



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

THIRD SECTION

CASE OF SYCHEV v. RUSSIA

(Application no. 14824/02)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sychev v. Russia,

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

Josep Casadevall, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 14824/02) 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 Oleg Ivanovich Sychev (“the applicant”), on 15 March 2002.

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

3. On 15 September 2005 the President of the Third Section decided to give notice of the application and decided to communicate to the Government the complaints concerning the lawfulness of the applicant's detention on remand, its allegedly excessive length and the length of proceedings in his criminal case. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in the town of Novyy Urengoy, the Tyumen Region.

5. The applicant is a military serviceman with the rank of Lieutenant Colonel. Between 1996 and 2000 he was employed as the head of road construction department no. 1393 in the Tyumen Garrison.

A. The applicant's arrest and the subsequent investigation

6. On 2 June 2000 the Military Prosecutor of the Tyumen Garrison ("the prosecutor") brought criminal proceedings against the applicant on suspicion of aggravated theft.

7. The applicant was arrested and searched on the same date. The arrest warrant mentioned the existence of witnesses who had indicated the applicant's involvement in criminal activity.

8. On that date police officer Pe. reported that the applicant had actively resisted arrest and that the police had had recourse to physical force to apprehend him. It does not appear that the report was ever mentioned by the courts in their assessment of the need to detain the applicant on remand pending the criminal proceedings.

9. On 5 June 2000 the prosecutor also initiated proceedings in respect of the applicant on suspicion of aggravated fraud.

10. On the same date the applicant was officially charged with several counts of theft and fraud, abuse of power and obstructing the course of justice and the preliminary investigation.

11. On 6 July he was also charged with bribery.

B. The detention order of 5 July 2000

12. On 5 July 2000 the prosecutor authorised the applicant's detention on remand, having noted the risk that he might flee or impede the investigation, as well as the gravity of the charges brought against him.

13. The detention order was appealed against by the applicant and then upheld by the Military Court of the Tyumen Garrison on 26 September 2000.

C. The detention order of 22 September 2000

14. On 22 September 2000 the Military Prosecutor of the Ural Military District extended the applicant's detention on remand to five months, that is, until 2 November 2000. In making the order, the prosecutor described in detail all the steps that had been taken by the investigation authorities until then, such as questioning several dozen witnesses, organising confrontations with witnesses and the co-accused, searching the co-accused's flats and seizing various documents.

D. The referral of the applicant's criminal case to the trial court

15. On 2 November 2000 the acting Military Prosecutor of the Tyumen Garrison approved the bill of indictment and the case was sent to the trial court.

16. On 4 November 2000 the Military Court of the Tyumen Garrison accepted the case for trial.

17. By a decision of 18 November 2000 the court scheduled the first hearing for 6 December 2000 and noted, without going into further detail, that the preventive measure should remain unchanged.

E. The hearings of 6 and 7 December 2000

18. On 6 December 2000 judge S. and two lay assessors, officers Ya. and M., started the examination of the applicant's case. The applicant was represented by a lawyer, Mr Trofimov.

19. In a decision dated 6 December 2000 the court granted a request by the prosecutor for a psychiatric expert examination of the applicant. The court noted the prosecutor's description of the applicant's behaviour during the investigation of the case, including occasional threats and verbal attacks against escorting policemen, attempts to punch them, and banging his head against the wall. In addition, the applicant was said to have eaten the schedule of his access to the case file.

20. The proceedings in the applicant's criminal case were therefore suspended. In the same decision the court made the applicant available for examination in the Tyumen Regional Psychiatric Clinical Hospital and ordered him to remain in custody.

21. In a document dated 7 December 2000 judge S. informed the military prosecutor of the Tyumen Garrison that the investigator G. had been perfectly aware of the applicant's allegedly "inappropriate" behaviour and that it had been his duty to order the latter's examination at an earlier date. His failure to do so during the preliminary investigation was viewed as a serious shortcoming which had adversely affected the applicant's constitutional rights since it had resulted, among other things, in the extension of the period of his detention.

F. The applicant's placement in hospital and the related review proceedings

22. It appears that on 8 December 2000 the applicant was admitted to hospital. The applicant appealed against the decision of 6 December 2000 and also brought proceedings against the hospital.

23. In a letter dated 15 December 2000 judge S. asked the head of the department of in-patient psychiatric examinations to suspend the applicant's examination in view of his appeal against the decision of 6 December 2000.

24. On 20 December 2000 the case file was sent to the Military Court of the Ural Command for an examination of the applicant's appeal. On 11 January 2001 the court rejected the appeal and upheld the impugned decision.

25. Owing to the heavy workload in the military communication services the case file was not returned to the trial court until 26 March 2001. On the next day it was sent to the hospital where the applicant was being kept.

26. On 9 February 2001 the applicant was diagnosed as sane by the experts and on that date he was apparently discharged from the hospital.

27. He submits that, notwithstanding the examination report, the court sent him, again, to the same hospital for a psychiatric examination on 4 April 2001. No such further examination having allegedly been carried out, he was discharged from the hospital on 20 April 2001. According to the applicant, his medical documents contained the diagnosis "sane" accompanied by a note indicating that this was the second such diagnosis (*повторно*).

28. In so far as the applicant complained about his detention in the hospital to the civil courts, in a judgment of 26 April 2001 the Tyumen District Court dismissed his complaint against the Tyumen Regional Psychiatric Hospital, finding that he had been placed there in accordance with a court order and that no violation of his physical integrity or any other rights had therefore taken place.

29. The applicant also complained to the Prosecutor's Office of the Tyumen Region, alleging that he had been unlawfully admitted to the psychiatric hospital and detained there. By a decision of 11 December 2001 a prosecutor refused to initiate criminal proceedings in connection with the applicant's complaint. That decision was quashed on 7 March 2002 by a superior prosecutor and the relevant case file was sent back for additional investigation. On an unspecified date the case was discontinued.

G. The trial proceedings following the applicant's examination

30. On 15 May 2001 the trial court received the case file from the hospital, together with the examination report.

31. It appears that owing to the court's workload, the next hearing was scheduled for 29 August 2001.

H. The trial hearings of 29-31 August 2001 and related review proceedings

32. At the hearing of 29 August 2001 the applicant requested the court to release him and to refer the case back for an additional investigation, with reference, among other things, to the prosecutor's failure clearly to formulate the charges of bribery. He further asked for additional access to the case file.

33. In a decision of 31 August 2001 the trial court rejected the applicant's requests for release and an additional investigation. It appears that in its reasoning the court merely cited the prosecutor's opinion on the applicant's complaints. In respect of the preventive measure it was noted that the applicant faced very serious charges and that he had attempted to obstruct the course of justice and the conduct of the preliminary investigation and on one occasion to abscond. The decision did not go into any further detail, and did not specify the period of the applicant's further detention.

34. At the same time the court ordered that the applicant and his lawyer should be granted access to the case file and adjourned the proceedings, without setting any further time-limit.

35. On 30 October 2001 the Military Court of the Ural Command upheld the decision of 31 August 2001 on appeal. The court repeated the reasoning of the trial court without going into further detail.

I. The letter dated 27 November 2001 from the prosecutor supervising the execution of punishments

36. In a letter dated 27 November 2001, apparently in response to the applicant's numerous complaints, the prosecutor supervising the execution of punishments notified the President of the Military Court of the Ural Command that the applicant had been kept in detention since June 2000. He further noted that since November 2000, when the trial court had accepted the case for trial, until November 2001 there had been two court hearings, the latter ending with a new adjournment for an indefinite period of time. The prosecutor lastly emphasised that the applicant was being kept in an overcrowded detention facility and requested that measures be taken to expedite the proceedings.

37. In response, the President of the Military Court of the Tyumen Garrison informed the prosecutor that the situation described in his letter was due to the applicant's own behaviour, and in particular to his constant appealing against the trial court decisions and his request for additional access to the case file. The President pointed out that on the last occasion when the applicant had had access, on 4 December 2001, he had behaved "inappropriately" again. In particular, he had shouted at the courier, had

sworn and had refused to familiarise himself with the documents in the absence of a prosecutor.

J. The trial hearings of 13 and 17 December 2001 and the decision on the applicant's fresh psychiatric examination

38. The proceedings resumed on 13 December 2001, presided over by judge Kh. with two law assessors, officers Ya. and Ch. The applicant again requested the court to release him and to refer the case back for an additional investigation because the charges of bribery were allegedly unclear. He also requested the court to accept his former wife, his son and a Mr P. as his representatives and filed several other requests.

39. On a motion by the prosecutor the court adjourned the hearing until 17 December 2001.

40. In a decision of 17 December 2001, acting upon the prosecutor's request, the trial court ordered a fresh in-patient psychological and psychiatric examination of the applicant in the Serbskiy State Scientific Centre of Social and Forensic Psychiatry in Moscow. The court referred to the applicant's behaviour on 4 December 2001, to the "number and content" of his complaints to different bodies, to the impossibility of controlling his conduct and to the lack of "effective contact" with him during the court hearings. In view of the above, the court raised doubts as to the previous experts' conclusions and said that the applicant's psychiatric condition needed further clarification. The proceedings were adjourned until the examination report was available.

41. In a decision of the same date the court rejected the applicant's requests for release, with reference to the gravity of the charges and to the fact that "there were sufficient grounds to consider that, if released, he would obstruct the establishment of the truth and abscond since such attempts have already taken place, according to the case file". No time-limits were set for the extended detention period.

42. In the same decision the court rejected the applicant's request to have his former wife, his son and Mr P. accepted as his representatives. At the same time the court allowed a certain Ms Porfilo to represent him.

43. On 5 February 2002 the Military Court of the Ural Command upheld the decision of 17 December 2001 on appeal.

K. Hearing of 14 August 2002 and the applicant's release on bail

44. The examination of the applicant's case resumed with the hearing of 14 August 2002, the applicant and his two representatives, Mr Trofimov and Mr Postnikov, being present. The applicant submits that Ms Porfilo was not duly notified about the hearing and was absent.

45. It appears that at the hearing Mr Trofimov again requested the court to change the preventive measure applied in respect of the applicant.

46. In a decision of 14 August 2002 the trial court granted the request, terminated the applicant's detention and released him on bail of 10,000 Russian roubles. The court stated, in particular:

“Having examined the [counsel's] request together with other circumstances of the case, the nature of the charges levelled against Sychev, the information about his personality and his income, and the fact that he has a permanent place of residence, the military court considers it possible to vary the preventive measure by replacing detention with bail and fixes its amount at 10,000 roubles.”

L. Partial discontinuation of the criminal proceedings against the applicant

47. In a decision of 26 August 2002 the trial court discontinued the criminal proceedings against the applicant for theft, fraud and obstructing the course of justice and the preliminary investigation because the prosecutor had dropped those charges in view of the lack of evidence that the applicant had committed the crimes concerned.

48. It does not appear that the applicant appealed against that decision.

M. The trial court judgment and the special ruling

49. It appears that on 4 September 2002 the Military Court of the Tyumen Garrison convicted the applicant on the remaining charges but dispensed him from punishment, having applied an amnesty law. It appears that the applicant did not appeal against the trial court's judgment.

50. On the same day the court issued a special ruling (*частное постановление*) indicating several violations of the law on criminal procedure during the preliminary investigation of the applicant's case. In particular, it was noted that the investigator had failed on numerous occasions to inform the applicant about his right to appeal against his decisions, that the applicant had not been provided with counsel upon his arrest and had been questioned in the absence of counsel, that a mass of evidence had been unlawfully obtained and added to the case file and that the documents in the file contained numerous unlawful erasures and corrections.

51. Judge Y. requested the military prosecutor of the Tyumen Garrison to take note of the above-mentioned shortcomings and to inform him about the measures taken in this connection.

II. RELEVANT DOMESTIC LAW

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

A. Preventive measures

53. “Preventive measures” or “measures of restraint” (*меры пресечения*) include an undertaking not to leave a town or region, parole, bail and detention on remand (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention on remand

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

Under the old CCrP, a decision ordering detention on remand 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).

C. Grounds for ordering detention on remand

55. 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 and family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

56. Before 14 March 2001, detention on remand 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 or 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 committed. The new CCrP reproduced the amended provisions (Article 97 § 1 and Article 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

D. Time-limits for detention on remand

1. Two types of detention on remand

57. The Codes distinguished between two types of detention on remand: the first being “pending the investigation”, that is, while a competent agency – the police or a prosecutor’s office – investigated the case, and the second “before the court” (or “during the trial”), that is, while the case was being tried in court. Although there was no difference in practice between them (the detainee was held in the same detention facility), the calculation of the time-limits was different.

2. Time-limits for detention “pending the investigation”

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

59. The period of detention “pending the investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

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

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

61. Before 14 March 2001 the old CCrP set no time-limit for detention “during the trial”. On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention “during the trial” 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 the 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.

62. The new CCrP establishes that the term of detention “during the trial” is calculated from the date the court received the file up to the date on which judgment is given. The period of detention “during the trial” may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

E. Expert examinations

63. Articles 78, 79 and 290 of the old CCrP made it mandatory to conduct expert examinations concerning the mental state of the accused in cases where doubts had arisen about the ability of the accused to control and guide his or her own actions. It was also possible, where justified, to order a fresh expert examination concerning the same issues.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

64. The applicant complained that his detention on remand, and especially his repeated placement in psychiatric institutions for an examination of his mental condition, had been unjustified and contrary to domestic law. He relied on various Convention provisions in this connection, including Articles 5, 6, 10 and 13.

The Court will examine this complaint under Article 5 § 1 of the Convention, which, in so far as relevant, provides 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; ...”

65. The Government maintained that the entirety of the applicant's detention on remand had been lawful and justified.

66. The applicant disagreed and maintained his initial complaints.

A. Admissibility

67. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with the matter after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken. The Court observes that under Article 5 § 1 of the Convention the applicant complains about separate detention terms, authorised by decisions of the competent prosecution and judicial authorities, and it is undisputed between the parties that the applicant did have effective remedies at his disposal to challenge each of these decisions separately (see, by contrast, *Ječius v. Lithuania*, no. 34578/97, §§ 42-45 and 101-102, ECHR 2000-IX).

68. The Court would note firstly that the applicant has clearly failed to exhaust available domestic remedies in respect of the detention orders dated 2 June, 22 September and 4 November 2000. The Court further observes that the applicant lodged his application on 15 March 2002, whilst the final domestic decisions in respect of the detention orders dated 5 July and 6 December 2000 were taken on 26 September 2000 and 11 January 2001 respectively. It follows that the most recent period of detention that the Court may examine commenced on 31 August 2001. That period of detention represented a continuous situation which ended when the trial court made its subsequent detention order on 17 December 2001, within the six months preceding the lodging of the application. The Court therefore considers that the part of the applicant's complaint concerning the detention orders issued before 31 August 2001 is inadmissible partly for the applicant's failure to exhaust and partly because it has been submitted out of time. Overall, this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

69. The Court further notes that the remainder of the 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

70. The Court finds that the applicant's detention between 31 August 2001 and 14 August 2002 was covered by Article 5 § 1 (c) as there existed – and this seems undisputed between the parties – a reasonable suspicion of his having committed numerous crimes. The detention took place in the context of pending criminal proceedings against the applicant with a view to securing his presence before the trial court and was based on court decisions.

71. In ordering the applicant's detention on 31 August and 17 December 2001 the trial court acted within its powers and there is nothing to suggest

that those decisions were invalid or unlawful under domestic law (see paragraphs 54 and 60-63 above, and *Stašaitis v. Lithuania* (dec.), no. 47679/99, 28 November 2000).

72. 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 (see *Khudoyorov v. Russia*, no. 6847/02, § 152, ECHR 2005-X).

73. In so far as the applicant objected to his placement in a psychiatric institution, the Court notes that remand in custody under Article 5 § 1 (c) of the Convention may be perfectly compatible with lawful confinement in a psychiatric hospital effected for the purpose of establishing whether or not the accused person's mental health has a bearing on his criminal liability for the offences with which he has been charged; deprivation of liberty may be justified on more than one of the grounds listed in Article 5 § 1 (see *Gulub Atanasov v. Bulgaria*, no. 73281/01, § 74, 6 November 2008). On the facts, the Court finds nothing unreasonable or arbitrary in the impugned decision as the trial court seemed to have been acting in good faith and may well have had good reasons to believe that in the circumstances of the case a fresh expert examination was justified and necessary. It is true that, in view of the Court's conclusions in paragraph 90 below, the examination in question could have been conducted in a different form, namely in an outpatient, and not in-patient, setting. The fact remains, however, that the applicant's continued detention ordered by the trial court decision of 17 December 2001 was covered by Article 5 § 1 (c) of the Convention and was not unlawful.

74. Overall, in view of the above, the Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand between 31 August 2001 and 14 August 2002.

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

75. The applicant complained that the domestic authorities had violated his right to a trial within a reasonable time or to release pending trial by repeatedly subjecting him to psychiatric examinations, which had resulted in unjustified delays in the proceedings. He relied on Article 5 § 3 of the Convention, which provides, in so far as relevant, as follows:

“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.”

76. The Government contested that argument.

77. The applicant maintained his initial complaints.

A. Admissibility

78. The Court considers that for the purposes of Article 5 § 3 of the Convention, multiple, consecutive detention periods should be regarded as a whole and the six-month period should start to run only from the end of the last period of remand in custody, in the instant case from 14 August 2002 (see, for example, *Ječius v. Lithuania*, cited above, § 44, *Gubkin v. Russia*, no. 36941/02, § 134, 23 April 2009; *Mishketkul and Others v. Russia*, no. 36911/02, § 40, 24 May 2007; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007). It follows that the Court is competent to make an overall evaluation of the applicant's entire detention on remand under Article 5 § 3 of the Convention.

79. The Court notes that the present complaint 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.

B. Merits

1. General principles

80. 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 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).

81. 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 continuing detention ceases to be reasonable (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, § 30, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *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).

82. 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 and take the place of the national authorities which 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).

2. Application to the present case

(a) Period to be taken into consideration

83. The applicant was arrested on 2 June 2000 on suspicion of his involvement in various crimes and was held in custody until 14 August 2002. Notwithstanding the fact that he was twice placed in specialist institutions for a psychiatric examination (see paragraphs 22-29 and 40 and the Court's reasoning in paragraph 73), throughout this time his detention was covered by Article 5 § 1 (c) of the Convention.

84. Making an overall evaluation of the accumulated periods under Article 5 § 3 of the Convention, the Court therefore concludes that the period to be taken into consideration in the instant case is two years, two months and twelve days.

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

85. It is clear from the case file that the applicant's detention was initially warranted by a reasonable suspicion of his having committed various crimes. 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.

86. The Court observes that after the case had been submitted for trial, on 18 November 2000 the applicant was kept in detention with no reference to any grounds. The trial court only noted that the preventive measure applied to the applicant “should remain unchanged” (see paragraph 17 above). Subsequently, in the period from 18 November 2000 to 14 August 2002 the trial court extended the applicant's detention on three occasions. On 6 December 2000 the court failed to mention any grounds for the decision, whilst on 31 August 2001 and 17 December 2001 the court referred to the gravity of the charges against the applicant and mentioned that he had attempted to obstruct the course of justice and the conduct of the investigation and to abscond (see paragraphs 20, 33 and 41 above).

87. 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 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 detention be used to anticipate a custodial sentence (see *Belevitskiy v. Russia*, no. 72967/01, § 101, 1 March 2007; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; and *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003). The Court further reiterates that any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Belevitskiy*, cited above, § 102, with further references). As regards the existence of a risk of absconding, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko*, cited above, § 106; and *Letellier v. France*, 26 June 1991, § 43, Series A no. 207). In the present case the decisions of the domestic authorities gave no reasons why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding to be decisive. The domestic decisions merely hinted at the existence of sufficient grounds to believe that the defendants would abscond, without saying what those grounds actually were. Since neither the trial court nor the Government in the proceedings before the Court have been able to substantiate the allegations that the applicant might obstruct the course of justice and abscond, the Court finds that the existence of such a risk was not established.

88. The Court would lastly emphasise that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring the accused's appearance at the trial when deciding whether he or she should be released or detained. Indeed, the 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). On the facts, the domestic courts in the present case should have seriously considered such a possibility not on 14 August 2002, some two years and two months after the applicant's arrest, but much earlier.

89. 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 specific facts or considering alternative preventive measures (see *Belevitskiy*, cited above, §§ 99 et seq.; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-XII; *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova*, cited above, §§ 38 et seq.; *Khudoyorov*, cited above, §§ 172 et seq., ECHR 2005-X; *Rokhlina*, cited above, § 63 et seq.; *Panchenko*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX).

90. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative “preventive measures”, by relying essentially on the gravity of the charges and, on one occasion, by failing to provide any grounds at all, the authorities extended the applicant's detention without giving “relevant” and “sufficient” reasons to justify its more than two-year duration. In these circumstances it is not necessary to examine under Article 5 § 3 of the Convention whether the proceedings were conducted with “special diligence”.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

92. Lastly, the applicant also complained about the length of the criminal proceedings in his case and alleged various defects in the investigation and trial proceedings. The applicant was further dissatisfied with his alleged inability to bring appeal proceedings against the decision of 6 December 2000.

93. As regards the length complaint, the Court notes at the outset that the period to be taken into consideration began on 2 June 2000, when the investigator brought criminal proceedings in respect of the applicant (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124,

ECHR 2002-VI), and ended on 4 September 2002 with the judgment of the Military Court of the Tyumen Garrison (see paragraph 49). It follows that the period to be taken into consideration lasted for two years, three months and three days. The Court reiterates in the first place 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, amongst many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

94. The Court considers that the present case was rather complex, involving two co-accused and several counts of crimes, including fraud, theft, abuse of power and obstructing the course of justice and the preliminary investigation. As regards the applicant's conduct, there is no indication in the case file that he contributed noticeably to the length of the criminal proceedings. In so far as the conduct of the authorities is concerned, the conduct of the investigation was reasonably fast, ending within just five months. It is true that there was a period of inactivity in the examination of the applicant's case by the trial court between 20 April and 17 December 2001, which was unaccounted for by the respondent Government. The Court considers that such a delay in the conduct of the hearing could have been minimised. However, the Court reiterates that a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71, and *Posedel-Jelinović v. Croatia*, no. 35915/02, § 26, 24 November 2005).

95. The foregoing considerations lead the Court to conclude that the total duration of the proceedings of two years, three months and three days does not give rise to any appearance of a violation of the reasonable-time requirement in Article 6 § 1. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

96. As to the remaining complaints, the Court notes that the applicant did not appeal against the trial court judgment (see paragraph 49) or the decision dated 26 August 2002 (see paragraph 48). It follows that he failed to exhaust domestic remedies in respect of his grievances about the alleged deficiencies in the criminal proceedings against him. His allegation about the inability to bring appeal proceedings against the decision of 6 December 2000 is unsubstantiated, as it is clear from the case file that the applicant lodged an appeal against the decision of 6 December 2000 and that it was examined by the court on 11 January 2001 (see paragraph 22 and 24).

97. Overall, the Court finds that this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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.”

99. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lawfulness of the applicant's detention on remand between 31 August 2001 and 14 August 2002 and the length of the applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 31 August 2001 to 14 August 2002;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's detention on remand.

Done in English, and notified in writing on 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President