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) to the second applicant EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) to the applicants jointly EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (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;

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

Done in English, and notified in writing on 24 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President