



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

FIRST SECTION

CASE OF ALEKSEY MAKAROV v. RUSSIA

(Application no. 3223/07)

JUDGMENT

STRASBOURG

12 June 2008

FINAL

12/09/2008

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 Aleksey Makarov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 3223/07) 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 Aleksey Borisovich Makarov ("the applicant"), on 15 January 2007.

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 1988 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 Bolsheviks 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. On 11 July 2006 the applicant was arrested. The arresting officer indicated in his report that the victims had identified the applicant as one of the perpetrators of the assault.

10. On 12 July 2006 he 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.

11. On 13 July 2006 the Tverskoy District Court of Moscow remanded the applicant in custody. It referred to the gravity of the charge, “his role in the imputed offence”, his record of administrative offences and his frequent absences from his registered place of residence. It also found that his accomplices whose identity had not been established were at large. The court concluded from that that the applicant might abscond or reoffend.

12. On 8 September 2006 the Tverskoy District Court extended the applicant’s detention until 16 November 2006. The court referred to the gravity of the charge, the possibility of his absconding or reoffending and the need for a further investigation. In particular, it was necessary to perform a psychiatric examination on a co-accused.

13. In his appeal submission the applicant complained that the court's conclusions were hypothetical and were not supported by relevant facts. The applicant had permanent residence in Moscow, attended university and had positive references. There was no risk of his absconding or reoffending.

14. On 4 December 2006 the Moscow City Court upheld the detention order on appeal, finding that it had been lawful, sufficiently reasoned and justified.

15. On 15 November 2006 the Tverskoy District Court ordered a further extension of the applicant's detention until 11 January 2007. At the hearing the applicant asked to be released on bail or under the personal guarantee of a member of the Russian Parliament. However, the court did not examine the possibility of a more lenient preventive measure. The extension order read as follows:

"The court takes into account that [the applicant] has no criminal record, lives with his parents at his registered place of residence in Moscow, is successfully pursuing studies at [a university in Moscow], and has positive references. However, as he is charged with a serious criminal offence punishable by more than two years' imprisonment, the court considers that he may abscond or interfere with the investigation if released. The preventive measure should accordingly be maintained."

16. On 25 December 2006 the Moscow City Court upheld the extension order on appeal.

17. On 11 January 2007 the Tverskoy District Court extended the applicant's detention until 16 March 2007. The court found that the applicant might abscond or hamper the investigation as he had been charged with a serious criminal offence and had a record of administrative offences. In reply to the applicant's request to be released on bail or under the personal guarantee of a member of the Russian Parliament, the court held that there was no reason to vary or cancel the preventive measure.

18. 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. Referring to Article 5 § 3 of the Convention, he complained that his detention was based on the gravity of the charge against him and that the conclusions that he might flee or impede the investigation were hypothetical and were not supported by relevant facts. The District Court had disregarded his arguments that he had positive references, that a member of Parliament had vouched for his attendance and that he was ready to post bail. As to his record of administrative offences, administrative fines had been arbitrarily imposed on him for attendance at peaceful assemblies organised by the National Bolshevik Party. The parties did not inform the Court whether the appeal had been examined.

19. On 2 March 2007 six defendants, including the applicant, were committed for trial.

20. On 12 March 2007 the Taganskiy District Court of Moscow scheduled the preliminary hearing for 20 March 2007 and held that all the defendants should remain in custody.

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

22. On 28 June 2007 the Tverskoy District Court extended the applicant's detention until 6 August 2007 for the same reasons as before. The court found that the positive references and the personal guarantee of a member of Parliament produced by the applicant were insufficient to warrant release. Given the gravity of the charge against him and his record of administrative offences, he might abscond or interfere with the proceedings in some other way. On 1 August 2007 the Moscow City Court upheld the extension order on appeal.

23. On 2 August 2007 the defendants were again committed for trial.

24. On 8 August 2007 the Taganskiy District Court held a preliminary hearing and ordered 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, and concluded that they might abscond or intimidate the victims and witnesses. It further noted that the defendants' assurances that they had no intention of absconding were unconvincing and held that there was no reason to apply a more lenient preventive measure.

25. In September 2007 the applicant and his co-defendants lodged applications for release with the Taganskiy District Court. On 12 September 2007 the Taganskiy District Court rejected their applications. It noted that the defendants' arguments had already been examined and rejected many times when extension orders had been issued. It found that the grounds for the defendants' detention mentioned in the extension orders were still pertinent and it was still necessary to hold them in custody. The defendants 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 them, they might abscond, reoffend or interfere with the establishment of the truth if released.

26. On 26 December 2007 the Taganskiy District Court extended the defendants' detention until 12 April 2008. It found that the grounds for their detention mentioned in the previous extension orders were still pertinent and a risk remained of their absconding, reoffending or obstructing the justice. The court also noted that the defendants' arguments about the absence of *corpus delicti* in their actions and about the lack of evidence of their involvement in the commission of the imputed offence were without substance because, in extending the defendants' detention, the court could not make any findings as to their guilt or innocence.

27. It appears that the criminal proceedings against the applicant are still pending.

II. RELEVANT DOMESTIC LAW

28. 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).

29. “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).

30. 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).

31. 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).

32. 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).

33. 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

34. 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

35. As regards the applicant's complaint that his detention was unlawful, the Court notes that on 13 July 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.

36. 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)).

37. 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.

38. 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

39. The applicant considered that the domestic courts had not advanced “relevant and sufficient” reasons to hold him in custody for more than a year. The domestic authorities had continued to extend his detention without demonstrating the existence of concrete facts in support of their conclusion that he might abscond, interfere with the investigation or reoffend. He denied involvement in any criminal activity. The administrative fines had been arbitrarily imposed on him for participation in peaceful assemblies. He lived permanently with his parents and attended a university. He argued that no proof of frequent absences from his place of residence had been submitted to the courts.

40. The Government submitted that the decisions to remand the applicant in custody had been lawful and justified. The domestic courts had taken into account the gravity of the charge, the applicant’s frequent absences from his registered place of residence and his record of administrative offences. The Government produced the applicant’s record of administrative offences, which included such offences as a violation of the procedure for organising public assemblies and refusing to comply with a lawful order of the police. The domestic courts had also considered that his accomplices whose identity had not been established were at large. Moreover, the applicant had not attended his classes at the university. It followed from the above facts that the applicant was not a law-abiding citizen and that there was a risk of his absconding or reoffending. The applicant’s positive references, his willingness to post bail and the personal surety of a member of Parliament had been insufficient to warrant release. The Government therefore considered that the courts’ decisions had been founded on relevant facts. 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).

2. The Court’s assessment

(a) General principles

41. 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).

42. 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. 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 authorising detention unconditionally 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)).

43. 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

44. The applicant was arrested on 11 July 2006. He has been held in custody ever since. The period to be taken into consideration has lasted one year and eleven months.

45. Although the applicant denied having participated in any criminal activity, the Court notes that the victims 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.

46. 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, his frequent absences from his registered place of residence, his record of administrative offences, and the fact that the imputed offence had been committed by an organised group and that some of his accomplices had absconded.

47. The Court observes that the gravity of the charge was the main factor for the assessment of the applicant’s potential to abscond, reoffend or obstruct the course of justice. Thus, in the extension order of 15 November 2006 the Tverskoy District Court found that the gravity of the charge outweighed the specific facts militating in favour of the applicant’s release, such as his clean criminal record, permanent residence in Moscow, ongoing studies at a university and positive references (see paragraph 15 above). The courts assumed that the gravity of the charge carried such a preponderant weight that no other circumstances could have obtained the applicant’s release. 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 seriousness 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; see also *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). 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 *Govorushko v. Russia*, no. 42940/06, § 48, 25 October 2007). The domestic courts explicitly refused to consider the state of evidence against the

applicant or verify the persistence of reasonable suspicion of his involvement in the commission of the imputed offence (see paragraph 26 above).

48. Another ground for the applicant's detention was the District Court's finding that the applicant was frequently absent from his place of residence. However, that finding was contradicted in a subsequent decision by the same court, which indicated that the applicant lived permanently with his parents at his registered place of residence (see paragraphs 11 and 15 above). The Court notes that whatever the District Court's finding about the applicant's residence situation was, the court invariably concluded that he should remain in custody. It shows that the applicant's residence situation was not a decisive factor in the assessment of the risk of absconding, which was primarily assessed by reference to the gravity of the charge. In any event, 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).

49. Further, the domestic courts gauged the applicant's potential to abscond by reference to the fact that his accomplices had gone into hiding. The Court reiterates in this respect that the conduct of a co-accused cannot be a factor in the assessment of the risk of the detainee's absconding, since such assessment must be based on the personal circumstances of the detainee (see *Korshunov v. Russia*, no. 38971/06, § 51, 25 October 2007, and, *mutatis mutandis*, *Mamedova v. Russia*, no. 7064/05, § 76, 1 June 2006). The domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that he presented a persistent risk of absconding.

50. The domestic courts also referred to 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.

51. The only other ground for the applicant's continued detention was his record of administrative offences. 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 cases of *Clooth v. Belgium* and *Kolev v. Bulgaria* (see below) the Court found that the previous criminal record did not justify the applicant's detention because the offences which had given rise to the applicant's previous convictions were non-violent and were not comparable, either in nature or degree of seriousness, to the charges preferred against him in the contested proceedings (see *Clooth*, cited above, § 40, and *Kolev v. Bulgaria*, no. 50326/99, §§ 60-61, 28 April 2005). In the present case the applicant's record included only minor non-violent administrative offences and he had no criminal record. The Court considers that the applicant's record of administrative offences did not justify his continued detention.

52. No other grounds have been invoked by the domestic courts. The Government submitted that the applicant had not attended his classes at the university, which gave reasons to believe that he was not a law-abiding citizen. It is not the Court's task to assume the place of the national authorities who ruled on the applicant's detention and 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 circumstance was referred to for the first time in the proceedings before the Court and the domestic courts never mentioned it in their decisions. On the contrary, the courts mentioned that the applicant's studies at the university were successful but found that that fact was insufficient to warrant his release, given the gravity of the charge (see paragraph 15 above).

53. The Court further observes that after the case had been submitted for trial in March 2007 the trial court used the same summary formula to refuse the petitions for release and extend the pre-trial detention of six persons, without describing their personal situation in any detail. The Court has already found that the practice of issuing collective detention orders without

a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

54. 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.

55. 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*, cited above, §§ 72 et seq.; *Dolgova v. Russia*, cited above, §§ 38 et seq.; *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)).

56. 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".

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

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

60. 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.

61. The Court observes that it has found a violation of Article 5 § 3 of the Convention in that the applicant’s 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 suffered non-pecuniary damage which would not 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

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

C. Default interest

63. 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 amount 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 12 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President