



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

FIRST SECTION

CASE OF POPKOV v. RUSSIA

(Application no. 32327/06)

JUDGMENT

STRASBOURG

15 May 2008

FINAL

29/09/2008

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 Popkov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 1 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 32327/06) 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 Roman Andreyevich Popkov ('the applicant'), on 8 July 2006.

2. The applicant was represented before the Court by Mr D. Agranovskiy, a lawyer practising in the Moscow Region. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his detention pending trial had been unlawful and excessively long.

4. On 14 February 2007 the Court decided to communicate the complaint about the allegedly excessive length of detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978 and lives in Moscow.

A. Background information

7. The applicant was a member of a public association, the National Bolshevik Party. On 15 November 2005 the Supreme Court of the Russian Federation ordered its dissolution. On 19 January 2006 the Federal Registration Service of the Ministry of Justice refused an application for registration of a political party by the same name. Party members challenged the refusal before the Taganskiy District Court of Moscow.

8. On 13 April 2006 fifteen party members, including the applicant, came to the Taganskiy District Court for a hearing concerning the refusal to register the National Bolshevik Party. The applicant alleged that near the court building they had been attacked by a group of forty people and had had to defend themselves. According to the Government, the party members, including the applicant, had assaulted passers-by with gas guns and rubber truncheons.

B. Criminal proceedings against the applicant

9. According to the Government, on 15 May 2006 the applicant was arrested in an attic where he was hiding. He was armed with a gas gun and offered resistance to the police. On the same day he was confronted with a witness, who identified him as one of the perpetrators of the assault.

10. According to the applicant, on 15 May 2006 he had attended an assembly of members of the National Bolshevik Party which was held on the premises of the Communist Party of the Russian Federation. At about 8 p.m. the police broke down the door and arrested the applicant together with three other participants in the assembly. They did not offer any resistance to the police. The applicant's account of the events was confirmed by affidavits by two members of the Communist Party of the Russian Federation.

11. On 16 May 2006 the applicant was charged with participation in mass disorders, involving the use of gas guns, assault and battery, an offence under Article 213 § 2 of the Criminal Code.

12. On 17 May 2006 the Tverskoy District Court of Moscow remanded the applicant in custody. It referred to the gravity of the charge, "his active role in the imputed offence", and the risk of absconding and reoffending.

13. In their appeal submission the applicant and his counsel complained that the District Court had disregarded such pertinent facts as the absence of a criminal record, the applicant's permanent residence and employment and positive references. The conclusions that the applicant might flee or reoffend were hypothetical and were not supported by relevant facts.

14. On 31 May 2006 the Moscow City Court upheld the decision on appeal, finding that it had been lawful, sufficiently reasoned and justified.

15. On an unspecified day the investigator applied to the Tverskoy District Court for an extension of the applicant's detention until 16 September 2006. He argued that there was a need for a further investigation and that it was "not opportune" to release the applicant.

16. On 14 July 2006 the Tverskoy District Court extended the applicant's detention until 16 September 2006. The decision read as follows:

"The court considers that there are no reasons to refuse the investigator's request [for an extension]. It follows from the case file that [the applicant] is charged with a criminal offence punishable by more than two years' imprisonment and classified as serious under [criminal] law, he has previously been criminally prosecuted and the criminal proceedings against him were discontinued on non-exonerating grounds. The court takes into account the arguments of the defendant and his counsel, however at the court hearing they did not advance convincing arguments in support of their request for release. Taking into account the extent of the investigative actions to be carried out, the period for extension proposed by the investigator ... is reasonable. The grounds for [the applicant's] detention have not ceased to exist. In view of the above, the court ... considers that there are sufficient reasons to believe that if released the defendant may abscond or impede the investigation in some other way. The court ... does not see any reason to release [the applicant] or apply a more lenient preventive measure."

17. The applicant appealed. He repeated his arguments advanced in the previous grounds of appeal and complained that his detention was incompatible with the requirements of Article 5 § 3 of the Convention.

18. On 20 September 2006 the Moscow City Court upheld the extension order on appeal.

19. On 15 September 2006 the Tverskoy District Court extended the applicant's detention until 16 November 2006, referring to the gravity of the charge, the need for a further investigation, and the risk of the applicant's absconding or interfering with the establishment of the truth. On 25 October 2006 the Moscow City Court upheld the extension order on appeal.

20. On 15 November 2006 the Tverskoy District Court extended the applicant's detention until 16 January 2007. It found that the applicant had been charged with serious criminal offences and had no residence registration or employment in Moscow or in the Moscow Region, which gave reasons to believe that he might abscond or impede the investigation.

21. The applicant appealed. He denied involvement in any criminal activity and alleged that the criminal proceedings against him were politically motivated and that he was being persecuted for his membership

of the National Bolshevik Party. He asked the court to release him on bail. He insisted that he had a permanent place of residence and employment in Moscow and that he had no intention of impeding the investigation. A member of Parliament offered his personal guarantee that the applicant would not abscond. On 20 December 2006 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful and justified.

22. On 15 January 2007 the Tverskoy District Court extended the applicant's detention until 16 March 2007. Counsel argued before the court that the applicant had been arrested a month after the fight and had had plenty of opportunity to abscond during that month if he wished. The fact that he had not fled from justice proved that he had no such intention. He moreover submitted that a member of Parliament had offered his personal guarantee that the applicant would not abscond and that the applicant's relatives were ready to post bail for him. The court found as follows:

“The court takes into account the arguments of the defence..., however, given the social dangerousness of the [imputed] criminal offence which is classified as serious and is punishable by more than two years' imprisonment, the character of [the applicant] who has been already prosecuted for a similar offence and does not live at his registered place of residence, and the extent of the investigative actions to be carried out and the fact that the case ... involves six defendants and is complex, the court agrees with the prosecutor's arguments and considers that it is necessary to ... extend the applicant's detention for two months. The court does not see any reason to apply a more lenient preventive measure ... because the circumstances described above, namely the gravity of the charge and [the applicant's] character give reasons to believe that he may abscond or impede the investigation in some other way, if released.”

23. On 14 February 2007 the Moscow City Court upheld the extension order on appeal.

24. On an unspecified date the investigation was completed and six defendants, including the applicant, were committed for trial.

25. On 12 March 2007 the Taganskiy District Court of Moscow scheduled a preliminary hearing for 20 March 2007 and held that all the defendants should remain in custody. It found that the defendants had been charged with a serious offence committed by an organised group some members of which had not yet been identified, referred to the defendants' characters and concluded that they might abscond or intimidate the victims and witnesses.

26. On 23 April 2007 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

27. On 27 March 2007 the Taganskiy District Court held a preliminary hearing. It refused the defendants' requests for release, citing the gravity of the charges against them and the risk of their absconding, reoffending or obstructing justice. In respect of the applicant's “character” the court noted that he had a registered place of residence in Bryansk and had already been prosecuted for a similar offence committed in 2002.

28. On 30 May 2007 the Moscow City Court upheld the decision on appeal.

29. On 24 May 2007 the Taganskiy District Court remitted the case for a further investigation.

30. On 29 June 2007 the Tverskoy District Court extended the applicant's detention until 6 August 2007 for the same reasons as before. It also held that the case involved several defendants and was complex. The complexity of the case justified the length of the applicant's detention.

31. In his appeal submission the applicant repeated his arguments that he had a permanent place of residence and employment in Moscow and positive references. He reiterated that a member of Parliament had vouched for his attendance and that his relatives were ready to post bail for him. On 15 August 2007 the Moscow City Court upheld the extension order on appeal.

32. On 2 August 2007 the defendants were again committed for trial. The trial started on 8 August 2007.

33. On 11 September 2007 the applicant lodged an application for release with the Taganskiy District Court. Referring to Article 5 § 3 of the Convention he claimed that his detention had exceeded “a reasonable time”. He asked to be released on bail.

34. On 12 September 2007 the Taganskiy District Court rejected his application. It noted that the applicant's arguments had already been examined and rejected many times when extension orders had been issued. It found that the grounds for the applicant's detention mentioned in the extension orders were still pertinent and it was still necessary to hold him in custody. The applicant had been charged with a serious criminal offence committed by an organised group, some members of which had not yet been identified. Given the gravity of the charges against him, he might abscond, reoffend or interfere with the establishment of the truth if released.

35. The applicant appealed. The parties did not inform the Court whether the grounds of appeal had been examined. It appears that the criminal proceedings against the applicant are still pending.

II. RELEVANT DOMESTIC LAW

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

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

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

39. 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).

40. After arrest the suspect is placed in custody “during the investigation”. The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention “during the investigation” is calculated to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

42. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain him and that the domestic courts had not had due regard to the defence's arguments. Under Article 5 § 3, he complained that his right to trial within a reasonable time had been infringed and alleged that detention orders had not been founded on sufficient reasons. The relevant parts of Article 5 read as follows:

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

...

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

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial ...”

A. Admissibility

43. As regards the applicant's complaint that his detention was unlawful, the Court notes that on 17 May 2006 the Tverskoy District Court of Moscow remanded the applicant in custody because of the gravity of the charges against him. The applicant's detention was subsequently extended on several occasions by the domestic courts.

44. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (compare *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-... (extracts)).

45. The Court finds that the applicant's detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

46. As regards the applicant's complaint that his right to trial within a reasonable time or to release pending trial had been infringed, the Court finds that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

47. The Government submitted that on 19 April 2007 the National Bolshevik Party had been recognised as an extremist organisation by a Russian court and had been banned. Since the party no longer existed, the applicant could not continue to be a member of it. They further argued that the decisions to remand the applicant in custody had been lawful and

justified. He had been charged with a serious offence, had absconded from the crime scene and had been arrested a month later in the attic where he had been hiding. He had been armed with a gas gun and had offered resistance to the police. The Government disputed the applicant's allegation that he had been arrested at the assembly of the National Bolshevik Party. In their view, after the party had been dissolved it could no longer hold assemblies. Moreover, at the time of the arrest no criminal proceedings had been pending against the applicant, he had not been formally recognised as a suspect and therefore had not enjoyed the rights that suspects enjoyed under domestic law. Once the applicant had been brought to the police station a witness had identified him as one of the perpetrators of the assault. That had raised a reasonable suspicion that the applicant had committed a criminal offence, so he had been remanded in custody.

48. The Government further repeated the reasons given by the domestic courts. The grounds for detention were described in Article 97 of the Code of Criminal Procedure (see paragraph 38 above) and the courts had referred to all of them in their decisions. It was not the Court's role to assess itself the facts which had led national courts to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (see *Kemmache v. France* (no. 3), judgment of 24 November 1994, Series A no. 296-C, § 44). The courts had relied on specific facts in their detention orders: they had indicated the imputed criminal offence and had listed the investigator's arguments advanced in his requests for an extension. The applicant's potential to abscond had been gauged by reference to the facts that he had no permanent place of residence in Moscow, had gone into hiding after the fight and had only been found a month later, on non-residential premises. Moreover, the applicant did not live at his registered address in Bryansk. He had left for Moscow where he had got married and rented a flat. When questioned by the authorities, his mother had stated that she did not know his address in Moscow. Therefore, the courts' finding that he had no permanent place of residence had been correct. The potential for reoffending had been gauged by reference to the fact that the applicant had been prosecuted previously for disorderly behaviour and the criminal proceedings had been discontinued because the applicant and the victim had reached a reconciliation, that is on non-exonerating grounds. The Government considered the applicant's pre-trial detention had been founded on "relevant and sufficient" reasons.

49. Finally, referring to the case of *Contrada v. Italy* (judgment of 24 August 1998, *Reports of Judgments and Decisions* 1998-V, § 67), the Government submitted that the case had to be investigated with "special thoroughness", given that the defendants were members of an organisation with a rigid hierarchical structure and very strict rules.

50. The applicant considered that the domestic courts had not advanced “relevant and sufficient” reasons to hold him in custody for more than a year. He denied that he had been in hiding. He had not fled from justice during the month that had passed between the fight and his arrest, although he had had plenty of opportunity to do so if he wished. He considered himself the victim rather than the perpetrator of the attack and was interested in cooperating with the investigation to assist them in establishing the truth. As to the circumstances of his arrest, he had been arrested during a lawful assembly of the members of the National Bolshevik Party which had been held on the premises of the Communist Party of the Russian Federation, with the owner's consent. The police had broken down the door and used force to arrest him, despite the fact he had not offered any resistance. He had a gas gun on him for defence purposes only, because he had been attacked many times in the past.

51. The applicant further argued that he had no criminal record, had permanent employment and a permanent place of residence in Moscow. He had offered to post bail and had provided the courts with the personal surety of a member of Parliament. However, the domestic authorities had continued to extend his detention, without demonstrating the existence of specific facts in support of their conclusion that he might abscond, interfere with the investigation or reoffend. He denied being a member of any organisation with a rigid hierarchical structure or strict rules and submitted that the domestic courts had never referred to his alleged membership of such an organisation in their decisions.

2. *The Court's assessment*

(a) **General principles**

52. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

53. 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 continued detention ceases to be reasonable. 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, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, § 4). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)).

54. It is incumbent on the domestic authorities to establish the existence of specific 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, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

55. The applicant was arrested on 15 May 2006. He has been held in custody ever since. The period to be taken into consideration has lasted slightly less than two years.

56. Although the applicant denied having participated in any criminal activity, the Court notes that a witness identified him as one of the perpetrators of the assault. 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. It remains to be ascertained whether the judicial authorities gave “relevant” and “sufficient” grounds to justify the applicant's continued detention and whether they displayed “special diligence” in the conduct of the proceedings.

57. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or obstructing the course of justice. In this respect they referred to the gravity of the charge, the absence of a registered place of residence or permanent employment in Moscow, the previous criminal proceedings against him and the fact that the imputed offence had been committed by an organised group.

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

59. Another ground for the applicant's detention was the District Court's finding that the applicant did not live at his registered place of residence in Bryansk and had no permanent residence or employment in Moscow. The applicant consistently maintained that he had a permanent place of residence and employment. It is not necessary for the Court to determine whether the applicant had a permanent place of residence. Even assuming that he did not have permanent residence in Moscow, the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007, and *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005).

60. The domestic courts also referred to the fact that the applicant had been prosecuted previously for a similar criminal offence. The Court accepts that that factor was relevant in assessing the danger of reoffending. Such a danger, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, § 40). In the present case the domestic courts did not specify the offence for which the applicant had been prosecuted. The Government explained that he had been prosecuted for disorderly behaviour, without indicating however the specific acts imputed to him. Moreover, as the charges against the applicant had been dropped, his guilt had never been established by the competent judicial authorities. It is

also worth noting that the offence imputed to the applicant was allegedly committed in 2002, that is four years prior to the commencement of the present proceedings. It was not alleged that the applicant had committed any administrative or criminal offences during those four years. Given that the applicant has no criminal record, the Court is not convinced that the risk of reoffending was sufficiently established.

61. In any event, even assuming that the authorities could justifiably consider that such a risk was initially present, the Court is not persuaded that that ground could in itself justify the entire period of the applicant's detention. With the passage of time it inevitably became less and less relevant. Nevertheless, over the following months the courts' reasoning did not evolve to reflect the developing situation and to verify whether at the advanced stage of the proceedings that ground retained its sufficiency (compare *Pihlak v. Estonia*, no. 73270/01, §§ 44 and 45, 21 June 2005).

62. The only other ground for the applicant's continued detention was the fact that the imputed offence had been committed by an organised group. The Court accepts that in cases concerning organised crime, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, in such cases the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. All these factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with acting in criminal conspiracy is not in itself sufficient to justify long periods of detention, his personal circumstances and behaviour must always be taken into account. There is no indication in the present case that before his arrest the applicant had made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any other way. In such circumstances the Court has difficulty accepting that there was a risk of interference with the administration of justice at the later stages of the proceedings. Such risk was bound to gradually decrease as the trial proceeded and the witnesses were interviewed (compare *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006). The Court is not therefore persuaded that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or otherwise hamper the investigation of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

63. No other grounds have been invoked by the domestic courts. The Government argued that the applicant had fled from the crime scene and there was a risk that he would abscond again if released. The applicant denied fleeing from justice and maintained that he continued to live at his

permanent place of residence and to work at the same company. It is not necessary for the Court to determine whether the applicant had been in hiding before his arrest. It is not its task to assume the place of the national authorities who ruled on the applicant's detention or to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). That argument was advanced for the first time in the proceedings before the Court and the domestic courts never mentioned it in their decisions.

64. The Court further observes that when requesting an extension of the applicant's detention until 16 September 2006, the investigator did not demonstrate the existence of specific facts relevant to the grounds for continued detention, he only submitted that it was "not opportune" to release the applicant. The Court is concerned by the fact that the District Court accepted such an unelaborated argument and extended the applicant's detention, finding that there was no reason to refuse the investigator's request. The District Court devoted no attention to discussion of the applicant's arguments that he had no criminal record, had a permanent place of residence and employment in Moscow, and positive references. It treated those arguments as irrelevant, holding that the gravity of the charges carried a greater weight than the specific facts militating in favour of the applicant's release, and blamed the applicant for the failure to advance more convincing arguments (see paragraphs 15 and 16 above). The Court considers that the domestic courts shifted the burden of proof to the applicant who was required to demonstrate the absence of risk of absconding, reoffending or interfering with the proceedings, failing which he was bound to remain in detention throughout the proceedings. The Court reiterates in this respect that any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of specific facts outweighing the rule of respect for individual liberty. 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 permissible only in exhaustively enumerated and strictly defined cases (see *Nakhmanovich v. Russia*, no. 55669/00, § 79, 2 March 2006, with further references).

65. Finally, the Court notes that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja*, cited above, § 64 *in fine*, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case the authorities never considered the possibility of

ensuring the applicant's attendance by the use of a more lenient preventive measure, although he asked many times to be released on bail and provided the domestic courts with the personal surety of a member of Parliament.

66. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Khudoyorov v. Russia*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

67. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative “preventive measures” and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although “relevant”, cannot be regarded as “sufficient” to justify its duration. In these circumstances it would not be necessary to examine whether the proceedings were conducted with “special diligence”.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of detention without sufficient reasons.

71. The Government submitted that the applicant had claimed compensation for non-pecuniary damage incurred through his criminal prosecution. However, it was not the Court's task to assess the reasonableness of the charges against him. They therefore considered that the applicant's claim should be dismissed. In any event, the claim was

excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

72. The Court observes that it has found a violation of Article 5 § 3 of the Convention in that the duration of the applicant's continued detention was not based on sufficient grounds. It considers that the applicant must have suffered frustration, helplessness and a feeling of injustice as a consequence of the domestic authorities' decision to keep him in custody without sufficient reasons. It finds that the applicant has suffered non-pecuniary damage which cannot be adequately compensated by the finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

74. 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 complaint concerning the excessive length of the applicant's detention 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President