



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

1959 · 50 · 2009

FIRST SECTION

CASE OF SERGEY MEDVEDEV v. RUSSIA

(Application no. 3194/08)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Sergey Medvedev 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. 3194/08) 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 Sergey Sergeyevich Medvedev (“the applicant”), on 21 November 2007.

2. The applicant was represented by Mr M. Stepanov, a lawyer practising in Moscow. 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 on remand had been unlawful and excessively long.

4. On 30 April 2008 the President of the First Section decided to communicate the complaint about the allegedly excessive length of detention 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 1983 and lives in the Moscow region.

A. Background information

6. The applicant was a member of a public association, the National Bolshevik Party. On 15 November 2005 the Supreme Court of the Russian Federation ordered its dissolution. On 19 January 2006 the Federal Registration Service of the Ministry of Justice refused an application for registration of a political party under the same name. Party members challenged the refusal before the Taganskiy District Court of Moscow.

7. On 13 April 2006 fifteen party members, including the applicant, attended the Taganskiy District Court for a hearing concerning the refusal to register the National Bolshevik Party. The applicant alleged that near the court building they had been attacked by a group of forty people and had had to defend themselves. According to the Government, the party members, including the applicant, had assaulted passers-by with gas guns and rubber truncheons.

B. Criminal proceedings against the applicant

8. On 15 May 2006 the applicant attended an assembly of members of the National Bolshevik Party. The police broke down the door and arrested him.

9. On 16 May 2006 the applicant was charged with participation in mass disorder, involving the use of gas guns and assault and battery, an offence under Article 213 § 2 of the Criminal Code.

10. The investigator applied to the Tverskoy District Court of Moscow for a custody order. He submitted that the applicant had been charged with a serious criminal offence, had no permanent place of residence in Moscow and had been previously fined in administrative proceedings for commission of disorderly acts. Therefore, there were reasons to believe that he might abscond or reoffend.

11. On 17 May 2006 the Tverskoy District Court ordered the applicant's placement in custody, referring to the gravity of the charge and the risk of his absconding or reoffending.

12. The applicant appealed. He complained that the District Court had disregarded pertinent facts such as his lack of a criminal record, his permanent residence and positive references and his frail health. The

conclusion that he might flee or reoffend was hypothetical and was not supported by relevant facts.

13. On 7 June 2006 the Moscow City Court upheld the decision on appeal, finding that it had been lawful, well-reasoned and justified. Before ordering the applicant's placement in custody the District Court had reviewed the materials submitted by the prosecution and had taken into account the applicant's character and personal situation.

14. On 30 October 2006 a member of Parliament offered his personal guarantee that the applicant would not abscond.

15. On 14 September 2006 the Tverskoy District Court extended the applicant's detention until 15 November 2006, finding that there was no reason to vary the preventive measure. On 18 December 2006 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful and justified.

16. On 13 November 2006 the Tverskoy District Court extended the applicant's detention until 16 January 2007 for the same reasons as before. On 10 January 2007 the Moscow City Court upheld the extension order on appeal.

17. On an unspecified date in December 2006 an additional charge of infliction of injuries, an offence under Article 112 § 2 of the Criminal Code, was brought against the applicant.

18. On 16 January 2007 the Tverskoy District Court extended the applicant's detention until 16 March 2007, referring to the gravity of the charges, the risk that he might abscond, reoffend or interfere with the proceedings and the need for further investigation.

19. In his appeal submissions the applicant asked to be released on bail. On 14 February 2007 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

20. On an unspecified date the investigation was completed and six defendants including the applicant were committed for trial.

21. On 12 March 2007 the Taganskiy District Court of Moscow scheduled a preliminary hearing for 20 March 2007 and held that all the defendants should remain in custody. It found that the defendants had been charged with a serious offence committed by an organised group, some members of which had not yet been identified, referred to the defendants' characters and concluded that they might abscond or intimidate the victims and witnesses.

22. On 27 March 2007 the Taganskiy District Court held a preliminary hearing. It refused the defendants' requests for release, citing the gravity of the charges against them and the risk of their absconding, reoffending or obstructing justice. In respect of the applicant's "character" the court noted that he had a record of administrative offences.

23. On 24 May 2007 the Taganskiy District Court remitted the case for further investigation and ordered that all the defendants should remain in

custody. It found that the defendants' characters and the gravity of the charges against them gave reasons to believe that they might abscond, reoffend or interfere with the proceedings. In respect of the applicant's "character" the court noted that he had a record of administrative offences.

24. On 29 June 2007 the Tverskoy District Court extended the applicant's detention until 6 August 2007. The court found that the case involved several defendants and was complex. Some of the defendants had been at large for a long time and some accomplices had not yet been identified. The complexity of the case justified the length of the applicant's detention. Given the gravity of the charges against the applicant, his record of administrative offences and his unemployment, he might abscond or interfere with the establishment of the truth in some other way if released.

25. In his appeal submissions the applicant repeated his arguments that the District Court's conclusions had not been supported by relevant facts, while he had produced a personal guarantee from a member of Parliament and had demonstrated that he had positive references. He also argued that the case was not complex and claimed that his detention had exceeded "a reasonable time". On 1 August 2007 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful and justified.

26. On an unspecified date the defendants were again committed for trial.

27. On 26 July 2007 the Taganskiy District Court scheduled a preliminary hearing for 8 August 2007 and ordered that the defendants should remain in custody in the meantime. The court found that the defendants had been charged with a serious offence committed by an organised group, some members of which had not yet been identified, and concluded that they might abscond or intimidate the victims and witnesses. It further noted that the defendants' assurances that they had no intention of absconding were unconvincing, and held that there was no reason to apply a more lenient preventive measure.

28. On 8 August 2007 the Taganskiy District Court held a preliminary hearing and ordered that all the defendants should remain in custody for the same reasons as before.

29. On 12 September 2007 the applicant and his co-defendants lodged applications for release with the Taganskiy District Court. On the same day the Taganskiy District Court rejected the applications. It noted that the defendants' arguments had already been examined and rejected many times when the extension orders had been issued. It found that the grounds for the defendants' detention mentioned in the extension orders were still pertinent and that it was still necessary to hold them in custody. The defendants had been charged with a serious criminal offence committed by an organised group, some members of which had not yet been identified. Given the gravity of the charges against them, they might abscond, reoffend or interfere with the establishment of the truth if released.

30. On 26 December 2007 the Taganskiy District Court extended the defendants' detention until 12 April 2008. It found that the grounds for their detention mentioned in the previous extension orders were still pertinent and that a risk remained of their absconding, reoffending or obstructing justice. The court also noted that the defendants' arguments about the absence of *corpus delicti* in their actions and about the lack of evidence of their involvement in the commission of the offence in question were without substance because, in extending the defendants' detention, the court could not make any findings as to their guilt or innocence.

31. On 24 March 2008 the Taganskiy District Court convicted the defendants as charged and sentenced the applicant to two years and six months' imprisonment.

II. RELEVANT DOMESTIC LAW

32. 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).

33. "Preventive measures" (*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).

34. 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).

35. 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).

36. 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 to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

37. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the judicial proceedings"). The period of detention "during the judicial proceedings" is calculated 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 OF THE CONVENTION

38. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain him and that the domestic courts had not had due regard to the defence's arguments. Under Article 5 § 3, he complained that his right to trial within a reasonable time had been infringed and alleged that the detention orders had not been founded on sufficient reasons. The relevant parts of Article 5 read as follows:

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

...

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

...

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

A. Admissibility

39. As regards the applicant's complaint that his detention had been unlawful, the Court notes that on 17 May 2006 the Tverskoy District Court of Moscow remanded the applicant in custody because of the gravity of the charges against him. The applicant's detention was subsequently extended on several occasions by the domestic courts.

40. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions

were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (compare *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-... (extracts)).

41. The Court finds that the applicant's detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

42. As regards the applicant's complaint that his right to trial within a reasonable time or to release pending trial had been infringed, the Court finds that it 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. The parties' submissions

43. The Government submitted that the decisions to remand the applicant in custody had been lawful and justified. The domestic courts had taken into account the fact that the applicant had been charged with a serious criminal offence, had not lived at his registered place of residence in the Moscow region and had no residence registration in Moscow. Therefore, there had been a risk that he might abscond if released. Further, the domestic courts had referred to the danger of his reoffending, that danger being gauged by reference to his membership of the National Bolshevik Party. That party had been recognised as an extremist organisation by a Russian court and had been banned. Its members had resorted to radical and violent action to express their political views. The applicant had been previously fined in administrative proceedings for commission of disorderly acts, which also proved that he was likely to reoffend. The domestic courts had also taken into account the fact that the imputed offence had been committed by an organised group. It had therefore been necessary to hold the applicant in custody to prevent his obstructing the establishment of the truth by communicating details of the investigation to his accomplices. In the Government's view, the applicant's detention had been founded on "relevant and sufficient" reasons.

44. The applicant considered that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody for more than a year. The criminal proceedings against him had been politically motivated and he had been persecuted for his political views and membership of an opposition organisation, the National Bolshevik Party. He had a permanent place of residence, had offered to post bail and had provided the courts with the personal surety of a member of Parliament. The domestic courts had extended his detention without demonstrating the existence of specific facts

in support of their conclusion that he might abscond, interfere with the investigation or reoffend.

2. *The Court's assessment*

(a) **General principles**

45. 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).

46. 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 (extracts)).

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

respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts or to 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

48. The applicant was arrested on 15 May 2006. On 24 March 2008 the trial court convicted him as charged. Thus, the period to be taken into consideration lasted slightly more than one year and ten months.

49. The Court accepts that the applicant's detention was initially warranted by a reasonable suspicion of his involvement in the commission of a criminal offence. 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.

50. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or obstructing the course of justice. In this respect they referred to the gravity of the charge, the applicant's lack of a permanent place of residence or employment in Moscow, his record of administrative offences, and the fact that the imputed offence had been committed by an organised group.

51. The gravity of the charge was the main factor in 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 of an accused absconding or reoffending, the need to continue deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, 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 *Ilijkov*, cited above, § 81).

52. Another ground for the applicant's detention was his record of administrative offences. The Court accepts that that factor was relevant in assessing the danger of his reoffending. Such a danger, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the

case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, Series A no. 225, § 40). In the cases of *Clooth v. Belgium* and *Kolev v. Bulgaria* (see below) the Court found that the applicant's previous criminal record did not justify his detention because the offences which had given rise to his previous convictions were non-violent and were not comparable, either in nature or degree of seriousness, to the charges preferred against him in the contested proceedings (see *Clooth*, cited above, § 40, and *Kolev v. Bulgaria*, no. 50326/99, §§ 60-61, 28 April 2005). In the present case the applicant's record included only minor non-violent administrative offences and he had no criminal record. The Court considers that the applicant's record of administrative offences did not justify his continued detention (see, for similar reasoning, *Aleksey Makarov v. Russia*, no. 3223/07, § 51, 12 June 2008).

53. The domestic courts also referred to the fact that the offence in question had been committed by a group of people acting in criminal conspiracy. The Court observes that the fact that a person is charged with acting in criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account (see *Aleksey Makarov*, cited above, § 50, and *Popkov v. Russia*, no. 32327/06, § 62, 15 May 2008). There is no indication in the present case that before his arrest the applicant had made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any other way. In such circumstances the Court has difficulty accepting that there was a risk of interference with the administration of justice at the later stages of the proceedings. Such risk was bound to gradually decrease as the trial proceeded and the witnesses were interviewed (compare *Miskurka v. Poland*, no. 39437/03, § 51, 4 May 2006). The Court is not therefore persuaded that compelling reasons existed for a fear that the applicant would interfere with witnesses or otherwise hamper the investigation of the case, and certainly not such as to outweigh his right to trial within a reasonable time or release pending trial.

54. The only other ground for the applicant's continued detention was the District Court's finding that he had no permanent place of residence or employment in Moscow. The applicant maintained that he had a permanent place of residence in the Moscow region. It is not necessary for the Court to determine the applicant's residence and employment situation. Even assuming that he did not have a permanent place of residence and was unemployed, the mere lack of a fixed residence or permanent employment does not give rise to a danger of absconding or reoffending (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007). In the present case, the domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that he presented such risks. Nor did they address the fact that the applicant had not fled,

reoffended or interfered with the investigation during the month that had passed between the events in question and his arrest, although he had had an opportunity to do so.

55. The Court notes the Government's argument that the applicant had been suspected of membership of an extremist organisation and had also been likely to communicate details of the investigation to his accomplices. However, it is not the Court's task to assume the place of the national authorities who ruled on the applicant's detention and to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). Those circumstances were referred to for the first time in the proceedings before the Court and the domestic courts never mentioned them in their decisions.

56. The Court further observes that while the case was pending before the trial court – from March to May and from July 2007 onwards – the trial court used the same summary formula to refuse the requests for release and extend the detention of seven persons, without describing their personal situation in any detail. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

57. Finally, the Court notes that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case the authorities never considered the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure, although he asked to be released on bail and provided the domestic courts with the personal surety of a member of Parliament.

58. 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-... (extracts); *Mamedova v. Russia*, cited above, §§ 72 et seq.; *Dolgova v. Russia*, cited above, §§ 38 et

seq.; *Khudoyorov v. Russia*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

59. 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” for the entire period of detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with “special diligence”.

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

II. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

61. The applicant alleged that the criminal proceedings against him had been politically motivated and that he had been persecuted for his membership of the opposition organisation the National Bolshevik Party. He invoked Article 18 of the Convention, which reads as follows:

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

62. The Court has examined this complaint in the light of the evidence submitted to it, and finds that it is unsubstantiated. The applicant was prosecuted for his participation in mass disorder rather than for his membership of an opposition organisation. Accordingly, this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government submitted that the claim was excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

66. The Court observes that it has found a violation of Article 5 § 3 of the Convention in that the length of the applicant's detention was not sufficiently justified. It considers that the applicant must have suffered frustration, helplessness and a feeling of injustice as a consequence of the domestic authorities' decisions to keep him in custody without sufficient reasons. It finds that the applicant suffered non-pecuniary damage which would not be adequately compensated by the finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

67. The applicant claimed 25,000 Russian roubles (RUB) for his representation. He submitted that his representative had spent 25 days on the preparation of the application form and the observations. It had been agreed between the applicant and his representatives that his work would be remunerated at the rate of RUB 1,000 per day. He produced receipts showing that he had already paid the legal fee. Relying on postal invoices, he also claimed RUB 188.50 for postal expenses.

68. The Government did not comment.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 580, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

70. 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 580 (five hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for 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