CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SULAOJA v. ESTONIA

(Application no. 55939/00)

JUDGMENT

STRASBOURG

15 February 2005

FINAL

15/05/2005

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 Sulaoja v. Estonia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 55939/00) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Kristjan Sulaoja ("the applicant"), on 20 October 1999.

2. The applicant was represented before the Court by Mr T. Sild, a lawyer practicing in Tallinn. The Estonian Government ("the Government") were represented by their Agents, Mrs M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoes, Special Advisor to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged that the reasons for his protracted detention on remand had been inadequate and that his applications for release had not been examined speedily.

4. The application was allocated to the Fourth 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.

5. By a decision of 13 January 2004 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The first set of proceedings

7. The applicant was born in 1964 and lives in the Hüüru village, Harju County.

8. On 14 February 1998 the Pärnu police took the applicant into custody on suspicion of having committed burglary. On 16 February 1998 the applicant was released from custody, but was subjected to another preventive measure in the form of a ban on leaving his place of residence.

9. On 19 February 1998 the applicant was re-arrested on suspicion of two further acts of burglary, one of which had been committed the same day.

10. On 20 February 1998 the applicant was charged with three counts of burglary and the police investigator requested the Pärnu City Court (*Pärnu Linnakohus*) to apply the preventive custody measure until 20 April 1998. The investigator noted that the applicant had no fixed residence and considered that he could, if released, continue to commit offences, evade investigation and abscond.

The applicant stated in writing that he did not wish to participate in the hearing before the City Court concerning the investigator's request and that he did not consider the presence of his lawyer there necessary either.

On the same day, i.e., 20 February 1998, the City Court authorised the applicant's detention until 20 March 1998.

11. In March 1998 the applicant was charged with additional counts of burglary, committed together with two minors.

12. On 20 March 1998 the investigator applied for an extension of the applicant's detention. Having noted that the applicant had been charged with additional crimes, that he had no fixed residence or place of work and that he had two prior criminal convictions, the investigator found that the applicant could, while at liberty, re-offend, evade investigation and flee. The investigator also noted that the applicant had confessed to the charges.

The applicant did not wish to participate in the hearing before the City Court, which allowed the investigator's request and prolonged the applicant's detention until 20 April 1998.

On 17 April 1998 the City Court granted the investigator's request to prolong the applicant's detention further until 20 June 1998. The request was based on reasons which were similar to those contained in the previous request. The applicant again had stated that he did not wish to attend the hearing on the extension of his custody.

On 18 June 1998 the applicant's detention was prolonged by the City Court for the third time at the request of the investigator who relied on his earlier arguments. The extension was valid until 20 August 1998.

13. On 19 August 1998 the City Court held a hearing on the further prolongation of the applicant's detention. It heard the applicant and his lawyer as well as the investigator. It rejected the applicant's request to be released and extended his detention until 20 September 1998. The court found that the applicant had no place of residence, family or work. If released, he could continue committing offences in order to support himself, and also evade investigation.

14. On 1 September 1998 the investigator drew up a final indictment which included an additional charge of inducing minors to participate in a crime.

15. On 18 September 1998 the City Court held a hearing to decide on the investigator's request to extend the applicant's detention until 20 November 1998 having regard to the large volume of the criminal case. The applicant and his lawyer, who both took part in the hearing, objected to the request. The City Court decided to allow the request and to extend the applicant's detention. It noted that the applicant had prior criminal convictions and that he had no place of residence or work. He had been charged with several offences for which he could be sentenced to imprisonment. There was thus reason to believe that he could abscond or commit new offences, if released.

16. On 20 November 1998 the City Court heard the applicant and his lawyer on the sixth application by the investigator to extend the applicant's detention. Noting again that the applicant had no place of residence, work or family to support him, it decided to prolong his detention until 20 January 1999.

17. On 18 January 1999 the investigator filed another request to extend the applicant's custody term until 20 February 1999, i.e. 12 months in total. The applicant did not wish to be present at the examination of this request before the City Court, which found the request substantiated and allowed it for reasons similar to those in its previous decisions.

18. On 12 February 1999 the applicant and his lawyer were acquainted with the results of the preliminary investigation of the criminal case. Three days later the public prosecutor approved the bill of indictment and the case was sent to the City Court for trial.

19. By a decision of 18 February 1999 the City Court, having reviewed the case-file from the prosecution, committed the applicant for trial. In respect of detention it was ordered in the decision: “To leave unchanged the preventive custody measure chosen with respect to the accused at trial.” The decision did not specify until when the applicant had to be kept in detention. The court relied on the relevant provisions, including Article 189, of the Code of Criminal Procedure. The applicant did not receive a copy of the

court decision, but was notified by the public prosecutor of the renewal of his detention on 22 February 1999.

20. On 22 February 1999 the applicant complained to the City Court that he was dissatisfied with the investigator who had refused to arrange his confrontation with witnesses. He considered that the investigation had been incomplete and asked the court to send the case back to the relevant authority.

21. On 15 March 1999 the applicant filed another complaint with the City Court, arguing that his detention after 20 February 1999 was unlawful and requesting his release from custody. He submitted that under the Code of Criminal Procedure (Article 73 § 6) notification of a prolongation of detention should reach the place of detention before the expiry of the previous order. He, however, received the notification only on 22 February 1999.

22. At the hearing before the City Court on 31 March 1999 the applicant pleaded guilty to the charges of burglary, but denied that he had induced two minors, M.T. and R.P., to participate in his criminal activity. The court heard five witnesses, including M.T. and R.P. By a judgment given on the same day it convicted the applicant on five counts of burglary under Article 139 § 2 of the Criminal Code as well as on the charge of inducing minors to participate in his crime, under Article 202 of the Code, and sentenced him to 2 years' imprisonment. The judgment did not mention the applicant's request for release or the continuation of the preventive custody measure.

23. On 15 April 1999 the applicant filed an appeal against the judgment with the Tallinn Court of Appeal (*Tallinna Ringkonnakohus*) in which he disputed his conviction under Article 202 of the Criminal Code. He also complained that the investigator had refused his request to conduct a confrontation with his accomplices M.T and R.P., and asked the appeal court to hear witness R.J., without indicating any reasons for his request.

The applicant further applied for release from custody and submitted that his continued detention after 20 February 1999 was unlawful.

24. On 23 April 1999 the Court of Appeal informed the applicant of the date of its preliminary hearing, noting that his presence was mandatory.

25. On 28 April 1999, after a preliminary hearing which the applicant did not attend, the Court of Appeal quashed the judgment of the City Court on procedural grounds and remitted the case to it for a new consideration with a different composition. It found that the lower court judgment was not reasoned and that its hearing records were incomprehensible. Moreover, as the applicant suffered from a mental handicap, it was necessary to have a psychiatric expert opinion on his mental state. Neither the decision nor the minutes of the hearing made reference to the applicant's request for release or dealt with the issue of detention pending final conviction and sentence.

B. Appeal against the detention to the Supreme Court

26. On 6 May 1999 the applicant wrote to the City Court asking it, without specifying the reasons, to call his witness R.J. He also informed the City Court that in his view he had the right to be released.

The following day the applicant filed an appeal against the Court of Appeal's decision of 28 April 1999 with the Supreme Court, submitting that neither the City Court nor the Court of Appeal had indicated on what ground he was being detained. He argued that the maximum time-limit of one year for pre-trial detention, stipulated in Article 74 of the Code of Criminal Procedure, expired on 19 or 20 February 1999 and that his continued detention was unlawful. He also requested his release from custody.

27. At the hearing before the Supreme Court on 8 June 1999, where the applicant was not present, the defence lawyer maintained the applicant's appeal and submitted, in addition, that the applicant had not been aware of the prolongation of his detention by a decision of the City Court of 18 February 1999 as a copy of the decision had not been sent to him.

28. By a decision of 8 June 1999 the Supreme Court dismissed the appeal. It considered that the time-limit of one year for pre-trial detention under Article 74 of the Code of Criminal Procedure had not been exceeded. The applicant had been taken into custody on 19 February 1998 and on 18 February 1999 he was committed for trial and ordered to remain in custody. In response to the defence lawyer's argument, the Supreme Court stated that, according to Article 202 § 1 of the Code of Criminal Procedure, a copy of the court decision committing the accused for trial was to be sent to the person only if the court changed a preventive measure – which was not the applicant's case. The applicant, however, had the opportunity to consult the decision in his criminal case-file.

The Supreme Court noted that, in remitting the case back to the first instance court, the Court of Appeal should have indicated, for the sake of clarity, that the preventive custody measure in respect of the applicant remained in force. Nonetheless, the absence of that indication did not render the applicant's detention unlawful. In sending the case back for a new consideration, the Court of Appeal restored the procedural stage which came about following the applicant's committal for trial on 18 February 1999. This situation also involved the preventive custody measure applied in respect of the applicant on the same day.

C. The second set of proceedings

29. On 31 August 1999 the medical experts established that the applicant was not of unsound mind or suffering from a mental disease, and was capable of understanding and controlling his actions.

30. On 5 October 1999 the City Court held a new hearing on the applicant's case. It heard 4 witnesses, including M.T and R.P. The applicant requested that an additional witness, L.M., be called to testify. The witness could provide information on the applicant's place of residence after 16 February 1998. The court rejected the request on the ground that the testimony of the proposed witness was irrelevant. The applicant had already submitted that at that time he was living at L.M.'s place and the court had sufficient evidence to decide on the case.

31. By a judgment of 5 October 1999 the City Court, having analysed the evidence in the case, including the testimonies of witnesses, found the applicant guilty as charged and sentenced him to 2 years and 6 months' imprisonment. It left unchanged the preventive custody measure applied to him, without putting forward any specific reasons for that.

32. In his appeal to the Court of Appeal, filed on 13 October 1999, the applicant submitted that his conviction under Article 202 of the Criminal Code of inducing minors to participate in burglary was based on insufficient evidence. He referred to the inability to confront the two minors during the preliminary investigation and asked the appeal court to hear his witness L.M. The applicant further disputed the lawfulness of his detention after 19 February 1999 and claimed that he had not received adequate replies to this question. He also demanded his release.

33. On 29 November 1999 the Tallinn Court of Appeal, having held a hearing, upheld the applicant's conviction, but reduced his sentence to 2 years' imprisonment. It did not hear the requested witness. The judgment of the Court of Appeal took effect on the day of its pronouncement, but was open to appeal to the Supreme Court within one month. Neither the judgment nor the hearing records mention the applicant's request for release.

34. On 21 December 1999 the applicant lodged an appeal with the Supreme Court contending, *inter alia*, that the investigator had acted unlawfully and pointing to the failure to hear the witness L.M. He requested to be released from custody.

On 12 January 2000 the Supreme Court refused, by a final decision, the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

35. Under Article 35-1 §§ 1 and 2 and Article 37 § 2 of the Code of Criminal Procedure, as in force at the material time, the accused and his defence lawyer have the right to submit applications and file appeals relating to the criminal proceedings.

36. Article 69 of the Code provides that a prohibition to leave a place of residence may be imposed on a suspect, accused or accused at trial, i.e. he or she may be obliged to undertake a written commitment not to leave his or her permanent or temporary residence without the permission of a

preliminary investigator, prosecutor or court. If the suspect, accused or accused at trial violates such commitment, a more severe preventive measure may be applied with regard to him or her, against which the suspect, accused or accused at trial shall be cautioned upon the obtaining of his or her signature.

37. Article 71-1 of the Code stipulates that a judge may, at the request of an accused, replace the preventive custody measure with bail.

38. According to Article 73 of the Code, preventive custody measure may be applied in respect of a suspect, accused or accused at trial in order to prevent them from evading the criminal proceedings or committing a new crime as well as to ensure the enforcement of a court judgment (§ 1).

The permission for taking a suspect or accused into custody is given by a county or city court judge on the basis of a reasoned request from an investigator (§ 2).

39. An investigator must notify the defence counsel and prosecutor of a custody application beforehand; the counsel and prosecutor have the right to participate in the hearing of the application by the county or city court judge (§ 3).

A person to be taken into custody has the right to request his or her interrogation by a county or city court judge with the participation of the defence counsel (§ 4).

40. A county or city court judge must give a reasoned ruling on the grant or refusal of the preventive custody measure. The judge must sign the ruling and certify it with the court seal (§ 5).

41. An extension of the term of custody is effected pursuant to the provisions which regulate the taking of a person into custody (§ 5-1).

A court must inform the administration of the detainee's place of detention of its decision to prolong his detention or to annul it. The notification must reach the place of detention before the expiry of the term of detention (§ 6).

42. Article 74 of the Code provides that a period of detention during the investigation of criminal offences may not last longer than 6 months. In particularly complex and voluminous cases, the State Public Prosecutor or his Deputy may exceptionally request an extension of the time-limit for such detention up to one year.

43. According to Article 77-1 of the Code, a person in respect of whom a preventive custody measure is applied or extended, or his representative, may file an appeal against that ruling within five days pursuant to the procedure prescribed in the Code of Criminal Court Appeal and Cassation Procedure.

44. Article 78 of the Code stipulates that an investigator, prosecutor or court will annul a preventive measure if there is no further need for its application, or alter the preventive measure and choose a new preventive measure (§ 1).

A preventive measure chosen in respect of an accused at trial may be altered or annulled by the trial court or a higher court (§ 3).

45. Under Article 189 of the Code, when committing the accused for trial, a court must examine whether a preventive measure has been correctly applied.

46. Article 202 § 1 of the Code requires a court to forward to the accused a copy of its decision on the committal for trial, if by that decision the court changed a preventive measure.

47. Article 222 of the Code empowers a court to amend and annul, in the course of the court proceedings, the preventive measures previously chosen with regard to the accused at trial.

48. According to Article 325 § 1 of the Code a court judgment becomes legally enforceable upon expiry of the term for filing of appeals or protests, if appeals or protests are not filed. If an appeal or protest is filed, a court judgment enters into force after the criminal matter has been heard by a higher court, unless the judgment is annulled.

49. Article 263 § 1 (10) and Article 275 § 1 (6) provide that, upon making a judgment, a court has to decide what preventive measure shall be applied with regard to the accused at trial or whether the preventive measure previously applied shall be annulled.

50. According to Article 35 § 1 of the Code of Criminal Court Appeal and Cassation Procedure a judgment of a court of appeal enters into force after it is pronounced or communicated through the court office in its full extent.

THE LAW

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

51. The applicant complained that his protracted detention was unfounded and in breach of Article 5 § 3 of the Convention, which provides:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and 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. Period to be taken into consideration

52. The Court notes that the total period of the applicant's deprivation of liberty lasted from his first arrest to the Supreme Court's final refusal to grant him leave to appeal, less the 3 days he was at liberty in the meantime, 1 year, 10 months, 23 days.

However, the period to be considered under Article 5 § 3 consisted of three separate terms, the first lasting from 14 February to 16 February 1998 (initial detention on suspicion of burglary), the second from 19 February 1998 to 31 March 1999 (the period of detention from the time the applicant was re-arrested to the original conviction by the first instance court), and the third from 28 April 1999 to 5 October 1999 (the period from the Court of Appeal's decision to quash the original judgment to the new conviction by the first instance court). The applicant's detention from 31 March 1999, the date of his original first-instance conviction, to 28 April 1999, the date on which that conviction was quashed and his case remitted, cannot be taken into account for the purposes of Article 5 § 3, as during that period the applicant was detained "after conviction by a competent court" under Article 5 § 1 (a) (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 104-105, ECHR 2000-XI). The total period of the applicant's detention on remand thus amounted to 1 year, 6 months and 22 days.

B. Reasonableness of the length of detention

1. The parties' arguments

53. The applicant maintained that the period of more than one and a half years during which he had been held in detention was excessive.

54. The applicant was of the opinion that the reasons for his continued detention had been inadequate. Most of the court orders by which his detention had been authorised had stated that he had been previously convicted, did not have a residence, a job or a family and could thus commit new offences.

55. The applicant noted that, under Article 74 of the Code of Criminal Procedure, reasons as to the particular complexity or extent of the case should have been advanced in order to request his pre-trial detention for a period exceeding six months. This had not been done. All the detention orders had employed the same laconic formula.

56. The applicant also maintained that the charges brought against him and the circumstances of the offence had not been complicated. He had admitted the charges from the very beginning and had assisted the investigation in a reasonable way. He submitted that it had appeared from the criminal case-file that by the end of March 1998 all or most of the factual circumstances supporting the charges had been established by the police investigators. He considered that, after having established the facts, the legal issues – for example the question whether he had induced minors

to burglary or whether they had acted of their own will – could have been determined during the trial, without any excessive delay of the investigation.

57. The Government were of the opinion that the applicant's detention of about one and a half years could not be considered excessive, taking into account the complexity of the criminal case and the fact that the first instance court had heard the case twice, since the first judgment had been quashed by the Court of Appeal.

58. The Government maintained that a substantial risk that the applicant would reoffend and abscond had persisted throughout the entire period of detention. The applicant had, indeed, committed a further offence at the time when he had been at liberty (from 16 February to 19 February 1998). The applicant had no place of residence or job and he lacked ties with his family members. Moreover, he had been convicted of criminal offences twice before. The Government concluded that the grounds for detention and the reasons given by the authorities had been "relevant" and "sufficient" so as to justify the applicant's detention under Article 5 § 3.

59. The Government noted that from July 1997 until the beginning of 1998 there had been a considerable increase in burglaries and thefts in the city of Pärnu committed by different groups of persons. Altogether the police had initiated 11 criminal cases and on 7 occasions the investigator had joined different criminal cases. This was because the burglaries and thefts had been committed by the same persons or the joinder of the cases had been considered necessary for the better conduct of the preliminary investigation and for speeding up the investigation. The charges against the applicant had been investigated within a criminal case which had included 39 counts of burglary and theft from different kiosks and numerous other episodes of burglaries and thefts. During the preliminary investigation 18 minors and 7 adults, including the applicant, had been charged with criminal offences.

60. The Government concluded that the criminal case as a whole had been a complex and voluminous one. They noted that the applicant had not objected to the joinder of the different criminal cases. When the investigator had come to the conclusion that it had been possible to deal with the charges against the applicant separately, his case had been separated on 12 February 1999. Even if the applicant's case on its own had not been particularly complex, it had to be assessed in the context of the complex criminal case of which it was a part in the beginning of the investigation. The complexity of the whole criminal case and the different steps taken by the investigator, especially the separation of the applicant's case from the voluminous one, demonstrated that the authorities had taken all necessary steps in order to speed up the proceedings. The Government also pointed out that, even assuming that certain delays in the preliminary investigation could have occurred for the above reasons, the proceedings after the separation of the cases had been conducted with exceptional speed. On the whole, the

Government were of the opinion that the authorities had displayed special diligence as required in the handling of criminal proceedings against remand persons and, therefore, Article 5 § 3 had not been violated.

2. The Court's assessment

61. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. The reasonableness of the detention of an accused has to be assessed in each individual case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention.

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and any well-documented facts stated by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

62. The persistence of a reasonable suspicion that the person arrested has committed an offence is a *conditio sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

63. The Court accepts that the suspicion against the applicant of having committed the offences with which he was charged may initially have warranted his detention. The detention in the initial phase of the investigation was further justified by the fact that the applicant committed a new offence during the short period while he was at liberty (see paragraph 9 above).

64. However, the Court observes that the judicial orders authorising the applicant's detention on remand were based on a brief standard formula that the detention was justified, namely that the applicant had been previously convicted, did not have a place of residence, a job nor a family and that he could commit new offences, and abscond. No more elaborate reasons were put forward to justify the need for the protracted detention of the applicant.

The Court finds that the mere absence of a fixed residence does not give rise to a danger of flight. Nor can it be concluded from the lack of a job or a family that a person is inclined to commit new offences. The Court has doubts as to whether the grounds for the applicant's detention, as reflected in the perfunctorily reasoned court orders, retained their sufficiency for the whole period of the pre-trial detention.

In that context, the Court would emphasise that under Article 5 § 3 the authorities, when deciding on the continuing detention of a person, are obliged to consider alternative measures of ensuring his appearance at trial. It should be recalled that this 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, for example, *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3, and *Iłowiecki v. Poland*, no. 27504/95, § 63, 4 October 2001). In the present case the authorities did not envisage any other guarantees that the applicant would appear for trial, although he repeatedly objected to his continued detention, requesting that it be replaced by another preventive measure – a prohibition on leaving a place of residence where he asserted that he could live with his brother.

65. Furthermore, the Court finds, in any case, that the authorities cannot be said to have displayed "special diligence" in the conduct of the proceedings. The charges against the applicant were not so complex and voluminous as to justify the length of the pre-trial investigation. Indeed, the Government conceded that the applicant's case was not necessarily particularly complex and that certain delays could have occurred during the preliminary investigation (see paragraph 60 above). The Court recalls that the applicant was charged with five counts of burglary and inducement of minors to commit criminal offences. The judgment of 31 March 1999 of the Pärnu City Court by which the applicant was initially convicted, extended to two pages. Five witnesses were heard during the preliminary investigation and at the hearing.

66. The applicant has claimed that by the end of March 1998 the factual circumstances concerning the offences committed by him had largely been established by the investigation. The Court has not been provided with any information to the contrary and finds no reason to hold otherwise. It should also be noted that as regards two of the counts of burglary the applicant was caught in the act by witnesses who then took him to the police. Moreover, during the investigation the applicant admitted having committed the

offences, except for the additional count of inducing minors. That being so, the authorities could hardly be regarded as having exercised special diligence in the conduct of the proceedings.

67. Article 5 § 3 of the Convention has therefore been violated.

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

68. The applicant complained of the failure to examine speedily his applications for release, relying on Article 5 § 4 of the Convention, which provides:

> "4. 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. The first set of proceedings

69. The Court notes that on 15 March 1999 the applicant lodged a complaint with the Pärnu City Court(see paragraph 21 above), arguing that his continuing detention after 20 February 1999 had been unlawful and requesting his release from custody. The judgment of the City Court of 31 March 1999 gave no response to the complaint and, in fact, contained no decision with respect to the preventive measure.

In a request of 15 April 1999, lodged with the Tallinn Court of Appeal together with an appeal, the applicant again asked to be released. On 28 April 1999 the Court of Appeal quashed the City Court's decision, leaving the question of the preventive measure undecided and unreasoned.

In the appeal to the Supreme Court, lodged on 7 May 1999, the applicant also requested his release. The issue of the lawfulness of the detention was decided by the Supreme Court on 8 June 1999(see paragraphs 26 to 28 above).

70. The Government submitted that the applicant had not requested his release at the hearing in the City Court.

71. The Court recalls that according to its case-law the supervision required by Article 5 § 4 of the Convention is incorporated in the decision when the decision is made by a court at the close of judicial proceedings (*De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, pp. 40-41, § 76). It is particularly so when the court imposes a fixed sentence of imprisonment after convicting the person of a criminal offence (*Waite v. the United Kingdom*, no. 53236/99, § 56, 10 December 2002).

72. It should be noted, however, that the national legislation may require that the question of the lawfulness of detention be addressed separately in a judgment by which a person is convicted or that a separate decision to that

effect be made. In the *König v. Slovakia* judgment (no. 39753/98, §§ 10 and 20, 20 January 2004), for example, the Court found that, in the absence of any decision on the request for release made by the applicant in his final speech at the court hearing, the applicant continued to be held in detention on remand, technically, by virtue of a decision which had been taken on a different occasion prior to the delivery of the convicting judgment.

73. The Court notes that, under Article 325 § 1 of the Estonian Code of Criminal Procedure, the first instance court judgment became legally enforceable after the expiry of the time-limit for appeal. According to Articles 263 § 1 (10) and 275 § 1 (6) the court had to decide whether to continue or lift the preventive measure in the convicting judgment. It has also been the judicial practice of first instance courts to include in the judgment a decision concerning the preventive measure applied. This was not done by the Pärnu City Court in the present case.

74. According to the interpretation of the Supreme Court, the applicant's detention had been lawful, despite the lack of a decision concerning the detention in the Court of Appeal's decision. The Supreme Court pointed only to some lack of clarity in the decision (see paragraph 28 above).

The Court notes that, apart from the legality of the detention itself, the issue of whether the lawfulness of the applicant's detention was decided speedily has to be resolved under Article 5 § 4. In the light of the national legislation and judicial practice, it cannot be held that the review of the lawfulness of the applicant's detention was incorporated in the City Court's judgment or in the Court of Appeal's decision.

Accordingly, the Court finds that 15 March 1999, when the applicant challenged the legality of his detention with the City Court, is to be considered the date of the applicant's request for the review of the lawfulness of his detention. The matter was decided by the Supreme Court on 8 June 1999, i.e. in 2 months and 24 days. The Court holds, in the light of its case-law, that the length of this period cannot be reconciled with the requirement of Article 5 § 4 of the Convention that the lawfulness of one's detention shall be decided speedily (see, for instance, *Rehbock v. Slovenia*, no. 29462/95, §§ 84-88, ECHR 2000-XII).

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

B. The second set of proceedings

76. The Court notes that in the second set of the court proceedings the applicant was convicted by the Pärnu City Court on 5 October 1999. The judgment contained a decision that the applicant had to remain in detention. In his appeal of 13 October 1999 he argued that the question of the lawfulness of his detention had not been resolved in a satisfactory manner and requested to be released.

On 29 November 1999 the Tallinn Court of Appeal confirmed the City Court's judgment as to its substance, without addressing the question of the lawfulness of the detention.

77. The Government were of the opinion that the lodging of the request to be released on 13 October 1999 with the Court of Appeal had made it impossible for it to resolve the issue of applying preventive measure, because with the pronouncement of the judgment of the Court of Appeal the conviction of the applicant became legally enforceable and he was subject to a sentence of imprisonment.

78. The Court finds that the review of the lawfulness of the applicant's detention was incorporated in the City Court's judgment of 5 October 1999. Subsequently, the applicant was entitled, under Article 5 § 4, after a "reasonable interval" to take proceedings by which the lawfulness of his continued detention was decided "speedily" by a court (see, among others, *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, p. 10, § 20).

79. It should be noted that a new request to be released was made by the applicant in his appeal of 13 October 1999, i.e. 8 days after the City Court had made a decision concerning his detention.

The Court doubts whether this period of 8 days constituted a "reasonable interval" for the purposes of Article 5 § 4. In any case, after the judgment of the Court of Appeal, which became legally effective from its delivery, the applicant was deprived of his liberty following – and because of – conviction by a competent court. Such a deprivation of liberty falls under Article 5 § 1 (a) of the Convention. The Court is therefore satisfied that the review of the legality of the detention, although not addressed by the Court of Appeal, can be deemed to have been incorporated also in that judgment(see paragraph 71 above).

80. Having regard to the specific circumstances of the case and taking into account, in particular, the short interval between the review of the lawfulness of the detention by the City Court and the applicants new request to be released, the Court is satisfied that the requirements of Article 5 § 4 were met in this set of proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant did not make any claim for costs and expenses but claimed the sum of 150,000 Estonian *kroons* (9,585 euros (EUR)) in compensation for distress and suffering caused by the illegal detention on remand and the fact that his requests for release were ignored by the judicial authorities.

83. The Government did not comment on the claim.

84. The Court finds that the applicant has suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards him EUR 3,000.

B. Default interest

85. 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 § 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the review of Mr Sulaoja's complaint of 15 March 1999 concerning the lawfulness of his detention;

3. *Holds* that there has been no violation of Article 5 § 4 of the Convention in respect of the review of Mr Sulaoja's complaints concerning the lawfulness of his detention after his conviction on 5 October 1999;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to

Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Estonian *kroons* at the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 15 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President