



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

FIRST SECTION

CASE OF BELOV v. RUSSIA

(Application no. 22053/02)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

03/10/2008

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 Belov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 22053/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Igor Vasilyevich Belov (“the applicant”), on 19 February 2002.

2. The applicant was represented by Ms E. Belova. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 19 February 2002 the applicant lodged with the Court a handwritten application, alleging, in particular, that he had been detained unlawfully for a long time and that the first set of criminal proceedings against him had been extremely long. The handwritten application was accompanied by a printed version which was addressed to the Court by Ms E. Belova. The latter application was not signed. On 23 July and 22 August 2002 the applicant’s representative submitted additional applications which were duly signed. In these applications the applicant complained about ill-treatment in a detention facility, various procedural violations in the course of the criminal proceedings and violations of the rights of his family members as a consequence of his conviction.

4. On 3 June 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1969 and lived until his arrest in the town of Yakhroma in the Moscow Region.

A. First set of criminal proceedings

7. On 18 August 1995 criminal proceedings were instituted against the applicant on suspicion of unlawful possession of weapons. He was arrested on the following day. It appears that the applicant immediately obtained legal representation and also appointed Ms B. to act as his public defender. The Taldomskiy District Prosecutor's office additionally charged the applicant with aggravated robbery and extortion.

8. On 13 September 1995 the Taldomskiy District Prosecutor, relying on the gravity of the charges against the applicant and his liability to reoffend, authorised his placement in custody. His detention was extended a number of times, having regard to the gravity of the charges.

9. On 29 December 1995 the Sergiyev-Pasad Town Court of the Moscow Region authorised the applicant's release on a written undertaking not to leave the town. Two months later the Dmitrov Town Prosecutor revoked the undertaking and authorised the applicant's arrest.

10. The applicant was served with the bill of indictment on 30 July 1996. Two days later he was committed to stand trial in the Dmitrov Town Court of the Moscow Region. On 2 August 1996 the Volokolamsk Town Court of the Moscow Region authorised the applicant's release under his own recognisance.

11. On 27 November 1997 the Dmitrov Town Court stayed the proceedings due to the applicant's illness. In 1997 and the beginning of 1998 on a number of occasions the applicant underwent treatment in a psychiatric hospital.

12. On 26 January 1998 the Dmitrov Town Court found that the applicant had not attended hearings on 19 and 26 January 1998 and had failed to provide any excuse. It remanded the applicant in custody. According to the Government, the applicant was not detained because he

had notified the Town Court that he had been treated in a psychiatric hospital.

13. On 23 April 1998 the Dmitrov Town Court ordered that the applicant be submitted to a psychiatric examination. A psychiatric expert opinion was lodged with the Town Court on 29 May 1998. However, the experts did not give answers to certain questions and on 25 September 1998 the Town Court revoked the applicant's undertaking not to leave the town and ordered that he be placed in custody and be transported to the Serbskiy Psychiatric Centre for an additional psychiatric evaluation. It appears that the applicant was placed in custody on 28 September 1998. The additional psychiatric evaluation was completed on 8 December 1998.

14. According to the Government, on an unspecified date the criminal proceedings were stayed because another criminal case had been brought against the applicant.

15. On 1 March 2000 the Dmitrov Town Court found the applicant guilty as charged and sentenced him to eight years' imprisonment. The judgment became final on 25 May 2000 when the Moscow Regional Court upheld it on appeal.

16. On 4 January 2001, acting upon an application by the President of the Moscow Regional Court and by way of a supervisory review, the Presidium of the Regional Court quashed the judgments of 1 March and 25 May 2000 and remitted the case for a fresh examination. The Presidium did not rule on the detention issue. The applicant remained in custody.

17. The Dmitrov Town Court received the case file on 21 February 2001. According to the Government, on 6 March 2001 the Town Court listed the first trial hearing and ordered that the measure of restraint applied to the applicant "should remain unchanged".

18. On 12 October 2001 the Town Court extended the applicant's detention for an additional three months, until 21 November 2001, holding that he was charged with serious criminal offences and was liable to abscond and reoffend. The Town Court noted that the applicant had already absconded once. A month later the Moscow Regional Court upheld the extension order, noting the gravity of the charges against the applicant.

19. According to the Government, no further extension orders were issued.

20. On 27 April 2002 the Dmitrov Town Court found the applicant guilty of aggravated robbery, dismissed the remaining charges and sentenced the applicant to four years and six months' imprisonment. The applicant did not appeal.

B. Second set of criminal proceedings

21. On 22 September 1998 the Dmitrov Town Prosecutor's office instituted criminal proceedings against the applicant. He was suspected of

having murdered two persons. On the same day the acting Dmitrov Town Prosecutor authorised the applicant's detention on the ground that he was suspected of a particularly serious offence and that he could not be found at his place of residence. The prosecutor concluded that the applicant had absconded.

22. After his arrest on 28 September 1998, the applicant was served with a copy of the decision of 22 September 1998 on which he made a handwritten note. It reads as follows:

“Served [with the decision]:

I do not agree that I absconded, because I underwent treatment in Moscow Regional psychiatric hospital no. 5”

That copy of the decision also bears a handwritten note from a certain official, who wrote that due to the state of his mental health the applicant could not be placed in a temporary detention unit or detention facility under normal conditions.

23. On 19 November and 4 December 1998 prosecution authorities further extended the applicant's detention, until 16 December 1998 and 16 March 1999 respectively. The reason for both the extensions was similar: the applicant was charged with a serious criminal offence and the investigating authorities needed additional time.

24. On 18 October 1999 and 28 August 2000 the Moscow Regional Court acquitted the applicant. Both judgments were quashed on appeal by the Supreme Court of the Russian Federation, on 15 March and 20 December 2000, respectively. The Government submitted that from 18 October 1999 to January 2001 the domestic courts had not determined the detention matter.

25. On 16 January 2001 the Moscow Regional Court fixed the first trial hearing for 26 February 2001 and authorised the applicant's detention on the ground that he had been convicted by the Dmitrov Town Court on 1 March 2000, he was serving his sentence in a correctional colony in the Ryazan Region and his presence was necessary at future court hearings.

26. On 17 September 2001 the Moscow Regional Court again acquitted the applicant and ordered that the issue of his further detention should be determined in the course of the first set of the criminal proceedings against him. On 10 April 2002 the Supreme Court of the Russian Federation upheld that judgment.

C. Alleged beatings in detention facility no. IZ-50/2

27. The applicant was detained in detention facility no. IZ-50/2 in Volokolamsk.

28. According to the applicant, on 28 December 2001 warders entered his cell and severely beat him up. The applicant claimed that as a result of

the beatings he had sustained a broken rib, concussion, a displaced joint on his left leg and multiple bruises.

29. The Government disputed the applicant's statement of facts, alleging that on 28 December 2001 he had been placed in a punishment cell for a refusal to follow lawful orders of the facility administration. When warders attempted to escort him to the punishment cell he resisted and put up a fight. A warder twisted the applicant's arm behind his back and forced him into the cell. The Government, relying on a medical certificate issued on 28 December 2001 by a prison doctor and a certificate issued on 28 July 2005 by the facility director, further submitted that on the same day the prison doctor had examined the applicant and had not recorded any injuries. Furthermore, the applicant had not made any complaints to the prison administration concerning his state of health.

30. On 22 January 2001 the applicant lodged a complaint with the Dmitrov Town Court alleging ill-treatment in detention facility no. IZ-50/2. The Town Court redirected that complaint to the Volokolamsk Town Prosecutor's office which had jurisdiction over it.

31. On 25 January 2002 an investigator of the Volokolamsk Town Prosecutor's office issued a decision dismissing the applicant's complaint. The investigator found no *prima facie* case of ill-treatment. The applicant did not appeal to a court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Placement in custody and detention

32. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960, "the old CCrP"). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

1. Preventive measures

33. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 89 of the old CCrP, Article 98 of the new CCrP).

2. Authorities ordering detention

34. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

Under the old CCrP, a decision ordering detention could be taken by a prosecutor or a court (Articles 11, 89 and 96).

The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor, supported by appropriate evidence (Article 108 §§ 1, 3-6).

3. Grounds for remand in custody

35. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge, information on the accused’s character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

36. Before 14 March 2001, remand in custody was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year’s imprisonment or if there were “exceptional circumstances” in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years’ imprisonment, if they had previously defaulted, had no permanent residence in Russia or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had allegedly committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

4. Time-limits for detention

(a) Two types of remand in custody

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

(b) Time-limits for detention “during investigation”

38. After arrest the suspect is placed in custody “during investigation”. The maximum permitted period of detention “during investigation” is two

months but this can be extended for up to eighteen months in “exceptional circumstances”. Under the old CCrP, extensions were authorised by prosecutors of ascending hierarchical levels but they must now be authorised by judicial decisions, taken by courts of ascending levels (under the new CCrP). No extension of detention “during investigation” beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

39. The period of detention “during investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

40. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

41. Under the old CCrP, the trial court had the right to refer the case back for “additional investigation” if it established that procedural defects existed that could not be remedied at the trial. In such cases the defendant’s detention was again classified as “during investigation” and the relevant time-limit continued to apply. If, however, the case was remitted for additional investigation but the investigators had already used up all the time authorised for detention “during investigation”, a supervising prosecutor could nevertheless extend the detention period for one additional month, starting from the date he received the case. Subsequent extensions could only be granted if the detention “during investigation” had not exceeded eighteen months (Article 97).

(c) Time-limits for detention “before the court”/“during judicial proceedings”

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

43. Before 15 June 2001 the old CCrP set no time-limit for detention “during judicial proceedings”. On 15 June 2001 a new Article, 239-1, entered into force which established that the period of detention “during judicial proceedings” could not generally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant’s release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or on a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

44. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court received the file up to the date on which the judgment is given. The period of detention “during judicial proceedings” may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

5. Proceedings to examine the lawfulness of detention

(a) Detention “during investigation”

45. Under the old CCrP, the detainee or his or her counsel or representative could challenge the detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required to review the lawfulness of and justification for a detention or extension order no later than three days after receipt of the relevant papers. The review was to be conducted in camera in the presence of a prosecutor and the detainee’s counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the detainee’s release (Article 220-1). An appeal to a higher court lay against the judge’s decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (see paragraph 96 below) (Article 331 *in fine*).

46. Under the new CCrP, an appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must rule on the appeal within three days of its receipt (Article 108 § 10).

(b) During judicial proceedings

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

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

49. An appeal against such a decision lies to a higher court. It must be lodged within ten days and examined within the same time-limit as an

appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

6. Time-limits for trial proceedings

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

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

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

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

B. Investigation of criminal offences

53. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, “the CCrP”) established that a criminal investigation could be initiated by an investigator on a complaint of an individual or on the investigative authorities’ own initiative when there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could order a specific investigative action, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party. The decision was amenable to an appeal to a higher prosecutor or to a court of general jurisdiction (Article 113).

54. On 29 April 1998 the Constitutional Court of the Russian Federation held that anyone whose legitimate rights and interests had been affected by a decision not to institute criminal proceedings should have the right to appeal against that decision to a court.

THE LAW

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

55. The applicant complained that on 28 December 2001 the warders had beaten him up and that the authorities had not carried out an effective investigation of his allegations of ill-treatment. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

56. The Government argued that the complaint was unsubstantiated. The warder had applied force to put an end to the applicant’s unlawful behaviour. The force had not been excessive, which was confirmed by the record of the applicant’s medical examination. His complaints had been thoroughly investigated by the prosecution authorities and no *prima facie* case of ill-treatment had been established. The Government further submitted that the applicant had been aware of the decision of 25 January 2002 but he had not appealed against it either to a higher-ranking prosecutor or a court.

57. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

58. The applicant’s allegations of ill-treatment were examined by the investigator, who did not find a *prima facie* case of ill-treatment, and in a decision of 25 January 2002 decided not to institute criminal proceedings.

Under Article 113 of the RSFSR Code of Criminal Procedure, which was in force at the material time, that decision was amenable to an appeal to a higher prosecutor or a court of general jurisdiction (see paragraph 53 above). The parties did not dispute that the applicant, after having learnt about the decision of 25 January 2002, had not used either avenue of appeal.

59. As regards an appeal to a higher prosecutor, the Court has already held on several occasions that an appeal to a higher prosecutor does not give the person employing it a personal right to the exercise by the State of its supervisory powers, and that such an appeal does not therefore constitute an effective remedy within the meaning of Article 35 of the Convention (see *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006).

60. The position is, however, different with regard to the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment. In such cases contentious proceedings are instituted, to which the applicant and the prosecutor are parties. In public and adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a *prima facie* case of ill-treatment and, if he has, to reverse the prosecutor's decision and order a criminal investigation. The Court has already found that in the Russian legal system, the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

61. In the present case the applicant did not make use of the judicial appeal option. Furthermore, the Court notes that the applicant was represented from the pre-trial stage of the proceedings onwards. No explanation has been offered for the lawyer's failure to lodge, or to advise the applicant to lodge, a judicial appeal against the prosecutor's decision not to investigate his allegations of ill-treatment.

62. In the light of the above considerations, the Court finds that the applicant's complaints concerning his alleged ill-treatment by the police must be dismissed for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

63. Having regard to the above finding, the Court also considers that the applicant's complaint under Article 13 of the Convention is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

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

64. The applicant complained under Article 5 § 1 (c) of the Convention that his detention had been unlawful. The relevant parts of Article 5 provide:

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

...

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

A. Submissions by the parties

65. The Government built their argument along two lines. They argued first that the application form of 19 February 2002, in which the applicant had raised the complaint about his unlawful detention, had not been signed either by the applicant or his representative. Thus, the Court should disregard this complaint.

66. If, however, the Court decides to proceed with the examination, the Government further argued that the entire term of detention had been compatible with the domestic procedural rules and free from arbitrariness. The applicant’s detention had been extended at regular intervals by the competent domestic authorities, a prosecutor or a court.

67. In particular, when on 4 January 2001 the Presidium of the Regional Court quashed the final judgments by which the applicant had been convicted it had had no legal obligation to extend the applicant’s detention because this period of detention was covered by the decision of 25 September 1998 of the Dmitrov Town Court authorising the applicant’s placement in custody. The applicant’s detention from 16 January to 6 March 2001 and from 6 March to 12 October 2001 was authorised by decisions of 16 January (issued within the second set of the criminal proceedings) and 6 March 2001 (taken in the course of the first set of the criminal proceedings), respectively.

68. As regards the period after 6 March 2001, the Government submitted that it had been based on provisions of the old Code of Criminal Procedure. The domestic courts had not been required to take any decision on the applicant’s detention because until 15 June 2001 the old Russian Code of Criminal Procedure set no time-limit for detention “during judicial proceedings” and after 15 June 2001 Article 239-1 of the old CCrP (see paragraph 43 above) which set such a time-limit, was not applicable to the applicant’s case because he had been charged with a particularly serious offence. Thus, when on 12 October 2001 the Dmitrov Town Court issued the following order extending the applicant’s detention, the Town Court merely misinterpreted the domestic law.

69. The Government concluded that the applicant's complaint under Article 5 § 1 (c) was therefore manifestly ill-founded and should be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

70. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

(a) Objection concerning the application form

71. The Court observes that on 19 February 2002 the applicant lodged two application forms with it. The first one was handwritten by the applicant and conveyed all the required information. The second application form was a printed version of the first one, with slight amendments pertaining to the fact that it had been lodged by the applicant's representative. It was not signed either by the applicant or his representative.

72. The Court notes the Government's objection as to the admissibility of the applicant's complaint about his detention due to the deficiency of the application form. In this connection, having regard to the fact that the applicant submitted the handwritten application which contained all the relevant and required information, the Court dismisses that objection as unfounded. In any event, the Court will examine the applicant's complaints as they were set out in the handwritten application.

(b) Period of detention to be examined

73. The Court observes at the outset that a part of the applicant's complaint refers to a period of pre-trial detention which ended more than six months before he lodged the application with the Court on 19 February 2002. The most recent period of detention that the Court may examine commenced on 6 March 2001. The Court notes the Government's argument that the applicant's detention after 6 March 2001 did not require a separate legal order and was executed on the basis of a mere requirement of the domestic law in force at the material time. That period of detention represented a continuous situation which ended on 12 October 2001 when the Dmitrov Town Court issued the following detention order, that is within the six months preceding the lodging of the application. The Court therefore considers that the part of the applicant's complaints concerning the detention orders issued before 6 March 2001 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Salmanov v. Russia* (dec.), no. 3522/04, 19 January 2006;

Korchuganova v. Russia, no. 75039/01, § 44, 8 June 2006; and *Pavlik v. Slovakia*, no. 74827/01, § 89, 30 January 2007, with further references).

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

2. Merits

(a) General principles

75. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

76. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Application of the general principles to the present case

i. The applicant’s detention from 6 March to 12 October 2001

77. The Court notes that on 6 March 2001 the Dmitrov Town Court listed the first trial hearing and held that the preventive measure applied to the applicant “should remain unchanged”. On 12 October 2001 the Town Court extended the applicant’s detention for an additional three months, until 21 November 2001.

78. The Court observes that on 6 March 2001 the Dmitrov Town Court gave no reasons for its decision to remand the applicant in custody. The

Town Court also did not set a time-limit for the continued detention or for a periodic review of the preventive measure. Leaving aside the concurrent developments in the applicant's case, it transpires that for more than seven months the applicant remained in a state of uncertainty as to the grounds for his detention from 6 March to 12 October 2001, when the Town Court eventually re-examined the detention.

79. The Court has already examined and found a violation of Article 5 § 1 (c) of the Convention in a number of cases concerning a similar set of facts. In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X).

80. The Court sees no reason to reach a different conclusion in the present case. It considers that the order of 6 March 2001 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1.

81. The Court also finds that the Town Court's decision of 12 October 2001 could not have constituted a "lawful" basis for the applicant's detention in the preceding period (*ibid.*, § 139). That decision authorised the applicant's detention from 21 August to 21 November 2001, out of which a period of one month and twenty-one days was thus authorised retrospectively. The Government did not indicate any domestic legal provision that permitted a decision to be taken authorising a period of detention retrospectively. It follows that the applicant's detention, in so far as it had been authorised by a judicial decision in respect of the preceding period, was not "lawful" under domestic law. Furthermore, the Court reiterates that any *ex post facto* authorisation of detention is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness (*ibid.*, § 142).

82. The Court therefore considers that there was a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 March to 12 October 2001.

ii. The applicant's detention from 12 October to 21 November 2001

83. The Court observes that the applicant's detention during the period from 12 October to 21 November 2001 was authorised by the Town Court on the grounds that the charges against him were serious and that he was liable to reoffend and abscond.

84. The Court reiterates that the trial court's decision to maintain a custodial measure would not breach Article 5 § 1 provided that the trial court "had acted within its jurisdiction... [and] had power to make an appropriate order" (see *Korchuganova*, cited above, § 62).

85. The trial court acted within its jurisdiction in making that decision and there is nothing to suggest that it was invalid or unlawful under domestic law in so far as it authorised the applicant's detention for the subsequent period. It has not been claimed that that decision was otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds relied on being analysed below in the context of compliance with Article 5 § 3 of the Convention.

86. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention order issued on 12 October 2001.

iii. The applicant's detention from 21 November 2001 to 27 April 2002

87. The Court reiterates that on 21 November 2001 the period of the applicant's detention authorised by the order of the Dmitrov Town Court on 12 October 2001 expired. No further decision on the applicant's detention was taken until 27 April 2002 when the Town Court convicted him.

88. According to the applicant, between 21 November 2001 and the Dmitrov Town Court's judgment of 27 April 2002, there was no decision – either by a prosecutor or a judge – authorising his detention. The Government argued that the applicant's detention until his conviction was based on the Town Court's decision of 6 March 2001 (see paragraph 68 above) and the legal provision allowing the applicant's detention due to the gravity of the charges against him.

89. The Court notes the Government's argument concerning the decision of 6 March 2001. In this connection, it reiterates the finding made in paragraph 80 above that the decision of 6 March 2001 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness. It thus could not constitute a "lawful" basis for the applicant's detention after 21 November 2001. Furthermore, the Court does not lose sight of the fact that the decision of 6 March 2001 was issued more than eight months before the beginning of the detention period it was allegedly meant to cover and that on 12 October 2001 the Town Court issued another detention order authorising the applicant's detention from 21 August 2001. Thus, it appears that the decision of 6 March 2001 expired before 21 November 2001.

90. The Court also reiterates the second part of the Government's argument that under the domestic law in force at the material time courts were not even required to issue any formal decision extending the applicant's detention. He allegedly could have remained in custody merely on the basis of the fact that he was charged with a particularly serious criminal offence. The Court reiterates that it has already examined and found a violation of Article 5 § 1 in a number of cases concerning the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation (see *Baranowski*, cited above, §§ 53-58, and *Ječius*, cited above, §§ 60-64). It has held that such a practice is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (*ibid.*). The Court has repeated this finding in several cases against Russia (see, for example, *Khudoyorov*, cited above, §§ 147-151, and *Korchuganova*, cited above, § 57).

91. The Court sees no reason to reach a different conclusion in the present case. It reiterates that for the detention to meet the standard of “lawfulness”, it must have a basis in domestic law. The Government, however, did not point to any legal provision which permitted an accused to continue to be held once the authorised detention period had expired. The Russian Constitution and rules of criminal procedure vested the power to order or extend detention in prosecutors and courts (see paragraph 34 above). No exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. As noted above, after 21 November 2001 there was no formal decision authorising the applicant's detention. The applicant was in a legal vacuum that was not covered by any domestic legal provision.

92. It follows that from 21 November 2001 to 27 April 2002 there was no valid domestic decision or other “lawful” basis for the applicant's detention. There has thus been a violation of Article 5 § 1 (c) of the Convention in respect of that period.

3. Summary of the findings

93. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 6 March to 12 October 2001 and from 21 November 2001 to 27 April 2002.

94. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention between 12 October and 21 November 2001.

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

95. The applicant complained that his detention had been excessively long. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which provides:

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

A. Submissions by the parties

96. The Government submitted that the length of the applicant’s detention during judicial proceedings had not been excessive. Furthermore, there was no maximum period of detention for persons accused of serious and particularly serious criminal offences in Russian law.

97. The applicant maintained his complaints.

B. The Court’s assessment

1. Admissibility

98. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23, § 9, and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

99. The Court observes that while its jurisdiction *ratione temporis* covers only the period after the entry of the Convention into force in respect of Russia, the Court will take into account the state of proceedings existing on the material date (see, among other authorities, *Klyakhin v. Russia*, no. 46082/99, § 58, 30 November 2004).

100. The Court notes that the applicant’s pre-trial detention commenced when he was arrested on 19 August 1995. He was released on his own recognisance on 29 December 1995 and rearrested two months later. He was again released on 2 August 1996 and remained under a written undertaking until 28 September 1998 when his placement in custody was authorised. Thus, by 5 May 1998, the date on which the Convention entered into force for Russia, the overall period of the applicant’s detention amounted to nine and a half months.

101. The Court further observes that after 28 September 1998 the applicant was detained within the meaning of Article 5 § 3 of the Convention until his conviction by the Dmitrov Town Court on 1 March 2000. From that date until 4 January 2001, when the Presidium of the Moscow Regional Court quashed the judgment of 1 March 2000, he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a), and therefore that period of detention falls outside the scope of Article 5 § 3 (see *B. v Austria*, judgment of 28 March 1990, Series A no. 175, §§ 33-39, and *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). From 4 January 2001 to 27 April 2002, when the Town Court convicted the applicant, he was again in pre-trial detention falling under Article 5 § 3 of the Convention.

102. The Court considers that, in the instant case, the multiple, consecutive detention periods should be regarded as a whole, and the six-month period should only start to run from the end of the last period of pre-trial custody, that is from 27 April 2002 (see *Kemmache v. France (no. 1)*, judgment of 27 November 1991, Series A no. 218, p. 23, § 44; *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 98; *Mitev v. Bulgaria*, no. 40063/98, § 102, 22 December 2004; and *Mishketkul and Others v. Russia*, no. 36911/02, § 40, 24 May 2007).

103. In order to assess the length of the applicant’s pre-trial detention, the Court should therefore make an overall evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see, *mutatis mutandis*, *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 37, § 6). Consequently, the Court concludes that, after deducting the periods when the applicant was detained after conviction under Article 5 § 1 (a) of the Convention from the total time that he was deprived of his liberty, the applicant was detained within the meaning of Article 5 § 3 of the Convention for nearly three years and six months, of which two years and nine months fall within the competence of the Court *ratione temporis*.

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

2. Merits

(a) General principles

105. 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 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. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they 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 set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these 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 *Labita*, cited above, § 152).

106. The arguments for and against release must not be “general and abstract” (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

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

(b) Application of the general principles to the present case

108. The Court notes that from 28 September 1998, when the applicant was rearrested, to 27 April 2002, the date of the final conviction, the authorities extended the applicant’s detention a number of times. In their decisions they either did not provide any reasons for the extensions or they relied on the gravity of the charges as the main factor and on the applicant’s potential to abscond and reoffend.

109. As regards the authorities’ reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral*, cited above, § 68; and *Ilijkov*, cited above, § 81). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a

reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

110. The other grounds for the applicant's continued detention were the authorities' findings that the applicant could abscond and reoffend. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of concrete facts in support of their conclusions.

111. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that he had been charged with serious criminal offences, thus facing a severe sentence. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and reoffending or make it appear so slight that it cannot justify detention pending trial (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, p. 19, § 43; and *Panchenko*, cited above, § 106).

112. In the present case in its decision of 12 October 2001 the Town Court mentioned that the applicant had once absconded. In this connection, the Court reiterates the Government's submissions that in 1998 the Dmitrov Town Court decided that the applicant had absconded because he had failed to attend two hearings. However, he had later notified the Town Court that he had been in the psychiatric hospital (see paragraph 12 above). This notification resulted in the revocation of the detention order. The Court also does not lose sight of the fact that before September 1998 the applicant was twice released on his own recognisance and there is no indication in the case file that he attempted to evade justice. It thus appears that on 12 October 2001 the Dmitrov Town Court, without verifying the circumstances of the case at hand, made a groundless assumption that the applicant was liable to abscond. The Court observes that the Town Court did not indicate any other circumstance suggesting that, if released, the applicant would abscond or evade justice, or that he would otherwise upset the course of the trial. The Court finds that the existence of such a risk was not established.

113. The Court further emphasises that when deciding whether a person should be released or detained the authorities have an obligation under

Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja*, cited above, § 64, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

114. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial. Furthermore, in carrying out its assessment, the Court does not lose sight of its finding that from 6 March to 12 October 2001 and from 21 November 2001 to 27 April 2002 the applicant's detention was not in accordance with the provisions of Article 5 § 1 (c) of the Convention (see *Goral v. Poland*, no. 38654/97, §§ 58 and 61, 30 October 2003, and *Stašaitis*, cited above, §§ 81-85). The Court finds it striking that for the most period of his detention the applicant was detained either without any formal decision authorising his detention or on the basis of decisions which did not provide any reasons for his continued detention.

115. Having regard to the above, the Court considers that by failing to refer to concrete relevant facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges or failing to indicate any ground for the extension, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty for a period of two years and nine months. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period as such a lengthy period cannot in the circumstances be regarded as "reasonable" within the meaning of Article 5 § 3 (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

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

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

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

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

A. Submissions by the parties

118. The Government considered that the complaint of excessive length of proceedings was inadmissible under Article 35 § 3 of the Convention. They argued that the delays had been caused by objective reasons: the applicant's and his representative's illnesses, simultaneous examination of the two criminal cases, and other valid grounds.

119. The applicant contested the Government's submissions.

B. The Court's assessment

1. Admissibility

120. The Court observes that the period to be taken into consideration began on 5 May 1998, when the Convention entered into force in respect of Russia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 27 April 2002 when the Dmitrov Town Court convicted the applicant. It thus lasted approximately four years.

121. The Court further considers it appropriate to take into account only the periods when the case was actually pending before the courts, that is the periods when there was no effective judgment in the determination of the charge against the applicant and when the authorities were under an obligation to pass such a judgment. The periods during which the domestic courts decided whether or not to reopen the case should be excluded since Article 6 does not apply to such proceedings (see, *mutatis mutandis*, *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005 and *Rudan v. Croatia* (dec.), no. 45943/99, 13 September 2001).

122. Taking into account the above mentioned principle, the Court finds that the proceedings were pending during two periods. The first period commenced on 5 May 1998, when the Convention entered into force in respect of Russia, and ended on 25 May 2000 when the Moscow Regional Court upheld the applicant's conviction on appeal. The second period began on 4 January 2001 with the judgment of the Presidium of the Moscow Regional Court and ended on 27 April 2002 when the Dmitrov Town Court again convicted the applicant. The overall period to be considered thus lasted approximately three and a half years.

123. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

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

125. The Court accepts that the proceedings at issue were complex. However, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings. The Court further reiterates that the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI).

126. As to the applicant's conduct, the Government argued that numerous hearings were adjourned because the applicant or his representative had been ill. In this connection, the Court notes that in 1997 the proceedings were stayed for two months because the applicant underwent treatment in the psychiatric hospital (see paragraph 11 above). The applicant also did not attend two hearings in January 1998 because he was ill. The Government did not indicate any other period when the proceedings were stayed or any other hearing which was adjourned due to the applicant's or his representative's conduct. Thus, the Court does not consider that the applicant contributed to delays in the proceedings after 5 May 1998, that is during the period within the Court's competence *ratione temporis*.

127. As regards the conduct of the authorities, the Court is aware of substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Government did not indicate that any hearing was fixed between 8 December 1998, when the Dmitrov Town Court received the expert opinion, and 1 March 2000, when it convicted the applicant. The Court further observes that on 4 January 2001 the Presidium of the Regional Court quashed the conviction and sent the case for re-examination. However, the Town Court only received the case for trial and fixed the first trial hearing three months later. The Government did not cite any reasons to justify that delay. The Court does not lose sight of the fact that after the quashing of the conviction on 4 January 2001 the proceedings before the Dmitrov Town Court were also pending for more than a year. The applicant submitted, and the Government did not provide any information to the

contrary, that during that period the Town Court did not hold any hearings, save for one fixed by the decision of 6 March 2001 and one hearing on 12 October 2001. Thus another unjustified delay is attributable to the State.

128. The Court also notes a delay of approximately seven months caused by the stay in the proceedings awaiting the expert opinions. The Court is not called upon to determine the reasons for the delay in preparation of the expert reports (inability to answer questions, absence of necessary qualification, etc.), because Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria*, no. 30546/96, § 57, 3 October 2000). The Court observes that the principle responsibility for a delay caused by the expert examinations rests ultimately with the State (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, § 32).

129. Having examined all the material before it and taking into account the overall length of the proceedings and what was at stake for the applicant, the Court considers that in the instant case the length of the first set of the criminal proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. The applicant further complained under Articles 3, 6, 7, 13 and 14 of the Convention that the first set of the criminal proceedings against him had been unfair as the domestic courts had misinterpreted the law and incorrectly assessed the facts, he had not been allowed to question certain prosecution witnesses, he had been found guilty of a criminal offence which had not been prescribed by law, domestic authorities had violated rights of his family members, including the right to education, and that the conditions of his detention had been extremely poor.

131. Having regard to all the material in its possession, and in so far as these complaints fall within the Court’s competence *ratione materiae*, it finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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.”

133. The applicant did not submit a claim for just satisfaction. 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 unlawfulness of the applicant’s detention after 6 March 2001, the excessive length of his detention, and the length of the first set of the criminal proceedings against him, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant’s detention from 6 March to 12 October 2001 and from 21 November 2001 to 27 April 2002;
3. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant’s detention from 12 October to 21 November 2001;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the unreasonable length of the applicant’s detention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the first set of the criminal proceedings;
6. *Holds* that there is no call to award the applicant just satisfaction.

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

Søren Nielsen
Registrar

Christos ROZAKIS
President