



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

SECOND SECTION

CASE OF ĐERMANOVIĆ v. SERBIA

(Application no. 48497/06)

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 Đermanović v. Serbia,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *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. 48497/06) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr Dušan Đermanović (“the applicant”), on 24 November 2006.

2. The applicant was represented by Ms A. Gaćeša, a lawyer practising in Novi Sad. The Serbian Government (“the Government”) were represented by their Agent, Mr S. Carić.

3. The applicant alleged that the length and conditions of his detention, as well as inadequate medical care during that time, had violated his rights under Articles 3, 5 and 6 of the Convention.

4. On 30 August 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

5. The applicant was born in 1966 and lives in Novi Sad.

6. On 24 March 2003 the competent authorities opened a criminal investigation against the applicant on suspicion of abuse of power (“*zloupotreba službenog položaja*”) and forging of official documents (“*falsifikovanje službenih isprava*”). On the same day, the applicant was examined by the investigating judge, at which time he submitted a temporary address.

7. On 5 May 2003 the police searched the flat owned by the applicant situated at the address of his permanent residence (*prebivalište*). The applicant's mother, who was present at the search, stated that the applicant had not lived in that flat for over two years. According to the official police report, the police then contacted the applicant by telephone and he informed them that he was looking for a new flat.

8. Subsequently, following a request by the Novi Sad District Public Prosecutor's Office (*Okružno javno tužilaštvo Novi Sad*), on 2 June 2003 the Novi Sad District Court (*Okružni sud u Novom Sadu*) ordered that the applicant be detained on remand under section 142(2)(1) of the Criminal Procedure Code (risk of flight) and that an arrest warrant be issued against him. The applicant appealed against that decision. On 4 June 2003 his lawyer submitted the applicant's new address to the Novi Sad District Court, alleging that he had already done so on 8 May 2003. However, on 23 June 2003 the Supreme Court dismissed the appeal against the detention order.

9. On 17 October 2003 the Public Prosecutor's Office indicted the applicant and shortly thereafter, on 11 December 2003, the District Court quashed the detention order against the applicant and set bail at EUR 40,000. The applicant appeared at the court hearing in person. However, the Supreme Court quashed the bail decision and remitted the case. Thereafter, the District Court again ordered that the applicant be remanded in custody because his behaviour thus far had indicated a high risk of flight; the Supreme Court upheld that decision.

10. Meanwhile, on 6 February 2004 the applicant was brought before the District Court (investigating) judge (“*istražni sudija*”), and was remanded in custody. The applicant claimed that he had gone to the police station of his own accord, but the Government disagreed. There appears to have been no official police report on the applicant's arrest. The only document relating to

the event of that date – a note made by the investigating judge of the Novi Sad District Court – states as follows:

“It is established that the [police] officers... at 10.30 a.m. brought [the applicant] before the... investigating judge of this court... The accused states that at 9 a.m. this morning he voluntarily reported to the Novi Sad police department, because he heard that they were looking for him...”

11. The applicant requested to be released on bail and offered EUR 50,000. His request was dismissed as insufficient, since “the amount [he had] obtained by unlawful actions was several times higher than the amount offered” and thus provided no guarantee that he would not abscond. His detention was thereafter regularly extended because of such a risk.

12. On 9 November 2004 the Novi Sad District Court sentenced the applicant to four and a half years' imprisonment. On 15 June 2005 the Supreme Court quashed that judgment and remitted the case, extending at the same time the applicant's pre-trial detention to prevent his absconding.

13. The applicant filed several applications for release on bail, but his requests were dismissed.

14. In the resumed proceedings, on 18 May 2006 the District Court again found the applicant guilty and sentenced him to three years' imprisonment. However, that judgment was quashed by the Supreme Court on 6 December 2006 and the applicant's detention was extended.

15. In early 2007 the applicant requested release from detention on account of inadequate medical care, but his request was dismissed in April 2007.

16. In the remitted proceedings, on 14 May 2007 the applicant's counsel objected to an expert opinion submitted to the court. She explained the applicant's health condition in detail, complained about the inadequacy of his medical treatment in detention and stressed that his health had deteriorated to a large extent owing to the duration of his detention.

17. In a fresh judgment in the applicant's case delivered on 7 June 2007, the court sentenced the applicant to four years' imprisonment, but decided to release him. However, the applicant was ordered not to leave his habitual place of residence and to report to the District Court each month, failing which he might be returned to custody.

B. The applicant's medical condition

18. The applicant was examined for the first time on 9 February 2004, shortly after being taken into custody. The medical report concluded that he had been in good health.

19. During 2004 he was diagnosed with psychiatric problems and was hospitalised on several occasions. In 2005 he suffered from severe back pain and was hospitalised as a result of a hunger strike. In 2006 he was diagnosed with benign breast augmentation. In addition to the public

medical care provided, since January 2006 the domestic court had allowed the applicant to have regular consultations with his private doctor.

20. At the end of 2006 the applicant was diagnosed with Hepatitis C. The testing was organised within the framework of voluntary confidential counselling and testing for HIV and Hepatitis (*“Dobrovoljno povjerljivo savjetovalište i testiranje”*), which at the material time appears to have been available in prison.

21. The applicant claimed that he had been diagnosed already in November 2006, whereas the Government submitted that his diagnosis had been made on 6 December 2006. In his examination of 1 December 2006 the applicant's private doctor made no mention of a Hepatitis C infection.

22. On 25 January 2007 the applicant went on a hunger strike.

23. On 8 February 2007 the applicant was examined by his private doctor, who recommended that he be examined by an infectious diseases specialist. That consultation took place on 13 February 2007, when the applicant underwent further blood tests.

24. As a result of his hunger strike, on 1 March 2007 the applicant was transferred to the Belgrade Prison Hospital because of a rise in his liver enzymes. However, he refused to be examined by the hospital staff, claiming that he had contracted Hepatitis during his last stay there. On 19 March 2007 the applicant's lawyer requested the court that he be returned to the Novi Sad District Prison, and on 28 March 2007 the authorities acted accordingly. On his release from the Belgrade Prison Hospital, the doctors concluded that there were no traces of starvation and that the applicant suffered from drug abuse.

25. On his return, he was again examined by the infectious diseases specialist, who on the basis of further blood tests concluded that his liver enzymes had improved and that he should undergo a liver biopsy, which was performed on 23 April 2007. The biopsy established that the applicant suffered from chronic Hepatitis C with minimal activity and minimal fibrosis. In May 2007 samples were sent for additional tests to determine his genotype in order to start anti-viral treatment.

26. The applicant was released from detention on 7 June 2007, before the genotyping tests were concluded and before he had started receiving treatment for his condition.

27. Pursuant to a medical report dated January 2008, after the applicant had undergone the appropriate anti-viral treatment, his infection was in remission.

II. RELEVANT DOMESTIC LAW

28. The relevant provisions of the Code of Criminal Procedure (*Zakonik o krivičnom postupku*; published in OG FRY nos. 70/01, 68/02, 58/04, 115/05 and 49/07) in force at the material time read as follows:

Section 136

“If there are circumstances indicating that the defendant might abscond, hide, go to an unknown place or abroad, the court may, by a reasoned decision, prohibit him from leaving his place of residence. ...

The parties may appeal against a ruling ordering, extending or setting aside [the said] measures ... and the Public Prosecutor may also appeal against a ruling rejecting his request for their application. The Judicial Panel ... shall decide on the appeal ... [within a period of three days] ... The appeal does not stay the execution of the ruling. ...”

Section 137

“A defendant who is to be or has already been detained based only on circumstances indicating that he will abscond ... [or if duly summoned, that he is clearly evading appearance at the main hearing] ... , may remain at large or may be released providing that he personally, or another person on his behalf, gives bail guaranteeing that he will not abscond until the conclusion of the criminal proceedings, and the defendant himself promises that he will not hide or change his place of residence without permission.”

Section 140(1)

“A decision concerning bail before and in the course of a [judicial] investigation shall be rendered by the investigating judge. After the indictment is preferred, the decision on bail shall be rendered by the President of the Chamber and [subsequently] at the main hearing by the Chamber itself.”

Section 142(2)

“For the purposes of the unhindered conduct of the criminal proceedings... detention may be ordered against a person who is under reasonable suspicion of having committed a criminal offence if:

(1) he is in hiding or his identity cannot be established, or if there are other circumstances clearly indicating a risk of flight; ...”

Section 143

“Detention shall be ordered by a decision of the competent court. ...

A decision on detention shall be served on the person to whom it relates at the time he is deprived of his liberty, but no later than within 24 hours ...

A detained person may file an appeal against the decision on detention with the Judicial Panel within 24 hours from the time of its receipt. The appeal, the decision on detention and other files shall immediately be forwarded to the Judicial Panel. The appeal shall not stay the execution of the [impugned] decision. ...

In the situation referred to ... [above] ... [,] the Judicial Panel shall rule on the appeal within 48 hours.”

Section 389(4)

“If the defendant is in detention on remand, the second-instance court shall examine the continuation of the reasons for the measure and decide whether or not to extend it. No appeal shall lie against that decision.”

29. The relevant provision of the Enforcement of Criminal Sanctions Act 2005 (*Zakon o izvršenju krivičnih sankcija*; published in OG RS no. 85/05) reads as follows:

Section 101

“Prisoners are entitled to free medical care.

Prisoners who cannot receive adequate medical treatment within the institution shall be transferred to the Special Prison Hospital or other health institution, and pregnant women to a maternity ward for childbirth.

Time spent on medical treatment shall be calculated as part of the time of imprisonment.”

Section 102

“(1) Medical treatment of a prisoner is conducted with his consent.

(2) Force-feeding of a prisoner is not allowed...”

Section 245

“The enforcement of a detention measure is subject to supervision by the president of the District Court that has jurisdiction for the territory where the main premises of the detention facility are located.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained under Article 3 of the Convention about the allegedly inadequate medical treatment afforded to him during his detention. The said provision reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

31. For the first time in his written observations to the Court, dated 30 January 2008, the applicant also complained about the general conditions of his detention, including the cell size and permissible outdoor walks.

32. The Court reiterates that, as regards complaints not included in the initial application, the running of the six-month time-limit is not interrupted until the date when the complaint is first submitted to it (see *Allan v. the United Kingdom* (dec.), no 48539/99, 28 August 2001).

33. Bearing in mind that the applicant was released on 7 June 2007 and that he introduced his complaint about the general conditions of his detention only on the above-mentioned date, it follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

34. Consequently, in examining the applicant's complaint under Article 3, the Court shall therefore only take into account the adequacy of medical treatment afforded to him in detention.

A. Admissibility

35. The Government submitted that the applicant had failed to exhaust domestic remedies. Without relying on any provision of domestic law, they claimed that he could have appealed to the president of the District Court, as well as to the prison or hospital authorities.

36. The applicant disagreed. He maintained that he had repeatedly informed the competent court about his health condition but to no avail.

37. The Court recalls that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV). The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (*ibid.*).

38. In the area of exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (*ibid.*, § 68).

39. The Court points out that the decisive question in assessing the effectiveness of a remedy concerning a complaint of ill-treatment is whether the applicant can raise this complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be both preventive and compensatory in instances where persons complain about their ill-treatment in detention or the conditions thereof (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

40. Turning to the present case, the Court observes on the one hand that, in her submissions to the District Court, the applicant's counsel often complained about the inadequacy of the medical treatment which her client had been receiving in detention (see above § 16). On the other hand, the Government failed to specify any provision of domestic law which would secure the applicant, with reasonable prospects of success, redress for his Convention grievance.

41. In Serbia, the enforcement of detention measures is regulated by the Code of Criminal Procedure and the Enforcement of Criminal Sanctions Act. Pursuant to section 245 of the Enforcement of Criminal Sanctions Act in force at the material time, enforcement of a detention measure is subject to supervision by the president of the District Court which has jurisdiction for the territory where the main premises of the detention facility are located. However, the above legislation does not provide for a complaints procedure – before a court or an administrative authority – which would satisfy the effectiveness requirements in respect of complaints concerning detention conditions or the medical treatment afforded to detainees.

42. In the absence of any domestic case-law in support of their contention, the Court must conclude that the Government have failed to show that there existed an effective remedy accessible to the applicant in respect of his Convention grievance under Article 3 of the Convention. Consequently, the Government's objection must be rejected.

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

B. Merits

1. The Government's submissions

44. The Government submitted that during his detention the applicant had been examined 270 times in the Novi Sad District Prison as well as by specialists. Further, he had been hospitalised in the Belgrade Prison Hospital on eight occasions. In addition, ever since January 2006 the applicant had had regular check-ups by his private doctor and was at all

times allowed to receive the treatment prescribed by him. In this connection, the Government pointed out the importance for detainees of being able to undergo medical checks by doctors from outside the prison regime, which in the applicant's case had been fully ensured.

45. The Government acknowledged that the applicant had been in good health when taken into custody and that his health had deteriorated during his detention. Most of the time, he had been suffering from depression and anxiety, partly because of his previous history of illness and in part related to his mental suffering caused by the detention itself. For his psychological problems, the applicant was, however, regularly treated by three psychiatrists.

46. The applicant was diagnosed with Hepatitis C on 6 December 2006 and the Government did not dispute that he had contracted the virus in detention. However, in their view, he had been afforded adequate medical treatment in that he had immediately been examined by an infectious diseases specialist and sent to the Novi Sad Clinical Centre for testing. As regards the medical care afforded to the applicant in March 2007 in the Belgrade Prison Hospital, the Government submitted that the applicant had not only begun a hunger strike, which had caused additional deterioration in his condition, but had also refused to be examined by the hospital staff, claiming that he had contracted that infection during his last stay there. The latter information, in the Government's view, could not be established beyond reasonable doubt.

47. Finally, the Government recalled the findings of the Committee for the Prevention of Torture during their visit to Serbia in 2004, when that body had found no specific problem with Hepatitis C infections in Serbian prisons and had observed that "the prison hospital staff seemed dedicated to providing best possible care to the patients".

2. The applicant's arguments

48. The applicant maintained that the treatment for his Hepatitis C infection had been inadequate. It had taken several months before he was examined for the first time by a specialist and his anti-viral treatment had not even begun prior to his release from detention seven months after the diagnosis. Moreover, during his hunger strike he had not been afforded the necessary vitamins, medication or tea.

49. As regards treatment in the Belgrade Prison Hospital, the applicant claimed that one of the doctors there had erroneously diagnosed him as a drug abuser – something which had never been diagnosed during his previous stays in that hospital. Also he claimed to have contracted the Hepatitis infection during his last stay at that hospital, which is why he refused any further blood tests.

3. *Relevant principles*

50. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, 6 April 2000, § 119, *Reports* 2000-IV). Such ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such intention does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III; *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII; *Cenbauer v. Croatia*, no. 73786/01, § 43, ECHR 2006-III).

51. The Court has consistently stressed that the suffering involved must in any event exceed that inevitably connected with a legitimate deprivation of liberty. Nevertheless, in the light of Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI), with the provision of the requisite medical assistance and treatment (see, *mutatis mutandis*, *Aerts v. Belgium*, 30 July 1998, §§ 64 et seq., *Reports* 1998-V).

52. In exceptional cases, where the state of a detainee's health is wholly incompatible with detention, Article 3 may require his or her release under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as that offered by the best medical institutions for the general public. Nevertheless, as said above, the State must ensure that the health and well-being of detainees are adequately secured (see *Kudła*, cited above, § 94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, 28 January 1994, Series A no. 280-A, opinion of the

Commission, pp. 15-16, § 79, and *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI).

4. The Court's assessment

53. In order to establish whether the applicant received the requisite medical assistance while in detention, it is crucial to determine whether the State authorities provided him with sufficient medical supervision for a timely diagnosis and treatment of his illnesses (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006, and *Mechenkov v. Russia*, no. 35421/05, § 102, 7 February 2008).

54. As regards the diagnosis of his Hepatitis C, the Court sees no evidence to indicate that the authorities had failed to ensure prompt discovery of the infection. Moreover, as is apparent from the case file, the applicant discovered his infection through voluntary confidential counselling, which had been offered to him in detention as part of a public awareness-raising project concerning HIV and Hepatitis infections (see paragraph 20 above). In the absence of any obvious earlier symptoms or claim to the contrary, the State can therefore not be reproached for failing to diagnose his illness in a timelier manner.

55. The applicant complained, however, that once his illness had been diagnosed, he had not received prompt and adequate treatment. The Court notes that chronic hepatitis is an illness that primarily attacks the liver and with time can lead to liver cirrhosis, liver cancer and death. In this connection the Court reiterates that it is essential that an applicant undergo an adequate assessment of his or her state of health in order to be provided with adequate treatment. In the present case, such an assessment could be obtained from a liver biopsy and relevant blood tests (see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007).

56. The Court observes that the applicant was diagnosed some time in late November or early December 2006, a fact which is in dispute between the parties. Since in his examination of the applicant dated 1 December 2006, the applicant's private doctor made no mention of such a diagnosis (see paragraph 21 above), the Court shall proceed on the assumption that the applicant's infection was indeed diagnosed on 6 December 2006.

57. Following that date, the applicant appears to have been examined for the first time in February 2007 by both his private doctor and a specialist in infectious diseases (see paragraph 23 above). By that time, he had already started his hunger strike as a result of which his liver enzymes rose and made him unfit for an immediate liver biopsy, which was nevertheless essential in establishing the already existing damage to his liver and the necessary course of treatment. He was therefore transferred to the Belgrade Prison Hospital, where he refused to be examined by the hospital staff because he claimed to have contracted the Hepatitis infection during his last stay there. At the applicant's own request, he was returned to the Novi Sad

Prison Hospital, where in April 2007 he underwent a liver biopsy, further blood tests and specialist exams (see paragraph 25 above). At the time of his release from detention, on 7 June 2007, the results of further blood tests to enable the applicant to start antiviral treatment had not yet been completed.

58. It is true that during the seven months between his diagnosis and release from detention the applicant had not started medication-based treatment for his Hepatitis C infection. However, during that period he had undergone a liver biopsy, numerous blood tests and examinations by specialised doctors (compare and contrast with *Testa*, cited above, § 52, and *Poghosyan v. Georgia*, no. 9870/07, § 57, 24 February 2009). Nevertheless, the Court finds it regrettable that two months elapsed before the applicant's first examination by an infectious diseases specialist on 13 February 2007, despite the fact that during that time he appears to have been under the supervision of his private doctor.

59. However, the Court would note that, by going on a hunger strike and refusing to be examined in hospital, the applicant himself substantially delayed the identification of the damage to his liver which he had already sustained. In doing so, he showed little or no concern for his state of health and can therefore hardly hold the authorities responsible for the aggravation of his condition during that period.

60. The Court is aware that Hepatitis C is a serious and, if left untreated, possibly fatal disease. However, it considers that in the present case the authorities showed a sufficient degree of diligence, providing the applicant with prompt and uninterrupted medical care as well as the possibility of identifying the extent to which the disease had already progressed.

61. In the light of the foregoing, it cannot be said that the authorities provided the applicant with inadequate or insufficient medical care. Accordingly, the Court concludes that there has been no violation of Article 3 of the Convention.

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

62. The applicant further complained that the length of his pre-trial detention had been excessive, in violation of Article 5 § 3 of the Convention, which, in so far as relevant, reads 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.”

63. The Government contested that argument.

A. Admissibility

64. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. *Period to be taken into consideration*

65. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005, and *Labita* cited above, §§ 145 and 147,).

66. Furthermore, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see *Panchenko*, cited above, § 93, and *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). However, when assessing the reasonableness of the length of the applicant's pre-trial detention, the Court should make a global evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see *Solmaz v. Turkey*, no. 27561/02, §§ 36-37, ECHR 2007-... (extracts)).

67. Accordingly, in the present case the period to be taken into consideration consisted of three separate terms: (1) from 6 February 2004 when the applicant was taken into custody until his conviction on 9 November 2004; (2) from 15 June 2005 when the applicant's conviction was quashed on appeal until his subsequent conviction on 18 May 2006; and (3) from 6 December 2006 when the second conviction was quashed on appeal until his release on 7 June 2007.

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

2. The parties' submissions

(a) The Government

69. The Government stressed that in 2003 the applicant had not been available to the police authorities, which was why the competent court had lawfully ordered that he be remanded in custody. His detention was thereafter regularly extended because of the risk of flight, which could not be excluded given the high maximum sentence for the crime of which he had been accused as well as his behaviour prior to his deprivation of liberty on 6 February 2004.

70. The Government further submitted that the domestic courts had thoroughly examined the applicant's requests for release on bail. However, those requests were rejected because the proposed amounts had been insufficient to guarantee the applicant's attendance at the hearings, in particular bearing in mind that he had unlawfully acquired around ten times more than the amount offered.

71. The authorities had also carefully examined the applicant's request to be released from detention on account of inadequate medical treatment, and concluded that there had been insufficient evidence to suggest that the applicant's medical condition might justify his release. Lastly, in its final judgment of 7 June 2007 the District Court decided to release the applicant, under certain conditions, primarily on account of his state of health.

(b) The applicant

72. The applicant maintained that the authorities had failed to prove an intention to abscond, thus rendering his detention devoid of any legal basis. Also, when extending his detention, the courts should have taken into account his medical condition and other relevant factors. His requests for bail were rejected without a valid reason, at the same time breaching his right to the presumption of innocence.

3. The Court's assessment

(a) General principles

73. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *McKay v. the United Kingdom* [GC], no. 543/03, § 42, ECHR 2006-X, and *Kudła*, cited above, § 110).

74. The Court further observes that it falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable length of time (see, among many other authorities, *Vrenčev v. Serbia*, no. 2361/05, § 73, 23 September 2008). To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by applicants in their appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita*, cited above, § 152).

75. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases the Court must establish whether the other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita*, cited above, § 153). The burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting release (see *Ilijkov v. Bulgaria*, no. 33977/96, § 85, 26 July 2001).

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

76. As noted above, the applicant was held in pre-trial detention for two years and two months, a period which may raise an issue under the Convention (see, for example, *Dolasiński v. Poland*, no. 6334/02, § 35, 19 December 2006; *Bárkányi v. Hungary*, no. 37214/05, § 27, 30 June 2009; *Doronin v. Ukraine*, no. 16505/02, § 61, 19 February 2009).

77. His detention was regularly extended by the domestic authorities. However, each periodic decision contained the same reason – the risk of absconding – owing to the fact that the applicant had been unavailable to the authorities in 2003 and that they had had to issue an international arrest warrant. The applicant contested these facts, claiming that he had provided the authorities with his temporary address and that, once he had found out about the arrest warrant, he had turned himself in at the local police station.

78. Be that as it may, the Court considers that the possibility of absconding may have been an acceptable justification for the initial placement of the applicant in custody. However, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. With the passage of time the authorities must examine this issue 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, among other authorities, *Letellier v. France*, 26 June 1991, § 43, Series A no. 207, and *Panchenko v. Russia*, cited above, § 106).

79. In the applicant's case, however, with the passing of time the courts' reasoning did not evolve to reflect the developing situation and they failed to verify whether this ground remained valid at the advanced stage of the proceedings (see *Bykov v. Russia* [GC], no. 4378/02, § 64, ECHR 2009-...). Instead, the authorities used standardised formulas, consistently referring to the initial difficulties in determining the applicant's whereabouts.

80. Furthermore, when prolonging the applicant's detention, the authorities failed to consider alternative means of ensuring his presence at the trial, such as, for example, the seizure of his travel documents. Moreover, his applications for release were rejected even after he had been detained for a period equivalent to three-quarters of the prison sentence imposed on him by both – ultimately quashed – judgments and despite his aggravated health condition.

81. For the foregoing reasons, the Court considers that the authorities extended the applicant's detention on grounds which cannot be regarded as “sufficient”, thereby failing to justify the applicant's continued deprivation of liberty for a period of over two years. It is therefore not necessary to examine whether the proceedings against him were conducted with due diligence.

82. There has accordingly been a breach of Article 5 § 3 of the Convention.

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

83. The applicant lastly complained about the length of the criminal proceedings against him. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides as follow:

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

84. The period to be taken into consideration began on 3 March 2004, when the Convention entered into force in respect of Serbia, and ended on 7 June 2007. It thus lasted approximately three years and three months.

85. During that time the case was examined by two levels of jurisdiction, including a remittal. Since it involved several accused persons and a series of financial offences, it was of a certain legal and factual complexity. Moreover, an examination of the case file does not disclose any lack of diligence on the part of the courts. Consequently, bearing in mind its case-law on the matter, the Court does not consider that the overall length of the proceedings in the present case exceeded a “reasonable time”.

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

4. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 42,272.30 euros (EUR) in respect of pecuniary damage and EUR 116,575.80 in respect of non-pecuniary damage.

88. The Government contested those claims.

89. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant has suffered non-pecuniary damage which cannot be sufficiently compensated by a mere finding of a violation of the Convention. Having regard to the violations found in the present case and making its assessment on an equitable basis, the Court therefore awards the applicant EUR 1,500 under this head.

B. Costs and expenses

90. The applicant also claimed EUR 26,155.98 for the costs and expenses incurred before the domestic court and before this Court, in respect of which claim the applicant submitted invoices from his lawyer.

91. The Government contested those claims.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

93. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 1,500, plus any tax that may be chargeable on that amount.

C. Default interest

94. 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 complaints concerning inadequacy of medical treatment and the length of pre-trial detention admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *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 sums, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
 - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable,
 - (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Sally Dollé
Registrar

Françoise Tulkens
President