



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

1959 · 50 · 2009

FIRST SECTION

CASE OF AVDEYEV AND VERYAYEV v. RUSSIA

(Application no. 2737/04)

JUDGMENT

STRASBOURG

9 July 2009

FINAL

09/10/2009

This judgment may be subject to editorial revision.

In the case of Avdeyev and Veryayev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 2737/04) 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 two Russian nationals, Mr Aleksandr Vladimirovich Avdeyev and Mr Yevgeniy Nikolayevich Veryayev (“the applicants”), on 30 November 2003.

2. The applicants, who had been granted legal aid, were represented by Ms E. Polyutskaya and Ms N. Vedmenskaya, lawyers practising in Moscow. The Russian Government (“the Government”) were represented Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been detained unlawfully for a long time without any valid reasons.

4. On 14 November 2006 the President of the First 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 applicants were born in 1975 and 1971, respectively, and live in the town of Sasovo in the Ryazan Region.

A. Institution of criminal proceedings and conviction on 9 April 2003

7. On 12 July 2001 the brother of the first applicant had a fist fight with Mr K. Several persons, including Mr L., witnessed the fight and were brought to the Sasovo District police station for questioning. The applicants, investigators in the Sasovo District Police Department at the material time, invited Mr L. into an office and urged him to change his statements about the fight. In response to Mr L.'s refusal, the applicants, who were intoxicated, beat him up. The first applicant dragged Mr L. outdoors, forced him into a car, drove him to a cemetery and left him there.

8. Criminal proceedings were instituted against the applicants upon Mr L.'s complaints. They were charged with aggravated abuse of position. The applicants were not remanded in custody as they had given written undertakings not to leave the town.

9. On 9 April 2003 the Sasovo District Court of the Ryazan Region found the applicants guilty as charged and sentenced the first applicant to three years and six months' imprisonment and the second applicant to three years' imprisonment. The applicants were taken into custody in the courtroom.

B. Quashing of the conviction on 5 June 2003. Detention on remand from 5 June to 10 July 2003

10. On 5 June 2003 the Ryazan Regional Court, acting on appeal, quashed the judgment of 9 April 2003, remitted the case for a fresh examination and ordered, without providing any reasoning or indicating any legal grounds, that the applicants should remain in custody. The decision of 5 June 2003 was not amenable to appeal.

C. Detention from 10 July to 8 October 2003

11. On 10 July 2003 the Sasovo District Court fixed the first trial hearing for 18 July 2003 and ordered that the measure of restraint applied to the applicants should "remain unchanged". No reasons for the extension were given. At the same time the District Court indicated that the decision

could be appealed against to the Ryazan Regional Court within ten days. The applicants did not appeal.

12. The applicants' lawyers asked the District Court to release the applicants on their own recognisance. Both requests were dismissed, on 11 and 14 July 2003, respectively, because the District Court had already examined the detention matter on 10 July 2003. The lawyers did not appeal against the decisions.

13. On 25 July 2003 the Sasovo District Court examined the applicants' requests for release and dismissed them by two separate identically worded decisions. In particular, the District Court held that the applicants were charged with serious criminal offences and could influence witnesses. The decisions were amenable to appeal, however, no appeal followed.

D. Detention from 8 October 2003 to 9 January 2004 (detention order of 8 October 2003)

14. On 8 October 2003 the District Court extended the applicants' detention on remand until 9 January 2004. It held that the applicants had committed a serious criminal offence and, if released, might obstruct justice. The District Court also mentioned that it had ordered an expert examination which had not yet been completed.

15. The applicants appealed, arguing that their conviction had been quashed and there were no further grounds to keep them in custody. They noted that they had children, had permanent places of residence and did not have any criminal record.

16. On 30 October 2003 the Ryazan Regional Court upheld the decision of 8 October 2003, noting that the detention had been lawfully extended with reference to the seriousness of the charge against the applicants.

E. Detention from 9 January to 12 February 2004 (detention order of 25 December 2003)

17. On 25 December 2003 the Sasovo District Court, by two separate similarly worded decisions, extended the applicants' detention for an additional three months, that is, until 9 April 2004. The District Court listed the following grounds for the extension: the gravity of the charge against the applicants, the fact that not all witnesses had yet been heard in open court, the likelihood that the applicants might try to influence the victim and witnesses and to prevent the establishment of the truth in the case.

18. The applicants' lawyers appealed, relying on Article 5 of the Convention and arguing that, when extending the applicants' detention, the District Court had not taken into consideration their personal circumstances: that Sasovo was their permanent place of residence, that they needed to take care of small children, etc. They further submitted that there was no

evidence of the alleged likelihood that the applicants would obstruct the course of justice. They had never attempted to influence the victim or witnesses and had never tried to interfere with the course of the investigation or judicial proceedings.

19. On 20 January 2004 the Ryazan Regional Court upheld the decisions of 25 December 2003, endorsing the reasons given by the District Court.

F. Conviction on 12 February 2004

20. On 12 February 2004 the Sasovo District Court found the applicants guilty of aggravated abuse of position and sentenced them to three years and five months' and three years' imprisonment, respectively.

21. On 1 April 2004 the Ryazan Regional Court upheld the conviction.

II. RELEVANT DOMESTIC LAW

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

A. Preventive measures

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

B. Authorities ordering detention

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

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

C. Grounds for remand in custody

25. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 97 § 1 of

the new CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99 of the new CCrP). A defendant should not be remanded in custody if a less severe preventive measure is available.

D. Time-limits for detention

1. Two types of remand in custody

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

2. Time-limits for detention “during investigation”

27. After arrest the suspect is placed in custody “during investigation”. The maximum permitted period of detention “during investigation” is two months but this can be extended for up to eighteen months in “exceptional circumstances”. Extensions are to be authorised by judicial decisions, taken by courts at ascending levels. No extension of detention “during investigation” beyond eighteen months is possible (Article 109 § 4 of the new CCrP).

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

29. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 109 § 8 (1) of the new CCrP).

3. Time-limits for detention “before the court”/“during judicial proceedings”

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

31. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court received the file up to the

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

E. Time-limits for trial proceedings

32. The new CCrP empowers the judge, within fourteen days of receipt of the case file, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

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

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

THE LAW

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

35. The applicants complained under Article 5 § 1 (c) that their detention from 5 June 2003 to 9 January 2004 had been unlawful. The relevant parts of Article 5 provide:

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

...

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

A. Submissions by the parties

36. The Government argued that the applicants’ detention had been lawful, complying with the requirements of Article 5 § 1 (c) of the

Convention. They further submitted that the applicants did not appeal against the detention orders issued between 10 July 2003 and 9 January 2004 and that their complaint should, therefore, be dismissed for failure to exhaust domestic remedies.

37. The applicants submitted that their detention had lacked any legal basis. The District Court's detention orders either did not have any reasoning at all or did not give valid reasons.

B. The Court's assessment

1. Admissibility

38. The Court observes at the outset that the applicants' complaint only refers to a particular period of their detention, that is from 5 June 2003, when the Regional Court quashed the conviction of 9 April 2003 and authorised their continued detention, to 9 January 2004. The Court further notes the Government's submission, which was not contested by the applicants, that the latter had failed to appeal against the orders extending their detention between 10 July and 8 October 2003.

39. In this connection, the Court points out that the applicants were represented, from the pre-trial stage of the proceedings, by two counsel of their own choosing. No explanation has been offered for their failure to lodge, or advise the applicants to lodge, a judicial appeal against the detention orders. The Court therefore considers that the part of the applicants' complaints concerning the detention orders issued between 10 July and 8 October 2003 must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Belov v. Russia*, no. 22053/02, §74, 3 July 2008 and *Matyush v. Russia*, no. 14850/03, § 63, 9 December 2008).

40. The Court further notes that the complaint concerning the unlawfulness of the applicants' detention from 5 June to 10 July 2003 and from 8 October 2003 to 9 January 2004 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

41. 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.

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

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

i. The applicants’ detention from 5 June to 10 July 2003

43. The Court notes that on 5 June 2003 the Ryazan Regional Court quashed the judgment of 9 April 2003, by which the applicants had been convicted, and ordered that they should remain in custody. On 10 July 2003 the Sasovo District Court again extended the applicants’ detention.

44. The Court observes that on 5 June 2003 the Ryazan Regional Court gave no reasons for its decision to remand the applicants in custody. It also did not set a time-limit for the continued detention or for a periodic review of the preventive measure. Leaving aside the concurrent developments in the applicants’ case, it transpires that for more than a month the applicants remained in a state of uncertainty as to the grounds for their detention from 5 June to 10 July 2003, when the District Court re-examined the detention matter.

45. The Court has already found violations of Article 5 § 1 (c) of the Convention in a number of cases against Russia concerning a similar set of facts (see, for example, *Solovyev v. Russia*, no. 2708/02, §§ 95-100, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 65-70, 28 June 2007; and *Belov v. Russia*, cited above, §§ 8-83, 3 July 2008). In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see also *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial

decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X).

46. The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 5 June 2003 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the “lawfulness” of detention within the meaning of Article 5 § 1.

47. The Court therefore considers that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicants’ detention from 5 June to 10 July 2003.

ii. The applicants’ detention from 8 October 2003 to 9 January 2004

48. The Court observes that the applicants’ detention during the period from 8 October 2003 to 9 January 2004 was authorised by the District Court on the grounds that the charges against them were serious, that they were liable to obstruct the course of justice and that it was necessary to complete the expert examination.

49. 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, had power to make an appropriate order, and had given reasons for its decision to maintain the custodial measure, for which it had also set a time-limit (see *Khudoyorov*, cited above, §§ 152-153; *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006; and *Pshevecherskiy v. Russia*, no. 28957/02, §§ 41-46, 24 May 2007).

50. The trial court acted within its jurisdiction in issuing the decision of 8 October 2003 and there is nothing to suggest that it was invalid or unlawful under domestic law in so far as it authorised the applicants’ detention for the subsequent period. Nor has it been claimed that that decision was otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds relied on being analysed below in the context of compliance with Article 5 § 3 of the Convention.

51. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention order issued on 8 October 2003.

3. Summary of the findings

52. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicants’ detention from 5 June to 10 July 2003.

53. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicants' detention between 8 October 2003 and 9 January 2004.

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

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

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

A. Submissions by the parties

55. The Government submitted that the length of the applicants' detention had not been excessive. It was necessitated by the seriousness of the charge against the applicants and the likelihood that they would try to influence witnesses. In the Government's opinion, there were “no grounds for the applicants' release”. The Government stressed that the length of the applicants' detention had been in direct relation to the general length of the criminal proceedings against them, which had had an objective justification: the complexity of the case, the necessity to perform expert examinations, the lawyer's illness and his inability to take part in the hearings, etc.

56. The applicants maintained their complaints, arguing that the domestic courts' conclusions about their potential to obstruct the course of justice had been groundless. They supported that assertion with reference to the fact that for almost two years, from July 2001 to 9 April 2003, during which the pre-trial investigation and trial proceedings against them had been pending, they had not been in custody. However, they did not attempt to abscond, reoffend or pervert the course of justice.

B. The Court's assessment

1. Admissibility

57. 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

58. 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 (see, among other authorities, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

59. 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 him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

60. The Court further observes that 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 length of 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).

61. 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 specific 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).

62. 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 continue to justify the deprivation of liberty. Where such grounds are “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

63. The Court notes that from 5 June 2003, when the Ryazan Regional Court authorised the applicants’ detention on remand, to 12 February 2004, the date of their conviction, the authorities extended the applicants’ detention a number of times. In their decisions they either did not provide any reasons for the extensions or they relied on the gravity of the charges as the main factor and on the applicants’ potential to obstruct the course of justice.

64. As regards the authorities’ reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral 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 applicants – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicants have committed the alleged offence (see *Khudoyorov*, cited above, § 180).

65. The remaining ground for the applicants’ continued detention was the authorities’ findings that the applicants might influence witnesses and thus obstruct 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.

66. The Court notes that at the initial stages of the investigation the risk that an accused person might pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes less strong (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006). Turning to the facts of the present case, the Court observes that it was not until 25 July 2003 that the District Court for the first time made reference to the risk of interference with the witnesses.

Apart from a bald reference to the applicants' being likely to influence witnesses, the District Court did not mention any specific facts warranting their detention on that ground. In its subsequent detention orders the District Court merely repeated the same conclusion of the collusion risk without citing any reasons why, notwithstanding the arguments put forward by the applicants in support of their requests for release, it considered the risk of interference with the witnesses to exist and to be decisive. Furthermore, the Court has not lost sight of the fact that throughout the entire period of the pre-trial investigation and the trial proceedings leading to their conviction on 9 April 2003 the applicants were not in custody. The domestic courts did not make any reference to inappropriate or unlawful behaviour by the applicants during that period. The Court is therefore not convinced that the domestic authorities' findings that the applicants were likely to pervert the course of justice had a sufficient basis in fact.

67. 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 v. Estonia*, no. 55939/00, § 64, 15 February 2005, 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 applicants' attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very least, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

68. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the relevant facts. They took no notice of the arguments in favour of the applicants' release pending trial, such as their family situation and their behaviour during the two years since the criminal proceedings had been initiated. It is of particular concern to the Court that the Russian courts persistently used a stereotyped summary formula to justify extension of detention for the applicants. In addition, the District Court, while issuing separate detention orders in respect of the two applicants, used identical or similar wording to extend their detention. 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 is incompatible, in itself, with Article 5 § 3 of the Convention (see *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). The Court considers that this conclusion is not altered in the present case. While extending the applicants' detention by means of identically or similarly worded detention orders the domestic authorities had no proper regard to the applicants' individual circumstances. Furthermore, the Court finds it particularly striking that two of the five

detention decisions issued by the domestic authorities in respect of the two applicants did not indicate any reason for their continued detention. These detention orders merely mentioned that the applicants should remain in detention.

69. Having regard to the above, the Court considers that by failing to refer to concrete relevant facts or consider alternative “preventive measures” and by relying essentially on the gravity of the charges or failing to indicate any ground for the extension, the authorities extended the applicants’ detention on grounds which cannot be regarded as “sufficient”. They thus failed to justify the applicants’ continued deprivation of liberty for eight months and eight days.

70. The Court is aware of the fact that the majority of length-of-detention cases that have come before it concern longer periods of deprivation of liberty and that against that background eight months and eight days may be regarded as a relatively short period in detention. However, Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain minimum 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)). That did not happen in the present case (see, for similar reasoning, *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004; *Kostadinov v. Bulgaria*, no. 55712/00, §§ 78-80, 7 February 2008; *Sarban v. Moldova*, no. 3456/05, §§ 95-104, 4 October 2005; and *Patsuria v. Georgia*, no. 30779/04, §§ 68-71, 6 November 2007).

71. There has therefore been a violation of Article 5 § 3 of the Convention on account of the authorities’ failure to justify the applicants’ continued detention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

74. The Government did not comment.

75. The Court notes that it has found several violations in the present case. In these circumstances, the Court considers that the applicants’

suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

76. The applicants did not seek reimbursement of costs and expenses and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

77. 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 complaints concerning the unlawfulness of the applicants' detention from 5 June to 10 July 2003 and from 8 October 2003 to 9 January 2004 and the excessive length of their detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicants' detention on remand from 5 June to 10 July 2003;
3. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicants' detention on remand from 8 October 2003 to 9 January 2004;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President