



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

1959 · 50 · 2009

FIRST SECTION

CASE OF SOROKIN v. RUSSIA

(Application no. 7739/06)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Sorokin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 7739/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Nikolay Nikolayevich Sorokin (“the applicant”), on 18 January 2006.

2. The applicant was represented by Mr S. Kanshin, a lawyer practising in Volgograd. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged that his detention pending trial had been excessively long and had not been accompanied by appropriate procedural guarantees.

4. On 31 March 2008 the President of the First Section decided to communicate 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). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Volgograd.

A. Criminal proceedings on the charges of theft and forgery of documents

6. On 31 January 2003 the applicant was arrested and charged with two counts of theft and the use of stolen and forged identity documents.

7. On 6 April 2004 the Dzerzhinskiy District Court of Volgograd convicted the applicant as charged and sentenced him to three years and six months' imprisonment starting from 31 January 2003.

8. On 27 July 2004 the Volgograd Regional Court upheld the judgment on appeal.

9. The applicant completed his sentence on 31 July 2006.

B. Criminal proceedings on the charges of membership of an armed criminal gang, robbery, extortion, kidnapping and murder

10. On 16 September 2003 the Tsentralniy District Court of Volgograd remanded the applicant in custody on the charge of aggravated murder. It referred to the gravity of the charge and the risk of absconding or interfering with the investigation.

11. On an unspecified date additional charges of membership of an organised criminal group, robbery, extortion and kidnapping were brought against the applicant.

12. On 13 November 2003 the Tsentralniy District Court extended the applicant's detention until 10 January 2004, referring to the gravity of the charges and the need for a further investigation.

13. On 24 December 2003 the Tsentralniy District Court extended the applicant's detention until 10 April 2004. It found that the applicant might abscond or reoffend, as he had been charged with serious criminal offences and was unemployed.

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

15. The defendants asked for trial by jury.

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

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

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

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

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

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

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

23. The applicant appealed. He submitted that it was not necessary to extend his detention as he was currently serving his sentence under the judgment of 6 April 2004 and for that reason could not tamper with witnesses or threaten jurors. On 8 December 2005 the Supreme Court of the Russian Federation upheld the extension order on appeal.

24. On 22 December 2005 the Volgograd Regional Court examined the prosecutor's request for a new extension. The prosecutor attended the hearing and asked the court to extend the defendants' detention for three months, referring to the gravity of the charges. It transpires from the hearing record that the applicant was not brought to the courtroom as he was in hospital receiving treatment for tuberculosis. The judge asked counsel for the applicant whether she had any objections to the hearing being held in the applicant's absence. Counsel stated that she had no objections. On the same day the Volgograd Regional Court extended the defendants' detention until 12 April 2006. It found that there was a risk that the defendants might intimidate witnesses and jurors as they were charged with particularly serious criminal offences, including membership of an armed criminal gang and murder.

25. In his appeal submissions the applicant complained that the hearing had been held in his absence. On 4 April 2006 the Supreme Court upheld the extension order on appeal, finding that it had been lawful and justified.

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

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

28. In his appeal submissions the applicant complained that the extension order had been poorly reasoned and had not been supported by relevant facts. The Regional Court had disregarded his arguments that he was suffering from tuberculosis and that his health had deteriorated in

detention. He also complained that he had not been given access to the materials submitted by the prosecution in support of their request for extension.

29. On 28 December 2006 the Supreme Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified. The defendants were charged with serious criminal offences, and they might therefore abscond, reoffend or obstruct the proceedings. The allegedly excessive length of their detention, their poor health or family situation were not sufficient reasons to warrant release.

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

31. The applicant appealed, referring to Article 5 § 3 of the Convention and complaining that his detention had exceeded a reasonable time and the extension order had been poorly reasoned. The Regional Court had already heard all prosecution witnesses and examined the evidence submitted by the prosecutor, therefore he could no longer put pressure on witnesses or interfere with the proceedings in any other way. Referring to his permanent place of residence, positive references and poor health, he asked to be released under an undertaking not to leave the town.

32. On 28 March 2007 the Supreme Court upheld the extension order on appeal, finding that it had been lawful and justified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. On 10 October 2008 the Volgograd Regional Court extended the defendants' detention until 12 January 2009, repeating verbatim the decision of 8 April 2008.

40. The proceedings are still pending before the trial court. The applicant remains in custody.

II. RELEVANT DOMESTIC LAW

41. Since 1 July 2002 criminal law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

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

43. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character,

his or her profession, age, state of health, family status and other circumstances (Article 99).

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

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

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

THE LAW

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

47. The applicant complained that his right to trial within a reasonable time had been violated and alleged that detention orders had not been founded on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

48. The Government invited the Court to reject the applicant's complaint relating to the period of his detention before 18 July 2005. In their opinion, the Court had competence to examine the applicant's detention only with regard to the six months preceding the submission of his application form. Moreover, the applicant had not appealed against the detention orders issued during the investigation.

49. The Court considers that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains

of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following his placement in custody on 16 September 2003 the applicant remained continuously in detention. Although he did not lodge appeals against the extension orders issued before October 2005, he appealed to the Supreme Court against the detention orders of 4 October and 22 December 2005 and 2 October and 27 December 2006, claiming, in particular, that his detention had exceeded a reasonable time. He thereby gave an opportunity to the Supreme Court to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. Indeed, the Supreme Court had to assess the necessity of further extensions in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody. The Court therefore dismisses the Government's objection.

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

B. Merits

1. Arguments by the parties

51. The Government argued that the applicant had been charged with many particularly serious criminal offences. He was moreover suspected of being an active member of an armed criminal gang committing crimes on a regular basis and presenting an increased danger to society. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V), they submitted that his membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. It had been necessary to hold the applicant in custody during the investigation and trial to prevent his interfering with witnesses. The domestic courts had also referred to the fact that the applicant was unemployed. The Government considered that the applicant's detention had been founded on "relevant and sufficient" reasons.

52. The applicant submitted that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody. The domestic courts' finding that he might abscond, reoffend or interfere with the proceedings had not been supported by any evidence and, moreover, had been absurd. Before 31 July 2006 the applicant had been serving his sentence after conviction in an unrelated criminal case on charges of theft

and forgery of documents. His imprisonment had made it impossible for him to abscond, reoffend or interfere with the proceedings.

2. *The Court's assessment*

(a) **General principles**

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

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

55. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilykov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions

dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

(i) Period to be taken into consideration

56. The Court observes that Article 5 § 3 applies solely in the situation envisaged in Article 5 § 1 (c) with which it forms a whole. It ceases to apply on the day when the charge is determined, even if only by a court of first instance, as from that day on the person is detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) (see *Solmaz*, cited above, §§ 24 to 26, and *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175).

57. The applicant was remanded in custody on 16 September 2003 on charges of membership of an armed criminal gang, robbery, extortion, kidnapping and murder. He has been held in detention pending trial ever since. During part of that period, from 6 April 2004 to 31 July 2006, he was concurrently serving his sentence after conviction in an unrelated criminal case on charges of theft and forgery of documents. The Court must verify which subparagraph of Article 5 § 1 was applicable during that period with a view to determining whether it should be taken into consideration for the purposes of Article 5 § 3.

58. The Court reiterates in this connection that the applicability of one ground listed in Article 5 § 1 does not necessarily preclude the applicability of another and detention may be justified under more than one subparagraph of that provision (see, among many others, *Brand v. the Netherlands*, no. 49902/99, § 58, 11 May 2004, and *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). In particular, in the case of *Eriksen v. Norway*, the Court considered that the applicant's detention was justified under both subparagraphs (a) and (c) of Article 5 § 1 and found that Article 5 § 3 was applicable (see *Eriksen v. Norway*, 27 May 1997, § 92, *Reports of Judgments and Decisions* 1997-III).

59. In the present case, on 6 April 2004 the applicant was convicted of theft and forgery of documents and sentenced to a term of imprisonment which he completed on 31 July 2006. During that period he was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a). At the same time, he was held in custody in connection with an unrelated set of criminal proceedings for the purpose of bringing him before

the competent legal authority on suspicion of being a member of an armed criminal gang and having committed robbery, extortion, kidnapping and murder, a situation envisaged in Article 5 § 1 (c). It accordingly follows that, from 6 April 2004 to 31 July 2006, the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs (a) and (c) of Article 5 § 1. Taking into account that the applicant was detained on the basis of Article 5 § 1 (c), and notwithstanding the fact that his detention was also grounded on Article 5 § 1 (a), the Court considers that this period should be taken into consideration for the purposes of Article 5 § 3. Therefore, the applicant has been continuously detained pending trial on the charges of membership of an armed criminal gang, robbery, extortion, kidnapping and murder, since he was remanded in custody on 16 September 2003 until now, that is for more than five years and nine months.

(ii) Reasonableness of the length of the period in issue

60. It is not disputed by the parties that the applicant's detention was initially warranted by reasonable suspicion that he was a member of an armed criminal gang and involved in robbery, extortion, kidnapping and murder. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify his continued detention and whether they displayed "special diligence" in the conduct of the proceedings. The inordinate length of the applicant's detention is a matter of grave concern for the Court. In these circumstances, the Russian authorities should have put forward very weighty reasons for keeping the applicant in detention for more than five years and nine months.

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

62. The gravity of the charges was the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk that an accused might abscond or reoffend, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; see also *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).

63. Another ground for the applicant's detention was his presumed membership of an organised criminal group. The Court accepts that in cases concerning organised crime the risk that a detainee if released might put

pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively longer period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). Taking into account that the applicant was suspected of being an active member of an organised criminal group, the Court accepts that the authorities could justifiably consider that the risk of pressure on witnesses and jurors was initially present. However, the Court is not persuaded that that ground could in itself justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of hampering the proceedings in a summary fashion without pointing to any aspect of the applicant's character or behaviour in support of their conclusion that he was likely to resort to intimidation. In the Court's view, such a generally formulated risk may not serve as justification for the applicant's detention for a period of more than five years. The domestic courts failed to consider the fact that that ground inevitably became less and less relevant with the passage of time. The courts' reasoning did not evolve to reflect the developing situation or to verify whether at the advanced stage of the proceedings that ground retained its sufficiency. The Court is not therefore convinced that, throughout the entire period of the applicant's detention, compelling reasons existed for a fear that he would interfere with witnesses or jurors or otherwise hamper the examination of the case, and certainly not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

64. Further, the domestic courts gauged the applicant's potential to reoffend by reference to his unemployment. In this respect, the Court reiterates that it cannot be concluded from this fact alone that the applicant was liable to commit new offences (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007). In any event, the mere absence of permanent employment could not serve as justification for more than five years' detention pending trial.

65. The Court also finds it peculiar that during the period from 6 April 2004 to 31 July 2006, when the applicant was serving a sentence in an unrelated criminal case, the domestic courts continued to refer to the danger of his absconding, reoffending or interfering with witness and jurors in their extension orders. The Court accepts that it may be necessary to issue custody orders in respect of convicted prisoners, for example to make possible the person's transfer from the correctional colony where he is serving his sentence to a detention facility situated in the area where the investigation and trial are conducted. However, in the present case the domestic courts did not refer to such a necessity. Instead, they repeated the stereotyped formula without any assessment of whether, considering that the applicant was detained in a correctional colony, the risk of fleeing from justice, reoffending or intimidating witnesses or jurors was real. The Court

considers that the extension orders issued between 6 April 2004 and 31 July 2006 attested to the domestic courts' perfunctory attitude to the applicant's detention, which was extended automatically without concrete relevant facts being addressed or the changing circumstances taken into account. Although it is true that the extension orders issued during that period did not affect the applicant's situation in practical terms, as he was in any event being held after conviction by a competent court, this fact is not decisive for the Court's assessment. The existence of a violation is conceivable even in the absence of prejudice or damage; the question whether an applicant has actually been placed in an unfavourable position or sustained damage becomes relevant only in the context of Article 41 (see, among many authorities, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 67, 31 July 2008; *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A; and *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31).

66. The Court observes that all decisions extending the applicant's detention were stereotypically worded and in summary form. They did not describe in detail the applicant's personal situation. Although in one of the extension orders the Regional Court stated that it had taken into account "the defendants' characters", this statement was not accompanied by any description of the applicant's character or an explanation as to why it made his detention necessary (see paragraph 27 above). The domestic authorities' reluctance to devote proper attention to discussion of the applicant's personal situation is particularly manifest in the Regional Court's decisions of 20 and 27 April 2004, which gave no grounds whatsoever for the applicant's continued detention. The Regional Court only noted that "the defendants should remain in custody" (see paragraphs 16 and 17 above).

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

68. Lastly, the Court notes that the domestic authorities explicitly refused to consider whether the length of the applicant's detention had exceeded a "reasonable time" (see paragraphs 29 and 37 above). Such an analysis should have been particularly prominent in the domestic decisions after the applicant had spent several years in custody; however the reasonable-time test has never been applied.

69. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an

applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation 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-... ; *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova*, cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, no. 6847/02, §§ 172 et seq., ECHR 2005-X (extracts); *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX).

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

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

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

72. The applicant complained that he had been refused access to the materials submitted by the prosecution in support of their requests for an extension of his detention and that the hearing of 22 December 2005 had been held in his absence. The Court considers that those complaints fall to be examined under Article 5 § 4, which provides:

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

1. The alleged refusal of access to the materials

73. The Government submitted that all materials submitted by the prosecutor had been examined by the court during the remand hearings in the presence of the applicant and his counsel. Neither the applicant nor his counsel had requested additional access to the file.

74. The applicant maintained his claims.

75. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine “not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention”. A court examining the lawfulness of detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client’s detention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151). While national law may satisfy the requirement of “equality of arms” in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

76. The applicant in the present case did not allege that he had not received copies of the prosecutor’s requests for extension. Nor did he claim that he had been denied an opportunity to comment on them. The thrust of his complaint was directed against the domestic court’s alleged refusal to grant him access to the materials which formed the basis for the prosecutor’s requests for extension. The Court is, however, not convinced by the applicant’s allegation. It was examined and rejected by the Regional Court which noted that it had at its disposal only the materials from the criminal case file and that that file had been studied by the applicant (see paragraph 37 above). The applicant did not submit any evidence to the contrary. There is no indication that the prosecutor relied on any documents which were not included in the criminal case file or that at any stage of the proceedings the applicant was denied access to the file. The Court is satisfied that the applicant was able to consult the documents in the criminal file and to comment on the prosecutor’s requests for extension (see, by contrast, *Nikolova*, cited above, § 63, and *Garcia Alva*, cited above, §§ 40 to 43). Accordingly, he had an effective opportunity to challenge the reasons for his detention.

77. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Absence from the hearing of 22 December 2005

78. The Government submitted that the applicant had not been brought to the courtroom on 22 December 2005 because he had been in hospital and had been receiving anti-tuberculosis treatment. The hearing had been attended by his counsel, who had not objected to it being held in the applicant's absence.

79. The applicant disputed the Government's allegation that he had been in hospital. He submitted that he had never received any treatment for tuberculosis. In his opinion, the authorities had just forgotten to bring him to the hearing.

80. The Court reiterates that in the case of a person whose detention falls within the ambit of Article 5 § 1 (c), Article 5 § 4 requires that a hearing be held (see *Trzaska v. Poland*, no. 25792/94, § 74, 11 July 2000). The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B). As a general rule, a detainee should have a right to participate personally in a hearing where his detention is discussed. Possible exceptions from this rule are conceivable: the Court observes in this connection that in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceedings take place. The detainee's personal presence is always required when the court has to assess his personality, the risk of his absconding or his predisposition to further offences, when the court changes the basis for the detention or when it extends the detention after a significant lapse of time (see *Lebedev v. Russia*, no. 4493/04, § 113, 25 October 2007).

81. In the present case, on 22 December 2005 the trial court extended the applicant's detention for three months. The hearing was attended by the prosecutor and counsel for the applicant, but not the applicant himself. The Court must examine whether the applicant's personal presence was required in the circumstances of the case.

82. The Court observes that the issues discussed during the hearing of 22 December 2005 concerned only the gravity of the charges against the defendants and the risk that they might interfere with the witnesses and jurors. That risk was formulated by the prosecutor and the court in general terms and its existence was inferred from the nature and gravity of the charges rather than based on the assessment of the applicant's character or personal situation. Given that the hearing did not involve any discussion of the applicant's personality, the Court is satisfied that counsel's presence was sufficient to ensure that the proceedings were adversarial and the principle of equality of arms was respected. Moreover, the same issues had been

previously discussed on many occasions in the applicant's presence and the applicant had had an opportunity to describe his personal situation to the judge and advance arguments in favour of his release. There is no evidence that the applicant's circumstances had materially changed since the previous hearings. Taking into account that no new issues were examined during the hearing, that the prosecutor did not put forward any new argument, and that the basis for remand was not amended, the applicant's personal attendance was not required (see, by contrast, *Mamedova*, cited above, § 91, and *Graužinis v. Lithuania*, no. 37975/97, § 34, 10 October 2000).

83. Finally, the Court finds it significant that counsel for the applicant, when questioned by the judge, stated clearly that she had no objections to the hearing being held in the applicant's absence (see paragraph 24 above).

84. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

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

88. The Court considers that the applicant has suffered non-pecuniary damage as a result of detention for more than five years which was not based on sufficient grounds. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the entire amount claimed by him, that is EUR 7,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Søren Nielsen
Registrar

Nina Vajić
President