CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ROKHLINA v. RUSSIA

(Application no. 54071/00)

JUDGMENT

STRASBOURG

7 April 2005

FINAL

12/10/2005

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 Rokhlina v. Russia,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 17 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 54071/00) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Tamara Pavlovna Rokhlina, on 21 December 1999. She was represented before the Court by Mr A. Kucherena, a lawyer practising in Moscow.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that her detention on remand had been excessively long and the review of the lawfulness of her detention had not been "speedy". She also complained under Article 6 § 1 of the Convention that the criminal charge against her had not been determined within a "reasonable time".

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

5. On 23 January 2004 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

6. By a decision of 9 September 2004, the Court declared the application partly admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and lives in Moscow.

A. The applicant's detention on remand

1. Arrest of the applicant

10. On 3 July 1998 the applicant was arrested on the suspicion of shooting her husband, Lieutenant-General Lev Rokhlin, a member of the Russian Parliament. An investigator of the Moscow Region prosecutor's office authorised her detention on remand. The applicant was placed in detention facility no. IZ-49/9 in the Moscow Region.

11. On 8 July 1998 the applicant was charged with murder under Article 105 § 1 of the Criminal Code and questioned as an accused in the presence of Mr Vankovich, a lawyer retained by her. She chose to remain silent on the merits of the charge against her and requested that the investigator be replaced because he had allegedly intimidated her and showed lack of respect for her and her family. On an unspecified date the applicant's request was rejected as unsubstantiated.

12. On 16 July 1998 the State Duma of the Russian Federation (the lower chamber of the Russian Parliament) established a special commission to monitor the progress of the investigation into the circumstances of Lieutenant-General Rokhlin's death (“the Duma commission”).

13. On 21 August 1998 the applicant's detention on remand was extended until 3 December 1998. The applicant did not appeal against the extension order.

2. First appeal against an extension of the detention on remand

14. On 1 December 1998 the applicant's detention was extended until 3 April 1999, that is for a total of nine months starting from the day of her arrest. On 9 December 1998 the applicant's lawyers appealed to a court against the extension order. They complained, in particular, about unreasonable delays in the investigation of the charge against their client and pointed to her frail health. The applicant submitted a supplementary

complaint against the extension order; she indicated that her prolonged separation from her mentally disturbed son was detrimental to his health.

15. On 21 December 1998 the Lyublinskiy District Court of Moscow rejected the appeals against the extension order. It held that the detention on remand had been imposed and extended "without any substantial violations of the law of criminal procedure" and that the detention was justified "because [the applicant] was charged with an especially serious criminal offence". The court found no grounds to release the applicant on bail. On 21 December 1998 and 10 and 13 January 1999 the applicant's lawyers appealed against the decision of the district court. They submitted that the court had not taken into account the applicant's deteriorating health, long periods of inactivity of the team of eight investigators, discrepancies in the applicant's confessions. They also alleged that the court had failed in its duty to give relevant and sufficient reasons for the continued detention. On 13 January 1999 the Moscow City Court heard the appeal and ruled that the suspicion against the applicant that she had committed an especially serious criminal offence was, pursuant to Article 96 of the RSFSR Code of Criminal Procedure, a sufficient ground for her detention on remand.

16. On 13 January 1999 the State Duma of the Russian Federation adopted a special address to the Prosecutor General of the Russian Federation. Members of Parliament noted that the investigation was lingering, while the applicant remained in custody. On 15 December 1998 the Duma commission members had met the applicant in prison and found her health unsatisfactory. In view of the applicant's poor health and adverse effects of her long separation from her mentally disturbed son and given that she was not a public danger, the Duma requested the Prosecutor General to consider the applicant's release from custody on humanitarian grounds.

3. Second appeal against an extension of the detention on remand

17. On 18 March 1999 the applicant's detention on remand was extended until 3 July 1999, i.e. for a total of twelve months. The applicant's lawyers appealed against the extension. They requested that the applicant be released, citing her poor health and excessive delays in the investigation.

18. On 6 April 1999 the Lyublinskiy District Court of Moscow found that the applicant's detention had been extended lawfully and no substantial violations of the laws of criminal procedure had occurred. The court held that, pursuant to Article 96 of the RSFSR Code of Criminal Procedure, the suspicion of an especially serious criminal offence was a sufficient ground for the holding in custody and that there were no exceptional grounds warranting the applicant's release. The court also noted that the applicant's state of health permitted her holding in custody.

19. On 11 May 1999 the Moscow City Court dismissed the applicant's lawyers' appeal against the district court's decision. It upheld the district court's interpretation that the existence of a suspicion of involvement in an

especially serious criminal offence had been a sufficient ground for the continued detention on remand. The court examined the medical certificates submitted by the applicant's defence and held that in the absence of any life-threatening medical condition and given that the applicant's adult daughter was taking care of her brother, the applicant should remain in custody.

4. Subsequent extensions of the detention and a third appeal against an extension of the detention on remand

20. On 23 June 1999 an extension of the detention on remand was authorised until 3 November 1999. The applicant did not appeal against the extension order.

21. On 8 October 1999 the acting Prosecutor General of the Russian Federation authorised the applicant's detention until 3 January 2000, i.e. for a total of eighteen months.

22. On 15 October 1999 the applicant's counsel, Mr Burmistrov, introduced an appeal against the detention order of 8 October 1999, under Article 220[1] of the RSFSR Code of Criminal Procedure. According to the stamp on the first page, the registry of the Lefortovskiy District Court received the statement of appeal on the same date.

23. On 18 or 19 October 1999 [the date is unreadable] the applicant filed a handwritten statement of appeal against the order of 8 October 1999. On the same date the head of the Lefortovo detention centre forwarded it, along with the applicant's medical certificate, to the Lefortovskiy District Court. According to the stamp on the forwarding letter, the court received the document on 25 October 1999.

24. The applicant and her lawyer complained about unjustified delays in the investigation and submitted that the applicant's health and that of her son were steadily deteriorating.

25. By an interim decision of 25 October 1999, the Lefortovskiy District Court scheduled the examination of the appeal by Mr Burmistrov, for 27 October 1999, at 3 p.m., with the participation of a prosecutor, the applicant and her counsel.

26. According to the covering note produced by the Government, on 26 October 1999 the Prosecutor General's office sent certain materials relating to the lawfulness of the applicant's detention to the Lefortovskiy District Court.

27. On 27 October 1999 the applicant was not brought to the court because she had fallen ill. The prosecutor and her counsel objected to holding the hearing in her absence. The hearing was adjourned until 1 November 1999.

28. On 1 November 1999 the Lefortovskiy District Court of Moscow heard the appeals against the extension order and dismissed them. The court held that “the imposition of a preventive measure in the form of placement in custody and [subsequent] extension of the detention in respect of the

applicant were lawful and justified". As to the defence's arguments about the applicant's medical condition and adverse effects of her separation from her son, the court found that these arguments were not "the grounds that would render the preventive measure applied to [the applicant] unlawful or unjustified". The court also added that it was not competent to impose a different "preventive measure" on the applicant, such decision being in the exclusive competence of investigators and prosecutors.

29. On 1, 7 and 25 November 1999 the applicant's lawyers appealed against the decision of 1 November. They submitted that the court did not take into account significant changes in the applicant's situation after fifteen months of detention, including the worsening health of her son, and that it did not give any relevant reasons for the continued detention.

30. On 25 November 1999 by the Moscow City Court upheld the decision of 1 November 1999. The court confirmed the conclusions of the first instance court to the effect that "the placement in custody as a preventive measure could be imposed on the sole ground of gravity of the [committed] offence". On the basis of a medical certificate issued by the detention facility on 4 November 1999 the court determined that the applicant could remain in custody.

5. Release from custody

31. On 23 December 1999 the acting Prosecutor General of the Russian Federation applied to the Moscow City Court for an extension of the applicant's detention until 3 July 2000.

32. On 29 December 1999 the Moscow City Court refused the Prosecutor General's application. It established that on 28 December 1999 the applicant and her lawyers had finished studying the case-file and there were therefore no lawful grounds to extend her detention beyond the maximum eighteen-month period.

33. On 30 December 1999 the prosecutor ordered the applicant's release from custody on the condition that she sign an undertaking not to leave the city.

B. The trial

34. On 16 November 2000 the Naro-Fominsk Town Court of the Moscow Region convicted the applicant of premeditated murder and sentenced her to eight years' imprisonment in a correctional colony. The court excluded the record of the interview made on the day following the arrest as inadmissible evidence because the applicant had been interviewed in the absence of a counsel, her rights had not been explained to her, she had not been informed of video-recording and because there were substantial discrepancies between the videotaped statements and the printed record.

35. On 21 December 2000 the Moscow Regional Court upheld the conviction. It established, however, mitigating circumstances in the applicant's case and reduced her sentence to four years' imprisonment.

36. On 7 June 2001 the Supreme Court of the Russian Federation, by way of supervisory review proceedings, quashed the judgments of 16 November and 21 December 2000 and remitted the case to the Naro-Fominsk Town Court of the Moscow Region for a new examination.

37. Since 11 October 2001 the criminal case against the applicant has been pending before the Naro-Fominsk Town Court of the Moscow Region.

38. On 25 March 2002 the proceeding were stayed because of the applicant's illness. They were resumed on an unspecified date.

39. On 22 April 2003 the applicant was taken to a hospital after she had a heart attack in the courtroom.

40. On 20 August 2003 the proceedings were stayed again because of the applicant's illness. They were resumed on an unspecified date.

41. On 15 April 2004 the proceedings were adjourned until 13 May 2004 at the applicant's daughter's request.

42. On 13 May 2004 the hearing was adjourned because one lay assessor had fallen ill.

43. On 28 May 2004 the applicant did not appear at the hearing because she had to attend to her son.

44. On 20 July 2004 the hearing was adjourned owing to the applicant's counsel's absence. On 8 September 2004 another counsel for the applicant did not appear.

45. On 25 October 2004 the court decided to hold a new directions hearing because, by virtue of recently amended Article 30 of the Code of Criminal Procedure, the applicant's case could be tried either by a single judge or by a three-judge bench. On 1 November 2004 the applicant applied for trial by a single judge.

46. The case is still pending before the trial court.

II. RELEVANT DOMESTIC LAW

A. Preventive measures

47. The Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (“the CCrP”) of 27 October 1960 (effective until 30 June 2002) listed as “preventive measures” or “measures of restraint”, *inter alia*, an undertaking not to leave a specified place and placement in custody (Article 89).

B. Grounds for ordering detention on remand

48. A decision to order detention on remand could only be taken by a prosecutor or a court (Articles 11, 89 and 96). In making this decision the relevant authority was to consider whether there were "sufficient grounds to believe" that the accused would flee from investigation or trial or obstruct the establishment of the truth or re-offend (Article 89), as well as to take into account the gravity of the charge, information on the personality of the accused, his (her) profession, age, state of health, family situation and other circumstances (Article 91).

49. At the material time the accused could be placed in custody if he or she was charged with a criminal offence carrying a sentence of at least one year's imprisonment or in exceptional circumstances (Article 96 § 1). If the accused was charged with any of the serious intentional offences listed in Article 96 § 2, including manslaughter, the detention on remand could be imposed on the sole ground of the dangerousness of that offence. The Plenary Session of the Supreme Court specifically directed the courts to avoid making any assessment of collected evidence or drawing conclusions as to the accused's guilt or innocence in the decisions concerning the lawfulness and justification of the placement in custody (Resolution of the Plenary Session of the Supreme Court of the Russian Federation, no. 6 of 29 September 1994, paragraph 9).

50. A prosecutor's order, or a court decision, ordering detention on remand was to be reasoned and justified (Article 92). The accused was to be informed of the detention order and to have explained the procedure for lodging an appeal against it (Article 92).

C. Time-limits for detention on remand

Types of detention on remand

51. The Code distinguished between two types of detention on remand: one was "during the investigation", that is when an authorised agency – the police or a prosecutor's office – undertook investigative measures, and the other was "before the court" (or "during the trial"), that is when the trial court examined the case. Although there was no difference in practice between them (the detainee was normally held in the same detention facility), the calculation of time-limits was different.

Time-limits for detention "during the investigation"

52. After his or her arrest the person was placed in custody "during the investigation". The maximum permitted term of detention "during the investigation" was two months but it could be extended for up to eighteen

months in "exceptional circumstances". Extensions were authorised by prosecutors of ascending hierarchical levels, up to the Prosecutor General of the Russian Federation. No extensions beyond eighteen months were permitted (Article 97).

53. The term of detention "during the investigation" was calculated until the day when the investigation was considered completed and the defendant was given access to the case file (Articles 97, 199, 200 and 201). The access was to be granted no later than one month before the authorised detention period expired (Article 97). If the defendant needed additional time to study the case-file, a judge acting on a request by a prosecutor could grant an extension of the defendant's detention on remand until such time as the reading of the file was completed, but for no longer than six months.

Time-limits for detention "before the court"

54. Once the investigation was considered to be complete and the defendant had received the bill of indictment and finished reading the case file, the file was transferred to a trial court. From that day the defendant's detention was "before the court" (or "during the trial"). At the material time the Code set no time-limit for detention "during the trial".

D. Proceedings to examine the lawfulness of detention

55. The detainee or his (her) counsel or representative could challenge the detention order, or any subsequent extension order, to a court (Article 220^1). The judge was required to review the lawfulness and justification of a detention or extension order no later than three days after receipt of the relevant materials. The review was to be conducted *in camera* in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances when the detainee waived his right to be present of his (her) own initiative. The judge could either dismiss the challenge or revoke the detention on remand and order the detainee's release. A judge's decision was to be reasoned (Article 220^2).

56. An appeal against the judge's decision lay to a higher court. The time-limit for examination of such an appeal was the same as that established for appeals against the conviction (see below) (Article 331).

E. Time-limits for trial

57. The case examination was required to start no later than fourteen days after the judge issued a procedural order fixing a hearing date (Articles 223^1 and 239). The duration of the trial was not limited in time.

58. The appeal court was required to examine an appeal against the first-instance judgment within ten days upon its receipt. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court of the Russian Federation this time-limit could be longer, up to two months (Article 333). No possibility of further extensions was provided for.

THE LAW

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

59. The applicant complained that her detention on remand had been unreasonably long. The Court has considered that this complaint falls to be examined under Article 5 § 3 of the Convention which provides as follows:

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

60. The applicant's detention on remand lasted from 3 July 1998 when she was taken in custody to 30 December 1999 when she was released. The period to be taken into consideration thus amounted to one year, five months and twenty-seven days.

A. Arguments before the Court

61. The applicant submitted that deprivation of liberty is the most severe measure of restraint and that it should not have been applied to her in view of her frail health and permanent residence in Moscow where she had lived with her mentally disturbed son requiring constant care and supervision. Due to her late husband's position and fame, she enjoyed high social esteem and the need to prevent her from re-offending could not be considered reasonably necessary. The domestic authorities failed to indicate any evidence showing that she had an intention to abscond, to exert pressure on witnesses or to continue criminal activities. The applicant also claimed that the term of eighteen months for the investigation of one incident of manslaughter involving one accused (the applicant) cannot be considered reasonable by any means.

62. The Government submitted that Article 96 § 2 of the then current Code of Criminal Procedure ("CCrP") provided for placement in custody on the sole ground of the gravity of the charges. As the investigative authorities had a reasonable suspicion that the applicant had committed manslaughter, her placement in custody was lawful. The Government claimed that the investigators had authorised the applicant's detention having regard to her

high social status, which could have afforded her an opportunity to exercise pressure on witnesses, and to her family situation. They noted that her underage son was in care of her relations. The global term of the applicant's detention did not exceed the maximum period of eighteen months authorised by Article 97 § 2 of the CCrP in case of serious and especially serious criminal offences. The lawfulness of extensions was confirmed on several occasions by the domestic courts.

B. The Court's assessment

63. The Court accepts that a reasonable suspicion against the applicant of her having taken her husband's life could have warranted the initial detention. The persistence of such a suspicion is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

64. The lawfulness and reasonableness of the applicant's continued detention were examined by the district courts on 21 December 1998, 6 April and 1 November 1999 and by the city court on 13 January, 11 May and 25 November 1999. In their decisions the courts persistently held that the applicant's continued detention was lawful and justified because she was charged with a serious criminal offence and because there were no circumstances warranting her release as her state of health was sufficiently stable and her daughter could take care of the applicant's handicapped son. As the Government explained, the restricted scope of their review was due to then current Article 96 § 2 of the CCrP which established a statutory presumption that where the detained person was charged with a serious or especially serious offence, the courts were not required to show the existence of other grounds warranting his or her detention.

65. The Government also submitted, without pointing to any court decision actually referring to that ground, that the applicant was to remain in custody because she could have influenced witnesses using her high social status. The Court reiterates that it is not its task to take the place of the national authorities who ruled on the applicant's detention and to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003; *Labita v. Italy*, cited above, § 152). That specific allegation was made for the first time in the proceedings before the Court and the domestic courts never referred to such a risk during the period under consideration.

66. The Court accepts that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding. In view of the seriousness of the accusation against the applicant the authorities could reasonably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (*Olstowski v. Poland*, no. 34052/96, § 78, 15 November 2001; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001). This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial control of the issue whether collected evidence supported a reasonable suspicion that the applicant had committed the imputed offence (see paragraph 49 *in fine* above).

67. The Court further recalls that 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. Any system of mandatory detention on remand is *per se* incompatible with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (*Ilijkov v. Bulgaria*, cited above, § 84-85, with further references).

68. The Court finds that the decisions of the domestic courts were not based on an analysis of all pertinent facts. They took no notice of the applicant's counsel's arguments that she had no prior criminal record, that she had a permanent residence in Moscow, family ties, a stable way of life and enjoyed high social esteem, and that the "domestic" nature of the offence she was charged with clearly mitigated the risk of re-offending or collusion. It is remarkable that the decision of the Lefortovskiy District Court of 1 November 1999 explicitly indicated that neither the applicant's medical condition nor adverse effects of the separation from her son were the factors capable of rendering her detention "unlawful or unjustified". As it happened, the applicant's release from custody did not take place until the maximum permitted period of pre-trial detention – eighteen months less three days – had expired.

69. The Court considers that by failing to address concrete relevant facts and by relying solely on the gravity of the charges and shifting to the accused the burden of proving that there was not even a hypothetical danger of absconding, re-offending or collusion, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "sufficient".

The authorities thus failed to justify the applicant's continued detention on remand during the period under consideration. In these circumstances it is not necessary also to examine whether the investigation was conducted with "special diligence".

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

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

71. The applicant complained that the decision on her appeals against the detention order of 8 October 1999 had not been rendered "speedily" in breach of Article 5 § 4 of the Convention which provides as follows:

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

A. Arguments before the Court

72. The applicant submitted that then current Article 220^2 § 2 of the CCrP required examination of a complaint concerning the lawfulness of an extension order within three days after receipt of all materials. The district court did not comply with that time-limit in her case. Subsequently, it took the city court twenty-five further days to consider her appeal against the decision of 1 November 1999.

73. The Government submitted the district court had received the applicant's lawyer's statement of appeal on 15 October 1999 and the applicant's points of appeal on 25 October 1999. A copy of the investigator's covering letter showed that the district court had received the case materials on 26 October 1999. It had fixed the hearing for 27 October 1999, that is within the three-day time-limit established in Article 220^2 § 2 of the CCrP. However, the hearing on the day did not take place because of the applicant's illness. On 1 November 1999 the district court heard and dismissed the appeal. On 1, 4, 9 and 12 November 1999 the applicant and her lawyers challenged the decision of the district court before the city court. The hearing before the city court was scheduled for 17 November 1999 and subsequently adjourned to 25 November 1999 because the applicant sought leave to appear in person. On 25 November 1999 the city court upheld the decision of 1 November 1999. The Government consider that the requirements of Article 5 § 4 have been complied with.

B. The Court's assessment

74. The Court recalls at the outset that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (*Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, § 28; *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per instance may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also recalls that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

75. Turning to the present case, the Court observes that the applicant's counsel and the applicant herself asked the Lefortovskiy District Court to review the lawfulness of her detention in their complaints of 15 October and 18/19 October 1999, respectively. While counsel's complaint was registered by the district court on the same day (on Friday, 15 October), it took the applicant's statement of appeal, six days (from 19 to 25 October) to arrive from the detention centre to the court. The Government did not offer any explanation for such a prolonged time of conveyance of the document within the boundaries of the same administrative district of Lefortovo in Moscow.

76. The Court notes that the then current rules of criminal procedure established a three-day time-limit for examination of a complaint bearing on the lawfulness of detention. The time-limit was, however, calculated from the date of receipt of all relevant materials rather than from the date of lodging of a complaint (see paragraph 55 above). It appears that in the instant case that requirement has been complied with: on 25 October 1999 the district court received the applicant's complaint; on 26 October 1999 the Prosecutor General's office forwarded the relevant parts of the criminal file to the court; and the first hearing was fixed for Wednesday, 27 October 1999. On that day, however, the hearing was cancelled because the applicant had fallen ill. Her failing health was an objective fact, for which neither the applicant nor the domestic authorities can be held responsible.

Making allowance of a few days for the applicant's recovery, the court fixed a new hearing date for Monday, 1 November 1999. On that date the complaints by the applicant and her counsel were examined and rejected.

77. As regards the appeal proceedings, the Court notes that an appeal against the order rejecting the application for release was to be considered within ten days upon its receipt (see paragraphs 56 and 58 above). The applicant and her two counsel submitted their points of appeal on various dates between 1 and 12 November 1999. The first hearing was fixed for 17 November 1999, that is within the ten-day time-limit.

78. The Government averred that the appeal could not have been examined on 17 November 1999 because the applicant had requested leave to appear in person. As the applicant did not claim that she had raised that request in her points of appeal lodged on earlier dates, the Court considers that the ensuing delay was attributable to her. The city court granted her leave to appear and adjourned the hearing for one week. The counsel made further written submissions on the applicant's behalf. On 25 November 1999 the appeal against the decision of 1 November 1999 was considered and rejected.

79. The global duration of the proceedings was thus approximately one month and ten days (from 15 October to 25 November 1999). During that time the lawfulness of the detention order was examined on two levels of jurisdiction and the hearing were held, where possible, within the domestic time-limits. In these circumstances, the Court finds that there was no violation of Article 5 § 4 of the Convention as regards the "speediness" of review afforded by the domestic courts.

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

80. The applicant complained that the criminal charge against her had not been determined within a "reasonable time", as required by Article 6 § 1 of the Convention which provides:

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

A. Period to be taken into consideration

81. The Court recalls that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see, among many authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI).

82. The period to be taken into consideration in the present case began on 3 July 1998 when the applicant was taken in custody and it has not yet ended, the proceedings are now pending before the trial court. The Court recalls, however, that it is appropriate to take into account only the periods when the case was actually pending before the courts, that is the periods when there was no effective judgment in the applicant's case and when the authorities were under an obligation to determine the charge against her within a "reasonable time" (*Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004). Accordingly, the period between 21 December 2000 when the judgment of 16 November 2000 became final and 7 June 2001 when that judgment was quashed, is not taken into account.

83. It follows that the period to be taken into consideration has lasted so far approximately six years and one month.

B. The reasonableness of the length of proceedings

1. Arguments before the Court

84. The applicant submitted that since the opening of a new trial in 2001 the courts had held hearings sporadically and frequently adjourned them for the reasons beyond her control. The trial court refused her request for a change of venue and she had to attend hearings in the court located more than 60 km from her home, which strains her health and exhausts financial resources. The decision of 25 October 2004 to hold a new directions hearing would lead to further delays in the case and it marked, in the applicant's view, the beginning of a third retrial.

85. The Government submitted that the proceedings in the applicant's case had been delayed for reasons not attributable to the domestic courts, which had taken all possible measures to ensure speedy examination of the case.

2. The Court's assessment

86. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant has also to be taken into consideration (see, among many other authorities, *Kalashnikov v. Russia*, cited above, § 125).

87. The Court notes that the case is not a complex one as its scope is limited to one count of manslaughter, in which the applicant is the main suspect. It is thus not the complexity of the case which accounted for the length of the proceedings.

88. Nor does it appear that the applicant's conduct has substantially contributed to the length of the proceedings. In any event, the Court reiterates that Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities. In particular, applicants cannot be blamed for taking full advantage of the resources afforded by national law in their defence (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

89. The Court finds, on the other hand, that many delays in the proceedings have been occasioned by the acts of the domestic authorities or rather their failures to act. In this connection it recalls that for a year and a half the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Kalashnikov v. Russia*, cited above, § 132).

90. In the initial stage the investigation caused unnecessary prolongation of the proceedings. Although a criminal case had been opened immediately after the offence, in which the applicant had been the only suspect, it took a team of eight experienced investigators more than a year to commit her for trial. Throughout 1998 and 1999, the applicant's lawyers repeatedly complained about long periods of inactivity between investigative actions, for which the respondent Government offered no explanation.

91. Further delays in the proceedings were due to infrequent hearings during the second trial. Once the Supreme Court quashed the original conviction in June 2001, the case-file was not remitted to the trial court until October 2001, that is more than four months later. Admittedly, in 2003 the proceedings were stayed on several occasions in order to afford the applicant sufficient time to recover from an illness. However, even after her convalescence, fewer than ten hearings were listed in 2004, with significant delays between them ranging from two weeks to several months. Although the applicant was not in custody, the Court finds that the trial court should have fixed a tighter hearing schedule in order to speed up the proceedings (cf. *Čevizović v. Germany*, no. 49746/99, 29 July 2004, §§ 51 and 60). Finally, it notes that after more than six years of proceedings the case is still pending before the first-instance court.

92. Having regard to the foregoing, the Court considers that the length of the proceedings does not satisfy the "reasonable time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 5,000,000 US dollars as compensation in respect of non-pecuniary damage.

95. The Government contested her claim as unsubstantiated and excessive. They considered that a token amount would constitute equitable satisfaction for the non-pecuniary damage suffered by the applicant.

96. The Court considers that the applicant must have suffered frustration, helplessness and a feeling of injustice as a consequence of the domestic authorities' decision to hold her in custody without sufficient reasons and the slow pace of the still-pending criminal proceedings against her. It finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation. Accordingly, making its assessment on an equitable basis and noting, in particular, the applicant's fragile health, the Court awards her 8,000 euros ("EUR"), plus any tax that may be chargeable on that amount.

B. Costs and expenses

97. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

98. 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 no violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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 8,000 (eight thousand euros) in

respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable 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 7 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President