



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

FIRST SECTION

CASE OF KORSHUNOV v. RUSSIA

(Application no. 38971/06)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Korshunov 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,

Mrs E. STEINER,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 38971/06) 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 Maksim Gennadyevich Korshunov ("the applicant"), on 26 July 2006.

2. The applicant was represented before the Court by Mr A. Taliadoros, a lawyer practising in Nicosia, Cyprus, and Sir Francis Jacobs QC and Mr D. Murray, barristers in London, the United Kingdom. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mrs V. Milinchuk.

3. On 7 November 2006 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. Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court) and decided that the proceedings in this case would be conducted simultaneously with those in application no. 42940/06 *Govorushko v. Russia* (Rule 42 of the Rules of Court).

4. 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

5. The applicant was born in 1971 and lives in St Petersburg.

A. Criminal proceedings against the applicant

6. On 7 August 2000 a criminal case was opened into smuggling of consumer goods.

7. On 25 June 2002 the Investigations Department of the Federal Security Service (“FSB”) declared the applicant to be a suspect in the criminal case. His whereabouts, however, could not be established. On 12 July 2002 the applicant's name was put on the list of fugitives from justice.

8. On 23 November 2003 the applicant was arrested by the Chinese police in Guangzhou, China, where he lived with his family.

9. On 26 November 2003 the applicant was extradited to Russia where he was taken into custody by the FSB. He was charged with several counts of aggravated smuggling.

10. From April to November 2005 the applicant was granted access to the materials in the case file.

11. On 29 November 2005 the case was referred for trial before the Avtozavodskiy District Court of Nizhniy Novgorod. According to the Government, the case materials comprised 113 binders; charges had been brought against five individuals who had acted in conspiracy; the witnesses' list included seventy-six prosecution witnesses from several cities in Russia, Belarus, Ukraine, China and Italy, as well as twenty-five witnesses and experts for the defence.

12. On 16 December 2005 the Avtozavodskiy District Court held the preliminary hearing and fixed the opening trial date for 28 December 2005.

13. On 23 March 2006 the Avtozavodskiy District Court ordered that the case be returned to the Prosecutor General's Office for correcting defects in the indictment against the applicant. That decision was set aside by the Nizhniy Novgorod Regional Court on 2 May 2006, which referred the case back to the District Court.

14. On 29 May 2006 the trial resumed but it was subsequently stayed from 23 June to 24 July 2006.

15. On 31 January 2007 the applicant was released on bail.

16. According to the information provided by the parties and the elements available in the case-file to date, the criminal proceedings are still pending before the trial court.

B. Decisions concerning the application of a custodial measure

17. On 26 November 2003 the Lefortovskiy District Court of Moscow ordered the applicant's detention on the grounds that he was charged with a particularly serious offence and could abscond, or interfere with, the investigation. On 10 December 2003 the Moscow City Court upheld the detention order, following an appeal by the applicant's counsel.

18. On 23 January, 5 April and 4 August 2004 the Lefortovskiy District Court extended the applicant's detention. Each time the District Court referred to the gravity of the charge against the applicant and to unspecified grounds to believe that he would abscond.

19. Further extensions were granted by the Moscow City Court on 24 November 2004, 25 March and 5 May 2005. By way of justification, the City Court invoked the gravity of the charges against the applicant and noted that the applicant had been in hiding from 2002 to 2004 [*sic*] and that two other co-defendants had also absconded. The extension order of 5 May 2005 specified that the applicant should remain in custody “until the defendants and their counsel had finished studying the case file, the prosecutor had referred the case for trial and the trial court had decided on the measure of restraint”.

20. The applicant's appeals against the extension orders were rejected.

21. On 29 November 2005 the applicant was moved to remand centre no. IZ-52/1 in Nizhniy Novgorod.

22. On 16 December 2005 the Avtozavodskiy District Court extended the applicant's detention, referring to the gravity of the charges against the applicant, his history of absconding, and the risk that he would “otherwise” interfere with the course of the trial because two other defendants had gone into hiding. On 24 January 2006 the Nizhniy Novgorod Regional Court upheld that decision on appeal.

23. On 1 June 2006 the Avtozavodskiy District Court, by a single decision, ordered to extend the applicant's and his co-defendant's detention until 2 September 2006, holding as follows:

“In deciding on extending the period of detention, the court takes into account that the measure of restraint in respect of [the applicant and his co-defendant] was imposed in accordance with Articles 97 to 101 and 108 of the Code of Criminal Procedure as there existed sufficient grounds to believe that they would abscond investigation and trial or interfere with the criminal proceedings. The grounds justifying the application of the measure of restraint still obtain to date. Positive references of the defendants and their medical ailments do not remove the grounds to believe that they can abscond because they are charged with particularly serious offences”.

24. Counsel for the applicant filed an appeal. He submitted, in particular, that the first-instance court had failed to take into account the facts mitigating for the applicant's release, such as the absence of a prior criminal record, positive references, a need to provide for his minor son, his chronic

ailments, and the long period of detention which had already exceeded thirty months.

25. On 26 June 2006 the Nizhniy Novgorod Regional Court upheld on appeal the extension order of 1 June 2006, noting that the initial grounds justifying the holding of the applicant and his co-defendant in custody still obtained and that the defence had not put forward any arguments warranting a change in the preventive measure.

26. On 21 August and 16 November 2006 the Avtozavodskiy District Court granted further extensions of the applicant's and his co-defendant's detention, invoking two grounds: that they were charged with particularly serious offences punishable with up to twelve years' imprisonment, and that the applicant had once absconded, whereas the investigation had established that his co-defendant had planned to abscond.

27. In the decision of 21 August 2006 the District Court found that:

“...if the preventive measure is replaced with a more lenient one, there exists a risk that the defendants would not appear at trial; thus, only the custodial measure may... ensure the protection of the interests of the State and society against crime and the possibility of a fair trial.”

28. The decision of 16 November 2006 employed a somewhat different wording which read as follows:

“Another, more lenient preventive measure, such as bail, would not be able to ensure a fair trial in this particular case. For that reason the need to ensure an effective protection of the public interests – notwithstanding the presumption of innocence and long periods of detention of both defendants – justifies a departure from the principle of individual liberty.”

29. On 11 September and 15 December 2006 the Nizhniy Novgorod Regional Court upheld, in a summary fashion, the above decisions.

30. On 30 January 2007 the Avtozavodskiy District Court granted the applicant's and his co-defendant's application for release on bail. It found that, although the risk of absconding still existed, with the passage of time that risk was no longer sufficient to justify a breach of the principle of individual liberty. The bail was set at 1,500,000 Russian roubles (approximately 44,000 euros). On the following day the applicant was released.

II. RELEVANT DOMESTIC LAW

A. Provisions governing detention pending trial

31. Since 1 July 2002 detention matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

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

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

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

35. After arrest the suspect is placed in custody “during the investigation”. The maximum permitted period of detention “during the investigation” is two months but it can be extended for up to six months. Further extensions for up to twelve or eighteen months may be authorised only if the accused is charged with serious or particularly serious criminal offences (Article 109 §§ 1-3).

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

B. Provisions on State liability for unlawful detention

37. The State or regional treasury is liable – irrespective of any fault by State officials – for the damage sustained by an individual on account of, in particular, unlawful criminal prosecution or unlawful application of a preventive measure in the form of placement in custody (Article 1070 § 1 of the Civil Code).

38. A court may hold the tortfeasor liable for non-pecuniary damage incurred by an individual through actions impairing his or her personal non-property rights, such as the right to personal integrity and the right to liberty of movement (Articles 150 and 151 of the Civil Code). Non-pecuniary damage must be compensated for irrespective of the tortfeasor's fault in the event of, in particular, unlawful conviction or prosecution or unlawful application of a preventive measure in the form of placement in custody (Article 1100 § 2).

THE LAW

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

39. The applicant complained under Article 5 § 1 of the Convention that his arrest had not been necessary to prevent him from committing offences or fleeing after having done so. Moreover, his detention from 26 May to 29 November 2005 had been unlawful because it had been extended in excess of the maximum period established in the domestic law.

40. The Court notes that the applicant's arrest and the allegedly unlawful period of his detention predated the lodging of his application by more than six months. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

41. The applicant complained under Article 5 § 3 of the Convention that the duration of his pre-trial detention had been in breach of the reasonable-time requirement. Article 5 § 3 provides as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

43. The Government stressed that the facts invoked by the defence in support of the applicant's petition for release – such as a permanent place of residence and family connection – had been duly taken into account by the domestic courts. Extension orders had been founded on the gravity of the charges against the applicant, as well as on the fact that the applicant had fled investigation, for a long time lived outside Russia, and had been placed on the list of fugitives from justice. The Government emphasised that in

January 2007 the applicant had been released on bail, although the grounds for holding him in custody had still obtained.

44. The applicant denied that he had been in hiding. He claimed firstly that the investigator's summons had not been properly served on him or on his relatives. At the time when the decision to initiate his search had been made (in July 2002), he had lived at his permanent place of residence in St Petersburg. During the entire period of pre-trial investigation, the applicant had travelled between Russia and China many times with no difficulty which was evidenced by the stamps in his passport. He had never been put on the international wanted list and the Government had not produced any evidence to the contrary. The courts had not reviewed or taken into consideration the facts that the applicant had been of good character and the single wage-earner in his family of three, and that he had never been criminally prosecuted. Moreover, the Russian courts had not considered alternative means to secure his attendance at court, thereby violating Article 108 of the Code of Criminal Procedure.

2. The Court's assessment

45. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30; *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

46. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, § 30, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 4).

47. The applicant was held in custody from 23 November 2003 to 31 January 2007 when he was released on bail. Such a length of pre-trial detention – over three years and two months – is a matter of grave concern for the Court. It observes that until January 2007 the domestic authorities never considered whether the length of his detention had already exceeded a

“reasonable time”. The fact that the maximum time-limits permitted by the domestic law were not exceeded may not be a decisive element for the Court's assessment. The calculation of the domestic time-limits depended solely on the gravity of the charges which was decided upon by the prosecution and was not subject to a judicial review (see *Shcheglyuk v. Russia*, no. 7649/02, § 43, 14 December 2006, and paragraphs 35 and 36 above). The Court reiterates that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such a long time (see *Korchuganova v. Russia*, no. 75039/01, § 71, 8 June 2006).

48. The Court observes that in 2003 the applicant was apprehended outside Russia on suspicion of having committed large-scale smuggling in conspiracy with others. It accepts therefore that his detention could have initially been warranted by a reasonable suspicion of his involvement in the commission of a criminal offence and considered necessary to prevent him from fleeing and to bring him before the competent legal authority. However, with the passage of time those grounds inevitably became less and less relevant. Nevertheless, over the following three years the courts' reasoning did not evolve to reflect the developing situation and to verify whether these grounds remained sufficient at the advanced stage of the proceedings.

49. During the entire period of the applicant's detention the District Courts – first in Moscow and then in Nizhniy Novgorod – ordered the applicant's continued detention on the basis of the gravity of the charges against him and the persistent existence of “grounds that [had] justified the application of the measure of restraint” (see paragraphs 23 and 25 above). In addition, they occasionally mentioned the fact that his co-defendants either had already absconded or had an intention to do so (see, in particular, paragraphs 22 and 26 above). They also mentioned that the applicant could interfere with the criminal proceedings, without explaining the reasons for that finding (see paragraph 23 above).

50. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51). This is particularly relevant 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 v. Russia*, no. 6847/02, § 180, 8 November 2005).

51. Further, the Court reiterates that the conduct of a co-accused cannot be a factor for the assessment of the risk of the detainee's absconding since such assessment must be based on personal circumstances of the detainee (see *Mamedova v. Russia*, no. 7064/05, § 76, 1 June 2006). The applicant constantly invoked the facts mitigating the risk of his absconding after a long time he had spent in detention (see paragraph 24 above). However, the domestic courts rejected without further scrutiny the applicant's arguments that he had no previous criminal record, positive references, that he had to provide for a minor son and also that he suffered from chronic ailments. The courts assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have obtained the applicant's release (see, for instance, the Avtozavodskiy District Court's decision cited in paragraph 23 above). In this connection the Court reiterates that any system of mandatory detention is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty.

52. The Court has previously found a violation of Article 5 § 3 of the Convention in several Russian cases where the domestic courts prolonged an applicant's detention relying essentially on the gravity of the charges and using stereotyped formula paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case or considering alternative preventive measures (see the *Belevitskiy*, *Mamedova* and *Khudoyorov* cases cited above, and also *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko v. Russia*, no. 45100/98, §§ 91 et seq., 8 February 2005; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

53. Having regard to its case-law on the subject and the above considerations, the Court concludes that the domestic authorities did not adduce "relevant and sufficient" reasons to justify the applicant's detention in excess of a "reasonable time". In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

55. The applicant further complained that he did not have an enforceable right to compensation for a violation of his right to trial within a reasonable time or to release pending trial. He relied on Article 5 § 5 of the Convention which provides as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

56. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

57. In the Government's view, in the absence of a violation of Article 5 § 3 of the Convention no question of a possible violation of the applicant's right to compensation could arise. Article 1070 of the Civil Code provided for the right to compensation for unlawful detention. Detention could be found unlawful by a judicial decision if, in particular, an arrest warrant or extension order had not been based on relevant and sufficient reasons. In the applicant's case, however, the appeal courts upheld all the extension orders as lawful. Finally, the Government pointed out that the applicant would have the right to compensation if he is eventually acquitted of the charges.

58. The applicant maintained his complaint.

2. The Court's assessment

59. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005, and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

60. In the present case the Court has found a violation of paragraph 3 of Article 5 in that the applicant's three-year detention exceeded a “reasonable

time” and was not based on “relevant and sufficient” reasons. It must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5.

61. The Court observes that, pursuant to the relevant provisions of the Russian Civil Code (see paragraphs 37 and 38 above), an award in respect of pecuniary and/or non-pecuniary damages may be made against the State only if the detention is found to have been unlawful in the domestic proceedings. In the present case, however, the appeal courts routinely upheld the lawfulness of the detention and extension orders and the applicant therefore had no grounds to claim compensation.

62. Furthermore, the Court notes that the provisions invoked by the Government do not provide for State liability for the detention which was not based on “relevant and sufficient” reasons or which exceeded a “reasonable time”. This state of Russian law precludes any legal possibility for the applicant to receive compensation for the detention which was effected in breach of Article 5 § 3 of the Convention (compare *Cahit Solmaz v. Turkey*, no. 34623/03, § 46, 14 June 2007, and *Çiçekler v. Turkey*, no. 14899/03, § 65, 22 December 2005).

63. Thus, the Court finds that the applicant does not have an enforceable right to compensation for his detention which has been found to be in violation of Article 5 § 3 of the Convention.

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

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

64. The applicant further complained that the length of the criminal proceedings against him had been in breach of the reasonable-time requirement in Article 6 § 1 of the Convention which reads:

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

A. Admissibility

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Submissions by the parties*

66. The Government submitted that the length of the proceedings was accounted for by the complexity of the case, the amount of case documents (113 binders), and the number of witnesses (seventy-six for the prosecution and twenty-five for the defence).

67. The applicant pointed out that the proceedings had lasted so far six years and eight months which period was clearly in excess of a reasonable time. Substantial delays had been attributable to the authorities. Thus, from 23 March to 29 May 2006 the trial had been stayed because the court had asked the prosecutor to correct defects in the bill of indictment. In addition, from 23 June to 24 July 2006 the proceedings had been adjourned because all three judges had gone on holiday. The applicant had remained in custody during these periods.

2. *The Court's assessment*

68. The Court reiterates that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court (see, for example, *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, § 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted, or the date when preliminary investigations were opened (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, § 19; *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 18; and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 110). “Charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see *Deweert*, cited above, § 46).

69. The Court notes that, in his submissions under Article 5 § 3 of the Convention (see paragraph 44 above), the applicant denied that the investigator's summons had been communicated to him. Nor had he been aware of the decision to put his name on the list of fugitives from justice. The Court therefore takes the date of his arrest, 23 November 2003, as the starting date of the proceedings. These proceedings are now still pending before the trial court. They have thus lasted to date more than three years and nine months.

70. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law,

in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

71. The Court notes that the applicant does not appear to have caused any delays in the proceedings. Moreover, the fact that he was held in custody required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see *Panchenko*, cited above, § 133, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

72. On the other hand, the proceedings were delayed owing to the conduct of the domestic authorities. After the case had been submitted for trial in November 2005, the trial would not be able to begin for several months because of the domestic courts' disagreement on the existence of defects in the indictment bill (see paragraph 13 above). This delay is attributable to the domestic authorities.

73. The Court observes that almost four years after the beginning of the criminal proceedings against the applicant, the trial court has yet not delivered its judgment. It also notes that the applicant spent a substantial part of that period in custody. In these circumstances, it considers that the length of the proceedings has exceeded a "reasonable time".

74. There has therefore been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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."

76. By letter of 12 March 2007, the Court invited the applicant to submit a claim for just satisfaction by 23 April 2007. Further to his request, it exceptionally granted him an extension until 23 May 2007. Nevertheless, the applicant did not submit a claim for just satisfaction within the extended time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the length of the applicant's detention, the existence of an enforceable right to compensation for the excessively long detention, and the length of the proceedings in the

applicant's case admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President