CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KORCHUGANOVA v. RUSSIA

(Application no. 75039/01)

JUDGMENT

STRASBOURG

8 June 2006

FINAL

08/09/2006

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 Korchuganova v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 18 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 75039/01) 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 Svetlana Gennadyevna Korchuganova, on 7 June 2001.

2. The applicant was represented before the Court by Mr V. Kotov, a lawyer of the International Protection Centre in Irkutsk. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained under Article 5 of the Convention about unlawfulness of certain periods of her pre-trial detention and its excessive global duration.

4. On 15 November 2004 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.

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.

6. The Chamber decided, after consulting the parties, that no hearing on the admissibility and/or merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1964 and is now serving her sentence in Irkutsk.

A. The applicant's arrest and detention pending investigation

8. On 5 March 1998 the applicant was arrested on suspicion of having arranged a contracted murder of two persons in 1995 and 1996. On the following day, pursuant to an order of the Usolye-Sibirskoye district prosecutor, she was remanded in custody for ten days. The order referred to the gravity of the "committed crime" and the applicant's potential to interfere with the establishment of the truth.

9. On 16 March 1998 the prosecutor authorised the applicant's detention pending investigation. On 15 April 1998 the Irkutsk Regional Prosecutor authorised an extension of the applicant's detention until 27 August 1998. The decision summarised the collected evidence and referred to the need for additional investigative actions.

10. On 24 November 1998 a deputy Prosecutor General extended the applicant's detention until 27 February 1999, noting that further investigation was needed.

11. On 16 February and 18 May 1999 the acting Prosecutor General authorised extensions of the applicant's detention until 27 May 1999 and 5 September 1999 for the reason that the defendants had not completed studying the file. By 5 September 1999 the applicant had spent eighteen months in custody.

12. On 26 August 1999 the Irkutsk Regional Court, further to the request by the Regional Prosecutor, extended the applicant's detention for an additional four months, until 27 December 1999. By way of justification, the Regional Court referred to the substantial volume of the case file (ten binders) and to the fact that the defendants had been charged with particularly serious crimes.

B. First referral of the case for trial

13. On 24 December 1999 the case was referred to the Irkutsk Regional Court for trial.

14. On 13 January 2000 the Regional Court returned the case for additional investigation.

15. On 21 April 2000 the prosecutor's office received the case file. The Regional Prosecutor granted an extension of the applicant's detention until 21 May 2000.

16. On 29 May 2000 the Regional Court, at the request of the Regional Prosecutor, extended the applicant's detention until 21 July 2000 on the grounds that the defendants were charged with particularly serious crimes, that the case-file comprised eleven binders and that the defendants could abscond.

C. Second referral of the case for trial

17. On 21 July 2000 the case was referred for trial for the second time.

18. On 31 July 2000 the Regional Court returned the case to the investigators because the applicant had not been afforded sufficient time for studying the file. It ordered that the applicant remain in custody in view of the gravity of the charges against her.

19. On 17 October 2000 the Regional Prosecutor's office received the file and extended the applicant's detention until 12 November 2000.

20. On 4 November 2000 the Regional Prosecutor asked the Regional Court for extension of the applicant's detention until 12 February 2001 with a view to affording her additional time for studying the case file.

21. On 13 November 2000 the Regional Court, sitting in a single-judge formation, granted the request. The entire reasoning read as follows:

> "The present case comprises twelve volumes; [the reading of the case-file] is progressing slowly. [The applicant and two co-defendants] are charged with serious crimes, reading of the file requires a long time. Moreover, [the applicant and two co-defendants] may flee from investigation and justice or exercise pressure on witnesses and other persons; therefore, I consider it possible to extend the defendants' period of detention by three months".

22. The applicant's lawyer, Mr Kotov, appealed against the decision of 13 November 2000. He submitted, in particular, that the Russian law did not allow the prosecutor to ask for a further extension of detention after return of the case for additional investigation.

23. On 10 January 2001 the Supreme Court of the Russian Federation upheld the decision of 13 November 2000, finding as follows:

> "The charges against [the applicant and two co-defendants] (including participation in an organised gang, several counts of murder...) are classified as particularly serious ones and, in the circumstances of the case, the investigation reasonably considered that the defendants should remain in custody.
>
> The request for extension of pre-trial detention was examined by the Irkutsk Regional Court in compliance with Article 97 of the RSFSR Code on Criminal Procedure; the defendants, their counsel, prosecutor and other interested parties were summoned to the court; [the applicant and a co-defendant] appeared in person...

Judicial examination was compatible with the requirements of the RSFSR Code on Criminal Procedure and the Russian Constitution.

The decision made by the judge is compatible with Article 97 of the RSFSR Code. The arguments to the effect that the court was not competent to examine that issue are contrary to the literal meaning and substance of that provision. There are no grounds to quash that decision...”

24. On 17 January and 26 February 2001 Mr Kotov’s applications for supervisory review in respect of the decisions of 13 November 2000 and 10 January 2001 were refused.

25. On 15 February 2001 the Regional Court authorised a further extension of the applicant’s detention until 12 March 2001.

D. Third referral of the case for trial

26. On 12 March 2001 the case was referred for trial for the third time.

27. On 3 April 2001 the Regional Court returned the case for additional investigation on the grounds that the defence rights had been unlawfully curtailed. It ordered that the defendants remain in custody in view of the gravity of the charges against them.

28. It is not clear when the case was again referred to the Irkutsk Regional Court for trial. The Government submitted that the Supreme Court had been unable to establish the date on the basis of the case file. Nor had it been possible to find out why no hearing had been fixed until 14 May 2002.

29. On 15 and 19 May 2002 hearings were adjourned at the applicant’s request. On 24 June and 1 July 2002 hearings were postponed because counsel for the applicant did not appear.

30. On 8 July 2002 the Regional Court granted an extension of the three defendants’ detention until 1 August 2002, referring solely to the gravity of the charges against them.

31. On 25 July 2002 the Regional Court commissioned a supplementary expert study, suspended the proceedings and remanded the defendants in custody until 1 November 2002, noting the gravity of the charges.

32. On 30 October 2002 the Regional Court authorised a further extension of the three defendants’ detention until 1 February 2003, citing the gravity of the charges.

33. On 29 January 2003 the Regional Court extended the defendants’ detention until 1 May 2003, noting that they were charged with serious criminal offences and, having regard to their “character”, they would abscond if released.

34. On 30 April 2003 the Irkutsk Regional Court found the applicant guilty on several counts of murder and sentenced her to thirteen years’ imprisonment, account being taken of the time already served.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Codes of Criminal Procedure

35. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, "the old CCrP"). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

36. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22). Under the old CCrP, a decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96). The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

37. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96). The amendments of 14 March 2001 repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

38. After arrest the suspect is placed in custody "pending the investigation". The maximum permitted period of detention "pending the investigation" can be extended for up to eighteen months in "exceptional circumstances". No extension beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

39. Access to the file materials is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case-file, a judge, on a request by a prosecutor, may grant an extension of detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could be granted one time only and for no longer than six months. Once the defendant has finished reading the file, the prosecutor forwards the case to the trial court and from that date the detention is "before the court" (or "during the trial").

40. Under the old CCrP, the trial court had the right to remit the case for an "additional investigation" if it established that procedural defects existed that could not be remedied at the trial. In such cases the defendant's detention was again classified as "pending the investigation" and the relevant time-limits continued to apply. If, however, the case was remitted

for an additional investigation, but the investigators had already used up all the time authorised for detention "pending the investigation", a supervising prosecutor could nevertheless extend the detention period for one additional month starting from the date he received the file. Subsequent extensions could only be granted if the detention "pending the investigation" had not exceeded eighteen months (Article 97).

2. Case-law of the Constitutional Court of the Russian Federation

41. Examining the compatibility of Article 97 of the RSFSR CCrP with the Constitution, on 13 June 1996 the Constitutional Court ruled as follows:

> "...affording the defendant a sufficient time for studying the file must not result in... his detention for a period of an unlimited duration. In that case such detention would amount to a sanction for using by the defendant of his procedural rights and thereby induce him to waive these rights..."

42. On 25 December 1998 the Constitutional Court issued a further clarification of its position (decision no. 167-O), finding as follows:

> "3. ...the studying of the file [by the defendant and his counsel] is a necessary condition for extending the term of detention [beyond eighteen months] but it may not be, taken on its own, a sufficient ground for granting such an extension... For that reason, in each particular case the prosecutor's application for extending the period of detention beyond eighteen months (Article 97 §§ 4, 6 of the RSFSR CCrP) must refer not to the fact that the defendant and his counsel continue to study the file... but rather to factual information demonstrating that this preventive measure cannot be revoked and the legal grounds for its continued application remain...
>
> 6. ...Article 97 § 5 of the RSFSR CCrP expressly provides that, on an application by a prosecutor, the judge may extend the defendant's detention until such time as the defendant and his counsel have finished studying the file and the prosecutor has submitted it to the [trial] court, but by no longer than six months. Accordingly, the law does not provide for lodging of repeated applications for extension of the defendant's detention, even after an additional investigation [has been carried out]... In the absence of an express legal provision for repeated extensions of detention on that ground, any other interpretation of [Article 97] would breach the prohibition on arbitrary detention in the meaning of the Constitutional Court's decision of 13 July 1996."

THE LAW

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

43. The applicant complained under Article 5 § 1 of the Convention that after 5 January 2000 she had been held in custody in breach of the

procedure prescribed by the domestic law. 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..."

A. Admissibility

44. The Court observes at the outset that a part of the applicant's complaint refers to the detention orders which had been issued more than six months before she lodged the application to the Court on 7 June 2001. The most recent detention order that the Court may examine was issued on 13 November 2000. The final decision concerning the lawfulness of that order was given on 10 January 2001, that is within the six months preceding the lodging of the application. Accordingly, the Court finds that the part of the complaint concerning the detention orders issued before 13 November 2000 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

45. The Court notes that the remainder of this complaint 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. General principles

46. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

47. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

2. Detention from 13 November 2000 to 12 March 2001

48. The Government acknowledged that on 12 November 2000 the six-month time-limit permitted by the domestic law for holding the applicant in custody while she studied the file, had expired. The two subsequent extensions until 12 February and 12 March 2001 (see paragraphs 20-21 and 25 above) were granted in excess of the maximum term established in the RSFSR Code of Criminal Procedure.

49. Referring to the Constitutional Court's case-law (cited in paragraphs 41 and 42 above), the applicant maintained that the Regional Court had unlawfully granted repeated extensions of her detention for studying the file after the maximum eighteen-month period had expired and her detention had already been extended once, on 26 April 1999, on the ground that she needed to study the file.

50. The Court observes that the rules on detention at the time permitted up to eighteen months' detention "pending the investigation", plus up to six months when authorised by a judicial decision if the defendants needed more time to study the file, and an additional month when authorised by a supervising prosecutor if the case was returned for an additional investigation (see paragraphs 39 and 40 above).

51. The Court notes that the eighteen months' detention "pending the investigation" expired on 5 September 1999. The Regional Court exercised its right to grant a further four-month extension until 27 December 1999 (see paragraph 12 above). Subsequently, the prosecutor made use of the possibility to authorise an additional month of custody until 21 May 2000 (see paragraph 15 above). It follows that by the beginning of the period under consideration, that is by 13 November 2000, no further extension was permissible under domestic law in order to have the applicant detained "pending the investigation". Nevertheless, further extensions were authorised on 13 November 2000 and 15 February 2001, although the authorities had already exhausted the legal possibilities for extending the

applicant's detention. Their failure to respect the applicable legislation is all the more inexplicable in the light of the Russian Constitutional Court's binding clarifications of 13 June 1996 and 25 December 1998, according to which repeated extensions of detention on the ground that the defendant has not finished studying the file, were not permitted by law and incompatible with the guarantee against arbitrary detention (see paragraphs 41 and 42 above).

52. The Court therefore finds that there has been a violation of Article 5 § 1 of the Convention as the applicant's detention from 13 November 2000 to 12 March 2001 had no basis in the domestic law.

3. Detention from 12 March 2001 to 8 July 2002

53. The Government submitted that from the date the case file had been referred to the trial court, and until 8 July 2002, the then effective rules of criminal procedure did not require that a separate decision extending the applicant's detention be issued. The applicant remained in custody on the ground that her case was being examined by the Irkutsk Regional Court. The delays in May and June 2002 were attributable to the conduct of the applicant and her counsel.

54. The applicant claimed that at least until 14 May 2002 there had been no decision extending her detention. Her detention in that period had therefore been unlawful and arbitrary.

55. The Court observes the parties' acknowledgement of the fact that in the period from 12 March to 3 April 2001 the applicant was kept in detention on the basis of the fact that the criminal case against her had been referred to the court competent to try the case.

56. The Court has already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been lodged with the trial court. The Court has held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – was incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Khudoyorov v. Russia*, no. 6847/02, §§ 146-148, ECHR 2005-...; *Ječius*, cited above, §§ 60-64, and *Baranowski*, cited above, §§ 53-58).

57. The Court sees no reason to reach a different conclusion in the present case. It reiterates that for the detention to meet the standard of "lawfulness", it must have a basis in domestic law. The Government, however, did not point to any legal provision which permitted a defendant to continue to be held once the authorised detention period had expired. The Russian Constitution and the rules of criminal procedure vested the power

to order or prolong detention pending trial in prosecutors and courts (see paragraph 36 above). No exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. As noted above, in the period until 3 April 2001 there was neither a prosecutor's order nor a judicial decision authorising the applicant's detention. It follows that the applicant was in a legal vacuum that was not covered by any domestic legal provision.

58. Furthermore, in the period from 3 April 2001 to an undetermined date the applicant's detention appears to have been grounded on the Regional Court's decision of 3 April 2001 remitting the matter for additional investigation and remanding her in custody. That decision, however, did not refer to any legal provision which would have permitted the applicant's further detention and set no time-limit either for the continued detention or for a periodic review of the preventive measure. The applicant's detention continued on obviously spurious grounds. As it happened, there was no progress in the case for more than a year until the Regional Court resumed hearings in May 2002. The legal basis for the applicant's detention in that period was so conspicuously lacking that no authority assumed responsibility for her detention and made any attempt to formalise it. The Government acknowledged that there were no documents in the case-file that would enable them to find out how the proceedings had developed in the intervening period. It follows that the applicant's detention in that period did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention.

59. The Court therefore finds that there has been a violation of Article 5 § 1 of the Convention as the applicant's detention from 12 March 2001 to 8 July 2002 had no sufficient basis in the domestic law.

4. Detention from 8 July 2002 to 30 April 2003

60. The Government submitted that the applicant's detention after 8 July 2002 had been extended in compliance with the Code of Criminal Procedure of the Russian Federation.

61. The applicant did not comment.

62. The Court observes that the applicant's detention in that period was extended by the Regional Court on four occasions on the ground of the gravity of the charges against her and her co-defendants. It reiterates that the trial court's decision to maintain a custodial measure would not breach Article 5 § 1 provided that the trial court "had acted within its jurisdiction... [and] had power to make an appropriate order" (see *Ječius*, cited above, § 69; *Stašaitis v. Lithuania* (dec.), no. 47679/99, 28 November 2000; *Karalevičius v. Lithuania* (dec.), no. 53254/99, 6 June 2002).

63. The trial court acted within its competence in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. It has not been claimed that these decisions were otherwise incompatible with the requirements of Article 5 § 1, the question of sufficiency and relevance of the invoked grounds being analysed below in the context of compliance with Article 5 § 3 of the Convention.

64. Accordingly, the Court finds that there has been no violation of Article 5 § 1 of the Convention in respect of the detention orders issued between 8 July 2002 and 30 April 2003.

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

65. The applicant complained of a violation of her right to trial within a reasonable time. She relied on Article 5 § 3 of the Convention which reads:

> "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."

A. Admissibility

66. The Court notes that this complaint 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. Period to be taken into consideration

67. The Court observes that the applicant's detention pending trial lasted from 5 March 1998, the date of arrest, to 30 April 2003, the date of conviction. The global duration thus amounted to five years, one month and twenty-six days. The Court has competence *ratione temporis* to examine the period after the ratification of the Convention by Russia on 5 May 1998. In carrying out its assessment, it will not lose sight of its finding that a significant period of the applicant's detention was not in accordance with the provisions of Article 5 § 1 of the Convention (see *Goral v. Poland*, no. 38654/97, §§ 58 and 61, 30 October 2003, and *Stašaitis v. Lithuania*, no. 47679/99, §§ 81-85, 21 March 2002).

2. The reasonableness of the length of detention

68. The Government submitted that the applicant's detention was compatible with the requirements of the rules of criminal procedure. The period of pre-trial detention was credited towards her sentence.

69. The applicant maintained that the length of her pre-trial detention had been unreasonable because of her poor health.

70. The Court accepts that the applicant's detention could have initially been warranted by a reasonable suspicion of her involvement in the commission of serious criminal offences. However, after a certain lapse of time the persistence of a reasonable suspicion, in itself, no longer suffices. Accordingly, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

71. The inordinate length of the applicant's pre-trial detention – over five years – is a matter of grave concern for the Court. It observes that at no point in the proceedings did the domestic authorities consider whether the length of her detention had exceeded a "reasonable time". Such an analysis should have been particularly prominent in the domestic decisions after she had spent more than two years in custody and the maximum detention period "pending the investigation" permitted by the domestic law had expired (see paragraph 51 above; cf. *Khudoyorov*, cited above, § 178). The Court considers that, in these circumstances, the Russian authorities were required to put forward very weighty reasons for keeping the applicant in pre-trial detention for such a long time.

72. However, in subsequent detention orders, the domestic authorities consistently relied on the gravity of the charges as the main factor warranting further extensions of the applicant's detention. Even though other facts that could have warranted the applicant's deprivation of liberty may have existed, they were not mentioned in the courts' decisions and it is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention (see *Ilijkov v. Bulgaria*, no. 33977/96, § 86, 26 July 2001).

73. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, 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; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral*, cited above, § 68; *Ilijkov*, cited above, § 81).

74. It further 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, warrants a departure from the rule of respect for individual liberty. Any system of mandatory detention pending trial is incompatible *per se* 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 (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). In the present case, apart from a blank reference to the applicant's "character" in just one decision, the domestic authorities did not mention any concrete facts warranting the applicant's detention.

75. 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 (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, during the entire period of the applicant's detention, the authorities did not consider the possibility of ensuring her attendance by the use of other "preventive measures" which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. 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 measures as an alternative to custody (see paragraph 37 above).

76. Furthermore, the Court observes that the four most recent decisions extending the applicant's detention had no proper regard to her individual circumstances. On 8 and 25 July and 30 October 2002 and 29 January 2003 the trial court used the same concise formula to extend pre-trial detention of the three defendants, without describing their situation in any detail. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 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.

77. The Court finds that by failing to address concrete relevant facts and by relying solely on the gravity of the charges, the authorities failed to justify the applicant's detention pending trial which had exceeded a "reasonable time". There has therefore been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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."

79. The applicant did not submit a claim for just satisfaction within the established time-limit. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lawfulness of the applicant's detention after 13 November 2000 and the length of her detention, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention, in that the applicant's detention from 13 November 2000 to 12 March 2001 had no basis in the domestic law;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention, in that the applicant's detention from 12 March 2001 to 8 July 2002 had no sufficient basis in the domestic law;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the applicant's detention from 8 July 2002 to 30 April 2003;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

6. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 8 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President