



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

1959 · 50 · 2009

FIRST SECTION

CASE OF LAMAZHYK v. RUSSIA

(Application no. 20571/04)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Lamazhyk v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 20571/04) 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 a Russian national, Mr Orlan Kan-oolovich Lamazhyk (“the applicant”), on 12 April 2004.

2. The applicant was represented by Mr S. Damdyn, a lawyer practising in the town of Kyzyl, Tyva Republic. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his detention on remand had been unlawful and excessively long, that the domestic courts had delayed examination of detention issues and that the criminal case against him had not been examined within a reasonable time.

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 applicant was born in 1974 and lived until his arrest in the town of Kyzyl in the Tyva Republic of the Russian Federation.

A. Institution of criminal proceedings and the applicant's arrest

7. On 21 January 2000 criminal proceedings were instituted against the applicant on suspicion of several counts of aggravated robbery. On the following day he was arrested. Three days later, however, his release was authorised on condition that he did not leave his town of residence.

8. On 3 March 2000 the head of the investigative unit of the Ministry of Internal Affairs of the Tyva Republic authorised the applicant's arrest in a decision which, in so far as relevant, read:

“On the night of 20-21 January 2000, at approximately midnight, [the applicant], who is unemployed, acting with mercenary intent for the purpose of stealing another's property, in collusion with Mr O. and unidentified persons, arrived by car... at the village of Khalbus-Dash... [and], having unlawfully entered a house and used weapons, attacked Mr Kh. and Mr D. After beating the victims Mr Kh. and Mr D. and having tied their hands, [the applicant], Mr O. and unidentified individuals, issuing threats of murder, killed 14 [cows], placed their bodies in the cars and stole property, thus causing the victims Mr O., Mr Or. and Mr D. pecuniary damage in the amount of 78,430 roubles, and fled the crime scene.

Having regard to the threat which the committed criminal offence poses to society and taking into account that [the applicant], if at liberty, may obstruct the establishment of the truth in the criminal case and may also abscond from the investigation and the court...

[I] ORDER:

1. That a measure of restraint in the form of arrest should be applied to [the applicant], who is to be informed of this, against his signature on a copy of the present decision...”

The decision bore the applicant's signature under the last printed paragraph, confirming that the decision had been served on him on 17 May 2000.

9. On 4 March 2000 the head of the investigative unit placed the applicant on the wanted persons list. The relevant part of the decision read:

“On 3 March 2000 a decision charging [the applicant] with having committed a crime proscribed by Article 162 § 3 (b) of the Russian Criminal Code and a warrant for his arrest were issued, given the particular gravity and dangerous nature of the crime committed by him. On the same day [police officers] were authorised to bring

[the applicant] to the pre-trial investigating authorities for the reading out of the charges and his questioning as an accused. However, the accused, [the applicant], was not found at his place of residence... [It] was established that he left for the Barun-Khemchinskiy District in the Tyva Republic. His exact location was not discovered.”

10. On 6 March 2000 the applicant was arrested. On the following day the Kyzyl District Prosecutor authorised his detention on remand.

B. Extensions of detention by prosecution authorities

11. On 9 June 2000 the acting Prosecutor of the Tyva Republic, by the same decision, extended the applicant’s and his co-defendant’s detention until 21 July 2000, relying on the particular gravity of the charges against them and the likelihood that they would pervert the course of justice and abscond if released.

12. The applicant’s and his co-defendants’ detention was further extended on 13 July, 10 and 23 October 2000 until 21 October and 6 November 2000 and 21 January 2001 respectively, with reference to the same grounds as in the decision of 9 June 2000.

C. Trial proceedings and further detention on remand.

13. On 20 January 2001 the applicant was committed for trial before the Supreme Court of the Tyva Republic. According to the Government, the applicant’s detention from 21 January to 20 March 2001 was not covered by any legal order as the domestic authorities were not required to issue one under the legislation governing criminal procedure.

D. First round of additional investigation

14. On 15 February 2001 the Supreme Court of the Tyva Republic adjourned the examination of the criminal case because one of the applicant’s co-defendants had violated the conditions of his release on bail and had absconded. The case file was sent to the Prosecutor of the Tyva Republic. The Supreme Court also noted that the prosecution authorities were to “determine the issue of the application of a measure of restraint [in respect of the applicant and his co-defendants]”.

15. The Supreme Court of the Tyva Republic resumed proceedings on 5 March 2001 and fixed a hearing for 12 March 2001. That hearing was adjourned because the victims and a lawyer failed to appear.

E. Second transfer of the case for additional investigation

16. On 20 March 2001 the Supreme Court of the Tyva Republic returned the case file to the prosecution authorities with an order to correct certain

serious procedural defects, noting that the defence rights had been violated. In the same decision the Supreme Court held that the measure of restraint applied to the co-defendants, including the applicant, should “remain unchanged” due to the gravity of the charges against them.

17. On 13 June 2001 the Supreme Court of the Russian Federation, acting on appeals from the applicant’s co-defendants, upheld the decision of 20 March 2001, endorsing the reasons given by the lower court.

18. On 20 July 2001 the acting Prosecutor of the Tyva Republic, relying on the gravity of the charges and the defendants’ liability to abscond, pervert the course of justice and re-offend, in a single decision, extended the applicant’s and his co-defendants’ detention until 20 August 2001. A further extension until 20 September 2001 was ordered by a deputy Prosecutor General of the Russian Federation, with reference to the same grounds.

F. Third round of additional investigation. Further extension of the applicant’s detention and trial proceedings

19. On 14 September 2001 the prosecution authorities returned the case file to the Supreme Court of the Tyva Republic, which on 2 October 2001 remitted the case again for additional investigation, noting serious violations of the defence rights, which had not been remedied during the previous referral of the case file to the prosecution authorities. The Supreme Court also noted that the defendants should remain in custody, given the gravity of the charges against them.

20. Having received the case file, on 11 October 2001 the first deputy prosecutor of the Tyva Republic extended the applicant’s and co-defendants’ detention until 11 November 2001, relying on the previously used grounds, namely the gravity of the charges and the defendants’ liability to abscond, reoffend and pervert the course of justice.

21. On 8 November 2001 the additional investigation ended and the Supreme Court of the Tyva Republic received the case file. It fixed the first hearing for 6 December 2001. As follows from copies of court minutes presented by the Government, the hearing of 6 December 2001, and the following hearings scheduled for 10 January and 12 March 2002, were adjourned because the presiding judge was involved in other unrelated proceedings.

22. In the meantime, the composition of the bench changed: a new presiding judge and lay assessor were assigned to the case. Between 12 March and 13 June 2002 the Supreme Court of the Tyva Republic fixed five hearings, of which three were adjourned because the co-defendants’ lawyers failed to appear, one hearing was rescheduled because the victims did not attend and one hearing was adjourned because it was necessary to serve a co-defendant with a copy of the indictment bill in a language he understood.

G. Decision of 13 June 2002 to refer the case for additional investigation

23. On 13 June 2002 the Supreme Court of the Tyva Republic, having found that the prosecution authorities had committed serious procedural violations at the indictment stage, referred the case back for additional investigation with an order to respect the rights of the defendants, including their right to the services of an interpreter, etc. The Supreme Court also stressed that the defendants should remain in detention.

24. On 15 November 2002 the Supreme Court of the Russian Federation quashed the decision of 13 June 2002 in the part concerning the referral of the case for additional investigation and sent the case for examination on the merits by the Supreme Court of the Tyva Republic. At the same time the Supreme Court of the Russian Federation held that there were no grounds to change the measure of restraint applied to the defendants and that they should therefore remain in custody.

H. New round of trial proceedings. Detention issues and conviction

25. After having received the case file on 4 February 2003, the Supreme Court of the Tyva Republic fixed the first hearing for 12 February 2003. That hearing was adjourned because the co-defendants' counsel failed to appear. The subsequent two hearings, listed for 3 and 19 March 2003, were postponed for the same reason.

26. On 24 March 2003 the Supreme Court of the Tyva Republic authorised an extension of the defendants' detention for an additional three months, until 24 June 2003, holding as follows:

“Taking into account the prosecutor's arguments that [the defendants] are charged with a criminal offence which belongs to the category of particularly serious [offences], punishable by a maximum of 10 years' imprisonment, [and] having regard to the particular complexity of the criminal case and [the fact] that the release from custody of the defendants, who pose an increased danger to society, may impede considerably a thorough, complete and objective examination of the circumstances of the case, the measure of restraint applied to the defendants should remain unchanged.”

27. Of the three hearings scheduled between 26 March and 24 June 2003 by the Supreme Court of the Tyva Republic, two were adjourned because the co-defendants' lawyers and the victims failed to appear and one hearing was postponed to provide counsel with additional time to study the materials of the case file.

28. On 24 June 2003 the Supreme Court of the Tyva Republic, using identical wording as that in the decision of 24 March 2003, extended the defendants' detention until 24 September 2003.

29. Between 24 June and 25 September 2003 the Supreme Court of the Tyva Republic fixed four hearings, of which two were adjourned because

the defence counsel failed to appear or were on annual leave, one hearing was postponed because a co-defendant was ill and one was rescheduled due to a victim's failure to attend.

30. On 25 September 2003 the Supreme Court of the Tyva Republic once again extended the defendants' detention for an additional three months, until 24 December 2003, invoking the same grounds as in the previous two detention orders of 24 March and 24 June 2003.

31. The applicant's lawyer appealed against the detention order of 25 September 2003, arguing that the applicant's detention from 24 to 25 September 2003 had not been covered by any legal order, in violation of the requirements of the Russian Code of Criminal Procedure and that the detention in general was excessively long.

32. On 4 December 2003 the Supreme Court of the Russian Federation upheld the detention order of 25 September 2003, noting that the applicant's and his co-defendants' detention had been regularly extended in compliance with the requirements of the Russian legislation on criminal procedure. It further stressed that in extending the defendants' detention the Supreme Court of the Tyva Republic had correctly relied on the gravity of the charges. As regards the detention from 24 to 25 September 2003, the Supreme Court of the Russian Federation held that the detention had been lawful, since the prosecution authorities had submitted the application for the extension before 24 September 2003 and the Supreme Court of the Tyva Republic had merely scheduled the hearing for 25 September 2003.

33. In the meantime, the Supreme Court of the Tyva Republic listed nine hearings between 25 September and 4 December 2003. Of those hearings, two were adjourned because the victims failed to appear, three hearings were rescheduled because the co-defendants' counsel were either involved in other proceedings or failed to appear, one hearing was postponed because the presiding judge was ill, one was postponed on the applicant's lawyer's request and two were cancelled because it was necessary to determine the issue of the defendants' representation.

34. On 18 December 2003 the Supreme Court of the Tyva Republic, relying on the same grounds as in the detention orders issued in 2003, issued a collective decision in respect of all the defendants, extending their detention until 24 March 2004. Subsequent identically-worded detention orders were issued by the Supreme Court of the Tyva Republic on 19 March and 18 June 2004, extending the defendants' detention until 24 June and 24 September 2004 respectively. The detention orders of 18 December 2003, 19 March and 18 June 2004 were amenable to appeal. Neither the applicant nor his lawyer made use of the appeal procedure.

35. Of the sixteen hearings scheduled between January and 25 August 2004, nine hearings were adjourned because either witnesses or co-defendants' and victims' counsel failed to appear, two were postponed because the applicant's lawyer did not attend, two were rescheduled because

the co-defendants' counsel were involved in other proceedings and one was cancelled following a co-defendant's request to consult a lawyer.

36. On 25 August 2004 the Supreme Court of the Tyva Republic found the applicant guilty of aggravated robbery and aggravated theft of weapons and sentenced him to eight years' and two months' imprisonment. The applicant decided not to lodge an appeal.

II. RELEVANT DOMESTIC LAW

Placement in custody and detention

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

1. Preventive measures

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

2. Authorities ordering detention

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

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

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

3. Grounds for remand in custody

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

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

4. Time-limits for detention

(a) Two types of remand in custody

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

(b) Time-limits for detention "during investigation"

43. After arrest the suspect is placed in custody "during investigation". The maximum permitted period of detention "during investigation" is two months but this can be extended for up to eighteen months in "exceptional circumstances". Under the old CCrP, extensions were authorised by prosecutors of ascending hierarchical levels but they must now be authorised by judicial decisions, taken by courts of ascending levels (under the new CCrP). No extension of detention "during investigation" beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

44. The period of detention "during investigation" is calculated up to the date on which the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

45. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, on a request by a prosecutor, may grant an extension of the detention until such time as the file has been read in full

and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

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

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

47. 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”).

48. 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.

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

5. Proceedings to examine the lawfulness of detention

(a) Detention “during investigation”

50. Under the old CCrP, the detainee or his or her counsel or representative could challenge the detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required

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

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

(b) During judicial proceedings

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

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

54. An appeal against such a decision lies to a higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

6. Time-limits for trial proceedings

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

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

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

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

THE LAW

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

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

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

...

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

A. Submissions by the parties

59. The Government, firstly, noted that the applicant had failed to exhaust domestic remedies as he had only appealed against the detention order of 25 September 2003. In the alternative, the Government submitted that the applicant’s detention had been regularly extended by the competent domestic authorities with reference to the gravity of the charges against him and other relevant grounds which had precluded the applicant’s release.

60. The applicant maintained his complaints, arguing that his detention had been unlawful from the very beginning, when the domestic authorities had decided to revoke the written undertaking not to leave his town of residence and had remanded him in custody for no apparent reason. He further referred to certain periods in his detention which had not been

covered by any legal order. In particular, he referred to the period from 21 January to 20 March 2001 and from 24 to 25 September 2003.

B. The Court's assessment

1. Admissibility

(a) Six-month issue

61. The Court observes at the outset that a part of the applicant's complaint refers to a period of pre-trial detention which ended more than six months before he lodged the application with the Court on 12 April 2004. The most recent period of detention which the Court may examine commenced on 24 September 2003 when the three-month period of detention covered by the order of 24 June 2003 expired (see paragraph 28 above). On 25 September 2003 the Supreme Court of the Tyva Republic issued the subsequent decision, meant to cover the period of the applicant's detention for an additional three months, starting from 24 September 2003 (see paragraph 30 above). The final decision concerning the lawfulness of that order was given on 4 December 2003, that is, within the six months preceding the lodging of the application (see paragraph 32 above). The Court therefore considers that the part of the applicant's complaints concerning the alleged unlawfulness of his detention before 24 September 2003 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Salmanov v. Russia* (dec.), no. 3522/04, 19 January 2006; *Korchuganova v. Russia*, no. 75039/01, § 44, 8 June 2006; *Pavlik v. Slovakia*, no. 74827/01, § 89, 30 January 2007; and *Ignatov v. Russia*, no. 27193/02, § 71, 24 May 2007).

(b) Exhaustion issue

62. The Court further notes the Government's submission, which was not contested by the applicant, that he had failed to appeal against the orders extending his detention after 24 December 2003 (see paragraph 34 above).

63. In this connection, the Court reiterates that the applicant was represented, from the pre-trial stage of the proceedings, by counsel of his own choosing. No explanation has been offered for the counsel's failure to lodge, or advise the applicant to lodge, a judicial appeal against the detention orders. The Court therefore considers that the part of the applicant's complaint concerning the detention after 24 December 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).

(c) Conclusion

64. The Court finally observes that, having applied the six-month and exhaustion rules, it has competence to examine the applicant's complaint related to the period of his detention from 24 September to 24 December 2003. The Court notes that that complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

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

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

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

i. The applicant's detention from 24 to 25 September 2003

67. The Court notes that on 24 June 2003 the Supreme Court of the Tyva Republic, relying on the gravity of the charges and the likelihood that the applicant would pervert the course of justice, extended his detention for an additional three months, until 24 September 2003. However, it was not until 25 September 2003 that the Supreme Court of the Tyva Republic authorised

an extension of the applicant's detention, noting that the extension was granted for three months, that is from 24 September to 24 December 2003.

68. The Court has to ascertain whether the detention from 24 to 25 September was "lawful". The Government maintained that the detention was lawful because it complied with the substantive and procedural provisions of the rules of criminal procedure. The applicant alleged that his detention from 24 September 2003, when the order of 23 June 2003 expired, to 25 September 2005, when the Supreme Court granted a further extension, was not covered by any detention order and had therefore been unlawful.

69. The Court reiterates that for detention to be "lawful" within the meaning of Article 5 § 1, it has to conform to both the substantive and procedural rules of the domestic law (see paragraph 65 above). The authorised period of the applicant's detention expired on 24 September 2003. It was only on the following day that the Supreme Court of the Tyva Republic issued the subsequent detention order. In this connection, the Court observes that neither the Government nor the Supreme Court of the Russian Federation, while examining an appeal against the detention order of 25 September 2003, pointed to any legal provision which permitted an accused to continue to be held once the authorised detention period had expired. The Russian Constitution and rules of criminal procedure vested the power to order or prolong detention on remand in courts (see paragraph 39 above). No exception to that rule were permitted or provided for, no matter how short the duration of the detention.

70. The Court further observes that the Supreme Court's decision of 25 September 2003 could not have constituted a "lawful" basis for the applicant's detention in the preceding period (see *Belov v. Russia*, no. 22053/02, § 82, 3 July 2008, with further references). The decision authorised the applicant's detention from 24 September to 24 December 2003, of which the period from 24 to 25 September 2003 was thus authorised retrospectively. The Court has already held in a number of cases that any *ex post facto* authorisation of detention is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness (see, for example, *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X (extracts); *Solovyev v. Russia*, no. 2708/02, § 99, 24 May 2007, and *Shukhardin v. Russia*, no. 65734/01, § 69, 28 June 2007). The Court sees no reason to reach a different conclusion in the present case. It follows that the applicant's detention, in so far as it had been authorised by the order of 25 September 2003 in respect of the preceding period, was not "lawful" under domestic law.

71. The Court thus concludes that from 24 to 25 September 2003 there was no formal decision authorising the applicant's detention. The applicant was in a legal vacuum that was not covered by any domestic legal provision (see *Shukhardin*, cited above, § 85). In the absence of any decision that could have served as a "lawful" basis for the applicant's detention in the

impugned period, the Court finds that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 24 to 25 September 2003.

ii. The applicant's detention from 25 September to 24 December 2003

72. The Court observes that the applicant's detention during the period from 25 September to 24 December 2003 was authorised by the Supreme Court of the Tyva Republic on the grounds that the charges against him were serious and that he was liable to obstruct the course of justice.

73. 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).

74. The trial court acted within its jurisdiction in issuing the decision of 25 September 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. It has not been claimed that that decision was otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds relied on being analysed below in the context of compliance with Article 5 § 3 of the Convention.

75. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 25 September to 24 December 2003.

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

76. The applicant complained that the length of his pre-trial detention was unreasonable, in breach of Article 5 § 3 of the Convention, which reads as follows:

"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."

A. Submissions by the parties

77. The Government claimed that the applicant had failed to exhaust domestic remedies as the only appeal he had lodged was against the detention order of 25 September 2003. They further submitted that the

length of the applicant's detention on remand had not been excessive. The extensions of the detention had been necessary in the circumstances of the case, in particular taking into account the gravity of the charges against the applicant and the risk of his obstructing the examination of the case, if released.

78. The applicant replied that the domestic courts had not provided any evidence to show that he had been genuinely liable to re-offend, abscond or pervert the course of justice. The only reason for his continued detention was the gravity of the charges against him.

B. The Court's assessment

1. Admissibility

79. The Court reiterates that the purpose of the rule requiring domestic remedies to be exhausted is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). In the context of an alleged violation of Article 5 § 3 of the Convention, this rule requires that the applicant give the domestic authorities an opportunity to consider whether his right to trial within a reasonable time has been respected and whether there exist relevant and sufficient grounds continuing to justify the deprivation of liberty.

80. Following his arrest on 6 March 2000 the applicant remained in pre-trial detention until his conviction on 25 August 2004. It is not disputed that he did not lodge any appeals against the prosecutors' orders and the decisions of the Supreme Court of the Tyva Republic extending his detention until 24 September 2003. He did, however, challenge the later detention order of 25 September 2003 before the Supreme Court of the Russian Federation, which on 4 December 2003 held that the applicant's detention had been lawfully extended at regular intervals. The Court thus considers that, although the applicant did not lodge appeals against the extension orders issued before September 2003, by lodging an appeal against the subsequent detention order of 25 September 2003 he gave an opportunity to the Supreme Court of the Russian Federation 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 (see, for similar reasoning, *Lyubimenko v. Russia*, no. 6270/06, § 62, 19 March 2009 and *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009). In these circumstances, the Government's objection of non-exhaustion of domestic remedies must be

dismissed in so far as it concerned the applicant's failure to appeal against the detention orders issued before 25 September 2003 (see *Shcheglyuk v. Russia*, no. 7649/02, § 36, 14 December 2006, and *Pshevecherskiy v. Russia*, no. 28957/02, § 51, 24 May 2007).

81. The Court further notes that 4 December 2003 was the most recent date on which the appeal court examined the question of the applicant's continued detention. It reiterates that on that date the Supreme Court upheld the order of 25 September 2003 extending the applicant's detention until 24 December 2003. The applicant did not challenge any of the orders extending his detention after 24 December 2003. The Government argued that by failing to file appeals, the applicant had denied the domestic authorities an opportunity to consider whether these further extensions were compatible with his Convention right to trial within a reasonable time or release pending trial. They insisted that the Court should reject the applicant's complaints in respect of that period of his pre-trial detention for the failure to exhaust available domestic remedies.

82. In this respect the Court reiterates that the question of exhaustion of domestic remedies in respect of the extension of the applicant's detention after 24 December 2003 will only arise if the examination of the reasons given by the domestic courts in their decisions extending the applicant's detention until that date will lead the Court to the conclusion that by that date the detention had not exceeded a reasonable time. Indeed, the Court has already held that when detention on remand is found to have exceeded a reasonable time on the most recent date when an appeal court examined the detention matter, the detention after that date will also be found, except in extraordinary circumstances, to have necessarily kept such character throughout the time for which it was continued (see *Stögmüller v. Austria*, 10 November 1969, § 12, Series A no. 9, and, most recently, *Pshevecherskiy*, cited above, § 53).

83. The Court thus considers that the issue of exhaustion of domestic remedies in respect of the applicant's detention after 24 December 2003 is closely linked to the merits of the complaint that his detention before 24 December 2003 had already exceeded a reasonable time, in violation of the requirements of Article 5 § 3 of the Convention. The Court therefore finds it necessary to join the Government's objection to the merits of the applicant's complaint in respect of his detention on remand before 24 December 2003.

84. The Court further notes that the applicant's complaint under Article 5 § 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

85. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty.

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest that might justify, 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).

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

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

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

88. Having regard to its finding in paragraphs 82 and 83 above and taking into account the particular circumstances of the case, the Court finds that the period to be examined commenced on 6 March 2000 when the applicant was re-arrested and ended on 24 December 2003.

89. The Court notes that the authorities extended the applicant's detention on a number of occasions. In their decisions they relied on the gravity of the charges as the main factor and on the applicant's potential to abscond, reoffend or pervert the course of justice.

90. As regards the authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral*, cited above, § 68; and *Ilijkov*, cited above, § 81). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

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

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

93. In the present case the domestic authorities did not cite any concrete facts warranting the applicant's detention on that ground. They did not indicate any circumstance to suggest that, if released, the applicant would abscond, re-offend or otherwise upset the course of the trial. Although the Court does not lose sight of the fact that in March 2000 the applicant allegedly violated the conditions of his release by leaving the town of his residence, and that there could have existed certain factors warranting the

authorities' conclusion with regard to the applicant's potential to abscond, the domestic authorities never referred to or mentioned that fact in the detention orders and it is not the Court's task to take the place of the national authorities who ruled on the issue of detention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006). The Court finds that the existence of such a risk was not established.

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

95. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They paid no regard to the arguments in favour of the applicant's release pending trial. It is also of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify extending his detention. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable-time" requirement in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). The Court also finds it striking that during certain periods the applicant was detained without any formal decision authorising his detention (see, for example, paragraphs 13, 21 and 71 above).

96. Having regard to the above, the Court considers that by failing to address concrete relevant facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention until 24 December 2003 on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued detention for almost three years and ten months and by 24 December 2003 the length of his detention had already ceased to be reasonable (see *Rokhlina*, cited above, § 69).

97. Having regard to the above finding and in the absence of any extraordinary circumstances, the Court cannot conclude that after

24 December 2003 the character of the applicant's continued detention changed. Hence the applicant did not fail to exhaust domestic remedies in respect of his complaint related to his detention after 24 December 2003 (see *Pshevecherskiy*, cited above, § 72) and the Court rejects the Government's objection in this respect.

98. The Court, accordingly, finds a violation of Article 5 § 3 of the Convention.

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

99. The applicant complained under Article 5 § 4 of the Convention that the Supreme Court of the Russian Federation had not examined "speedily" his appeal against the detention order of 25 September 2003. Article 5 § 4 provides:

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

A. Submissions by the parties

100. The Government submitted that, according to information submitted by the Supreme Court of the Russian Federation, the Supreme Court had "speedily" examined the applicant's complaints concerning the lawfulness of his detention from 24 September to 24 December 2003. They further noted that the applicant had been found guilty of a criminal offence and that the term of his pre-trial detention had counted towards his sentence.

101. The applicant maintained his complaint.

B. The Court's assessment

1. *Admissibility*

102. 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

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

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

104. The Court notes that it took the Supreme Court of the Russian Federation more than two months to examine the applicant’s appeal against the detention order of 25 September 2003 (see paragraphs 30 and 32 above). There is nothing to suggest that the applicant caused delays in the examination of his appeal against that detention order. The Government did not indicate any particular instance when the applicant had in any way caused a delay in those proceedings. The Court therefore considers that the impugned period cannot be considered compatible with the “speediness” requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Khudoyorov*, cited above, §§ 198 and 203; and *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were found not to have been “speedy”).

105. The Court also notes that the fact that the applicant was found guilty of a criminal offence and that the duration of his pre-trial detention counted towards his sentence cannot in principle justify the failure to examine speedily his applications for release or his appeals against the detention orders (see *Bednov v. Russia*, no. 21153/02, § 33, 1 June 2006).

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

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

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

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

A. Submissions by the parties

108. The Government considered that the complaint of excessive length of proceedings was inadmissible under Article 35 § 3 of the Convention. They argued that the delays had been caused by objective reasons: the complexity of the case, the victims’, witnesses’ and lawyers’ failure to attend hearings, the co-defendant’s and counsel’s illnesses, the judge’s illness and his participation in other unrelated proceedings. The Government, without providing further details and citing the Supreme Court of the Russian Federation, further submitted that the domestic authorities had undertaken steps to expedite the proceedings: “had taken steps to ensure the witnesses’ attendance and made changes in legal representation.” At the same time the Government accepted that a certain delay in the proceedings had been caused by the three referrals of the case for an additional investigation.

109. The applicant contested the Government’s submissions.

B. The Court’s assessment

1. Admissibility

110. The Court observes that the period to be taken into consideration began on 22 January 2000, when the applicant was arrested. The period in question ended on 25 August 2004 when the Supreme Court of Tyva Republic convicted the applicant. It thus lasted approximately four years and seven months before the investigating authorities and the trial court.

111. 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

112. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case

and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

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

114. As to the applicant's conduct, the Government argued that the applicant had to bear the responsibility for a delay in the proceedings because his representative had failed to appear or had applied for an adjournment. In this connection, the Court notes that according to a summary table of court hearings presented by the Government, the applicant's lawyer successfully asked for an adjournment of one hearing in 2003 and failed to attend two hearings in 2004, thus causing an aggregated delay of two months (see paragraphs 33 and 35 above). The Government did not indicate any other period when the proceedings were stayed or any other hearing which was adjourned due to the applicant's or his representative's conduct. Having regard to the overall length of the proceedings, the Court therefore considers the delay caused by the applicant to be negligible.

115. As regards the conduct of the authorities, the Court is aware of substantial periods of inactivity for which the Government have not submitted any satisfactory explanation and which are attributable to the domestic authorities. The Court observes that an aggregated delay of approximately sixteen months was caused by the referral of the case for additional investigation on four occasions, and by the prosecution authorities' repeated failure to comply with the trial court's orders and to correct procedural defects and a change in the composition of the bench (see paragraphs 14-15, 16-21, 22, 23-25 above). In this respect, the Court reiterates that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004). Another delay of over three months was caused by the judge's illness and his involvement in other unrelated proceedings.

116. The Court furthermore notes that the conduct of the applicant's co-accused and their counsel, the victims and witnesses was one of the reasons for the prolongation of the proceedings. The Court reiterates that the delay occasioned by their failure to attend at least thirty hearings and the Supreme

Court's failure to discipline them is attributable to the State (see *Kuśmerek v. Poland*, no. 10675/02, § 65, 21 September 2004, and *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007). The Court is mindful of the Government's argument that the domestic authorities undertook "certain steps" to expedite the proceedings. However, the Government did not explain what steps had been taken. Furthermore, without accepting the veracity of the Government's argument, the Court observes that even if such measures had, in fact, been applied, their effectiveness would appear to be open to doubt as counsel, witnesses and victims failed to attend hearings throughout the entire period the trial proceedings were pending.

117. Having examined all the material before it and taking into account the overall length of the proceedings, what was at stake for the applicant and the fact that the proceedings were pending for the substantial part before the trial court without apparent progress, the Court considers that in the instant case the length of the first set of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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."

119. On 15 March 2007 the Court invited the applicant to submit his claims for just satisfaction. He did not submit any claims within the required time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the question of exhaustion of domestic remedies in respect of the applicant's complaint concerning the excessive length of his detention after 24 December 2003 and *rejects* it;
2. *Declares* the complaints concerning the unlawfulness of the applicant's detention from 24 September to 24 December 2003, the excessive length of his detention, the failure of the domestic authorities to decide "speedily" on the lawfulness of his detention from 24 September to 24 December 2003 and the length of the criminal proceedings against him, admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 24 to 25 September 2003;
4. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 25 September to 24 December 2003;
5. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
6. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
7. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
8. *Holds* that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President