



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

1959 · 50 · 2009

FIRST SECTION

CASE OF TSARKOV v. RUSSIA

(Application no. 16854/03)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Tsarkov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 16854/03) 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, Mr Vitaliy Yevgenyevich Tsarkov (“the applicant”), on 11 April 2003.

2. The applicant was represented by Mr B. Bowring, a lawyer practising in London. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his pre-trial detention pending the criminal investigation had been unlawful and that his entire period of detention had been based on insufficient grounds.

4. On 28 November 2005 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 applicant was born in 1973 and is serving a prison sentence in Tomsk.

A. The applicant's arrest and initial detention

7. The applicant was suspected of involvement in a criminal gang. On 1 September 2000 the Prosecutor's Office of the Republic of Tatarstan (the "Prosecutor's Office") opened a criminal investigation into the gang's activities. On 20 September 2001 the applicant was arrested on suspicion of two counts of murder and placed in custody.

8. On 21 September 2001 the prosecutor authorised the applicant's detention pending investigation, referring to the gravity of the charges and the risk of his absconding and obstructing justice. No time-limit for detention was fixed.

9. The applicant appealed. He claimed that the prosecutor's decision of 21 September 2001 lacked justification. He also applied for release, arguing that he had no intention of absconding, had family commitments and a permanent place of residence and a job.

10. On 6 June 2002 the Vakhitovskiy District Court of Kazan rejected the applicant's appeal and his application for release and upheld the prosecutor's decision of 21 September 2001. In particular, the court stated the following:

"When deciding to detain [the applicant], [the prosecutor] took into account the gravity of the charges and the fact that [the applicant] might abscond and interfere with the establishment of the truth...

The arguments furnished by [the applicant and his counsel] are not sufficient to refute [the prosecutor's] finding that [the applicant] might abscond and interfere with establishment of the truth."

11. On 5 July 2002 the Supreme Court of the Republic of Tatarstan upheld the decision of 6 June 2002.

B. Further detention during the investigation phase

12. In the meantime, on 28 September 2001 the Prosecutor's Office indicted the applicant for murder and involvement in a criminal gang. On an unspecified date the applicant was also charged with fraud, extortion and kidnapping.

13. On 19 November 2001 the Prosecutor's Office extended the applicant's detention until 20 March 2002. The detention order was issued in respect of seven defendants, including the applicant. Referring to the gravity of the charges, the prosecutor in charge of the investigation alleged that the defendants might abscond or interfere with the investigation. The detention order further indicated that several witnesses, including two of the defendants, had identified the applicant as one of the perpetrators of the crimes under investigation. The applicant did not appeal.

14. On 21 March and 14 June 2002 the Deputy Prosecutor of the Russian Federation extended the applicant's detention until 4 July and 4 October 2002 respectively. The orders were issued in respect of nine and then twelve defendants, including the applicant, and reiterated verbatim the reasoning previously used to justify keeping the accused in custody. As to the evidence collected in the course of the investigation, the prosecutor referred to numerous witnesses who had testified against the applicant. The applicant did not appeal.

15. On 30 April 2002 the defendants and their lawyers started studying the case file which comprised seventy-two volumes.

16. On 29 August 2002 the Supreme Court of the Republic of Tatarstan further extended the applicant's detention until 4 January 2003. The court reasoned as follows:

“[The applicant] should remain in custody since he is charged with grave offences and might abscond and threaten the witnesses and other parties involved in the proceedings. Besides, [the applicant] is to study a considerable volume of the case-file materials. In view of the above, the court grants the investigator's request to extend [the applicant's] detention.”

17. The applicant appealed, arguing that the investigator had not furnished any evidence to substantiate his allegations that the applicant might abscond or interfere with the administration of justice. He further asked the appeal court to release him and apply any other alternative measure prescribed by law to ensure his presence in court or anticipate his custodial sentence, if any. On 6 November 2002 the Supreme Court of Russia dismissed the applicant's appeal and upheld the decision of 29 August 2002.

18. On 20 November 2002 the Supreme Court of the Republic of Tatarstan further extended the applicant's detention pending his study of the case file. No time-limit for the detention period was indicated. The court provided the following justification for its decision:

“[The applicant] should remain in custody since he is charged with grave offences and might abscond or interfere with the administration of justice.”

19. The applicant appealed. Alleging numerous violations of the applicable rules of criminal procedure in the course of his arrest and detention, he asked the appeal court to release him.

20. On 5 February 2003 the Supreme Court of Russia upheld the detention order of 20 November 2002 on appeal. In particular, it noted as follows:

“As [the lower court] indicated, [the applicant] may abscond or interfere with administration of justice and has been charged with grave and serious offences. Accordingly, the [lower] court’s decision to extend the applicant’s detention was justified. As regards [the applicant’s] allegations about violations of rules of criminal procedure... they will be subject to examination in the course of the trial ...”

21. It appears that in 2004 the defendants, including the applicant, and their counsel, completed their study of the case file. According to the Government, on 27 April 2004 the Deputy Prosecutor of the Republic of Tatarstan approved the bill of indictment in respect of the applicant and fifteen other persons and forwarded the case file to the Supreme Court of the Republic of Tatarstan.

C. Detention during the trial phase

22. On 22 July 2004 the Supreme Court of the Republic of Tatarstan reviewed the material in the case file in respect of the sixteen defendants, including the applicant, and scheduled the first hearing for 27 September 2004. The court further decided that the case would be tried by a jury and that fourteen defendants, including the applicant, should remain in custody pending trial. No time-limit for their detention was fixed. When dismissing the defendants’ application for release, the court noted as follows:

“The defendants have been charged with numerous grave and serious offences which might entail a custodial sentence exceeding two years. [The court does not] discern any special exceptional circumstances which would render [the defendants’] release possible. The reasons earlier [indicated by the court] to extend the defendants’ detention, i.e., the risk of absconding, threatening the witnesses and other parties involved in the criminal proceedings or interfering with the administration of justice in any other way, have not ceased to exist.”

23. The applicant appealed. He argued that he had spent over two years and eight months in detention. He asked the court to release him on an undertaking not to leave town or on bail. He further referred to the fact that he had no previous convictions, that he was married and had a minor child and a full-time job. On 7 September 2004 the Supreme Court of Russia dismissed the applicant’s appeal and upheld the decision of 22 July 2004 finding no reason to depart from the lower court’s findings.

24. On 29 October 2004 the Supreme Court of the Republic of Tatarstan extended the detention of fourteen defendants, including the applicant, until 29 January 2005. The applicant argued that he should be released pending trial. He claimed that the gravity of the charges alone could not constitute a sufficient reason for extension of his detention; that he had been detained during a lengthy period; that the prosecution had failed to prove that he

might abscond or interfere with the administration of justice; that the court had already examined the materials concerning a number of charges against the defendants; and that the criminal proceedings had been too long. The court dismissed the applicant's arguments, noting as follows:

"[The defendants'] application for release cannot be granted for the following reasons. They have been charged with grave and serious offences which might entail a custodial sentence exceeding two years. [The court does not] discern any special exceptional circumstances which would render [the defendants'] release possible. The reasons earlier [indicated by the court] to extend the defendants' detention, i.e., the risk of absconding, threatening the witnesses and other parties involved in the criminal proceedings or interfering with the administration of justice in any other way, have not ceased to exist... The fact that the court had already examined several charges against the defendants cannot be regarded as a sufficient reason to justify their release. Nor is the length of the criminal proceedings a factor to be taken into account when deciding the issue of detention."

25. On 28 January, 29 April, and 29 July 2005 the Supreme Court of the Republic of Tatarstan extended the pre-trial detention for the applicant and thirteen other defendants until 29 April, 29 July and 29 October 2005 respectively. Each time the court dismissed the defendants' applications reproducing verbatim its earlier reasoning as follows:

"[The defendants'] application for release cannot be granted for the following reasons. They have been charged with grave and serious offences which might entail a custodial sentence exceeding two years. [The court does not] discern any special exceptional circumstances which would render [the defendants'] release possible. The reasons earlier [indicated by the court] to extend the defendants' detention, i.e., the risk of absconding, threatening the witnesses and other parties involved in the criminal proceedings or interfering with the administration of justice in any other way, have not ceased to exist... The fact that the court had already examined several charges against the defendants cannot be regarded as a sufficient reason to justify their release. Nor is the length of the criminal proceedings a factor to be taken into account when deciding the issue of detention."

26. It appears that the applicant did not appeal against the above decisions.

27. On 24 October 2005 the Supreme Court of the Republic of Tatarstan found the applicant guilty as charged and sentenced him to twenty-one years' imprisonment. On 12 April 2006 the Supreme Court of Russia upheld the applicant's conviction on appeal.

II. RELEVANT DOMESTIC LAW

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

29. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22). Under the old CCrP, a decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96). The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

30. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96). The amendments of 14 March 2001 repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

31. After arrest the suspect is taken into custody "pending investigation". The permitted period of detention "pending investigation" may be extended for up to eighteen months in "exceptional circumstances". No extension beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

32. Access to the case material is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could be granted once only and for no longer than six months. The new CCrP does not set any time-limits in this respect. Once the defendant has finished reading the file, the prosecutor remits the case to the trial court and from that date the detention is classified as "before the court" (or "during the judicial proceedings").

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

34. The applicant complained that his arrest and detention pending the investigation had not been lawful. In particular, he alleged that he had been arrested and detained in the absence of a reasonable suspicion of his involvement in offences and that on 20 November 2002 his pre-trial detention pending the investigation had been extended indefinitely.

35. He also complained that the reasons for the repeated extensions of his entire pre-trial detention had not been sufficient to justify the length of the detention period.

36. The applicant relied on Articles 5 § 1 (c) and 6 of the Convention. The Court considers that the applicant’s complaints fall to be examined under Article 5, which, in so far as relevant, reads as follows:

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

...

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

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Whether the applicant's arrest and detention were compatible with Article 5 § 1

1. Admissibility

37. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with the matter within a period of six months from the date on which the final decision was taken.

38. The Court observes that the applicant's complaint concerns the alleged unlawfulness of his arrest on 20 September 2001 and ensuing detention pending investigation which was maintained by the domestic authorities on 21 September and 19 November 2001, 21 March, 14 June, 29 August and 20 November 2002. The relevant final decisions concerning the detention periods starting on 29 August and 20 November 2002 were rendered on 6 November 2002 and 5 February 2003 respectively.

39. The Court further observes that the applicant introduced his application on 11 April 2003. It follows that the earliest period of detention that the Court may examine commenced on 29 August 2002. The Court therefore considers that the part of the applicant's complaint concerning the arrest and detention orders issued before 29 August 2002 has been introduced out of time and must be rejected in accordance with Article 35 § 1 and 4 of the Convention for non-compliance with the six-month time-limit.

40. The Court considers that the remainder of the complaints concerning the lawfulness of the applicant's pre-trial detention pending the investigation are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They 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 (see, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X (extracts)).

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) Pre-trial detention pending the investigation from 29 August to 19 November 2002

43. The Government submitted that the applicant’s pre-trial detention had been extended on 29 August 2002 in compliance with the applicable rules of criminal procedure.

44. The applicant maintained that he had been held in detention in the absence of reasonable suspicion.

45. As regards the alleged lack of reasonable suspicion, the Court reiterates that the standard imposed by Article 5 § 1 (c) of the Convention, does not presuppose the existence of sufficient evidence to bring charges, or find guilt, either at the point of arrest or while the applicant is in custody (see, for example, *Calleja v. Malta*, no. 75274/01, § 103, 7 April 2005). However, for there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see, for example, *Makhmudov v. Russia*, no. 35082/04, § 80, 26 July 2007, and *Erdagöz v. Turkey*, 22 October 1997, § 51, *Reports of Judgments and Decisions* 1997-VI).

46. In the present case, the Court considers that the authorities had sufficient information for a “reasonable” suspicion against the applicant, as a certain number of witnesses had identified him as an offender (see paragraph 13 above). Furthermore, the Court observes that the applicant’s detention in that period was imposed for the purpose of bringing him before the competent legal authority on suspicion of having committed several criminal offences. The domestic courts acted within the scope of their competence in making those decisions and there is nothing to suggest that their decisions were invalid or unlawful under domestic law (see *Ječius*, cited above, § 69). The question of the sufficiency and relevance of the grounds justifying the applicant’s detention will be analysed below in the context of compliance with Article 5 § 3 of the Convention.

47. Accordingly, the Court finds that there has been no violation of Article 5 § 1 of the Convention in respect of the applicant's pre-trial detention from 29 August to 19 November 2002.

(c) Pre-trial detention pending the investigation from 20 November 2002 to 21 July 2004

48. The Government submitted that on 20 November 2002 the applicant's pre-trial detention had been extended pending the study of ninety-eight volumes of the case file by the applicant and fifteen other defendants and their counsel. Such an extension was permissible under the rules of criminal procedure.

49. The applicant claimed that the extension of his pre-trial detention on the ground that he had not finished studying the file had been incompatible with the guarantee against arbitrary detention.

50. The Court observes that on 20 November 2002 the Supreme Court of the Republic of Tatarstan acted within its powers in deciding to extend the applicant's detention for as long as it would be necessary for all defendants to finish studying the case file. Accordingly, it remains to be ascertained whether the domestic-law provisions allowing such extension of the pre-trial detention *sine die* are in conformity with the principles of legal certainty and protection from arbitrariness set forth in the Convention.

51. The Court notes that, under the Russian rules of criminal procedure, the domestic court is not required, when extending a defendant's detention pending the study of the case file, to indicate the end-date of the detention period or the date of the next re-examination of the issue. In the Court's view, under those rules, it is not at all impossible for a defendant to remain in custody for an indefinite period of time, which in certain circumstances may easily exceed a year or more, especially if the criminal investigation involves several defendants and comprises a voluminous case file. As it happened, the applicant remained in custody for over a year and eight months while waiting for other defendants and their counsel to finish reading the file, without any prospect for the re-examination of the issue of his detention.

52. The Court has previously ruled that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – is incompatible with the principles of legal certainty and the protection of arbitrariness, which are common threads throughout the Convention and essential for the rule of law (see, for example, *Khudoyorov*, cited above, § 146).

53. Turning to the circumstances of the present case, the Court does not see any reason to reach a different conclusion. Even though on 20 November 2002 the Supreme Court of Tatarstan issued an order

extending the applicant's pre-trial detention in accordance with applicable rules of criminal procedure, such judicial authorisation did not remedy the applicant's situation. It remained impossible for the applicant to foresee the duration of his continued detention, it being conditional only on the time he or fifteen other persons and their counsel would need to study the case file.

54. In the Court's view, the provisions of Russian law governing detention pending the study of the case file by defendants in a criminal case were not foreseeable in their application and fell short of the "quality of law" standard required under the Convention.

55. The Court therefore finds that there has been a violation of Article 5 § 1 on account of the applicant's detention from 20 November 2002 to 21 July 2004.

B. Whether the length of the applicant's entire pre-trial detention exceeded the "reasonable time" requirement set forth in Article 5 § 3

1. Admissibility

56. The Court considers that the applicant's complaint that the reasons for extensions of his pre-trial detention were not sufficient to justify the length of his detention 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

57. 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 in a given case 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, § 30, Series A no. 254-A, and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

58. 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 *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

59. 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, 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 (see *Ilijkov v. Bulgaria*, no. 33977/96, § 77, 26 July 2001; *I.A. v. France*, 23 September 1998, § 102, *Reports of Judgments and Decisions* 1998-VII; and *Contrada v. Italy*, 24 August 1998, § 54, *Reports of Judgments and Decisions* 1998-V).

(b) The period to be taken into consideration

60. The Court observes that the applicant's pre-trial detention lasted from 20 September 2001, the date of his arrest, to 24 October 2005, the date of his conviction. The period to be taken into consideration for the purposes of Article 5 § 3 is therefore four years, one month and four days.

(c) Whether there were relevant and sufficient reasons

61. The Government submitted that the applicant's pre-trial detention was compatible with the "reasonable time" requirement. The applicant had been charged with several serious crimes and could have put pressure on the victims of those crimes. The authorities had even changed the identity of certain witnesses. Besides, being involved in organised crime, the applicant could have left the country and sought refuge abroad. Furthermore, the period of the pre-trial detention would be deducted from the applicant's sentence. Lastly, the applicant had contributed to the length of his detention by studying the case file for a substantial amount of time. According to the Government, from 1 to 4 March 2004 it had taken the applicant some thirteen hours to study only 52 pages of the case file. The material was all typewritten and easily legible. It concerned only the extension of his pre-trial detention and the applicant had been previously issued with copies.

62. The applicant maintained that his pre-trial detention had not been based on sufficient and relevant reasons. He alleged that the prosecution had no reasonable suspicion of his having committed a criminal offence and that there had been no sufficient grounds to believe that he might re-offend, abscond, influence witnesses or obstruct the investigation. He further claimed that the prosecution and the courts had failed to take into account the facts of his family commitments, including an underage child, or of his job and permanent place of residence. He also refuted the Government's

contention that he had delayed studying the case file. He noted that the domestic court had not imposed any deadline on him in that regard.

63. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion of his involvement in the commission of serious criminal offences. However, with the passage of time that ground inevitably became less and less relevant. Accordingly, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *Labita*, cited above, §§ 152 and 153).

64. The inordinate length of the applicant's pre-trial detention – over four years – is a matter of grave concern for the Court. It observes that at no point in the proceedings did the domestic authorities consider whether the length of the detention had exceeded a “reasonable time”, but, on the contrary, stated that the length of the criminal proceedings was not a factor to be taken into account when deciding the issue of detention (see paragraphs 24 and 25 above). The Court does not subscribe to this point of view and furthermore considers that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in pre-trial detention for such a long time.

65. When extending the applicant's pre-trial detention, the domestic authorities referred to the gravity of the charges against him. In this respect they noted that he might obstruct the course of justice or put pressure on the witnesses. They also invoked the risk of his absconding or committing other offences.

66. The Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilykov*, cited above, § 81).

67. The Court accepts that in cases concerning organised crime, involving numerous accused, the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. All these factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with acting in a criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account. There is no indication in the present case that the domestic courts had in any

way verified whether the applicant had indeed made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any other way. In such circumstances the Court has difficulty accepting the argument that there was a risk of interference with the administration of justice. Furthermore, such a risk was bound to decrease gradually as the trial proceeded and the witnesses were interviewed (compare *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006). The Court is not therefore persuaded that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or otherwise hamper the investigation of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

68. As regards the existence of a risk of absconding, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko*, cited above, § 106, and *Letellier*, cited above, § 43). In the present case the decisions of the domestic authorities gave no reasons why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding to be decisive. The Government submitted that the applicant, being a member of an organised criminal gang, had the means to leave the country and seek refuge abroad. However, it is not the Court's task to take the place of the national authorities who ruled on the applicant's detention and to substitute its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). That circumstance was referred to for the first time in the proceedings before the Court and the domestic courts never mentioned it in their decisions. The Court finds that the existence of a risk that the applicant might abscond was not established.

69. The Court further observes that since 19 November 2001, except on two occasions, the prosecutor and the courts used the same summary formula to refuse the petitions for release and extend the pre-trial detention of the applicant and thirteen other persons, without describing their personal situation in any detail. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006; *Korchuganova*, cited above, § 76; and *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006). In extending the applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

70. Lastly, the Court 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 trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, during the entire period of the applicant's detention, the authorities did not consider the possibility of ensuring his attendance by the use of other "preventive measures" which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. At no point in the proceedings did the domestic courts explain in their decisions why alternatives to the deprivation of liberty would not have ensured that the trial would follow its proper course. 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 (see paragraph 30).

71. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts have 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); *Khudoyorov*, cited above, §§ 172 et seq.; *Mamedova*, cited above, §§ 72 et seq.; *Dolgova*, cited above, §§ 38 et seq.; *Rokhlina*, cited above, §§ 63 et seq.; *Panchenko*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

72. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 6,176 euros (EUR), which he said represented his lost earnings on account of his arrest and pre-trial detention, and EUR 20,000 in respect of non-pecuniary damage.

76. The Government noted that the applicant had failed to substantiate the alleged pecuniary damage by any documentary evidence. They further submitted that the applicant had claimed compensation for non-pecuniary damage resulting from his criminal prosecution. They opined that the applicant's claim should be dismissed. In any event, they considered the applicant's claims for non-pecuniary damage excessive. Lastly, they suggested that the finding of a violation by the Court would in itself constitute sufficient just satisfaction.

77. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court observes that the applicant spent more than four years in custody, that his detention was in part unlawful and that its length 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, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

78. The applicant claimed EUR 1,740 for the work carried out by Ms Zainutdinova. According to the applicant, she spent thirty hours on the preparation of his application to the European Court of Human Rights, one hour on the collation of documents, one hour on preparation of correspondence with the Court, one hour on preparation of correspondence with the lawyers in Moscow and Mr Bowring, and five hours on preparation of the applicant's claims for just satisfaction. He further claimed 500 pounds sterling (GBP) for the work carried out by his representative Mr Bowring, who spent one hour perusing papers and corresponding with contacts in Russia and four hours preparing the applicant's observations. He submitted copies of receipts for the amount of 15,000 Russian roubles (RUB) in respect of the work performed by Ms Zainutdinova and a copy of the invoice for the services provided by Mr Bowring.

79. The Government submitted that the applicant had failed to demonstrate that the amounts he claimed in respect of the work performed by Ms Zainutdinova and Mr Bowring constituted costs necessarily and actually borne by him. They further pointed out that, as regards the work allegedly performed by Ms Zainutdinova, the applicant had submitted supporting documents in respect of RUB 15,000 only.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 875.40 in respect of costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

81. 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 applicant's arrest and detention orders issued before 29 August 2002 inadmissible and the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 29 August to 19 November 2002;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's pre-trial detention from 20 November 2002 to 21 July 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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 875.40 (eight hundred and seventy-five euros and forty cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rosakis
President