



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

FIRST SECTION

CASE OF DOLGOVA v. RUSSIA

(Application no. 11886/05)

JUDGMENT

STRASBOURG

2 March 2006

FINAL

03/07/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dolgova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 11886/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Valentina Andreyevna Dolgova, on 23 March 2005.

2. The applicant, who had been granted legal aid, was represented before the Court by Ms S. Dobrovolskaya, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

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

4. On 8 June 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1986 and lives in Moscow.

A. Events leading to the applicant's arrest and prosecution

1. The prosecution's case

7. The applicant was a member of the National Bolsheviks Party.

8. At 12.30 p.m. on 14 December 2004 forty Party members effected an unauthorised entry into the reception area of the Administration of the President of the Russian Federation (the "President's Office"). Some of them pushed away the guards at the entrance and occupied room no. 14 on the ground floor. They locked themselves in, blocked the door with a heavy safe and let the others enter through the window.

9. Until the police arrived, the Party members, including the applicant, waved placards through the office window, threw out leaflets and chanted slogans calling for the President's resignation. They stayed in the office for approximately one hour.

2. The applicant's version

10. On 14 December 2004 the applicant came with her friends for a walk in the city centre. Suddenly she found herself in the midst of a dense crowd and she thought it best to go in the same direction as everyone else. The crowd brought her into a certain building which turned out to be the waiting area of the President's Office. She felt weak and sat down on the floor. The people around shouted and chanted but she could not understand what was going on. Then the police arrived and took everyone in custody.

3. Media reports

11. The media reported that on 14 December 2004 a group of about forty members of the National Bolsheviks Party locked themselves in an office on the ground floor of the President's Office.

12. They asked for a meeting with the President, the deputy head of the President's Office Mr Surkov, and the President's economic advisor Mr Illarionov. They waved placards with "Putin, resign!" («Путин, уйди!») written on them through the window and distributed leaflets with a printed address to the President that listed ten aspects in which he failed to respect the Russian Constitution, and a call for his resignation.

13. The intruders stayed in the office for one hour and a half until the police broke through the door. They did not offer any resistance to the authorities.

B. Investigation into the charges

14. On 15 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's placement in custody on the ground that she was suspected of a particularly serious criminal offence. The applicant did not appeal against the arrest warrant.

15. On 21 December 2004 an investigator for particularly important criminal cases of the prosecutor's office of the Central Administrative District of Moscow charged the applicant with violent overthrow of State power (Article 278 of the Criminal Code) and intentional destruction and degradation of others' property in public places (Articles 167 § 2 and 214).

16. Between 24 December 2004 and 4 February 2005 the applicant did not participate in any investigative actions.

17. On 4 February 2005 the Zamoskvoretskiy District Court of Moscow extended her detention on remand until 14 April 2005. The court's entire reasoning read as follows:

"The court sees no reason to apply a more lenient preventive measure to [the applicant]. She is charged with a criminal offence under Article 278 of the Criminal Code which is classified as a particularly serious one and requires a thorough, comprehensive and objective investigation.

Notwithstanding the fact that [the applicant] has a permanent registered place of residence in Moscow, has no criminal record, is a student, has positive references and suffers from frail health, the court, taking into account the nature and factual basis of the imputed offences, gravity of the charges, her character and other circumstances described in the investigator's decision, considers that there are sufficient indications to believe that, once released, [the applicant] would abscond or otherwise interfere with the proceedings."

18. On 3 March 2005 the Moscow City Court upheld, on an appeal by the applicant, the remand decision of 4 February 2005, finding that it had been lawful, "sufficiently reasoned and justified".

19. On 21 February 2005 the applicant's charge was amended to that of participation in mass disorders, an offence under Article 212 § 2 of the Criminal Code.

20. On 11 April 2005 the Zamoskvoretskiy District Court granted the prosecution's request for a further extension of the applicant's detention until 14 August 2005, relying on the following reasons:

"At present there are no reasons to vary the preventive measure applied to [the applicant]... Although [the applicant] has a permanent registered place of residence in Moscow, having regard to the gravity of the charge against her, the fact that the charge is well-founded, the circumstances of the crime, there is no guarantee that the

[applicant] would not default on the investigator's and court's summons if released from custody."

C. Trial

21. On 7 June 2005 the investigation was completed and thirty-nine persons, including the applicant, were committed for trial before the Tverskoy District Court of Moscow.

22. On 20 June 2005 the trial court scheduled the preparatory hearing for 30 June 2005. It extended the detention on remand of all the defendants, noting that "the grounds on which the preventive measure [had been] previously imposed, still persist[ed]" and that "the case-file gave sufficient reasons to believe that, once released, the defendants would flee or interfere with the trial".

23. On 30 June 2005 the court fixed the opening of the trial for 8 July 2005. It rejected the defendants' requests for release, citing the gravity of charges against them and the risk of their absconding or obstructing justice.

24. On 10 August 2005 the Tverskoy District Court rejected the applications for release filed by many defendants, including the applicant, although she had produced a personal surety from Mr M. Rotmistrov, a member of the lower chamber of the Russian Parliament. The court held:

"The court takes into account the defence's argument that individual approach to each defendant's situation is essential when deciding on the preventive measure.

Examining the grounds on which... the court ordered and extended detention on remand in respect of all defendants without exception... the court notes that these grounds still persist today. Therefore, having regard to the state of health, family situation, age, profession and character of all defendants, and to the personal sureties offered by private individuals and appended to the case file, the court concludes that, if released, each of the applicants can abscond or obstruct justice in some other way...

In the court's view, in these circumstances, having regard to the gravity of the charges, there are no grounds for varying or revoking the preventive measure in respect of any defendant..."

25. On 8 December 2005 the Tverskoy District Court found the applicant and her co-defendants guilty as charged and gave her a suspended sentence of three years' imprisonment. It appears that the applicant did not lodge an appeal against the conviction.

II. RELEVANT DOMESTIC LAW

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

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

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

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

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

31. From the date the prosecutor forwards the case to the trial court, the defendant’s detention is “before the court” (or “during the trial”). The term of detention “during the trial” is calculated to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

32. The applicant complained under Article 5 § 1 (c) of the Convention that her arrest had not been based on a reasonable suspicion of her involvement in the crime.

Under Article 5 § 3, she complained about a violation of her right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons.

The relevant parts of Article 5 read as follows:

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

...

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

...

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. Admissibility

33. As regards the applicant’s complaint about insufficient grounds for her arrest, the Court observes that she did not appeal against the arrest warrant (see paragraph 14 above).

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

34. As regards the applicant’s complaint about a violation of her right to trial within a reasonable time or to release pending trial, the Court considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

35. The Government submitted that the decisions to remand the applicant in custody had been lawful and justified because there had existed risks of her absconding, colluding and re-offending. Thus, she had made contradictory statement about her membership in the National Bolsheviks Party and about the purposes of their entry into the reception area of the President’s Office. She had been charged with serious and particularly serious criminal offences and could therefore re-offend, if she remained at liberty. These charges had required a thorough, comprehensive and objective investigation. However, if released, the applicant had been able to exert pressure on witnesses or to adjust her position in line with those of her

co-defendants, thereby interfering with the establishment of the truth. In addition, there had been sufficient evidence to believe that the applicant had been a member of the Party whose dissolution had been ordered by the Moscow Regional Court on 29 June 2005 on account of extremist activities of its members. During the investigation, unidentified NBP members had threatened on the phone the investigator and the judge who had remanded the defendants in custody, with physical violence. Those calls had originated in Poland. The applicant had been able to abscond because she had had close relatives outside Russia and because her mother had been a foreign national. Her counsel had not offered any guarantees that she would appear during the investigation or at trial. The Government considered that there had been no violation of Article 5 § 3 of the Convention because the applicant's pre-trial detention had been founded on "relevant and sufficient" reasons.

36. The applicant firstly exposed the Government's submissions as factually untrue. She had never been a member of the National Bolsheviks Party and the evidence relied upon by the Government had not formed part of the case-file. Moreover, the Regional Court's judgment dissolving the Party had been quashed on appeal by the Supreme Court, on 16 August 2005. The applicant's mother had been a Russian national having a registered place of residence in Moscow; a copy of her passport and residence stamp were produced. Threatening phone calls had been made on behalf of her co-defendant and had been of no relevance to her situation. Finally, contrary to the Government's allegation, her counsel had provided the trial court with a Russian MP's personal surety.

37. As regards compliance with Article 5 § 3 of the Convention, the applicant considered that the domestic courts had not had "relevant and sufficient" reasons to hold her in custody for such a long period. Pre-trial detention was the most restrictive preventive measure which should not have been applied in her case because she had had a permanent place of residence in Moscow, positive work references, no criminal record, she had been a student and a Russian MP had personally vouched for her attendance. The domestic courts had been fully aware of these circumstances and there had been no public interest in extending her detention. She could not interfere with trial because all the evidence had been gathered and submitted to the trial court.

2. The Court's assessment

38. The applicant was taken in custody on 14 December 2004. On 8 December 2005 the trial court convicted her of a criminal offence. The period to be taken into consideration lasted almost twelve months.

39. Although the applicant disputed her participation in any criminal activity, the Court observes that she was apprehended in the premises in which the impugned offences had been allegedly committed. It accepts

therefore that her detention could have initially been warranted by a reasonable suspicion of her involvement in the commission of these offences.

40. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, 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, §§ 152 and 153, ECHR 2000-IV).

41. As to the grounds for the continued detention, the domestic courts consistently relied on the gravity of the charges as the main factor for the assessment of the applicant’s potential to abscond or obstruct the course of justice. However, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

42. 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 review of the issue whether the evidence that had been gathered supported a reasonable suspicion that the applicant had committed the alleged offence attracting a sentence of the relevant length (cf. *Rokhlina v. Russia*, no. 54071/00, § 66, 7 April 2005). Indeed, the initial charge of violent overthrow of State power, which was a particularly serious criminal offence in the domestic classification, had been accepted by the District Court on 4 February 2005 without any inquiry, although it was later amended to a lesser charge of participation in mass disorders. Nevertheless, on 11 April 2005 the same court stated in the extension order that the so amended charge was also “well-founded”, without citing any reasons for that finding.

43. The Court observes that the only other ground for the applicant’s continued detention was the domestic courts’ finding that there were no circumstances warranting her release. In their petitions for release, however, the applicant and her counsel had advanced specific arguments capable of casting doubt on the lawfulness of, and justification for, her detention. They submitted that she had had no criminal record and that there was no danger

of absconding because she had a permanent place of residence in Moscow, studied at university, had positive work references and suffered from frail health. Although the existence of these facts was acknowledged in the domestic decisions and their accuracy had not been disputed by anyone, the domestic courts treated them as irrelevant, consistently holding that the gravity of the charges carried a greater weight than the concrete facts mitigating for the applicant's release (see paragraphs 17, 20 and 24 above). Thus, the District Court's decision of 11 April 2005 expressly indicated that the applicant had failed to show that there had been no possibility of her absconding (see paragraph 20 above).

44. The Court reiterates 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 (see *Rokhlina*, cited above, § 67; *Ilijkov*, cited above, §§ 84-85).

45. It is therefore incumbent on the domestic authorities to establish and to demonstrate convincingly the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases.

46. No other grounds have been invoked by the authorities to justify the applicant's continued detention. The Government submitted that the applicant was to remain in custody because she was a member of a dissolved political party whose members had threatened the investigator and the judge, because she could change her depositions or influence her co-defendants and because her mother was a foreign national. The documentary evidence produced by the applicant, such as the copy of her mother's Russian passport and the Supreme Court's judgment in the case concerning dissolution of the National Bolsheviks Party, casts doubt on the truthfulness of the Government's statements. In any event, it is not the Court's task to assume 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). Those specific allegations were made for the first time in the proceedings before the Court and the domestic courts never referred to those grounds in their decisions.

47. The Court further emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right

to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

48. In the present case, during the entire period of the applicant’s detention on remand, the authorities did not consider the possibility of ensuring her attendance by the use of other “preventive measures” – such as bail or an undertaking to appear – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings (see paragraph 27 above). In particular, on 10 August 2005 the trial court refused the applicant’s petition for release, although she had produced a personal surety given not just by a private individual, but by a member of the Russian Parliament. Moreover, at no point in the proceedings did the domestic courts explain in their decisions why alternatives to the deprivation of liberty would not have ensured that the trial would follow its proper course. This failure is made all the more inexplicable by the fact that the new Code of Criminal Procedure expressly requires the domestic courts to consider less restrictive “preventive measures” as an alternative to custody (see paragraph 29 above).

49. Furthermore, the Court observes that the judicial decisions extending the applicant’s period of detention had no proper regard to her individual circumstances. On 20 and 30 June and 10 August 2005 the trial court used the same summary formula to refuse petitions for release and extend pre-trial detention of thirty-nine persons, notwithstanding the defence’s express request that each detainee’s situation be dealt with individually. In the Court’s view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it will permit the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or compliance with the “reasonable-time” requirement in respect of each individual member of the group.

50. Having regard to the above considerations, the Court finds that by failing to address concrete facts or consider alternative “preventive measures” and by relying essentially on the gravity of the charges, the authorities prolonged the applicant’s detention on grounds which cannot be regarded as “relevant and sufficient”. The authorities thus failed to justify the applicant’s detention on remand during the period under consideration. In these circumstances it is not necessary to examine whether the proceedings were conducted with “special diligence”.

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

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

51. The applicant complained under Article 10 of the Convention that the decision to institute criminal proceedings against her had been triggered

by her participation in a public assembly where leaflets had been distributed.

52. The Court observes that the applicant did not appeal against her conviction. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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. Pecuniary damage

54. The applicant assessed the pecuniary damage at 37,693 Russian roubles (“RUR”) which represented her loss of earnings during the detention period and the amounts spent on food parcels while in the remand centre.

55. The Government pointed out that the decision to prefer criminal charges against the applicant was not the subject of the Court’s review in the present case. There was therefore no connection between the loss of earnings and food expenses and the alleged violation.

56. The Court finds that there has been no causal link between the violation found and the claimed pecuniary damage. Consequently, it sees no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

57. The applicant claimed 500,000 euros (“EUR”) in respect of compensation for non-pecuniary damage.

58. The Government considered the amount excessive and submitted that there was no causal link between the alleged violation and the claimed non-pecuniary damage. In any event, a finding of a violation would constitute sufficient just satisfaction.

59. 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 keep her in custody without sufficient reasons. 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 having regard

to the applicant's vulnerable age, the Court awards her 5,000 euros, plus any tax that may be chargeable on that amount.

C. Costs and expenses

60. The applicant claimed RUR 7,000 of legal fees in the domestic proceedings and RUR 2,600 for the preparation of the application to the Court. She also claimed EUR 25,000 in respect of future expenses in the Strasbourg proceedings.

61. The Government responded that only actual, but not future, expenses should be reimbursed.

62. The Court notes that the applicant was granted EUR 715 in legal aid for her representation by Ms Dobrovolskaya. As the applicant did not justify having incurred any actual expenses exceeding that amount, the Court makes no award under this head.

D. Default interest

63. 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

1. *Declares* unanimously the complaint concerning the excessive length of the applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, 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;

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

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr A. Kovler is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE KOVLER

To my regret, I am unable to agree with the majority's finding of a violation of Article 5 § 3 of the Convention. It is not the Chamber's finding *per se* that troubles me, but rather the manner in which it reached its conclusion.

I have little doubt that the case is admissible. Indeed, it meets the admissibility criteria of Article 35 § 1. Equally, it concerns pre-trial detention, a topic that the Court has examined, albeit more carefully, in many previous Russian cases (see, for example, *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI; *Smirnova v. Russia*, nos. 46133/99 and 48183/99, ECHR 2003-IX (extracts); *Panchenko v. Russia*, no. 45100/98, 8 February 2005; *Rokhlina v. Russia*, no. 54071/00, 7 April 2005; *Romanov v. Russia*, no. 63993/00, 20 October 2005; and *Khudoyorov v. Russia*, no. 6847/02, ECHR 2005-... (extracts)).

When analysing the domestic legislation, this judgment, unlike, for example, the above-mentioned *Kalashnikov* judgment, makes it clear that Russian criminal procedure distinguishes detention pending preliminary investigation from detention following the preliminary investigation. This distinction is crucial for understanding whether the length of pre-trial detention was reasonable.

Some of the initial charges laid against the applicant (see paragraph 15) were, to put it mildly, doubtful (for example, 'violent overthrow of State power' under Article 278 of the Criminal Code). Nevertheless, most of the charges – 'intentional destruction of property' and 'vandalism', later changed to 'rioting' –, and the gravity of the charges justified her detention. One must not forget that the Strasbourg Court may not overrule the national authorities' decision to detain a person. What the Strasbourg Court may do, in my opinion, is to assess whether the length of the detention was reasonable.

The applicant was detained 'pending investigation' from 14 December 2004 to 7 June 2005, i.e. five months and 22 days, whereas for such criminal cases Article 109 § 2 of the Code of Criminal Procedure permits detention for two to six months. She was detained 'pending trial' from 7 June to 8 December 2005, i.e. six months and one day, whereas Article 255 § 3 of the Code of Criminal Procedure establishes a 'basic' period of up to six months.

The judgment lacks analysis of the 'reasonableness' of those periods in the light of the circumstances of this particular case. The Court has exhaustively analysed its own case-law but has not applied it to the case at hand. Yet 'the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in

detention must be assessed in each case according to its special features' (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

Having passed over the issue of whether the detention period was reasonable, the Court rapidly turned to the question of the cancellation or amendment of the detention. Overall, this case has been marked by haste: the Court reached its judgment remarkably quickly. This haste has had an adverse effect on the Court's findings and has prevented me from joining the majority, although my inclination was to detect signs of a violation of Article 5 § 3. The approach in such cases should not be a cavalier and Bolshevik-style one - no pun intended - but *festina lente*: hurry slowly.

I must make one more remark. Traditionally, the Court has carefully avoided referring to facts that have not been submitted by the parties. The instant judgment breaks this tradition and refers – quite selectively – to certain unidentified 'media reports'. However, the Court's wish to provide an account of the facts which differs from those of the parties is understandable.

Finally, the non-pecuniary damages awarded are too high. They are the same as in *Kalashnikov*, although the violations in the *Kalashnikov* case were more numerous and more serious. Even the applicant's young age is no excuse for such an approach.