



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

FIRST SECTION

CASE OF MELNIKOVA v. RUSSIA

(Application no. 24552/02)

JUDGMENT

STRASBOURG

21 June 2007

FINAL

30/01/2008

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 Melnikova v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 24552/02) 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, Ms Yelena Yuryevna Melnikova ("the applicant"), on 20 May 2002.

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

3. The applicant alleged, in particular, that her pre-trial detention was unlawful and unreasonably long.

4. By a decision of 30 June 2005, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Penza.

1. First set of criminal proceedings

7. On 15 October 1996 the applicant was arrested and detained on suspicion of murder. On 6 June 1997 the criminal proceedings were terminated and she was released.

2. Second set of criminal proceedings

8. On 17 October 2001 a new set of criminal proceedings was initiated against the applicant and another person. This time she was suspected of fraud.

9. On 13 December 2001 the applicant was put on a list of persons wanted by the police.

10. On 5 January 2002 the applicant was arrested. The reasons for her arrest indicated in the arrest warrant included preventing her from committing further offences, absconding from the investigation and interfering with the course of justice.

11. On 8 January 2002 the investigation authorities charged her, as a principal offender, with fraud and remanded her in custody pending trial for the reasons that, having been earlier placed on the wanted list, she might abscond and interfere with the course of justice. Later the investigation authorities decided to carry out a psychiatric examination of the applicant. On 19 February 2002 she was transferred from the remand prison to a psychiatric hospital. The preventive measure was changed from detention to an obligation not to leave the place without permission.

12. On 22 March 2002, after the psychiatric examination, the prosecutor ordered to re-detain the applicant on the ground of the gravity of charges.

13. On 1 April 2002 the investigator applied to the prosecutor for extension of the applicant's detention on the grounds that she was charged with having committed grave offences, had no permanent residence in Penza and "did not take voluntarily any measure to compensate the damage caused to the victims". The prosecutor extended the applicant's detention until 17 April 2002.

14. On 8 April 2002 the applicant and the co-accused were informed that the preliminary investigation was complete. On 10 April 2002 they began studying the case file.

15. On 17 April 2002 the investigator applied to the prosecutor for extension of the applicant's detention until 5 May 2002 on the ground of the gravity of charges. The prosecutor granted the extension until 5 May 2002.

16. On 29 April 2002 the investigator applied to the prosecutor for extension of the applicant's detention until 5 June 2002 in order to let her study the case file. The investigator stated that she should remain in detention because of the gravity of the charges and lack of permanent residence in Penza and that, if released, she might abscond and put pressure on the victims and witnesses.

17. On 30 April 2002 the prosecutor extended the applicant's detention until 5 June 2002.

18. On an unspecified date the applicant filed an application for release pending trial on the grounds, *inter alia*, of her state of health and two dependent children.

19. On 6 May 2002 the Oktyabrskiy District Court of Penza dismissed the application. The court held:

“The offence the accused is charged with belongs to the category of “serious” [offences]. Taking into account the social danger of the offence, the preventive measure applied to [Ms] Melnikova is lawful and well-grounded. At present, there are no reasons to change it.”

20. The applicant appealed.

21. On 31 May 2002 she finished studying the case file.

22. On 5 June 2002 the case was transmitted to court.

23. On the same date the Penza Regional Court quashed the decision of 6 May 2002 and remitted the case for a fresh examination by the same court.

24. On an unspecified date the applicant again filed an application for release pending trial, referring to her two dependent children.

25. On 24 June 2002 the Leninskiy District Court of Penza dismissed the application. Relying on Article 261 of the 1960 Code of Criminal Procedure, the court held:

“... the application [for release] ... must be dismissed, because ... the detention ... was lawfully applied to the applicant by the investigator and authorised by the prosecutor, and because there was a risk that she might abscond.

It can be seen from the case file that before her arrest [Ms] Melnikova was on the wanted list, furthermore, she does not have a permanent residence in Penza. The investigator's order to apply the preventive measure was lawfully authorised by the prosecutor because, in accordance with the legislation in force, the preventive measure may be applied by the court after 1 July 2002. At present there are no grounds for modification of the preventive measure in respect of [Ms] Melnikova.”

26. On 6 November 2002, in the course of the trial, the applicant sought to declare certain evidence inadmissible and again filed an application for release.

27. On the same date the Leninskiy District Court of Penza, relying on Articles 235 and 271 of the 2001 Code of Criminal Procedure, dismissed the application on the following grounds:

“ ... [the applicant] is charged with serious offences, has neither a permanent residence nor a job in Penza, the preventive measure was applied in accordance with the law, there are no grounds for its modification and release [of the applicant]...”

28. On an unspecified date the applicant's lawyer requested the court to remit the case to the investigating authorities for the charges to be re-formulated. He also asked for the applicant's interim release.

29. On 28 November 2002 the Leninskiy District Court of Penza returned the case to the prosecutor for the bill of indictment to be amended but refused to release the applicant. The court held in particular:

“... as [Ms] Melnikova is accused of having committed serious offences ... the court finds no grounds for modification of the preventive measure...”

30. On 6 December 2002 the Leninskiy District Court of Penza extended the applicant's detention until 10 January 2003 relying on the gravity of the offence with which the applicant was charged.

31. The applicant appealed against the decisions of 28 November and 6 December 2002 arguing, *inter alia*, that she had two dependent children and, therefore, if released she could not abscond.

32. On 18 December 2002 the Penza Regional Court dismissed the appeal. The court held:

“The [trial] court rightfully refused to release [Ms] Melnikova, because during the preliminary investigation it was decided to detain her and because less than six months had elapsed between the transmission of the case to the court and the ruling of 28 November 2002, and also because [she] was charged with serious offences there were no reasons to apply a different preventive measure.”

33. On 25 December 2002 the prosecutor remitted the case for additional investigation.

34. On 26 December 2002 the investigator accepted the case for additional investigation. On the same date the Zheleznodorozhniy District Court of Penza ordered extension of the applicant's detention until 28 February 2003. The applicant appealed.

35. On 31 December 2002 the Penza Regional Court dismissed the appeal. The court held:

“[Ms] Melnikova faces serious charges and has sought to evade investigation. If released, she may abscond and obstruct the establishment of the truth. In the present case it is necessary to correct the defects [of the investigation] discovered in the course of the trial, to carry out investigative acts for this purpose, to submit a final bill of indictment and to familiarise the accused with the file. The judge was right not to find grounds for the cancellation of detention as a preventive measure in respect of [Ms] Melnikova.”

36. It appears that on 22 February 2003 the case was referred to the court, and the applicant remained in custody until the delivery of the sentence.

37. On 23 May 2003 the Leninskiy District Court of Penza convicted the applicant of fraud and sentenced her conditionally to 5 years' imprisonment.

II. RELEVANT DOMESTIC LAW

A. Preventive measures

1. Code of Criminal Procedure of 1960 in force until 30 June 2002 ("the old CCrP")

38. The relevant Articles of the old CCrP provide:

Article 11 (1). Personal inviolability

"No one may be arrested otherwise than on the basis of a judicial decision or a prosecutor's order. [...]"

Article 89 (1). Application of preventive measures

"When there are sufficient grounds for believing that an accused person may evade an inquiry, preliminary investigation or trial or will obstruct the establishment of the truth in a criminal case or will engage in criminal activity, or in order to secure the execution of a sentence, the inquirer, the investigator, the prosecutor or the court may apply one of the following preventive measures in respect of the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or taking into custody. [...]"

Article 91. Circumstances to be considered when applying a preventive measure

"When the need for application of a preventive measure is considered and the type of measure is chosen... the circumstances to be taken into account shall include... the gravity of the charges brought and the personality of the suspect or the accused, occupation, age, health, family status and other circumstances."

Article 92. Order or decision to apply a preventive measure

"A preventive measure shall be applied under an order made by an inquirer, an investigator, or a prosecutor, or a reasoned decision given by a court, which shall specify the offence of which the person is suspected or accused and the grounds for application of the preventive measure. The person concerned shall be informed of the order or decision and at the same time the person shall be provided with explanations concerning the procedure for appealing against the preventive measure applied."

A copy of the order or the decision on the application of the preventive measure shall be immediately handed to the person concerned.”

Article 96. Taking into custody

“Taking into custody as a preventive measure shall be effected in accordance with the requirements of Article 11 of this Code in respect of a person charged with criminal offences for which the law prescribes a penalty in the form of deprivation of liberty for a period of more than two years. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of liberty for a period of less than two years is prescribed by law. [...]”

Article 97. Time-limits for pre-trial detention

“A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension up to six months from the day of taking into custody may be effected only in cases of special complexity by a prosecutor of a subject of the Russian Federation ...

An extension of the time-limit for such detention beyond six months shall be permissible in exceptional cases and solely in respect of persons accused of committing grave or very grave criminal offences. Such an extension shall be effected by a deputy of the Prosecutor General of the Russian Federation (up to one year) and by the Prosecutor General of the Russian Federation (up to one year and a half) [...]”

Article 101. Cancellation or modification of a preventive measure

“A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the circumstances of the case so require. The cancellation or modification of a preventive measure shall be effected by a reasoned order of the person carrying out the inquiry, the investigator or the prosecutor, or by a reasoned court decision after the case has been transferred to a court.

The cancellation or modification, by the inquirer or by the investigator, of a preventive measure chosen on the prosecutor's instructions shall be permissible only with the prosecutor's approval.”

Article 222. Issues to be decided when scheduling a hearing

“When scheduling a hearing a judge shall decide in respect of each accused:

...5) whether the preventive measure applied to the accused is subject to modification or cancellation . [...]”

Article 223.1. Scheduling of a hearing

“The judge ... shall deliver a ruling on scheduling of a hearing...

The decision concerning scheduling of a hearing should be taken within 14 days after the case has been committed for trial is the accused is in custody...”

Article 239.1. Time-limits for detention of the accused during the trial

“The term of detention of a person whose case is before a court may not exceed six months from the date when the case is transmitted to the court. In instances where detention as a preventive measure is applied by a court according to the procedure provided [in the present Code] the above-mentioned term starts to run from the moment when the accused is taken into custody.

If there is evidence that the release of the accused will significantly impede [the examination of the case] the court may, either of its own motion or upon the prosecutor's request, extend the term of the [detention] but for no more than three months. Such decision shall be taken before the expiry of the term of the detention provided in paragraph 1 of the present Article.

[...]

The provisions of the present Article are not applicable to persons charged with particularly serious offences.”

Article 261. Procedure of delivery of rulings in a court hearing

“The court delivers rulings concerning all the questions examined in the hearing.

Rulings concerning ... application, modification or cancellation of a preventive measure ... are delivered by the court in the consultation room and are issued as separate documents, signed by the whole composition of the court.

[...]

Ruling delivered by the court during the hearing shall be read out. [...]”

39. Under Article 220-1, complaints about a decision to take the suspect into custody as a preventive measure should be lodged by the detainee or his representative with a court. By Article 220-2, judicial review of the lawfulness and validity of an arrest should be conducted by a judge *in camera* at the place of detention within three days of receipt of the material justifying the arrest.

2. *Code of Criminal Procedure of 2001 in force from 1 July 2002 (“the new CCrP”)*

40. The relevant Articles of the new CCrP provide

Article 97. Grounds for applying a preventive measure

“1. An inquirer, an investigator, a prosecutor or a court within their competence may apply to an accused one of the preventive measures provided for in the present Code when there are sufficient grounds to believe that the accused:

- 1) will evade an inquiry, preliminary investigation or trial;
- 2) may continue criminal activity;
- 3) may threaten a witness or other participants in the criminal proceedings, destroy evidence or otherwise interfere with the course of the criminal proceedings.

2. A preventive measure may also be applied in order to secure enforcement of the sentence.”

Article 99. Circumstances to be considered in applying a preventive measure

“When the need for application of a preventive measure is considered and the type of measure is chosen ... the circumstances to be taken into account shall include the gravity of the charges brought, the personality of the accused, his age, health, family status, occupation and other circumstances.”

Article 101. Order or decision to apply a preventive measure

“1. A preventive measure shall be applied under an order made by an inquirer, an investigator, a prosecutor or a judge, or a decision given by a court, which shall specify the offence of which the person is suspected or accused and the grounds for application of the preventive measure.

2. A copy of the order or decision on the application of the preventive measure shall be handed to the person concerned and to his lawyer or legal representative upon their request.

3. At the same time the procedure for appealing against application of the preventive measure... shall be explained to the person concerned.”

Article 108. Taking into custody

“1. Taking into custody as a preventive measure shall be effected pursuant to a court decision in respect of a person suspected or accused of committing criminal offences for which the law prescribes a penalty in the form of deprivation of liberty for a period of more than two years when application of a milder preventive measure is impossible. ...the judge's decision shall specify concrete factual circumstances which constitute the grounds for such decision. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of liberty for a period of less than two years is prescribed by law, provided that:

- 1) the suspect or accused does not have a permanent residence within the territory of the Russian Federation;
- 2) his identity has not been established;
- 3) he has breached the terms of a previously applied preventive measure; or

4) he has fled from the investigative authorities or from the court. [...]

3. When it is necessary to apply taking into custody as a preventive measure a prosecutor, or an investigator, or an inquirer with the prosecutor's consent, shall file an application with the court. The application must set out reasons and grounds making it necessary to take a suspect or an accused into custody and which make application of another preventive measure impossible. Evidence supporting the grounds set out in the application shall be attached. If the application is filed in respect of a [detained] suspect, the order [on detention] and the indicated evidence shall be submitted to a judge not later than eight hours before the expiration of the term of detention.

4. [The application] shall be considered by a judge alone... with the participation of the suspect or the accused, a prosecutor and counsel if the latter participates in the criminal case, either at the place of preliminary investigation or at the place of detention of the accused within eight hours after the receipt of the file by the court.
...

7. Having examined the application a judge shall deliver one of the following decisions:

1) to [take into custody] the suspect or the accused;

2) to refuse the application;

3) to extend the term of detention. Provided the detention is recognised by the court as lawful and well-grounded, the term of detention may be extended up to 72 hours from the moment of delivering a court decision on application of one of the parties for the submission of additional evidence with regard to the sufficiency or insufficiency of the grounds for... taking into custody. The date and time until which the term of detention is extended shall be indicated in the ruling on extension of the term of detention. ...

10. If the question of application of taking into custody as a preventive measure in respect of the defendant arises in court, the court shall decide on this issue upon the application of a party or of its own motion, and shall make the requisite orders.

11. A ruling of a judge on application or refusal to apply taking into custody as a preventive measure shall be subject to appeal within three days after its delivery. The appeal court shall decide [on the appeal] within three days after it is lodged. [...]

Article 109. Time-limits for pre-trial detention

“1. A period of detention during the investigation of criminal offences may not last longer than two months.

2. If it is impossible to complete a preliminary investigation within two months and if there are no grounds for modification or cancellation of the preventive measure this time-limit may be extended up to six months by a judge of a district or garrison court of the requisite level according to the procedure provided in Article 108 of the present Code. A further extension of this term up to 12 months may be effected in respect of persons accused of committing grave or particularly grave criminal offences only in

cases of special complexity of the criminal case and provided there are grounds for application of this preventive measure by a judge of the same court upon application of the investigator filed with the consent of a prosecutor of a subject of the Russian Federation or a military prosecutor of equal status.

3. A term of detention beyond 12 months may be extended to 18 months only in exceptional cases and in respect of persons accused of committing grave or particularly grave criminal offences by [a judge] upon application of an investigator filed with the consent of the Prosecutor General of the Russian Federation or his deputy.

4. Further extension of the time-limit is not allowed. [...]

Article 110. Cancellation or modification of a preventive measure

“1. A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the grounds for its application ... change.

2. The cancellation or modification of a preventive measure shall be effected by an order of the person carrying out the inquiry, the investigator, the prosecutor or the judge or by a court decision.

3. A preventive measure applied at the pre-trial stage by the prosecutor or by the investigator or the inquirer upon his written instructions may be cancelled or changed only with the prosecutor's approval.”

Article 228. Issues to be decided in respect of a criminal case received by the court

“In respect of a criminal case [received by the court] the judge has to decide in respect of each accused the following:

...

3) whether the preventive measure applied is subject to cancellation or modification [.]

[...]”

Article 255. Decision concerning a preventive measure

“1. In the course of a judicial hearing the court may apply, change or cancel a preventive measure in respect of the defendant.

2. If taking into custody is applied to the defendant as a preventive measure, the term of detention from the date when the criminal case is submitted to the court and until the sentence is delivered may not exceed six months except as provided in paragraph 3 of this Article.

3. ...[U]pon expiry of six months from the date when the criminal case was submitted to it, the [trial] court may extend the term of detention... only in respect of a

criminal case concerning grave and particularly grave criminal offences and for not more than three months each time.

4. A court decision on extension of the term of detention of the defendant may be appealed against. The appeal does not suspend the criminal proceedings.”

Article 237. Return of the case to the prosecutor

“1. The judge, upon a party's application or upon his own initiative, returns the case to the prosecutor for elimination of the obstacles for its examination by the court, if:

1) the bill of indictment ... was drawn up in breach of the provisions of the present Code, which exclude the possibility of rendering a judgment ... on its basis;

2) the accused has not been provided with a copy of ... the bill of indictment;

3) it is required to draw up a bill of indictment ... in a case that has been transmitted to the court together with an order to apply preventive measures of medical character.

2. In instances provided for in the first part of the present article the judge obliges the prosecutor to rectify the breaches within five days.

3. When returning the case to the prosecutor the judge shall decide on application of the preventive measure to the accused.”

2. Ruling of the Constitutional Court no. 4-II of 22 March 2005

41. On 22 March 2005 the Constitutional Court of the Russian Federation adopted Ruling no. 4-II in respect of a complaint concerning the *de facto* extension of pre-trial detention after the transmittal of the case-file from the prosecution authorities to the trial court. It found that the challenged provisions of the new CCrP complied with the Constitution of the Russian Federation. However, their practical interpretation by the courts may have contradicted their constitutional meaning. In part 3.2. of the Ruling the Constitutional Court held:

“The second part of Article 22 of the Constitution of the Russian Federation provides that [...] the detention is permitted only on the basis of a court order [...]. Consequently, if the term of detention, as defined in the court order, expires, the court shall decide on the extension of the detention, otherwise the accused person should be released [...].

These rules are common for all stages of criminal proceedings, and also cover the transition from one stage to another. [...] The transition of the case to another stage does not automatically put an end to the preventive measure applied at previous stages.

Therefore, when the case is transmitted by the prosecution to the trial court, the preventive measure applied at the pre-trial stage [...] may continue to apply until the expiry of the term, for which it has been set in the respective court decision [imposing it] [...]

[Under to Articles 227 and 228 of the Code of Criminal Procedure] a judge, after having received the criminal case concerning a detained defendant, should, within 14 days, set a hearing and establish “whether the preventive measure applied should be lifted or changed”. This wording implies that the decision to detain the accused or extend his detention, taken at the pre-trial stage, may stand after the completion of the pre-trial investigation and transmittal of the case to the court, only until the end of the term, for which the preventive measure has been set.

The prosecution, in its turn, while approving the bill of indictment and transferring the case-file to the court, should check whether the term of detention has not expired and whether it is sufficient to allow the judge to take a decision [on further detention of the accused pending trial]. If by the moment of transferral of the case-file to the court this term has expired, or if it appears to be insufficient for allowing the judge to take a decision [on detention], the prosecutor, pursuant to Articles 108 and 109 of the Code of Criminal Proceedings, [should] request the court to extend the period of detention.”

B. Forensic medical examination

Article 188. Placement of the accused or the suspect in a medical institution

“If forensic medical examination or forensic psychiatric examination requires inpatient supervision, the investigator places the accused or the suspect in a corresponding medical institution, which shall be indicated in the order to conduct the examination.

...

The time spent in the psychiatric medical institution shall be counted towards the term of detention...”

42. Under Section 40 § 2 of the Law on Psychiatric Aid of 2 July 1992 provides that a patient may be discharged from a psychiatric hospital upon completion of the examination he was placed in the hospital for.

C. Lodging of applications

43. Article 235 governs the procedure for examination of an application to exclude certain evidence.

44. Article 271 provides general rules for lodging and examination of applications.

THE LAW

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

45. The applicant complained under Article 5 of the Convention that her pre-trial detention had been unlawful. The Court will examine the complaint under Article 5 § 1 (c), which reads 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[.]”

1. The parties' submissions

46. The applicant contended that her pre-trial detention had been unlawful because it had not been authorised by a proper authority in accordance with the procedure prescribed by law.

47. The Government submitted that the applicant's pre-trial detention had been authorised by a proper authority. In particular, as regards the period between 5 June and 6 December 2002, on 5 June 2002 the bill of indictment and the case file had been transmitted to the Leninskiy District Court, which had received them on 10 June 2002 and fixed a hearing for 24 June 2002. On the date of the hearing the applicant had filed an application for release pending trial, which had been dismissed by the court. On 6 and 28 November 2002 the Leninskiy District Court had refused two other applications for release pending trial made by the applicant. On 6 December 2002 the same court had extended the applicant's detention until 10 January 2003. Her appeal against both rulings had been dismissed on 18 December 2002 by the Penza Regional Court. As regards the period between 28 February and 23 May 2003 the Government submitted that the applicant had been detained because her case had been pending before the court and the issues concerning her detention had been decided in accordance with the legislation on criminal procedure.

48. The Government further submitted that the decisions of 24 June, 6 and 28 November 2002 dismissing the applicant's applications for release had legal effect equivalent to a decision to extend the term of her detention. Therefore, they constituted sufficient legal basis for the applicant's pre-trial detention. Furthermore, as regards the decision of 28 November 2002, when the court returned the case to the prosecutor for the bill of indictment to be amended, pursuant to Article 237 of the new CCrP the court had to rule on

the preventive measure to be applied to the applicant irrespective of her application for release. The Government concluded that the applicant's pre-trial detention had been compatible with Article 5 § 1.

2. The Court's assessment

(a) General principles

49. 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.

50. 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).

(b) Pre-trial detention from 5 January to 5 June 2002

51. The Court notes that the applicant was arrested on 5 January 2002. The decision to remand her in custody pending trial was taken on 8 January 2002. On 19 February 2002 the applicant was placed in a psychiatric hospital under an obligation not to leave the place without permission. She was re-detained on 22 March 2002 and her subsequent detention was authorised by the prosecutor's decisions of 22 March, 1, 17 and 30 April 2002. By the latest decision the term of her pre-trial detention was extended to 5 June 2002. It follows that the applicant's detention was duly authorised throughout this period.

52. In these circumstances, the Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 5 January to 5 June 2002.

(c) Pre-trial detention from 5 to 24 June 2002

53. The Court notes that by the decision of 30 April 2002 the prosecutor extended the term of the applicant's pre-trial detention until 5 June 2002. On that date the case was transmitted to court. However, no decision concerning the preventive measure to be applied to the applicant was taken. On 24 June 2002 the Leninskiy District Court of Penza dismissed an application for release filed by the applicant.

54. The Government maintained that from 5 to 24 June 2002 the applicant was detained on the basis of the fact that the criminal case against her had been referred to the trial court, which complied with domestic rules of criminal procedure.

55. The Court observes that it has already found a violation of Article 5 § 1 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 court competent to try the case (see *Khudoyorov v. Russia*, no. 6847/02, §§ 144-151, 8 November 2005; *Baranowski v. Poland*, cited above, §§ 53-58 and *Ječius v. Lithuania*, cited above, §§ 60-64). It 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 – is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (*ibid.*). The Court sees no reason to reach a different conclusion in the present case.

56. Therefore, there has been a violation of with Article 5 § 1 of the Convention on account of the applicant's detention from 5 to 24 June 2002.

(d) Pre-trial detention from 24 June to 28 November 2002

57. The Court notes that, during the period from 24 June to 28 November 2002, the trial court ruled on two applications for release lodged by the applicant. In the ruling of 24 June 2002 the Leninskiy District Court dismissed the applicant's application for release on the grounds that detention as a preventive measure had been lawfully applied to her by the investigator and authorised by the prosecutor and there had been a risk of her absconding. In the ruling of 6 November 2002 the same court dismissed another application for release on the grounds that the applicant was charged with serious offences and had neither a permanent residence nor a job in Penza and that the preventive measure had been applied in accordance with the law and there were no grounds for its modification.

58. The Government argued that the decisions of 24 June and 6 November 2002 had a legal effect equivalent to that of a decision on extension of the term of detention and, therefore, they constituted sufficient legal basis for the applicant's pre-trial detention.

59. The Court notes, however, that the latest extension of the applicant's detention was authorised by the prosecutor on 30 April 2002 until 5 June 2002. On the latter date the case was transmitted to court and no decision concerning the applicant's detention was taken by the trial court. The Court further notes that under Articles 222 and 223.1 of the old CCrP, which remained in force until 30 June 2002, when scheduling a hearing, the judge had to decide on the preventive measure to be applied to the applicant within 14 days after the case has been committed for trial. Article 228 of the new CCrP provides that the judge should decide on the preventive measure when a criminal case is received by the court.

60. The Court observes that the rulings of 24 June and 6 November 2002 were delivered under neither Articles 222 and 223.1 of the old CCrP, nor under Article 228 of the new CCrP. In the ruling of 24 June 2002 the court referred to Article 261 of the old CCrP, and in the ruling of 6 November 2002 to Articles 235 and 271 of the new CCrP. Furthermore, both rulings clearly referred to the prosecutor's decision on extension of the applicant's detention, although it had expired on the date when the case had been transmitted for trial and the applicant had been in detention for almost 20 days without any authorisation whatsoever.

61. The Court considers that the applications for release filed by the applicant did not exempt the domestic authorities from the obligation to authorise the applicant's detention "in accordance with a procedure prescribed by law" by issuing a formal detention order, as provided by Article 5 § 1. Finding otherwise would place on the applicant, rather than the authorities, the burden to ensure a lawful basis for her continued detention.

62. The Court therefore finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 24 June to 28 November 2002.

(e) Pre-trial detention from 28 November to 6 December 2002

63. The Court notes that on 28 November 2002 the Leninskiy District Court returned the case to the prosecutor for the bill of indictment to be amended. At the same time the court dismissed the applicant's application for release and ordered her to remain in detention since she was accused of having committed serious offences and there were no grounds to change the preventive measure. The Court further notes that under Article 237 of the new CCrP when a court returns a case to a prosecutor it has to decide on a preventive measure to be applied to the applicant. Therefore, the decision of 28 November 2002 was taken in accordance with the above provision of the new CCrP. The Court observes that a particular term during which the applicant should remain in custody was not indicated in the decision. However, Article 255 of the new CCrP provides a six-month time-limit for detention after the case has been committed for trial which, when a

particular term is not indicated in the court order, applies automatically. Therefore, the Court finds that the applicant's ensuing detention was duly authorised.

64. Accordingly, there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 28 November to 6 December 2002.

(f) Pre-trial detention from 6 December 2002 to 28 February 2003

65. The Court notes that on 6 December 2002 the Leninskiy District Court extended the applicant's pre-trial detention until 10 January 2003. On 26 December 2002 the same court subsequently extended the detention until 28 February 2003. On 22 February 2002 the applicant's case was again transmitted for trial. The trial court did not rule on the preventive measure to be applied to the applicant. The Court observes that in the ruling no. 4-Π of 22 March 2005 the Constitutional Court held that “the transition of the case to another stage does not automatically put an end to the preventive measure applied at previous stages”. Accordingly, the extension of the applicant's detention until 28 February 2003 remained valid irrespective of the fact that her case was transmitted for trial. It follows that the applicant's detention was duly authorised throughout this term.

66. In these circumstances, the Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 6 December 2002 to 28 February 2003.

(g) Pre-trial detention from 28 February to 23 May 2003

67. The Court notes that on 22 February 2002 the applicant's case was again committed for trial. Although the authorised term of her detention expired on 28 February 2003, there is no evidence that a separate decision concerning the applicant's detention was taken. Nevertheless, she remained in custody. In the absence of authorisation of the subsequent term of the applicant's detention and having regard to its finding in § 56 above, the Court concludes that the applicant's detention was not compatible with the Convention's requirements.

68. Accordingly, there has been a violation of with Article 5 § 1 (c) of the Convention on account of the applicant's detention from 28 February 2003 to 23 May 2003.

3. Summary of the findings

69. The Court has found no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 5 January to 5 June 2002, from 28 November to 6 December 2002 and from 6 December 2002 to 28 February 2003.

70. The Court has found a violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 5 to 24 June 2002, from 24 June to 28 November 2002 and from 28 February to 23 May 2003.

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

71. The applicant complained under Article 5 of the Convention that there had been no reasonable grounds for her to be held in remand prison for such a lengthy period.

The Court will examine the complaint under Article 5 § 3, which reads, in so far as relevant, 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. Release may be conditioned by guarantees to appear for trial.”

1. *The parties' submissions*

72. The applicant averred that the overall term of her pre-trial detention, that is almost 1 year and 5 months, had been excessive and unreasonable. Furthermore, she contended that the reasons for her continued detention had not been sufficiently specified. She had had a permanent place of residence, a job, and there had been no evidence of her intention to abscond and hinder the investigation. The reference to her having sought to evade the investigation in 2001 had not corresponded to the facts of the case because she had not even been notified about the institution of the criminal proceedings against her and had become aware of having been placed on a wanted list only when studying the case file. Furthermore, when remanding her in custody the domestic authorities paid no regard either to her state of health or to the fact that she had had two little children that had been left with no means of subsistence. The applicant also submitted that during her placement in the psychiatric hospital she had been *de facto* deprived of her liberty and therefore that period should be counted towards her pre-trial detention.

73. The Government noted, referring to *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 24, § 10, that the reasonableness of continued detention must be assessed in each case according to its special features. They further noted that according to the Court's case-law the principal grounds for detention besides reasonable suspicion are the danger of absconding, the risk of collusion and the need to prevent the accused committing further offences (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 14, § 31). The Government submitted that when imposing detention as a preventive measure in respect of the applicant the investigation authorities and the courts had taken into consideration the fact that in 2001 she had sought to evade the investigation,

had had no place of residence and, therefore, being free could evade the trial. Furthermore, she had been accused of having committed a grave offence. In the Government's view the domestic authorities and courts had sufficient grounds to consider the applicant's detention necessary to prevent her from committing further offences and evading justice.

74. The Government further submitted that under the Law on Psychiatric Aid a person placed for an examination can not freely leave the hospital. However, placement in a hospital “cannot be considered as deprivation of liberty since it is not a type of punishment”. They also submitted that, at the same time, under Article 188 of the old CCrP in force at the material time “the time of stay in a mental medical institution included into the term of holding in custody and in this connection the time of [the applicant's] stay in psychiatric hospital belongs to the aggregate [length] of preliminary detention”.

2. *The Court's assessment*

(a) **General principles**

75. Under the Court's case-law, a person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see, e.g., the *Yagci and Sargin v. Turkey* judgment of 8 June 1995, Series A no. 319-A, § 52). Refusing bail should be justified either by the risk that the accused will fail to appear for trial, will interfere with the course of justice, or is likely to commit further offences. The severity of the potential sentence, though important, is not an independent ground and cannot itself justify the refusal of bail (*Yagci and Sargin v. Turkey*, cited above, § 52).

76. Arguments for and against release must not be “general and abstract” (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, § 44). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

77. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (*Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

(b) Application of the principles to the present case

78. The Court notes that the applicant was arrested on 5 January 2002 and released on 23 May 2003. Between 19 February and 22 March 2002 the applicant stayed in a psychiatric hospital where she was placed for an examination under an obligation not to leave the place without permission. Under Article 188 of the old CCrP the time spent by a suspect or an accused in a psychiatric institution counted towards the overall term of pre-trial detention. The Court sees no reason to deviate from domestic rules in this respect. Accordingly, the total duration of the applicant's detention amounted to 1 year, 4 months and 18 days.

79. The Court further notes that in a number of decisions to remand the applicant in custody domestic authorities relied on the lack of a permanent residence in Penza and her being previously placed on a wanted list. In her observations the applicant contended that she had had a permanent place of residence, had never absconded from the investigation and had learnt about having been placed on the wanted list only when studying the case file. The Court observes that it is not sufficiently clear whether referring to "the lack of permanent residence in Penza" the domestic authorities meant that the applicant, who had two dependent children and was corresponding with the Court using a residential address in Penza, had nowhere to live in Penza or that she did not have a permanent residential registration in Penza. However, it does not find it necessary to decide on these issues and shall assume, for the purposes of the following analysis, that the applicant indeed absconded from the investigation at the initial stages and had no fixed residence in Penza.

80. The Court accepts that the applicant's arrest on 5 January 2002 may have been warranted by a reasonable suspicion that she had committed fraud and the fact that she had been placed on a wanted list. The decision to remand her in custody of 8 January 2002 was based on her placement on the wanted list and the risk of absconding and interfering with the course of justice. It accepts that these grounds were relevant and sufficient at that stage of the applicant's pre-trial detention.

81. On 19 February 2002 the applicant was placed in a psychiatric hospital for examination and re-detained upon her release on 22 March 2002. The decision to re-detain the applicant was based solely on the ground of the gravity of the charges. Furthermore, in the decisions to extend the applicant's detention or to dismiss her applications for release of 17 April, 6 May, 28 November and 6 December 2002, the prosecution authorities and courts also relied only on the gravity of the charges as the ground for the applicant's continued detention. 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; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001). Accordingly,

the reasons for the applicant's detention adduced by the domestic authorities in the above decisions were not sufficient.

82. The Court notes that, in the decisions to extend the applicant's detention or to dismiss her applications of release of 1 and 30 April, 24 June, 6 November and 26 December 2002, the prosecution authorities and courts relied not only on the gravity of the charges, but also on the absence of a permanent residence in Penza or previous placement on the wanted list. While the mere absence of a fixed residence does not give rise to a danger of flight (*Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005), this element, combined with the placement on the wanted list, could support the existence of a risk of absconding at the initial stages of the investigation. However, the danger of flight necessarily decreases with the passage of time spent in detention (*Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 39, § 10). The Court considers that, although these grounds might be relevant and sufficient at initial stages of investigation, the mere reiteration thereof at later stages of investigation without scrupulous examination of evolving circumstances could not be sufficient to justify the applicant's continued detention (*Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 69-71, ECHR 2003-IX (extracts)). In particular, in their decisions to remand the applicant, the domestic authorities did not address specific grounds for release put forward in the applicant's applications for release, such as her state of health and two dependant children, and failed to consider any alternative preventive measures.

83. Accordingly, even though the applicant's detention might have been warranted at the initial stages of the investigation, the Court finds that the domestic authorities failed to adduce relevant and sufficient reasons to justify its prolongation up to 1 year, 4 months and 18 days. In such circumstances it is not necessary to examine whether the authorities displayed "special diligence" required in the handling of criminal proceedings against remand prisoners.

84. Therefore, there has been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 100,000 euros (EUR) for compensation of non-pecuniary damage caused by unlawful and unreasonably long pre-trial detention.

87. In the Government's view, the finding of a violation would constitute sufficient compensation in the present case.

88. The Court notes that the applicant's detention was unlawful for several months and, when it was “lawful”, it was not based on sufficient grounds. The Court considers that, as a consequence, the applicant must have suffered frustration, helplessness and a feeling of injustice that cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

89. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court.

90. Accordingly, the Court makes no award under this head

C. Default interest

91. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 5 to 24 June 2002, from 24 June to 28 November 2002 and from 28 February to 23 May 2003;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 5 January to 5 June 2002, from 28 November to 6 December 2002 and from 6 December 2002 to 28 February 2003;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President