



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

FIRST SECTION

CASE OF SHKILEV v. RUSSIA

(Application no. 13541/06)

JUDGMENT

STRASBOURG

19 March 2009

FINAL

19/06/2009

This judgment may be subject to editorial revision.

In the case of Shkilev v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 13541/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Yuriy Nikolayevich Shkilev (“the applicant”), on 20 February 2006.

2. The applicant was represented by Mr P. Kazachenok, a lawyer practising in Volgograd. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative 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 his detention had been excessively long.

4. On 4 February 2008 the President of the First Section decided to communicate the above complaint to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1976 and lives in Volgograd.

7. On 21 April 2003 the applicant was arrested on suspicion of aggravated murder.

8. On 23 April 2003 the Elista Town Court of the Kalmykiya Republic formally remanded the applicant in custody, referring to the gravity of the charge and the risk that he might abscond or interfere with the investigation.

9. On 12 June 2003 the Tsentralniy District Court of Volgograd extended the applicant's detention until 10 September 2003, referring to the gravity of the charges and the risk of his absconding, reoffending and interfering with the investigation.

10. On 8 September 2003 the Tsentralniy District Court extended the applicant's detention until 10 December 2003, referring to the gravity of the charges and the complexity of the case. It stated that there was no reason to amend the preventive measure.

11. On an unspecified date the applicant's case was joined with the cases of five other persons, who had allegedly acted in conspiracy with the applicant.

12. In October 2003 the applicant and his co-defendants were charged with organising an armed criminal gang, several counts of aggravated robbery, kidnapping, extortion, infliction of serious injuries and murder.

13. On 4 December 2003 the Tsentralniy District Court extended the applicant's and a co-defendant's detention until 10 April 2004, referring to the need for an additional investigation and the gravity of the charges. Moreover, the applicant had no permanent place of residence in Volgograd. The court found that there was a risk of the defendants' absconding or re-offending.

14. On 12 April 2004 the investigation was completed and six defendants, including the applicant, were committed for trial before the Volgograd Regional Court.

15. The defendants asked for a trial by jury.

16. On 20 April 2004 the Volgograd Regional Court fixed a preliminary hearing for 27 April 2004 to examine the request. It further held that the defendants should meanwhile remain in custody.

17. On 27 April 2004 the Volgograd Regional Court ordered that the defendants be tried by jury and that they remain in custody pending trial.

18. On 13 October 2004 the Volgograd Regional Court extended the defendants' detention until 12 January 2005, referring to the gravity of the charges.

19. On 12 January 2005 the Volgograd Regional Court extended the defendants' detention, referring to the gravity of the charges and the risk that they might put pressure on witnesses and jurors.

20. On 7 April 2005 the Volgograd Regional Court extended the defendants' detention until 12 July 2005. The Regional Court found that, in view of the gravity of the charges, it was "opportune" to keep the defendants in custody. It rejected their requests to release them under an undertaking not to leave the town, since it could not exclude the risk that they would put pressure on witnesses or jurors.

21. On 29 June 2005 the Volgograd Regional Court extended the defendants' detention until 12 October 2005. It found that the defendants might interfere with the proceedings, as they were charged with serious criminal offences, including the charge of being members of an armed criminal gang.

22. On 4 October 2005 the Volgograd Regional Court extended the defendants' detention until 12 January 2006 for the same reasons as before.

23. The applicant appealed against the extension order of 4 October 2005. In his grounds of appeal he complained that the Regional Court's conclusions that he could interfere with the investigation or abscond had been hypothetical and had not been supported by facts. He had a permanent place of residence, a minor daughter and elderly parents, and there was therefore no danger of his absconding. On 8 December 2005 the Supreme Court upheld the extension order on appeal, finding that it had been lawful and justified.

24. On 22 December 2005 the Volgograd Regional Court extended the defendants' detention until 12 April 2006 for the same reasons as before.

25. On 10 April and 5 July 2006 the Volgograd Regional Court extended the defendants' detention for the same reasons as before.

26. On 2 October 2006 the Volgograd Regional Court extended the defendants' detention until 12 January 2007, referring to the gravity of the charges and the defendants' "characters". The court also indicated that the purpose of the detention was to eliminate any risk of the defendants' absconding, re-offending or hampering the court proceedings.

27. The applicant appealed, claiming that the Regional Court had used a stereotyped formula to justify his detention and that its conclusions that he might abscond, reoffend or interfere with the proceedings were not supported by relevant facts. He referred to his positive references and frail health and submitted that he had a minor child and elderly parents. He also complained that his detention had exceeded a reasonable time.

28. On 28 December 2006 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified. The defendants were charged with serious criminal offences, and they might therefore abscond, re-offend or obstruct the proceedings. The allegedly excessive length of their detention, their poor health, minor children, elderly

parents or permanent place of residence were not sufficient reasons to warrant release.

29. On 27 December 2006 the Volgograd Regional Court extended the defendants' detention until 12 April 2007 for the same reasons as before.

30. On 10 April 2007 the Volgograd Regional Court extended the defendants' detention until 12 July 2007 for the same reasons as before.

31. On 9 July 2007 the Volgograd Regional Court extended the defendants' detention until 12 October 2007, finding that there was no reason to vary the preventive measure.

32. On 11 October 2007 the Volgograd Regional Court extended the defendants' detention until 12 January 2008, referring to the gravity of the charges and the risk of absconding or intimidating the witnesses or jurors.

33. On 9 January 2008 the Volgograd Regional Court extended the defendants' detention until 12 April 2008 for the same reasons as before.

34. On 8 April 2008 the Volgograd Regional Court rejected the applicant's request to be released under an undertaking not to leave the place of residence and extended the defendants' detention until 12 July 2008. The decision reads as follows:

"As the trial has not yet been completed, it is necessary to extend the defendants' detention.

The court considers that the gravity of the charges justifies applying to the defendants a preventive measure in the form of detention.

However, in addition to the gravity of the charges - namely the organisation of an armed gang ... and commission of assaults on citizens and murders - carrying a sentence of up to twenty years' imprisonment for each of the defendants, the court also takes into account other factors.

Thus, the court is entitled to believe that ... application to the defendants of an undertaking not to leave the town or other preventive measures will not exclude the possibility of their absconding or exercising pressure on participants to the proceedings and jurors.

The defendants' argument that their detention has been excessively long is not in itself sufficient to warrant release.

The defendants have not produced any material showing the existence of factors making impossible [*sic*] their stay in detention facility conditions.

The court is not convinced by the defendants' argument that they have not been granted access to the materials submitted by the prosecution in support of their requests for extension. The court has at its disposal only the materials from the criminal case file, which had been studied by the defendants.

The court considers that the grounds for the detention of the defendants, charged with serious and particularly serious criminal offences, are relevant and sufficient. Their detention serves the interest of society, as it prevents the commission of similar criminal offences and ensures high-quality and effective examination of the present criminal case.

The criminal case file contains sufficient evidence against each defendant justifying an extension of their detention...”

35. On 7 July 2008 the Volgograd Regional Court extended the defendants’ detention until 12 October 2008, repeating verbatim the decision of 8 April 2008.

36. On 10 October 2008 the Volgograd Regional Court extended the defendant’s detention until 12 January 2009, repeating verbatim the decision of 8 April 2008.

37. The proceedings are still pending before the trial court.

II. RELEVANT DOMESTIC LAW

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

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

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

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

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

THE LAW

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

43. The applicant complained of a violation of his right to trial within a reasonable time and alleged that detention orders had not been founded on sufficient reasons. He relied on 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. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

44. The Government invited the Court to reject the applicant’s complaint relating to the period of his detention before 20 August 2005. In their opinion, the Court had competence to examine the applicant’s detention only with regard to the six months preceding the submission of his application form. Moreover, the applicant had not appealed against the detention orders issued before 4 October 2005.

45. The Court considers that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following his placement in custody on 21 April 2003 the applicant continuously remained in detention. Although he did not lodge appeals against the extension orders issued before October 2005, he appealed to the Supreme Court against the detention orders of 4 October 2005 and 2 October 2006, claiming, in particular, that his detention had exceeded a reasonable time. He thereby gave an opportunity to the Supreme Court to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Supreme Court had to assess the necessity of further extensions in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody. The Court therefore dismisses the Government’s objection.

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

B. Merits

1. Arguments by the parties

47. The Government submitted that the applicant had been charged with many particularly serious criminal offences. He was moreover suspected of being an active member of an armed criminal gang committing crimes on a regular basis and presenting an increased danger to society. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V), they submitted that his membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. It had been necessary to hold the applicant in custody during the investigation and trial to prevent his interfering with witnesses and jurors who lived in the same area and were not segregated from society. The domestic courts had justified the extensions of his detention by reference to the fact that he did not have a registered place of residence in the Volgograd region, as he lived permanently in another region, the Kalmykiya Republic. The Government considered the applicant's detention had been founded on "relevant and sufficient" reasons.

48. The applicant submitted that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody. They had relied essentially on the gravity of the charges, without demonstrating the existence of specific facts in support of their conclusion that he might abscond, interfere with the investigation or reoffend. They had disregarded his arguments that he had no criminal record, had a permanent place of residence and employment, and was the only breadwinner for his wife and minor daughter.

2. The Court's assessment

(a) General principles

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

50. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a

reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, § 4, 27 June 1968, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)).

51. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court’s task to establish such facts and take the place of the national authorities who ruled on the applicant’s detention. It is essentially on the basis of the reasons given in the domestic courts’ decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

52. The applicant was arrested on 21 April 2003. He has been held in custody ever since. The period to be taken into consideration has lasted more than five years and ten months.

53. It is not disputed by the parties that the applicant’s detention was initially warranted by a reasonable suspicion of his membership of an armed criminal gang and his involvement in the commission of several counts of aggravated robbery, kidnapping, extortion, infliction of serious injuries and murder. It remains to be ascertained whether the judicial authorities gave

“relevant” and “sufficient” grounds to justify his continued detention and whether they displayed “special diligence” in the conduct of the proceedings. The inordinate length of the applicant’s detention is a matter of grave concern for the Court. In these circumstances, the Russian authorities should have put forward very weighty reasons for keeping the applicant in detention for more than five years and ten months.

54. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or interfering with witnesses or jurors. In this respect they referred to the gravity of the charges, with a particular emphasis on the charge of membership of an armed criminal gang, and the absence of a registered place of residence in Volgograd.

55. The gravity of the charges was the main factor for the assessment of the applicant’s potential to abscond, reoffend or obstruct the course of justice. Thus, in the appeal decision of 28 December 2006 the Supreme Court found that the gravity of the charges outweighed the specific facts militating in favour of the applicant’s release, such as the considerable length of his detention pending trial, minor child, elderly parents and poor health (see paragraph 28 above). The courts assumed that the gravity of the charges carried such a preponderant weight that no other circumstances could have obtained the applicant’s release. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilikov*, cited above, § 81).

56. The domestic courts also referred to the applicant’s presumed membership of an organised criminal group. The Court accepts that in cases concerning organised crime the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (*Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). Taking into account that the applicant was suspected of being an active member of an organised criminal group, the Court accepts that the authorities could justifiably consider that the risk of pressure on witnesses and jurors was initially present. However, the Court is not persuaded that that ground could in itself justify the entire five-year period of the applicant’s detention. Indeed, the domestic courts referred to the risk of hampering the proceedings in a summary fashion without pointing to any

aspect of the applicant's character or behaviour in support of their conclusion that he was likely to resort to intimidation. In the Court's view such a generally formulated risk may not serve as a justification for the applicant's detention for a period of more than five years. The domestic courts omitted to consider the fact that that ground inevitably became less and less relevant with the passage of time. The courts' reasoning did not evolve to reflect the developing situation and to verify whether at the advanced stage of the proceedings that ground retained its sufficiency. The Court is not therefore convinced that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or jurors or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

57. The only other ground for the applicant's continued detention was the domestic courts' finding that he had no permanent residence in the Volgograd Region. The Court reiterates that the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007; and *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005). In any event, it was undisputed that the applicant had a fixed residence in the neighbouring region, the Kalmykiya Republic.

58. The Court observes that all decisions extending the applicant's detention on remand were stereotypically worded and in summary form. They did not describe in detail the applicant's personality or individual circumstances. Although in one of the extension orders the Regional Court stated that it had taken into account "the defendants' characters", this statement was not accompanied with any description of the applicant's character or an explanation as to why it made his detention necessary (see paragraph 26 above). The domestic authorities' reluctance to devote proper attention to discussion of the applicant's personal situation is particularly manifest in the Regional Court's decisions of 20 and 27 April 2004, which gave no grounds whatsoever for the applicant's continued detention. The Regional Court only noted that "the defendants should remain in custody" (see paragraphs 16 and 17 above). It is even more striking that by that time the applicant had already spent a year in custody, the investigation had been completed and the case had been referred for trial.

59. After the case had been submitted for trial in April 2004 the trial court issued collective detention orders using the same stereotyped formula to extend the detention of six persons. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the applicant's detention by means of collective detention orders

the domestic authorities had no proper regard to his individual circumstances.

60. Lastly, the Court notes that the domestic authorities explicitly refused to consider whether the length of the applicant's detention had exceeded a "reasonable time" (see paragraphs 28 and 34 above). Such an analysis should have been particularly prominent in the domestic decisions after the applicant had spent several years in custody; however, the reasonable-time test has never been applied.

61. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova*, cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 172 et seq., ECHR 2005-X (extracts); *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

62. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify its duration for more than five years. In these circumstances it would not be necessary to examine whether the proceedings were conducted with "special diligence". However, the Court will address the Government's argument that the complexity of the applicant's case accounted for the length of his detention. It accepts that in cases concerning organised crime, involving numerous defendants, the process of gathering and hearing evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-suspects (see, *mutadis mutandis*, *Łaskiewicz v. Poland*, no. 28481/03, §§ 59 and 61, 15 January 2008). However, it has already found, in similar circumstances, that the complexity of the case, the number or the conduct of the defendants could not justify more than five years' detention pending investigation and trial (see *Erdem v. Germany*, no. 38321/97, § 46, ECHR 2001-VII (extracts)).

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

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

64. The applicant further complained under Article 6 § 3 (b) that he had been refused access to the materials submitted by the prosecution in support of their requests for an extension of his detention. The Court considers that this complaint falls to be examined under Article 5 § 4 (see *Lamy v. Belgium*, 30 March 1989, §§ 29 and 37, Series A no. 151), which 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.”

65. The Court observes that the applicant did not raise this issue in his appeal submissions. Therefore, he did not afford the appeal court an opportunity to examine the alleged breaches of his right to challenge appropriately the reasons relied upon to justify his being remanded in custody and, if appropriate, to offer redress. The applicant has not provided any adequate explanation of why this complaint was not raised before the appeal court. The Court considers that the applicant has failed to exhaust domestic remedies in respect of this complaint, as required by Article 35 § 1. Accordingly, the said complaint must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

67. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

68. The Government submitted that the claim was excessive and that that the finding of a violation would in itself constitute sufficient just satisfaction.

69. The Court considers that the applicant has suffered non-pecuniary damage as a result of detention for more than five years which was not based on sufficient grounds. In these circumstances, the Court considers that the applicant’s suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

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

C. Default interest

71. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 19 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President