



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

FIRST SECTION

CASE OF VLADIMIR SOLOVYEV v. RUSSIA

(Application no. 2708/02)

JUDGMENT

STRASBOURG

24 May 2007

FINAL

12/11/2007

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 Vladimir Solovyev 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 N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 2708/02) 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, Mr Vladimir Viktorovich Solovyev (“the applicant”), on 31 December 2001.

2. The applicant was represented by Mr A. Chumakov, a lawyer practising in Tyumen. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. In his first letter lodged with the Court on 31 December 2001 the applicant argued that the Constitutional Court of the Russian Federation had not examined his complaints concerning the applicability of certain laws on criminal procedure. In his subsequent letters of 21 and 30 January and 30 June 2003 and 22 January 2004 he complained that his detention on remand after 1 July 2002 had been unlawful and extremely long, that he and/or his lawyer had not been called to hearings on 1 July, 1 October, 13 November, 15 December 2002 and 8 January 2003, that their appeals against the detention order of 1 July 2002 had not been examined and that the criminal proceedings against him were extremely long. On 14 June 2004 the applicant lodged with the Court an application form, restating his complaints from the letters and raising a number of new complaints relating to his detention on remand and the criminal proceedings against him.

4. On 18 March 2005 the Court decided to give notice of 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and lives in the town of Yekaterinburg in the Sverdlovsk Region.

A. Institution of criminal proceedings

7. In May 1993 the bodies of three persons were found in a street of Yekaterinburg. On 29 March 1994 the applicant was charged with two counts of manslaughter and unlawful possession of weapons. Ten days later a deputy prosecutor of the Ordzhonikidzevskiy District of Yekaterinburg discontinued the criminal proceedings against the applicant because he was found to have acted in self-defence and the use of force had been justified.

8. On 14 November 1997 the applicant was charged with having severely injured Mr M.

9. In February 1998 the Sverdlovsk Regional Prosecutor re-opened the criminal proceedings against the applicant on the charges of manslaughter and arms possession and remitted the case for further investigation. On 17 November 1998 an investigator of the Ordzhonikidzevskiy District prosecutor's office dropped two of the three charges.

10. In December 1998 the two sets of criminal proceedings were joined and the applicant was issued with the bill of indictment. He was charged with one count of manslaughter, causing severe bodily injuries and unlawful restriction of liberty.

B. Trial proceedings

1. Committal for trial and the applicant's arrest

11. On 1 February 1999 the applicant was committed for trial and on 1 December 1999 the Ordzhonikidzevskiy District Court of Yekaterinburg listed the first hearing for 17 October 2000.

12. At the hearing of 17 October 2000, to which the applicant's lawyer was not called, the Ordzhonikidzevskiy District Court authorised the applicant's arrest, reasoning as follows:

“Mr Solovyev is charged with murder, intentional infliction of severe injuries... and unlawful confinement...”

Before the hearing they [the applicant and his co-defendant] unsuccessfully sought the removal of the presiding judge and influenced participants in the proceedings, including the victim, Mr M., who asked the court not to examine the case because the defendants had not committed any criminal offence against him. They also appealed against the decision by which a court hearing had been fixed.

Mr Solovyev is charged with serious and especially serious criminal offences... When they [the applicant and his co-defendant] had been under a written undertaking not to leave the town, they had attempted to obstruct the thorough and full examination of the case. A prosecutor lodged a request in that connection; having regard to the above-mentioned considerations, the court finds it substantiated and authorises... Mr Solovyev's placement in custody.”

The District Court listed the next hearing for 18 December 2000. The decision of 17 October 2000 was upheld on 9 November 2000 by the Sverdlovsk Regional Court. The applicant was taken into custody on 17 October 2000.

2. Requests for removal of the bench; detention order of 1 March 2001

13. At the hearing of 18 December 2000 the applicant and his lawyer sought the removal of the entire bench including the presiding judge. The District Court dismissed those requests and adjourned the proceedings until 1 March 2001 because the victim had come to the hearing in an inebriated state. On 9 February 2001 the Sverdlovsk Regional Court upheld that decision.

14. On 1 March 2001 the presiding judge, in an interlocutory decision, extended the applicant's detention and excused himself from the proceedings because he felt offended by the conduct of the applicant's counsel. No reasons or time-limit for the extension were given. The judge noted that the decision was not amenable to appeal.

3. Detention order of 17 April 2001

15. On 17 April 2001 a new presiding judge listed a hearing for 7 June 2001 and extended the applicant's detention, without citing any grounds or setting a time-limit.

16. The applicant alleged that he had not received that decision. Nonetheless, he had appealed against it on 23 and 28 May 2001.

17. On 18 July 2001 the Sverdlovsk Regional Court upheld the decision, without giving any reasons for the applicant's continued detention.

4. Interlocutory decisions and the detention order of 7 June 2001

(a) Rejection of a request for an additional investigative measure

18. On 4 June 2001 the Ordzhonikidzevskiy District Court dismissed the applicant's request for an additional investigative measure. The applicant's appeal against that decision was dismissed by the Sverdlovsk Regional Court on 18 July 2001.

(b) Adjournment of the proceedings and detention order of 7 June 2001

19. On 7 June 2001 the applicant asked the District Court to adjourn the proceedings because his lawyer was on leave. The court acceded to his request, adjourned the proceedings and extended his detention on remand. No reasons or time-limit for the extension were given.

20. The applicant appealed against the decision, claiming that it had not been given by a lawful tribunal.

21. On 20 July 2001 the Sverdlovsk Regional Court dismissed the applicant's appeal. The applicant was not taken to the appeal hearing.

5. Detention order of 4 September 2001

(a) Legal representation issues

22. On 3 September 2001 Ms Sulina was appointed to act as the applicant's counsel.

23. At the hearing held on the following day the applicant, assisted by Ms Sulina, asked the District Court to release him against a written undertaking not to leave the town and to replace Ms Sulina with Mr Ratushniy and Ms Gagarina, representatives of a certain NGO. The Ordzhonikidzevskiy District Court dismissed his petition for release on the grounds that he was charged with serious criminal offences and he did not admit his guilt. The District Court held that "there were no grounds to change the measure of restraint". It refused the appointment of Mr Ratushniy and Ms Gagarina because they had not produced written authority to act.

24. On 5 September 2001 the applicant again asked the court to appoint Mr Ratushniy and Ms Gagarina. That hearing was postponed to allow the applicant and his co-defendant to find new lawyers.

25. According to the applicant, on 11 September 2001 he submitted his statement of appeal against the decision of 4 September 2001 to the administration of the remand facility where he was being held. On 12 September 2001 he sent a letter by registered mail to the Sverdlovsk Regional Court. However, his appeal was never considered.

26. The Government submitted that the applicant's co-defendant, but not the applicant, had appealed against the decision of 4 September 2001.

27. On 5 September 2001 the Ordzhonikidzevskiy District Court held that the applicant should pay 345 Russian roubles (RUR; approximately 13 euros (EUR)) in respect of certain legal fees. The applicant alleged that he had not been promptly informed about that decision and that he had only appealed against it on 6 November 2001. He claimed that his appeal had not been examined.

(b) Adjournment of the proceedings until 1 April 2002

28. At the hearing of 17 December 2001 the applicant successfully petitioned for an adjournment because his lawyer had defaulted. The hearing was postponed until the following day.

29. On 19 December 2001 the District Court, upon the applicant's request, adjourned the proceedings until 24 December 2001 to enable the applicant and his new lawyer to read the case file together.

30. The subsequent hearings of 24 and 25 December 2001 were postponed because the lawyer for the applicant's co-defendant had defaulted. The proceedings were stayed until 1 April 2002. The applicant claimed that on 31 December 2001 he had appealed against the decisions of 24 and 25 December 2001, but his appeals were never examined.

6. Detention order of 1 April 2002

31. At the hearing of 1 April 2002 the applicant's lawyer asked the Ordzhonikidzevskiy District Court to remit the case for further investigation and release the applicant on bail or on a written undertaking not to leave the town. The District Court refused the requests, on the ground that the applicant was charged with a serious criminal offence and did not admit his guilt.

32. On 4 April 2002 the applicant's lawyer appealed against the decision of 1 April 2002, but his appeal was never considered. The Government submitted that on 26 July 2002 the Ordzhonikidzevskiy District Court had extended the time-limit for lodging an appeal against the decision of 1 April 2002. However, there was no evidence in the case file that such an appeal had, in fact, been lodged.

7. Attempt to return the case for further investigation. Detention order of 27 May 2002

33. On 27 May 2002 the Ordzhonikidzevskiy District Court gave interlocutory decisions, whereby it dismissed the applicant's request for the bench to stand down, remitted the case for further investigation and extended his detention on remand. As regards the grounds for the extension, the District Court noted that the applicant was charged with a serious criminal offence and that he did not admit his guilt and had threatened the victim.

34. The applicant lodged an appeal.

35. On 17 July 2002 the Sverdlovsk Regional Court returned the case file to the District Court for correction of procedural defects. The Regional Court held that in the course of the appeal hearing the applicant's lawyer had also complained that on 4 April 2002 he had lodged an appeal against the decision of the District Court of 1 April 2002. The lawyer had provided the Regional Court with a copy of his statement of appeal bearing a stamp of the District Court and showing that it had received the statement on 4 April 2002. The Regional Court instructed the District Court to investigate whether that statement had been lodged in accordance with the requirements established in law.

36. On 21 August 2002 the Sverdlovsk Regional Court upheld the decisions of 27 May 2002 in the part concerning the request for the bench to stand down and the extension of the applicant's detention. However, it did not accept the District Court's view that the case was to be returned for further investigation and instructed it to examine the merits of the charges. The applicant's lawyer was not called to the hearing.

8. Detention order of 1 July 2002 (period to 1 October 2002)

37. On 1 July 2002 a new Code of Criminal Procedure became effective.

38. On the same day the Ordzhonikidzevskiy District Court extended the applicant's detention until 1 October 2002, holding that the applicant was charged with a serious criminal offence and that he would not admit his guilt and had threatened the victim. The applicant and his lawyer were not called to the hearing. The representative of the prosecution authorities did not attend.

39. The applicant appealed against the decision of 1 July 2002, also alleging that he had only received a copy of that decision on 4 July 2002. The applicant provided the Court with a copy of his statement of appeal. The document bore the stamp of the District Court indicating that the appeal was lodged on 12 July 2002.

40. On 21 August 2002 the Sverdlovsk Regional Court refused to examine the applicant's appeal against the decision of 1 July 2002 and remitted the matter to the District Court. The Regional Court held as follows:

“In a decision [of 1 July 2002] Mr Solovyev's detention on remand was extended until 1 October 2002.

Mr Solovyev lodged several appeals against that decision; [they] were lodged outside the time-limit established by the law. From the case file it cannot be established when Mr Solovyev learned about that decision. Moreover, his lawyer, Mr Khaymin, participating in the appeal hearing,... has learnt about that decision for the first time and has expressed his wish to appeal against it ...

In view of the foregoing, [the court] decides to stay the appeal proceedings, establish the date when Mr Solovyev was issued with the decision [of 1 July 2002], include the notification in the case file, invite him to apply for extension of the time-limit for lodging an appeal against that decision ..., accept an appeal from Mr Khaymin, and subsequently fix an appeal hearing.”

41. Two days later the Regional Court received an application from the applicant's lawyer seeking an extension of the time-limit for lodging an appeal against the decision of 1 July 2002. According to the Government, there was no indication in the case file that the request had been examined.

9. Detention order of 1 October 2002 (period to 1 January 2003)

42. On 1 October 2002 the District Court extended the applicant's detention for three months, that is, until 1 January 2003. The court gave the same grounds for the extension as those in the detention orders of 27 May and 1 July 2002. Neither the applicant nor his lawyer was present at the hearing.

43. On 13 November 2002 the Sverdlovsk Regional Court quashed the decision of 1 October 2002 and remitted the matter for a fresh examination by the District Court. The Regional Court reasoned that in breach of the rules of criminal procedure the District Court had not ensured the presence of the applicant and his lawyer at the hearing of 1 October 2002. It held that the applicant's detention “should remain unchanged” in the meantime, because it had not established any ground to release him. The applicant was not taken to the appeal hearing, even though he had sought leave to appear. His lawyer attended that hearing.

10. Extension order of 20 November 2002

44. On 20 November 2002 the Ordzhonikidzevskiy District Court listed a hearing for 17 December 2002 and extended the applicant's detention, without citing any grounds or setting a time-limit. The applicant and his lawyer were not called to the hearing.

45. On 7 March 2003 the Sverdlovsk Regional Court dismissed the applicant's appeal against the decision of 20 November 2002 because no procedural or substantive violations were established.

11. Re-examination of the detention order of 1 October 2002 and trial hearings

46. On 15 December 2002 the District Court re-examined the detention matter (which it had previously examined on 1 October 2002) and retrospectively extended the applicant's detention for three months, until 1 January 2003. It held that the applicant was charged with serious criminal offences and that, if released, he could pervert the course of justice. A new lawyer, Mr Tselousov, and the applicant attended the hearing.

47. The applicant and Mr Khaymin, his other lawyer, appealed against that decision. The applicant also sought leave to appear before the appeal court.

48. According to the Government, the District Court fixed six trial hearings between 17 and 24 December 2002. They were adjourned because the applicant's lawyer defaulted.

49. On 8 January 2003 the Sverdlovsk Regional Court examined the grounds of the applicant's appeal against the decision of 15 December 2002 and upheld the decision. According to the applicant, neither he nor his lawyer was called to the appeal hearing. According to the Government, the applicant's lawyer was given notice of the appeal hearing but defaulted and failed to notify the Regional Court about the reasons for his absence. The Government provided the Court with a copy of the notice addressed to a prosecutor and to the applicant's lawyer. The notice did not bear the signature of any court official.

12. Interlocutory orders on legal fees and requests for removal

50. On 15 December 2002 the Ordzhonikidzevskiy District Court ordered that the applicant should pay RUR 258 (less than EUR 10) in legal fees. It appears that the applicant did not appeal against that order.

51. On 25 December 2002 the District Court dismissed requests by the applicant and his co-defendant for the removal of the prosecutor, the presiding judge and one of the applicant's lawyers, Mr Simkin. The applicant has alleged that he did not receive that decision and, therefore, could not appeal against it.

13. Detention order of 25 December 2002 (period to 1 April 2003) and trial hearings

52. On 25 December 2002 the Ordzhonikidzevskiy District Court extended the applicant's detention to 1 April 2003. It held that the applicant was charged with serious criminal offences, the victims and witnesses had not yet been questioned and, therefore, that the detention should be extended. The applicant and his lawyer, Mr Khaymin, attended the hearing.

53. From 13 January to 7 February 2003 the District Court fixed five hearings which were adjourned owing to the absence of the applicant's lawyer. On 18 February 2003, upon the applicant's request, he was assigned new counsel. The proceedings were stayed until 13 March 2003 to allow the new lawyer to study the case file.

54. On 7 March 2003 the Sverdlovsk Regional Court disallowed appeals by the applicant and his lawyer against the extension order of 25 December 2002 because they had missed the time-limit. It asked the District Court to determine whether the time-limit could be extended. According to the

applicant, the District Court did not take any actions following that decision of the Regional Court. The Government did not comment on this.

14. Detention order of 26 March 2003 (period to 1 July 2003)

55. On 26 March 2003 the Ordzhonikidzevskiy District Court extended the applicant's detention to 1 July 2003. The court noted that the applicant had no criminal record, that he had a permanent place of residence and work, that he was the breadwinner for two minor children and that he suffered from several illnesses. On the other hand, he was charged with serious criminal offences, victims and witnesses had not yet been heard, and the case had been pending for a long time, owing mostly to the applicant's conduct. The applicant, if released, could therefore obstruct the proceedings.

56. According to the applicant, on 3 April 2003 he and his lawyer lodged an appeal against that decision. The appeal was never examined.

15. Detention order of 26 June 2003 (period to 1 October 2003)

57. On 25 June 2003 the applicant sought the removal of the entire bench and the prosecutor. The court dismissed those requests.

58. On 26 June 2003 the Ordzhonikidzevskiy District Court ruled out certain evidence as inadmissible. In the same decision the trial court discontinued the criminal proceedings against the applicant in respect of the manslaughter charges because the statutory limitation period had expired, and extended the applicant's detention to 1 October 2003. The court noted that the applicant was charged with serious criminal offences and that the trial was pending.

59. The applicant and his lawyer appealed against the decision of 26 June 2003 but subsequently withdrew their appeals.

C. Partial discontinuance of proceedings and conviction

60. On 10 July 2003 the Ordzhonikidzevskiy District Court discontinued the criminal proceedings against the applicant in respect of the charges of unlawful confinement because the conduct in question could not be characterised as a criminal offence.

61. On the same day the District Court found the applicant guilty of causing bodily injuries and sentenced him to one year's imprisonment. The applicant was released on a written undertaking not to leave the town pending the appeal proceedings.

62. On 15 July and 12 August 2003 the applicant lodged appeals against the conviction. On an unspecified date the applicant's lawyer appealed against the judgment of 10 July 2003.

63. On 24 February 2004 the applicant and his lawyer withdrew their appeals.

64. On 3 March 2004 the Sverdlovsk Regional Court accepted the withdrawal and discontinued the appeal proceedings. On the same day the applicant's written undertaking not to leave the town was cancelled.

II. RELEVANT DOMESTIC LAW AND PRACTICE

65. 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”).

A. Preventive measures

66. “Preventive measures” or “measures of restraint” include an undertaking not to leave a town or region, personal security, bail and detention on remand (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities empowered to detain on remand

67. 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 to detain someone on remand 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).

C. Grounds for detention on remand

68. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or re-offend (Article 89 of the old CCrP). 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 91 of the old CCrP, Article 99 of the new CCrP).

69. Before 14 March 2001, detention on remand was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were “exceptional circumstances” in the

case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment or if they had previously defaulted or had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence committed. The new CCrP reproduces the amended provisions (Articles 97 § 1 and 108 § 1) and adds that a defendant should not be remanded in custody if a less severe preventive measure is available.

D. Time-limits for detention on remand

1. Two types of detention on remand

70. The Codes provide for a distinction between two types of detention on remand: the first being “during the investigation”, that is while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being “before the court” (or “during the trial proceedings”), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

2. Time-limits for detention “before the court” / “during the judicial proceedings”

71. From the date the prosecutor refers the case to the trial court, the defendant's detention is classified as “before the court” (or “during the judicial proceedings”).

72. Before 14 March 2001 the old CCrP set no time-limit for detention “during the judicial proceedings”. On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention “during the judicial proceedings” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or on a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

73. The new CCrP establishes that the term of detention “during the judicial proceedings” is calculated from the date the court received the file up to the date the judgment is given. The period of detention “during the judicial proceedings” 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).

E. Proceedings to examine the lawfulness of detention

During the judicial proceedings

74. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should be held in custody or released pending the trial hearings (Articles 222 § 5 and 230 of the old CCrP, Articles 228 (3) and 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP).

75. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including detention on remand (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

76. An appeal against such a decision lies to the higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

F. Time-limits for trial proceedings

77. Under the old CCrP, within fourteen days after receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for further investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court having jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

78. The duration of the entire trial proceedings is not limited in time.

79. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days after it was lodged. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this time-limit could be extended by up to two months (Article 333). No further extensions were possible.

The new CCrP establishes that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

80. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand from 17 October 2000 to 10 July 2003 had been unlawful. 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. Submissions by the parties

81. The Government argued that the entire term of detention was compatible with the domestic procedural rules and free from arbitrariness. At the beginning of the criminal proceedings the domestic authorities decided not to remand the applicant in custody. However, owing to his behaviour, and in particular the fact that he had threatened the victim and could have perverted the course of justice, the District Court authorised his placement in custody. The detention was extended at regular intervals in accordance with domestic procedure. On 1 July 2002 the Ordzhonikidzevskiy District Court extended the applicant's detention on remand for three months in compliance with the requirements of the new Code of Criminal Procedure. On 1 October 2002 the District Court extended his detention for a further three months. The decision of 1 October 2002 was quashed on 13 November 2002 by the Sverdlovsk Regional Court on procedural, that is purely formal, grounds. The Regional Court held that the measure of restraint against the applicant should “remain unchanged”. Following the re-examination of the detention issue, the District Court extended the applicant's detention until 1 January 2003. Moreover, while the

re-examination proceedings were still pending, on 20 November 2002 the Ordzhonikidzevskiy District Court held that the applicant should remain in custody. On 25 December 2002, 26 March 2003 and 26 June 2003 the District Court, in accordance with the rules laid down in the new Code of Criminal Procedure, extended the applicant's detention each time for three months. On 10 July 2003 the applicant was released.

82. The applicant argued that the decision concerning his placement in custody and the subsequent decisions extending his detention on remand had been issued in breach of domestic requirements. Therefore the entire period of his detention had been unlawful.

B. The Court's assessment

1. Admissibility

83. The Court observes at the outset that on 21 January 2003 the applicant complained to the Court that he had been unlawfully detained after 1 July 2002. In the application form lodged with the Court on 14 June 2004, for the first time, he complained about the entire period of his detention on remand. The Court therefore considers that the applicant's complaints in respect of the detention orders issued before 1 July 2002 were introduced out of time, that is more than six months after the end of the period in question, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

84. The Court further notes that the complaint concerning the unlawfulness of the applicant's detention after 1 July 2002 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.

2. Merits

(a) General principles

85. 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.

86. 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, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Detention from 1 July to 1 October 2002

87. The Court notes that on 1 July 2002 the Ordzhonikidzevskiy District Court authorised the applicant's detention on remand until 1 October 2002 because of the gravity of the charges against him and the threats he had made against the victim.

The trial court acted within its powers in making that decision and there is nothing to suggest that it was invalid or unlawful under domestic law. The question whether the reasons for the decision were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3. In the cases of *Stašaitis v. Lithuania* (no. 47679/99, 21 March 2002) and *Khudoyorov v. Russia* (no. 6847/02, §§ 152-153, ECHR 2005-X) the Court accepted that similar decisions by trial courts were compatible with the requirements of Article 5 § 1 of the Convention. There is nothing in the present case to warrant a different conclusion.

88. The Court finds that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 1 July to 1 October 2002.

(c) Detention from 1 October to 13 November 2002

89. The Court observes that on 1 October 2002 the Ordzhonikidzevskiy District Court extended the applicant's detention until 1 January 2003. On 13 November 2002 the Sverdlovsk Regional Court quashed that decision because of breaches of the rules of criminal procedure and ordered a re-examination of his detention in respect of that period.

90. The issue to be determined is whether the detention in that period was “lawful”, including whether it complied with “a procedure prescribed by law”. The Court reiterates that a period of detention will in principle be lawful if served pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily affect retrospectively the validity of the intervening period of detention.

91. In the present case the Court will consider whether the detention order of 1 October 2002 constituted a lawful basis for the applicant's detention until it was quashed on 13 November 2002. The mere fact that the order was set aside on appeal did not in itself affect the lawfulness of the detention in the preceding period (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, §§ 43 and 46).

92. It has not been alleged that on 1 October 2002 the District Court acted in excess of its jurisdiction. Indeed, as a matter of domestic law, it had the authority to examine the issue of extension of the applicant's detention and to grant a further extension, not exceeding three months (see paragraph 73 above). Furthermore, the Court finds that the applicant's detention on the basis of the order of 1 October 2002 cannot be said to have been arbitrary as the court gave certain grounds justifying the continued detention on remand. The sufficiency and relevance of these grounds will be discussed below from the standpoint of Article 5 § 3 of the Convention.

93. It has not therefore been established that, in issuing the detention order of 1 October 2002, the District Court acted in bad faith, or that it neglected to attempt to apply the relevant legislation correctly. The fact that certain flaws in the procedure were found on appeal does not in itself mean that the detention was unlawful (see *Khudoyorov*, cited above, § 132, with further references).

94. In these circumstances, the Court finds that there was no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 1 October to 13 November 2002.

(d) Detention from 13 November to 15 December 2002

95. The Court notes that on 13 November 2002 the Regional Court, having quashed the District Court's decision, held that the preventive measure imposed on the applicant "should remain unchanged" and ordered a re-examination of the detention. On 20 November 2002, while the re-examination proceedings were still pending, the District Court extended the applicant's detention on remand without setting a time-limit or citing any grounds for the extension. On 15 December 2002 the District Court re-examined the detention and authorised an extension until 1 January 2003.

96. The Court observes that on 13 and 20 November 2002 the Regional and District courts, respectively, did not give any reasons for their decisions to remand the applicant in custody. Nor did they set a time-limit for the continued detention or, in the case of the Regional Court, for a re-examination of the detention by the District Court. Leaving aside the concurrent developments in the applicant's case (see paragraph 99 below), it transpires that for more than a month the applicant remained in a state of uncertainty as to the grounds for his detention from 13 November to

15 December 2002, when the District Court eventually re-examined the detention.

97. The Court has already examined and found a violation of Article 5 § 1 (c) of the Convention in a number of cases concerning a similar set of facts. In particular, the Court held that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis*, cited above, § 67). Permitting a prisoner to languish in detention on remand without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, 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 (see *Khudoyorov*, cited above, § 142).

98. The Court sees no reason to reach a different conclusion in the present case. It considers that the Regional Court's decision of 13 November 2002 and the District Court's decision of 20 November 2002 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.

99. The Court also finds that the District Court's decision of 15 December 2002, as upheld on appeal on 8 January 2003, did not constitute a "lawful" basis for the applicant's detention from 13 November to 15 December 2002. That decision authorised the applicant's detention from 1 October 2002 to 1 January 2003, out of which a period of two months and fourteen days was thus authorised retrospectively. The Government did not indicate any domestic legal provision that permitted a decision to be taken authorising a period of detention retrospectively. It follows that the applicant's detention, in so far as it had been authorised by a judicial decision issued in respect of the preceding period, was not "lawful" under domestic law. Furthermore, the Court reiterates that any *ex post facto* authorisation of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness (see *Khudoyorov*, cited above, § 142).

100. The Court therefore considers that there was a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 13 November to 15 December 2002.

(e) Detention from 15 December 2002 to 10 July 2003

101. The Court observes that the applicant's detention during the period from 15 December 2002 to 10 July 2003 was extended by the District Court on four occasions on the grounds that the charges against him were serious and that the trial was still pending.

102. The Court 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 *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006).

103. 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 those decisions were otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds invoked being analysed below in the context of compliance with Article 5 § 3 of the Convention.

104. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention orders issued between 15 December 2002 and 10 July 2003.

3. Summary of the findings

105. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 1 July to 13 November 2002 and from 15 December 2002 to 10 July 2003.

106. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 13 November to 15 December 2002.

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

107. The applicant complained that his detention on remand had been extremely long. The Court considers that the present complaint falls to be examined under Article 5 § 3 of the Convention, which reads 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..."

A. Submissions by the parties

108. The Government submitted that it had been necessary for the applicant to remain in custody because he had threatened the victims and could have obstructed the criminal proceedings. The decisions of the domestic courts authorising the applicant's continued detention were "founded on relevant and sufficient reasons". The courts had examined all circumstances with "special diligence".

109. The applicant responded that the domestic courts had not provided any evidence showing that he had, in fact, threatened the victims. The Government had indicated that he might have perverted the course of

justice, but had provided no further details. The excessive length of his detention on remand had been caused by the failure of the domestic authorities to conduct the criminal proceedings against him without undue delay.

B. The Court's assessment

1. Admissibility

110. 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.

2. Merits

(a) Period to be taken into consideration

111. The Court observes that the applicant's detention on remand lasted from 17 October 2000, the date of the arrest, to 10 July 2003, the date of his conviction and release. The global duration thus amounted to two years, eight months and twenty-two days. In carrying out its assessment, the Court will not lose sight of its finding that from 13 November to 15 December 2002 the applicant's detention was not in accordance with the provisions of Article 5 § 1 (c) of the Convention (see *Goral v. Poland*, no. 38654/97, §§ 58 and 61, 30 October 2003, and *Stašaitis*, cited above, §§ 81-85).

(b) The reasonableness of the length of detention

112. The Court notes that the Ordzhonikidzevskiy District Court authorised the applicant's placement in custody on 17 October 2000, that is more than a year after the case was sent for trial in February 1999. The District Court cited the gravity of the charges against the applicant and his attempts to influence the victim and obstruct the examination of the case as the grounds for his arrest. After 17 October 2000 the District Court extended his detention on remand thirteen times. In respect of the first three extensions it did not cite any grounds for the applicant's continued detention (see paragraphs 14, 15 and 19 above). In the subsequent detention orders the domestic authorities consistently relied on the gravity of the charges against the applicant, his failure to plead guilty and the fact that he had threatened the victims and could thus have obstructed the examination of the case.

113. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Panchenko v. Russia*, no. 45100/98, § 102,

8 February 2005; and *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003). This is particularly true in the Russian legal system where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

114. The other grounds for the applicant's continued detention were the domestic courts' finding that the applicant had threatened the victims and could pervert the course of justice and that he had not admitted his guilt in having committed the criminal offences with which he had been charged. The Court observes that it is incumbent on the domestic authorities to establish 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 (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of concrete facts in support of their conclusions that the applicant had threatened the victims and could therefore pervert the course of justice.

115. The Court notes that at the initial stages of the investigation the risk that an accused person may pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes irrelevant (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006). In this connection, the Court reiterates that the applicant was arrested more than a year after the judicial proceedings had commenced. He remained in custody for more than two years during which the proceedings were pending before the court. It thus appears that the domestic authorities had sufficient time to take statements from the victims in a manner which could have excluded any doubt as to their veracity and would have eliminated the necessity to continue the applicant's deprivation of liberty on that ground. Furthermore, the Court notes that, apart from a blank reference to the threats which the applicant had allegedly made against the victims, the domestic authorities did not mention any concrete facts warranting the applicant's detention on that ground. The authorities did not indicate any circumstance suggesting that, if released, the applicant would abscond or evade justice, or that he would otherwise interfere with the course of the proceedings.

116. As to the applicant's refusal to plead guilty, the Court cannot but disagree that it warranted his continued detention. The applicant was not obliged to co-operate with the authorities and could not be blamed for

having taken full advantage of his right to remain silent (see *Mamedova*, cited above, § 83; *mutatis mutandis*, *Yağcı and Sargin v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66; and *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, § 42).

117. 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 ways 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). At no point in the proceedings in the present case 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 69 above).

118. In sum, the Court finds that the domestic courts' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial, such as his family situation and his deteriorating health. It is of particular concern to the Court that the Russian courts persistently used a stereotyped summary formula to justify extension of detention: the District Court reproduced the same formula in at least three decisions between 27 May and 1 October 2002.

119. Having regard to the above, the Court considers that by failing to address concrete relevant facts and by relying essentially on the gravity of the charges, 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 deprivation of liberty for a period of approximately two years and nine months. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period as such a lengthy period cannot in the circumstances be regarded as "reasonable" within the meaning of Article 5 § 3 of the Convention (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006). There has therefore been a violation of this provision.

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

120. The applicant complained that appeals by himself and his lawyer against the detention orders of 4 September 2001, 1 April, 1 July and 25 December 2002 and 26 March 2003 had not been examined and that he and/or his lawyer had not been afforded the opportunity to take part in the hearings of 17 October 2000, 7 June and 20 July 2001, 21 August, 1 October, 13 and 20 November, 15 December 2002, 8 January 2003, at

which the District or Regional courts had reviewed his detention. He further complained that the courts had not promptly examined his appeals against the detention orders. The Court considers that the present complaints fall to be examined under Article 5 § 4 of the Convention which reads 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. Submissions by the parties

121. The Government submitted that, in breach of the requirements of the new Code of Criminal Procedure, neither the applicant nor his lawyer had been called to the hearing of 1 July 2002. On 21 August 2002 the Sverdlovsk Regional Court had disallowed the applicant's appeal against the detention order of 1 July 2002 because it had been lodged too late and the applicant had not asked the Regional Court to extend the time-limit. As regards his lawyer's appeal against that detention order, the lawyer had asked the Regional Court to extend the time-limit for lodging an appeal. However, there was no evidence that such a request had ever been considered. As to the hearing of 1 October 2002, the Government notes that that detention order had been quashed on appeal because the applicant and his lawyer had not been called to the hearing of 1 October 2002. The Government further argued that the applicant's lawyer had attended the appeal hearing of 13 November 2002 and both the applicant and his lawyer had been present at the hearing of 15 December 2002. As regards the appeal hearing of 8 January 2003, the applicant's lawyer had been notified but had defaulted. The Government argued that the applicant's complaints should be dismissed as manifestly ill-founded.

122. The applicant averred that the Government had not indicated the date when he had learned about the detention order of 1 July 2002. The Regional Court had not been able to determine the date when he had been served with that detention order and whether he had missed the time-limit for lodging an appeal against it. It had instructed the District Court to determine that issue but no action had been taken. Moreover, his lawyer had also appealed against the detention order of 1 July 2002 and had asked the court to extend the time-limit. That matter had never been resolved. He further argued that neither he nor his lawyer had attended the hearings of 1 October 2002 and 8 January 2003 and that he had not been taken to the hearing of 13 November 2002.

B. The Court's assessment

1. Admissibility

123. Having regard to its finding in paragraph 83 above, the Court will only examine the applicant's complaints as raised in his letters: (i) that he had been denied a review of the lawfulness of his continued detention authorised on 1 July 2002 as neither he nor his lawyer had been afforded an opportunity to attend the hearing of 1 July 2002 and their appeals against that detention order had never been examined, and (ii) that the procedure by which the lawfulness of his detention from 1 October 2002 to 1 January 2003 had been reviewed had been defective because he and/or his lawyer had not been called to the hearings on 1 October, 13 November, 15 December 2002 and 8 January 2003 (see paragraph 3 above). Additional complaints were submitted on 14 June 2004, that is more than six months after the applicant's detention on remand had ended on 10 July 2003. It follows that the new complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

124. The Court further observes that the applicant complained that he and his lawyer had been absent from the hearing of 1 July 2002 and that the domestic courts had failed to examine their appeals against the detention order made on that date. In this connection the Court has some doubt as to whether the applicant has exhausted the available domestic remedies. The Government did not raise any objection save that the complaint was manifestly ill-founded. The Court reiterates that its normal practice has been, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies unless this matter has been raised by the Government in their observations (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 40-41, ECHR 2006-..., with further references). Having regard to the fact that the Government did not raise that objection, the present complaint cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted (cf. *Dobrev v. Bulgaria*, no. 55389/00, § 112, 10 August 2006).

125. Therefore the complaints raised in the applicant's letters of 21 and 30 January and 30 June 2003 and 22 January 2004 about the alleged failure of the authorities to ensure the effective enjoyment by the applicant of his rights under Article 5 § 4 of the Convention in respect of the review of the lawfulness of his detention from 1 July to 1 October 2002 and from 1 October 2002 to 1 January 2003 must be declared admissible as they are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and neither are they inadmissible on any other grounds.

2. *Merits*

(a) Principles established in the Court's case-law

126. The Court reiterates that although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII, with further references). The proceedings must be adversarial and must always ensure equality of arms between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Trzaska v. Poland*, no. 25792/94, § 74, 11 July 2000). The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, § 47).

(b) Review of the lawfulness of the applicant's detention from 1 July to 1 October 2002

127. The Court observes that on 1 July 2002 the Ordzhonikidzevskiy District Court extended the applicant's detention until 1 October 2002. The Court notes that the Government submitted that neither the applicant nor his lawyer had been called to that hearing. In their observations the Government conceded that the applicant's rights had been violated in this respect.

128. The Court further notes that on 12 July 2002 the applicant lodged an appeal against the decision of 1 July 2002 alleging that he had only learnt about it on 4 July 2002. On 21 August 2001 the Regional Court adjourned the examination of the appeal and remitted the matter to the District Court. The Regional Court instructed the District Court to determine whether the applicant had complied with the time-limit for lodging an appeal. It also noted that the applicant should be invited to apply for an extension of the time-limit and that the District Court should accept an appeal from his lawyer and fix the date of an appeal hearing. On 23 August 2001 the applicant's lawyer applied for an extension of the time-limit, but his request was not considered. The applicant contended – and this was not contested by the respondent Government – that the District Court had failed to implement the directions of the Regional Court. The District Court had not considered the request for the extension of the time-limit and had not accepted his lawyer's appeal. No appeal hearing was fixed.

129. The Court reiterates that Article 5 § 4 compels the Contracting States to provide a detained person with a review of a judicial character along the adversarial procedure, providing him with the opportunity to present his case effectively at a hearing. That Convention provision does not require setting up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84).

130. The Court has frequently found violations of Article 5 § 4 of the Convention in cases raising issues similar to the one in the present case (see *Włoch v. Poland*, no. 27785/95, §§ 125-131, ECHR 2000-XI; *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000; and *Mamedova v. Russia*, no. 7064/05, §§ 90-93, 1 June 2006).

131. Having examined the materials submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court observes that the extension order of 1 July 2002 was issued by the District Court in the absence of the applicant and his representative, although, as the Government pointed out, their presence was required by Russian law. The decision was taken on the basis of the case file which had been prepared by the prosecution authorities. The applicant did not have the opportunity to contest properly the reasons invoked to justify the continuation of his detention. Any questions by the District Court could have prompted, on the part of the applicant, reactions warranting consideration by the members of the court before they reached their decision. However, the District Court did not afford the applicant an opportunity to describe his personal situation and answer questions related to the extension of his detention.

132. Subsequently it was open to the applicant under the Russian law to lodge an appeal against the extension order of 1 July 2002 to the Regional Court (see paragraph 76 above) and he and his lawyer attempted to make use of this avenue. However, their appeals were not examined. The applicant thus was also not given an opportunity to present his arguments before the Regional Court which could have examined the factual and legal justification for the continuation of his detention and provide the applicant with a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of the deprivation of liberty.

133. The Court observes that in such circumstances the applicant was deprived of an effective review of the lawfulness of his continued detention from 1 July to 1 October 2002, being unable to present his case effectively at any stage of the proceedings. The Court therefore finds that there has been a violation of Article 5 § 4 of the Convention.

(c) Review of the lawfulness of the applicant's detention from 1 October 2002 to 1 January 2003

134. The Court notes that on 1 October 2002 the District Court extended the applicant's detention for an additional three months, until 1 January 2003. Neither the applicant nor his lawyer was present at the hearing. At the appeal hearing of 13 November 2002, in the presence of the applicant's lawyer, the Regional Court expressly acknowledged that on 1 October 2002 the District Court had failed to comply with the requirements of Russian law, in so far as it had failed to secure the applicant's rights to be present and represented at that hearing. The Regional Court quashed the detention order of 1 October 2002 and ordered a re-examination.

135. On 15 December 2002 the District Court reconsidered the detention matter, confirming its findings made on 1 October 2002. The Court observes that the evidence in the case file shows beyond any doubt that the applicant and his lawyer attended the hearing on 15 December 2002. Moreover, the Court notes that in his observations lodged with the Court on 7 November 2005 the applicant no longer argued that he and his lawyer had not been present at the hearing of 15 December 2002.

136. The Court further observes that on 8 January 2003 the Regional Court examined appeals by the applicant and his lawyer against the decision of 15 December 2002. The applicant was not taken to the hearing. The parties made conflicting statements as to whether the applicant's lawyer had been given notice of that hearing. However, the evidence in the case file does not convince the Court that he had been. The Court notes that the Government did not present any evidence showing that the notice of hearing had in fact been dispatched and that it had reached the lawyer. Furthermore, the Court finds it peculiar that the notice was not signed and that it was addressed to both the prosecutor and the lawyer. In these circumstances, the Court is not persuaded that the lawyer had been notified of the hearing of 8 January 2003.

137. The Court thus reiterates that the lawfulness of the applicant's detention from 1 October 2002 to 1 January 2003 was examined twice by the District Court and twice by the Regional Court on appeal. The applicant was not afforded an effective opportunity to argue his case at the first hearing of 1 October 2002 owing to his and his lawyer's absence. The Court notes the Government's argument that on 13 November 2002 the Regional Court had taken steps to remedy the alleged violation. In this respect, the Court observes that on 13 November 2002, that is almost a month and a half after the applicant's detention had been extended on 1 October 2002, the Regional Court quashed that order, noting the violation of the applicant's procedural rights. However, the Regional Court did not examine the merits for the applicant's continued detention and did not address his lawyer's arguments relevant to the lawfulness of the continued detention, merely holding that the detention "should remain unchanged" (see paragraph 43

above). In these circumstances the Court cannot conclude that the judicial examination of the applicant's detention carried out by the Regional Court on 13 November 2002 met the requirements of Article 5 § 4 of the Convention as regards the required scope of review (see *Hristov v. Bulgaria*, no. 35436/97, § 117, 31 July 2003).

138. The Court further observes that in the course of the re-examination of the detention matter, on 15 December 2002 the District Court, in the presence of the applicant and his lawyer, confirmed the lawfulness of the extension of the detention until 1 January 2003. Although the hearing of 15 December 2002 was held in a manner which respected the principle of equality of arms, the Court does not lose sight of the fact that it took place fifteen days before the expiration on 1 January 2003 of the authorised three-month' period of the applicant's detention. In that connection, the Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 16, § 33). In the present case a delay referred to above coupled with the fact that neither the applicant nor his lawyer were afforded an opportunity to attend the subsequent appeal hearing of 8 January 2003 and present their arguments, although the prosecutor was given that opportunity, do not allow the Court to conclude that the applicant effectively enjoyed his rights under Article 5 § 4 of the Convention (see *Nikolova v. Bulgaria* [G.C.], no. 31195/96, 25.03.1999, § 59, *Niedbala v. Poland*, no. 27915/95, §§ 66-67, 4 July 2000 and *Trzaska v. Poland*, no. 25792/94, §§ 77-78, 11 July 2000).

139. Accordingly, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

140. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Submissions by the parties

141. The Government considered that the complaint about the excessive length of the proceedings was inadmissible under Article 35 § 3 of the Convention. They argued that the applicant and his co-defendant had caused delays by changing their legal representation, appealing against the trial

court's decisions and petitioning for various procedural actions. At least fifteen hearings were adjourned due to the absence of the applicant's and/or his co-defendant's lawyers.

142. The applicant contested the Government's submissions. He argued that the District Court had not taken any actions between 1 February 1999, when it had received the case file for trial, and 17 October 2000, when the first hearing had taken place. A further stay of the proceedings was caused by the District Court's unlawful decision of 27 May 2002 to remit the case for further investigation.

B. The Court's assessment

1. Admissibility

143. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 3 March 2004 when the Sverdlovsk Regional Court discontinued the appeal proceedings. It thus lasted approximately five years and ten months.

144. 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.

2. Merits

145. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

146. The Court observes that the parties did not argue that the case had been complex. It thus sees no reason to conclude otherwise.

147. As to the applicant's conduct, the Government argued that he had contributed to the length of the proceedings by submitting various requests and appealing against the District Court's decisions. The Court is not convinced by this argument. It has been the Court's constant approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his interests (see *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

148. The Court notes, however, the Government's argument that a substantial delay in the proceeding was caused by the failure of the applicant's lawyer to attend hearings. The aggregate delay incurred as a result amounted to approximately ten months.

149. As regards the conduct of the authorities, the Court considers that the overall period, less the period attributed to the applicant, leaves the authorities accountable for a period of approximately five years. The Court is aware of substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court notes that on 1 February 1999 the District Court received the case for trial. However, it took the presiding judge approximately a year and nine months to fix and hold the first trial hearing (see paragraph 11 above). The Government did not cite any reasons to justify that delay. The Court also observes that on 27 May 2002 the District Court remitted the case for further investigation to enable the prosecution to correct certain defects. However, that decision was quashed on 21 August 2002 and the case was sent back to the District Court. Thus another unjustified delay of almost three months is attributable to the State (see paragraphs 33 and 35 above). The Court does not lose sight of the fact that the proceedings were also pending for almost a year before the Regional Court (see paragraphs 62-64 above). It appears that during that period the Regional Court did not hold any hearings.

150. Having examined all the material before it and taking into account the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

151. In his application lodged with the Court on 14 June 2004 the applicant complained under Articles 3, 6, 13 and 14 of the Convention that the Constitutional Court had refused to examine his complaints. He maintained also that certain interlocutory orders issued by the District Court in the course of the proceedings had been unfair in that the court had assessed the facts and applied the substantive and procedural law incorrectly, that those decisions had not been pronounced in public and that certain decisions had not been served on him. Furthermore, the applicant argued that the trial court had not been impartial and that it had dismissed his various requests, that he had not been able to appeal against the decisions in which costs had been awarded against him and that he had been discriminated against.

152. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione materiae*, it

finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed RUR 210,000 representing capital losses during the period when he was detained. He submitted that he had been forced to sell a plot of land and borrow money to support his family and pay for the services of a lawyer. He further claimed EUR 1,480,000 in respect of non-pecuniary damage.

155. The Government contested the existence of a causal link between the alleged violation and the pecuniary loss alleged by the applicant, as the decision to prefer criminal charges against the applicant was not the subject of the Court's review in the present case. They further argued that the claims were excessive and unreasonable. In any event, a finding of a violation would constitute sufficient just satisfaction.

156. The Court finds that there is no causal link between the violations found and the pecuniary damage claimed. Consequently it finds no reason to award the applicant any sum under this head.

157. As to non-pecuniary damage, the Court notes that it has found several violations in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

158. The applicant also claimed RUR 26,515.11 for the costs and expenses incurred before the domestic courts and the Court, of which RUR 25,000 represented expenses for Mr Chumakov's legal services and RUR 1,515.11 represented postal expenses.

159. The Government argued that the applicant had not submitted documents to substantiate his claims for at least RUR 501. As regards the remaining expenses, confirmed by various receipts and vouchers, they were not necessary.

160. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court observes that the applicant submitted a copy of his contract with Mr Chumakov for representation in the domestic and Strasbourg proceedings. He also provided copies of receipts and vouchers confirming his postal expenses. Regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 780 under this head, plus any tax that may be chargeable.

C. Default interest

161. 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. *Declares* the complaints concerning the unlawfulness of the applicant's detention after 1 July 2002, the excessive length of his detention on remand, the failure of the domestic authorities to carry out an effective review of the lawfulness of his detention from 1 July to 1 October 2002 and from 1 October 2002 to 1 January 2003, and the length of the criminal proceedings against him, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 13 November to 15 December 2002;
3. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 1 July to 13 November 2002 and from 15 December 2002 to 10 July 2003.
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the unreasonable length of the applicant's detention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the domestic authorities' failure to carry out an effective review of the applicant's detention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;
7. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of the settlement:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 780 (seven hundred and eighty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President