



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

THIRD SECTION

CASE OF MATYUSH v. RUSSIA

(Application no. 14850/03)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Matyush v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 14850/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Natalya Albertovna Matyush (“the applicant”), on 25 March 2003.

2. The Russian Government (“the Government”) were initially represented by P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that she had been detained in appalling conditions, that her detention on remand had been unlawful and excessively long and that her detention complaints had not been examined speedily.

4. On 7 April 2006 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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 1964 and lives in the town of Solnechnogorsk in the Moscow Region.

A. The applicant's arrest and detention until 8 September 2000

7. On 8 March 1999 the applicant was arrested on suspicion of having committed franchise fraud, that is, having organised a financial pyramid scheme in which more than one hundred persons had been enrolled and which had caused fraudulent losses of over 23,000,000 Russian roubles. Three days later a prosecutor authorised the applicant's placement in custody on the ground that she was charged with a serious criminal offence and was liable to abscond and pervert the course of justice.

8. On 6 May and 2 July 1999 the Omsk Regional Prosecutor extended the applicant's detention until 8 July and 8 September 1999 respectively, having regard to the gravity of the charges.

9. On 3 September and 29 November 1999 a deputy Prosecutor General of the Russian Federation, invoking the same grounds as in the previous detention orders, authorised the extension of the applicant's detention until 8 December 1999 and 8 March 2000 respectively.

10. On 25 February and 26 June 2000 the acting Prosecutor General of the Russian Federation authorised further extensions of the applicant's detention until 8 July and 8 September 2000 respectively. The reasons for both extensions were the same: the gravity of the charges and the applicant's liability to abscond and pervert the course of justice.

B. Detention until 8 March 2001

11. On 15 August 2000 the Omsk Regional Prosecutor asked the Omsk Regional Court to extend the applicant's detention for an additional six months because the applicant needed additional time to read the case file. The prosecutor also noted that the applicant and her co-defendants had participated in an organised criminal offence, had been charged with serious criminal offences, and had influenced other defendants, witnesses and victims. They were liable to abscond and pervert the course of justice.

12. On 23 August 2000 the President of the Omsk Regional Court wrote in the corner on the first page of the prosecutor's application that he authorised the extension of the applicant's and her co-defendants' detention until 8 March 2001.

13. On an unspecified date the applicant and her co-defendants appealed against the order of 23 August 2000. They claimed that the maximum eighteen-month period of their detention would expire on 8 September 2000. An extension of the detention beyond eighteen months was possible only if the defendant needed more time to read the case file. The applicant insisted that she had finished studying the file and that there were therefore no grounds for a further extension.

14. On 22 November 2000 the Supreme Court of the Russian Federation examined the applicant's and her co-defendants' appeals against the order of 23 August 2000, quashed it and remitted the matter to the Omsk Regional Court for fresh examination. The relevant part of the Supreme Court's decision reads as follows:

"By virtue of Articles 220-1 and 220-2 of the RSFSR Code of Criminal Procedure the judge has to examine the lawfulness and well-foundedness of the request for extension of the detention of Ms Matyush... and has to issue a reasoned decision as required by paragraph 8 of Article 220-2 of the RSFSR Code of Criminal Procedure.

Moreover, paragraph 2 of Article 102 of the RSFSR Code of Criminal Procedure requires that [a court] should prepare minutes of a court hearing in which the issue of extension of detention is examined... [the minutes] should indicate who participated in the hearing and should reflect the progress of the examination of the materials.

The minutes of the court hearing and the reasoned decision of the judge were not included in the materials presented to the Supreme Court of the Russian Federation, which constitutes a gross violation of the requirements of the RSFSR Code of Criminal Procedure.

Accordingly, the decision [of the President of the Regional Court] should be quashed and the case file should be sent for re-examination.

The Supreme Court cannot accept counsel's requests for Ms Matyush's release... because [the Supreme Court] is unable to conclude from the presented decision whether [she] is detained lawfully or unlawfully, and counsel's arguments are based on this circumstance.

In the course of the fresh consideration of the file, the [Regional] Court has to examine thoroughly all the arguments set out in the application by the Omsk Regional Prosecutor and to give a reasoned decision.

On the basis of the foregoing, and in accordance with Articles 332 and 339 of the RSFSR Code of Criminal Procedure, the Court decides:

To quash the decision of 23 August 2000 of the President of the Omsk Regional Court by which an extension of Ms Matyush's... detention was authorised and to refer the case back for fresh consideration...

The preventive measure applied to Ms Matyush... should remain unchanged, namely detention on remand."

15. On 19 January 2001 the Omsk Regional Court extended the applicant's detention until 8 March 2001, noting the gravity of the charges against her. The Regional Court held that the gravity of the charges could serve as the sole ground for the detention, but it also pointed to the applicant's failure to finish studying the file.

16. On 3 May 2001 the Supreme Court upheld the decision of 19 January 2001, stating that the applicant had been charged with especially serious criminal offences and her detention had been authorised and extended a number of times in accordance with the requirements of the RSFSR Code of Criminal Procedure. The request for extension of the applicant's detention until 8 March 2001 had also been lodged in compliance with Russian law. The applicant did not have a permanent place of residence in the Omsk Region, where the investigation was being conducted, and she was liable to abscond. The extension of the applicant's detention had been necessary as she had continued reading the case file.

C. The applicant's committal for trial and her detention until 1 July 2002

17. On 2 March 2001 the bill of indictment was served on the applicant. She was charged with aggravated fraud, forgery of documents, money laundering and organisation of a criminal enterprise. Five days later the case was referred for trial.

18. On 10 July 2001 the Omsk Regional Court scheduled the first trial hearing. It also examined requests by the applicant and her co-defendants for release and dismissed them on the ground of the gravity of the charges.

19. In July 2001 the applicant appealed against the order, arguing that the Regional Court had failed to issue a reasoned decision concerning the extension of her detention. Three of the applicant's co-defendants also appealed and sought leave to appear at the appeal hearing. The applicant did not file such a request.

20. On 25 October 2002 the Supreme Court of the Russian Federation upheld the decision of 10 July 2001, noting that the Regional Court had acted within its competence. The Supreme Court further held as follows:

“By virtue of Article 96 § 1 of the RSFSR Code of Criminal Procedure... in force at the time the Regional Court issued its decision [of 10 July 2001], detention could be authorised as a preventive measure in respect of persons suspected or accused of having committed a criminal offence punishable by more than two years' imprisonment.

As appears from the presented materials, Ms Matyush... was charged with criminal offences punishable by more than two years' imprisonment. Having regard to this circumstance, the investigating authorities correctly applied the preventive measure.

By virtue of Article 222 of the RSFSR Code of Criminal Procedure, when a judge schedules a court hearing, he should, among other issues, determine matters concerning the adjustment or annulment of preventive measures.

When there is a necessity to annul a preventive measure or to change it to a stricter or a more lenient one, a judge determines the matter and gives a decision accordingly.

As appears from the materials submitted, the [Regional Court] did not determine an issue concerning the change or annulment of the preventive measure and, accordingly, there was no need to issue a decision on the matter.”

D. The applicant’s detention until 21 April 2003

1. Decision of 1 July 2002

21. On 1 July 2002 the new Code of Criminal Procedure became effective.

22. On the same day the Omsk Regional Court, by the same decision, extended the applicant’s and her co-defendants’ detention until 1 October 2002, holding that they were charged with especially serious criminal offences, had no place of residence in the Omsk Region and were liable to abscond. It appears that at the hearing the applicant unsuccessfully challenged the composition of the bench.

23. The applicant and her co-defendants lodged appeals against the decision. Three of the co-defendants, but not the applicant, sought leave to appear at the appeal hearing.

24. On 25 October 2002 the Supreme Court of the Russian Federation upheld the decision of 1 July 2002, confirming that the gravity of the charges could serve as the sole ground for the applicant’s and her co-defendants’ continuing detention. The applicant’s lawyer, who had been duly notified of the hearing, did not attend.

2. Decision of 1 October 2002

25. On 1 October 2002 the Omsk Regional Court authorised a further extension of the applicant’s and her co-defendants’ detention until 1 January 2003. It relied on the gravity of the charges against them as the ground for the extension.

26. The applicant appealed, arguing that the gravity of the charges could no longer serve as the reason for her continuing detention and that her detention was excessively long.

27. On 17 April 2003 the Supreme Court of the Russian Federation upheld the decision of 1 October 2002, holding that the applicant and her co-defendants were charged with serious criminal offences and that that

ground was sufficient to authorise their detention for an additional three months.

3. Decision of 25 December 2002

28. On 25 December 2002 the Omsk Regional Court, once again relying on the gravity of the charges, extended the applicant's and her co-defendants' detention for an additional three months, until 1 April 2003.

29. The applicant appealed. She did not seek leave to appear. In the meantime, on 31 March 2003 the Omsk Regional Court authorised a further extension of the detention for an additional three months, until 1 July 2003, on the ground of the gravity of the charges.

30. On 17 April 2003 the Supreme Court of the Russian Federation quashed the decision of 25 December 2002 and authorised the applicant's release on a written undertaking not to leave the town. The relevant part of the decision reads as follows:

“By virtue of Article 255 of the Russian Federation Code of Criminal Procedure, a court which has jurisdiction to examine a case has the right to extend the detention of a defendant after the expiry of the six-month period following the committal of the case for trial.

A court decision concerning a preventive measure, the type of measure taken, an extension of detention or a change of a preventive measure should be reasoned.

When indicating the grounds for its decision concerning the extension of the detention, the court has to take into account not only the seriousness of a criminal offence with which a defendant was charged, but also other grounds and circumstances, as indicated in Articles 97 and 99 of the Code of Criminal Procedure.

This requirement of the law was not complied with when the [Regional] Court determined the matter of the extension of the defendants' detention.

As follows from the materials submitted, when extending the detention of Ms Matyush... and identifying the grounds for the extension of the detention, the court referred only to the fact that the defendants were charged with serious and particularly serious criminal offences.

Furthermore, the court decision did not indicate what had served as the grounds for the extension of the detention or whether the court could have concluded that the defendants would abscond, continue criminal activities, threaten witnesses and other parties to the proceedings, and so on.

When the gravity of the charges is taken into account, [the court] should also have regard to all the legal characteristics of the criminal offence and of the person who committed it.

In particular, it is necessary to consider the character and degree of a threat to society posed by the criminal offence in question, the state of health of the defendant, his family status, including the right of detainees to trial within a reasonable time or to

release pending trial as provided for by Article 5 of the European Convention on Human Rights.

As is rightfully pointed out in the grounds of appeal, the court did not take into account those circumstances and did not examine the [defendants'] arguments.

...

Having regard to the fact that the court breached the requirements of the law while determining the issue of detention and that the case is currently at the final stage of court proceedings..., the [Supreme Court] considers that the defendants cannot influence other parties to the proceedings, that they have permanent places of residence, and that they were detained for a long time [over four years], which had a negative influence on the state of their health,... and the preventive measure should be changed to written undertakings not to leave the town.”

31. According to the Government, on 17 April 2003 a copy of the decision of the Supreme Court was sent by special courier to Omsk, where the applicant was being detained, and arrived there on 21 April 2003. The applicant was released on the same day.

E. Trial and appeal proceedings

32. On 21 April 2004 the Omsk Regional Court, composed of Mr Tsvetkov, the presiding judge, Ms Moskalenko and Ms Marchenko, lay assessors, found the applicant guilty of aggravated fraud and sentenced her to seven years' imprisonment.

33. The applicant and her co-defendants appealed. They claimed that the Regional Court had been composed in breach of provisions of the new Code of Criminal Procedure in that the lay assessors should not have participated in the trial after 1 January 2004.

34. On 25 November 2004 the Supreme Court of the Russian Federation upheld the applicant's conviction. As regards the complaint related to the lay assessors, the Supreme Court held as follows:

“The allegations of the defendants ... concerning the unlawful composition of the [trial] court... that due to the entrance into force of the Russian Code of Criminal Procedure such category of cases should have been decided by a single judge, are unfounded.

The case was scheduled for consideration by a judge and two lay assessors.

The consideration of the case on the merits began at the first hearing of 14 August 2001 by the court composed of the presiding judge and two lay assessors, chosen by way of casting lots, i.e. in accordance with the provisions of the law on criminal procedure in force at the material time.

Thus, the Supreme Court does not see any violation of the law in that the examination of the case had been finished by the same court which had started its examination because according to § 1 of Article 242 of the Code of Criminal

Procedure a case should be examined by the same court and because the law on criminal procedure does not have retroactive effect.”

F. Conditions of the applicant’s detention

35. From the day of the arrest until her release on 21 April 2003 the applicant was detained in facility no. IZ-55/1 in Omsk.

1. Number of inmates per cell

36. According to certificates issued on 29 May 2006 by the director of the facility and produced by the Government, between 12 March 1999 and 22 November 2001 the applicant was detained in seven different cells measuring from 16.2 to 41.7 square metres. She was usually kept together with no more than seven inmates. The design capacity of the cells had not been exceeded. The Government submitted that at all times the applicant had had at least 4 square metres of personal space. They supported their assertion with the facility director’s certificate issued on 29 May 2006 which showed the number of detainees on 12 and 15 March and 18 and 21 December 1999, 22 October and 1 November 2000, and 12 and 18 February, 26 March and 22 November 2001. In another certificate issued on 29 May 2006 the director of facility no. IZ-55/1 stated that “while detained in those [seven] cells [the applicant] had had an individual bunk and bedding”. The Government did not provide any information on the number of detainees in cells where the applicant had been detained after 22 November 2001.

37. The applicant did not dispute the cell measurements. She alleged, however, that she had been afforded less than 2 square metres of floor surface as the cells had been severely overcrowded. Given the lack of beds, inmates had slept in shifts.

2. Sanitary conditions, installations, food and medical assistance

38. The Government, relying on the information provided by the director of the facility, submitted that all cells were equipped with a lavatory pan, a tap, a sink and a ventilation shaft. The lavatory pan was separated from the living area by a one-and-a-half-metre-high partition. The smaller cells had one window and the larger cells had two windows which measured 150 by 120 centimetres in width. The windows had a casement. Inmates could request warders to open the casement to let fresh air in. However, until an unspecified date in 2001 the windows had been covered with metal shutters blocking access to natural light and air. The cells were equipped with lamps which functioned day and night. Inmates were allowed to take a shower once a week for fifteen minutes. The cells were disinfected once a month. A central-heating system was installed in the building. The Government

further stated that the applicant was given food three times a day “in accordance with the established norms”. Medical personnel at the facility checked the quality of the food three times a day and made entries in registration logs. The applicant had a one-hour walk daily.

39. According to the Government, detainees, including the applicant, were provided with medical assistance. They had regular medical check-ups, including X-ray examinations, blood tests, and so on. On her admission to the detention facility the applicant was examined by a doctor who noted that the applicant was healthy. On 8 February 2002 a prison doctor diagnosed the applicant with acute respiratory disease and prescribed treatment. On 22 November 2002 the applicant was diagnosed with bronchopneumonia. She was transferred to the facility hospital, where she was treated until 23 December 2002. On two other occasions, from 20 January to 14 February 2003 and from 25 March to 22 April 2003, the applicant was admitted to the prison hospital with the diagnosis of bronchopneumonia. The Government gave a detailed description of the treatment administered to the applicant, including the type of medicine, dose and frequency. They also furnished a copy of the applicant’s medical record and medical certificates.

40. The applicant disagreed with the Government’s description and submitted that the sanitary conditions had been unsatisfactory. The cells were infested with insects but the administration did not provide any insecticide. The windows were covered with metal blinds which blocked access to natural light and air. Inmates had to wash and dry their laundry indoors, creating excessive humidity in the cells. Inmates were also allowed to smoke in the cells. The lavatory pan was separated from the living area by a partition affording no privacy to inmates. The food was of poor quality and in scarce supply. The applicant further argued that she had not been adequately treated in the prison hospital. She insisted that she had contracted a serious respiratory disease and had stayed in the prison hospital for a long time because the conditions of her detention had been unsatisfactory and because it had been extremely cold in winter in the cells. The applicant complained to various domestic officials, including the trial judge, about the conditions of her detention. No response followed.

II. RELEVANT DOMESTIC LAW

A. Criminal-law matters

41. For a summary of relevant domestic law concerning detention on remand see *Shukhardin v. Russia* (no. 65734/01, §§ 36-56, 28 June 2007).

B. Conditions of detention

42. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

III. RELEVANT INTERNATIONAL DOCUMENTS

Conditions of detention

43. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

“b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private "because they know that all complaints usually pass through the colony's administration".

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

44. The applicant complained that the conditions of her detention from her arrest on 8 March 1999 to 21 April 2003 in detention facility no. IZ-55/1 in Omsk were in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

45. The Government argued that the applicant had not exhausted domestic remedies available to her. In particular, she had not complained to a prosecutor about the conditions of her detention. The Government further commented on the conditions of the applicant's detention. In particular, they submitted that the applicant had been detained in satisfactory sanitary conditions. Relying on certificates issued by the facility director, they pointed out that the applicant had not been detained in overcrowded cells. At all times she had had an individual sleeping place. The Government did not argue that they were not in possession of any documents showing the names and exact number of inmates in the cells in which the applicant had been detained. They also noted that the applicant had been given food which had met applicable standards.

46. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

47. The Court notes the Government's argument that the applicant failed to complain to a prosecutor about the appalling conditions of her detention. In this connection, the Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and most recently, *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007). The Court also reiterates its finding made in the context of a complaint under Article 13 of the Convention that in Russia there have been no domestic remedies whereby an applicant could effectively complain about the appalling conditions of his or her detention (see *Benediktov v. Russia*, no. 106/02, § 30, 10 May 2007). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

48. The Court notes that this 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*

49. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in detention facility no. IZ-55/1 in Omsk. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

50. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the cells. However, the applicant claimed that the cell population substantially exceeded their design capacity. The Government argued that the applicant had not been detained in overcrowded cells and that at all times she had had an individual bunk.

51. The Court notes that the Government, in their plea concerning the number of detainees, cited statements by the facility's director indicating the number of the applicant's fellow inmates for certain dates (see paragraph 36 above). The Court finds it peculiar that the Government preferred to indicate the number of inmates on certain dates only. The Court further observes that the Government did not support their statements with extracts from the facility's registration logs showing names and number of inmates. In this respect, assuming that the facility's registration logs had been destroyed, the Court considers it extraordinary that in May 2006, that is more than three years after the applicant's detention in that facility had come to an end, the director was able to recollect the exact number of inmates who had been detained together with the applicant. The director's certificates are therefore of little evidential value for the Court. However, if the registration logs still exist, the Court finds it peculiar that the Government preferred to rely on the director's certificates to support their allegations concerning the conditions of the applicant's detention when it was open to them to submit copies of registration logs showing the names of inmates detained with the applicant. The Court further notes that the Government did not indicate the exact number of inmates detained together with the applicant in the period after 22 November 2001.

52. In this connection, the Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a

Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

53. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information, the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-55/1 on the basis of the applicant's submissions.

54. According to the applicant, she was usually afforded less than two square metres of personal space throughout her detention. There was a clear shortage of sleeping places and the applicant had to share a bed with other detainees, taking turns to rest. For more than four years the applicant was confined to her cell day and night, save for a daily one-hour walk.

55. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

56. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (extracts); *Labzov v. Russia*, no. 62208/00, § 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Kalashnikov*, cited above, §§ 97 et seq.; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

57. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for more than four years was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in her feelings of fear, anguish and inferiority capable of humiliating and debasing her.

58. Furthermore, while in the present case it cannot be established "beyond reasonable doubt" that the ventilation, heating, lighting or sanitary conditions in the facilities were unacceptable from the standpoint of Article 3, the Court nonetheless notes that the cell windows had been covered with metal shutters blocking access to fresh air and natural light. They were removed some time in 2001, that is more than two years after the applicant's detention in that facility had begun. In addition, the Court

observes that the applicant was diagnosed with a serious respiratory disease in the facility and that it appears most likely that she contracted it while in detention. Although this fact in itself does not imply a violation of Article 3 given, in particular, the fact that the applicant received treatment (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005, and *Igor Ivanov v. Russia*, no. 34000/02, § 40, 7 June 2007) and that she fully recovered, the Court considers that these aspects, while not in themselves capable of justifying the notion of “degrading” treatment, are relevant in addition to the focal factor of the severe overcrowding, to show that the applicant’s detention conditions went beyond the threshold tolerated by Article 3 of the Convention (see *Novoselov*, cited above, § 44).

59. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of her detention from 8 March 1999 to 21 April 2003 in facility no. IZ-55/1 in Omsk.

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

60. The applicant complained under Article 5 § 1 (c) of the Convention that her detention on remand had been unlawful. 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...”

A. Submissions by the parties

61. The Government argued that the entire term of the applicant’s detention was compatible with the domestic procedural rules and free from arbitrariness. In particular, the decisions extending the applicant’s detention before 8 March 2001 had been issued in compliance with the requirements of the RSFSR Code of Criminal Procedure. As regards the period after 8 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, which set such a time-limit, was not applicable to the applicant's case because she had been charged with a particularly serious offence. On 1 July 2002 the new Code of Criminal Procedure had become effective and the applicant's detention had been extended at regular intervals in accordance with the rules laid down in the new Code. On 17 April 2003 the Supreme Court of the Russian Federation had ordered the applicant's release. It had taken five days to deliver a copy of that decision to Omsk, which was situated more than 2,500 km from Moscow. There were no other means of expediting the delivery as such means would not have guaranteed the authenticity of the decision. The applicant had been released on 21 April 2003.

62. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

63. 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 she lodged the application with the Court on 25 March 2003. The Court notes the Government's argument that the applicant's detention after 8 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 1 July 2002 when the Omsk Regional Court issued the following detention order. The Court notes, and the parties did not dispute the fact, that the decision of 10 July 2001, as upheld on appeal on 25 October 2002, could not be construed as a formal order authorising the applicant's continued detention during the period prior to 1 July 2002 (see *Shukhardin v. Russia*, no. 65734/01, § 81, 28 June 2007, and *Melnikova v. Russia*, no. 24552/02, § 61, 21 June 2007). Therefore, the most recent detention order that the Court may examine was issued on 1 July 2002. The final decision concerning the lawfulness of that order was given on 25 October 2002, 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 1 July 2002 was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Ignatov v. Russia*, no. 27193/02, § 71, 24 May 2007; *Korchuganova v. Russia*, no. 75039/01, § 44, 8 June 2006; and *Pavlik v. Slovakia*, no. 74827/01, § 89, 30 January 2007, with further references).

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

2. Merits

(a) General principles

65. 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.

66. 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 is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law are clearly defined and that the law itself is 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) The applicant’s detention from 1 July 2002 to 17 April 2003

67. The Court observes that the applicant’s detention during the period from 1 July 2002 to 17 April 2003 was extended by the Regional Court on four occasions on the grounds that the charges against her were serious.

68. 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).

69. The trial court acted within its jurisdiction in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. It has not been claimed that those decisions were otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds invoked being analysed below in the context of compliance with Article 5 § 3 of the Convention.

70. Accordingly, the Court finds that there has been no violation of Article 5 § 1 of the Convention in respect of the detention orders issued between 1 July 2002 and 17 April 2003.

(c) The applicant's detention from 17 to 21 April 2003

71. The Court observes that on 17 April 2003 the Supreme Court authorised the applicant's release subject to a written undertaking not to leave the town. The applicant was released on 21 April 2003. According to the Government, the delay in her release was caused by the large distance between Moscow, where the Supreme Court is situated, and the Omsk Region, where the applicant was detained, and the time it took a courier to deliver a certified copy of the decision of 17 April 2003 to the Omsk Region.

72. In this connection, the Court notes that it is common ground between the parties that the applicant's detention from 17 to 21 April 2003 was not based on any legal order. Nor has it been disputed that the sole basis for her detention during those four days was the need to avoid the forgery of the decision of 17 April 2003 and to ensure that her release was effected in compliance with the established domestic procedure.

73. The Court reiterates that it must scrutinise complaints of delays in the release of detainees with particular vigilance (see *Nikolov v. Bulgaria*, no. 38884/97, § 80, 30 January 2003). Some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep it to a minimum (see *Quinn v. France*, 22 March 1995, § 42; *Giulia Manzoni v. Italy*, 1 July 1997, § 25 *in fine*; *K.-F. v. Germany*, 27 November 1997, § 71; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (see *Nikolov*, cited above, § 82). It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty.

74. In the instant case the applicant remained in detention for four days after the Supreme Court's decision directing that she should be released. Having regard to the prominent place which the right to liberty holds in a democratic society, the respondent State should have introduced appropriate legislation and deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant as required by the relevant case-law (see *Shukhardin*, cited above, § 94). The Court is not satisfied that the Russian officials complied with that requirement in the present case.

75. The Court notes that the applicant's continued detention after 17 April 2003 was clearly not covered by sub-paragraph (c) of paragraph 1 of Article 5 and did not fall within the scope of any other of the sub-paragraphs of that provision. There has accordingly been a breach of Article 5 § 1 in this respect.

3. Summary of the findings

76. The Court has found no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 1 July 2002 to 17 April 2003.

77. The Court has found a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 17 to 21 April 2003.

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

78. The applicant complained that her detention on remand 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

79. The Government submitted that the length of the applicant's detention on remand had not been excessive. It had not exceeded the maximum period of detention established under Russian law for persons accused of particularly serious criminal offences. The length of detention had been justified by the complexity of the criminal case. Furthermore, the applicant had had to remain in custody as she had been liable to pervert the course of justice and influence witnesses. She could also have absconded as she had not lived in Omsk prior to her arrest.

80. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

81. 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

(a) General principles

82. 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 v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

83. 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).

84. 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. 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*, 26 June 1991, § 43, Series A no. 207; and *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005). 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

(i) Period to be taken into consideration

85. The Court observes that the applicant's detention on remand lasted from 8 March 1999, the date of her arrest, to 21 April 2003, the date of her release. The overall duration thus amounted to four years, one month and fourteen days.

(ii) The reasonableness of the length of detention

86. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that she was involved in large-scale franchise fraud. In the decision of 11 March 1999 a prosecutor cited the gravity of the charges and the need to prevent the applicant from absconding and obstructing as the grounds for placing her in custody. At that stage of the proceedings those reasons were sufficient to justify keeping the applicant in custody (see *Khudoyorov*, cited above, § 176).

87. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, the authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding her in custody.

88. The Court reiterates that after 11 March 1999 the applicant's detention on remand was extended thirteen times. When extending the applicant's detention or examining the lawfulness of, and justification for, her continued detention, the domestic authorities consistently relied on the gravity of the charges as the main factor and on the applicant's potential to abscond and pervert the course of justice.

89. As regards the domestic 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 on remand (see *Panchenko*, cited above, § 102; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; 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).

90. The other grounds for the applicant's continued detention were the domestic authorities' findings that the applicant could abscond and pervert the course of justice. 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.

91. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that she 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 necessity to continue the deprivation of liberty must be examined with reference to a number of other relevant factors. In the present case the domestic authorities did not mention any concrete facts warranting the applicant's detention on that ground, save for a reference to her lack of a permanent place of residence and work in the Omsk Region. In this connection, the Court reiterates that the mere absence of a fixed residence and work does not give rise to a danger of absconding (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005). The Court further observes that the authorities did not indicate a single circumstance suggesting that, if released, the applicant would abscond or evade justice, or that she would otherwise upset the course of the trial. The Court finds that the existence of such a risk was not established.

92. 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. This failure is made all the more inexplicable by the fact that the new Code of Criminal Procedure expressly requires the domestic courts to consider less restrictive measures as an alternative to custody.

93. 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. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify the extension of the applicant's detention; the prosecutors reproduced the same formula in all their decisions. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and her co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it

permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the “reasonable-time” requirement in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

94. 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, the authorities prolonged 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 four years and almost two 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 period cannot be considered reasonable within the meaning of Article 5 § 3 of the Convention (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

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

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

96. The applicant complained under Article 5 § 4 of the Convention that the courts had not decided the lawfulness of her detention “speedily”. Article 5 § 4 provides:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful...”

A. Submissions by the parties

97. The Government submitted that, according to information submitted by the Supreme Court of the Russian Federation, the domestic courts had “speedily” examined the applicant’s complaints concerning the lawfulness of her detention on remand. Delays in the examination of the applicant’s appeals against the detention orders had been caused by “objective reasons” in that the applicant and her co-defendants had needed time to study court records and prosecutors’ observations and to prepare grounds of appeal. Further delays were caused by the applicant’s co-defendants’ conduct. In particular, on a number of occasions the co-defendants’ lawyers had not attended detention hearings or the co-defendants had sought adjournment of the proceedings because they were ill.

98. The applicant maintained her complaint.

B. The Court's assessment

1. Admissibility

99. The Court observes that the applicant's complaints in respect of her requests for release and appeals against detention orders which were examined by the domestic courts in the final instance before 25 October 2002 were introduced out of time, that is more than six months before the applicant lodged her application with the Court on 25 March 2003, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. The Court will therefore only examine the applicant's complaints related to the detention decisions which became final no earlier than 25 October 2002.

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

2. Merits

(a) General principles

101. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per level of jurisdiction may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Howiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

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

102. The Court notes that it took the domestic courts approximately fifteen, three and a half, six and a half, and four months to examine the applicant's request for release or her appeals against the detention orders (see paragraphs 18-20, 22-24, 25-27 and 28-30 above). There is nothing to suggest that the applicant caused delays in the examination of her requests for release or her appeals against the detention orders. The Government did not indicate any particular instance when the applicant had allegedly applied for a stay of the proceedings by which the lawfulness of her detention had been reviewed or had in any other way caused a delay in those proceedings. The Court notes the Government's argument that the proceedings were stayed due to the applicant's co-defendants' conduct. The Court, however, finds it striking that the domestic courts preferred to delay the proceedings in which a question of the applicant's continued deprivation of liberty was to be decided merely for a purpose of issuing a collective detention order, a practice which the Court has already found to be incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention (see paragraph 93 above). The Court therefore considers that these four periods cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Mamedova*, cited above, § 96; *Khudoyorov*, cited above, §§ 198 and 203; and *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were found not to have been "speedy").

103. There has therefore been a violation of Article 5 § 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

104. Lastly, in the application forms lodged on 21 April, 14 May and 11 October 2003, 2 March and 26 July 2004 and 16 January and 1 July 2005 the applicant complained that the hearing of 1 July 2002 had not been audio recorded; that she had been unable to lodge her amendments to the minutes of that hearing; that her challenges as to the composition of the court had been dismissed; that she had not been called to the hearing of 25 October 2002; that she had been convicted by a court which had not been "a tribunal established by law"; and that the domestic courts had not considered her arguments, had incorrectly applied the domestic law and had not assessed the facts.

105. In the light of all the material in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any 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

106. 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.”

107. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention from 8 March 1999 to 21 April 2003 in detention facility no. IZ-55/1, the unlawfulness of her detention after 1 July 2002, the excessive length of her detention on remand and the failure of the domestic authorities to decide “speedily” on the lawfulness of her detention in the final instance no earlier than 25 October 2002 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 1 July 2002 to 17 April 2003;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 17 to 21 April 2003;
5. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
6. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

7. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President