



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

FIRST SECTION

CASE OF SHENOYEV v. RUSSIA

(Application no. 2563/06)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

10/09/2010

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

In the case of Shenoyev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 2563/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Anton Igorevich Shenoyev (“the applicant”), on 31 October 2005.

2. The applicant was represented by Mr B. Ilyunov, a lawyer practising in Ulan-Ude. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 30 January 2009 the President of the First Section decided to give priority treatment to the application and to give notice of it to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1971 and is serving a prison sentence in colony no. 18 in the Yamalo-Nenetskiy Region.

A. Preliminary investigation

5. The applicant was arrested on 27 March 2003. He was suspected of unlawful possession of firearms and two robberies of local post offices, as well as robbery, triple murder and attempted murder of security officers transporting money. It appears that the applicant was informed of his procedural rights, including the privilege against self-incrimination. The investigator interviewed him in the presence of a lawyer; the applicant made admissions in relation to the above offences. A search was carried out of the applicant's garage and another location indicated by the applicant; certain evidence such as coins, guns and gun cartridges were seized. On 28 March 2003 one of the victims identified the applicant in a line-up procedure as the alleged perpetrator.

6. On 29 March 2003 the applicant was brought before a judge of the Oktyabrskiy District Court of Ulan-Ude. Having heard the parties, the district judge authorised the applicant's continued detention on account of the admissions, the identification of the applicant by one of the victims and the evidence seized. The judge excluded any less intrusive preventive measure on account of the number and gravity of the offences of which the applicant was suspected and the risk that he would reoffend or abscond.

7. The applicant's detention was examined again on 17 April 2003 and he was remanded in custody on the same grounds. The judge also referred to the applicant's personality and that he “had committed several criminal offences within a short period of time”. Lastly, the judge noted that the period asked for (more than two months) by the investigating authority was justified by the need to carry out specific investigative measures and to obtain ten expert reports.

8. According to an out-patient psychiatric report dated 26 May 2003, the applicant had symptoms of “an accentuated personality” prone to gambling; however, this condition was not considered as requiring treatment or entailing any legal consequences (see also paragraph 22 below).

9. At a remand hearing on 19 June 2003 the applicant chose to remain silent; his counsel made no comment on the prosecution's extension request. The judge extended the applicant's detention with reference to the number and gravity of the charges, and the risk that he would abscond or interfere with the course of the investigation.

10. The investigator applied for a further extension on 15 August 2003. The judge heard the applicant and his counsel, none of whom objected to the remand request, referring to their wish to continue the study of the case file. The judge granted the prosecutor's request, referring to the gravity of the charges and the risk that the applicant would abscond, reoffend or interfere with the course of the proceedings. A further detention order was issued on 17 September 2003. The applicant and his counsel raised no objection to the extension request.

B. First trial

11. On 14 October 2003 the criminal case against the applicant was listed for trial before the Supreme Court of the Buryatiya Republic (“the Regional Court”). The selection of a jury panel was carried out between 27 November and 9 December 2003. Between 11 December 2003 and 23 March 2004 the jury heard evidence and witnesses. On an unspecified date the applicant retracted statements that he had made previously. On 23 March 2004 the jury found the applicant guilty as charged.

12. On 13 April 2004 the Regional Court approved the applicant's detention for a further three months, referring to the gravity of the charges and the need to complete the trial.

13. On 20 April 2004 the trial judge sentenced the applicant to life imprisonment. Thereafter and until July 2004 the parties studied the trial record and submitted their objections to it.

14. The applicant appealed against the verdict, considering that the composition of the jury panel had been unlawful because the next of kin of some jurors had criminal records, which under the applicable legislation should have prevented those jurors from sitting on a panel.

15. In August 2004 the case was sent to the Supreme Court of Russia. Between October 2004 and February 2005 the applicant submitted further statements of appeal. After the applicant's unsuccessful attempts, in February 2005 the Supreme Court itself sought to obtain further particulars on the criminal records of jurors' next of kin.

16. On 8 June 2005 the Supreme Court set the verdict aside on account of irregularities in the jury selection procedure, including the above issue of next-of-kin convictions. However, the appeal court rejected the remaining points of appeal as unfounded. Lastly, it indicated without further reasons that “the preventive measure (detention) in respect of the applicant should be maintained”.

C. Second trial

17. The retrial started on 17 August 2005. The Regional Court held a hearing and decided that “the applicant should remain in custody”. Subsequently, the Supreme Court held that there had been no need for the decision of 17 August 2005. Noting that the applicant did not challenge his detention, the Supreme Court stated that, in any event, the question of remand had already been determined in the decision of 8 June 2005.

18. In the meantime, on 7 September 2005, the Regional Court held a remand hearing. It appears that the applicant and his counsel made no comment on the prosecution's request, leaving the matter to the Court's discretion. The judge granted an extension with reference to the gravity of

the charges and the risk that the applicant would abscond or interfere with the course of the proceedings.

19. Further extensions were issued on 7 December 2005, 22 February and 23 May 2006. On each occasion the Regional Court considered that the reasons referred to since the order of 29 March 2003 remained valid, namely, the risk that the applicant would abscond, reoffend or interfere with the course of the proceedings, supported by the gravity of the charges against the applicant.

20. On 22 February 2006 the trial judge ordered a further extension. He rejected the applicant's arguments that were based on the considerable length of detention, his permanent residence and the need to take care of an underage child. The judge stated that the length of detention was not a matter to be taken into account for the remand, and that the reasons for it were still valid. Another remand decision in similar terms was issued on 23 May 2006.

21. The jury selection procedure lasted from 27 March to 4 April 2006. On 27 June 2006 the jury returned a guilty verdict on all counts except for unlawful procurement and possession of gun cartridges.

22. On 13 October 2006 an in-patient psychiatric report was commissioned. Remand orders were issued on 28 August and 21 November 2006. The report was issued in February 2007.

23. On 21 February 2007 the Supreme Court held a remand hearing. The applicant did not attend because he had been admitted to a Moscow hospital for the in-patient forensic examination. However, he was represented at that hearing by counsel who consented to proceed without the applicant being present. The remand judge extended the applicant's detention indicating that "the applicant had been charged with and found guilty by a jury of particularly serious offences and risked a heavy sentence of imprisonment". Thus, the judge concluded that the applicant would abscond if at large and would thus obstruct the proceedings.

24. On 22 May 2007 the trial judge upheld the jury verdict and sentenced the applicant to life imprisonment. As follows from the trial judgment, the applicant underwent an in-patient examination by psychiatrists who concluded that he had a serious addiction to gambling; that at the time of the offences he had been unable to fully comprehend the dangerousness of his actions; and that at the time of the psychiatrists' report he had needed no compulsory medical treatment (see also paragraphs 8 and 22 above). While accepting the report in evidence, the trial judge considered that the applicant was legally liable for the relevant offences.

25. On 14 June 2007 the Supreme Court upheld the extension order of 21 February 2007. It refused the applicant leave to be present at the appeal hearing or to participate in it by way of a video link.

26. On 27 February 2008 the Supreme Court examined the parties' appeals and ordered a retrial because one of the jurors had a mental illness,

which under the applicable legislation prevented him from sitting as a juror. Referring to the gravity of the charges, the appeal court held that the applicant should remain in detention pending the retrial.

D. Third trial

27. On 8 April 2008 the Regional Court extended the applicant's detention noting that the retrial was pending. It considered that there was a risk of the applicant fleeing justice on account of (i) the gravity of the criminal offences leading, if convicted, to long custodial sentences or life imprisonment; (ii) the fact that the applicant had been previously subject to criminal prosecution for unspecified offences. The judge also referred to the 2007 psychiatric report concluding that the applicant had a serious addiction to gambling which had led to changes in his social, family and professional behaviour and to his being prone to unlawful conduct. In addition to the above, the judge held as follows:

“On the facts of the case, including the nature of the offences (several robberies and murders)...related to the [the applicant's] passion for gambling, which in its turn led to the incurring of debts and misappropriation of property, the Court concludes that a less intrusive preventive measure would allow the applicant to resume his criminal activity and the damage caused to the public interest would manifestly exceed the damage related to the limitation inherent in the deprivation of liberty.

The Court has taken due account of the fact that [the applicant] has a permanent place of residence, provided positive accounts from his employer and has an underage child in his care.

This detention order is based on the persistence of the circumstances justifying the initial arrest and detention. No sufficient reasons for varying the preventive measure have been adduced.”

28. On 29 April 2008 the trial judge returned the case to the prosecutor to amend the list of evidence to be presented at the trial. The judge also upheld the applicant's continued detention on account of the risk that he would reoffend (based on the gravity of the offences and eventual sentences, as well as the previous prosecution against the applicant). On 9 July 2008 the Supreme Court set aside the part of the decision of 29 April 2008 relating to the remittal but upheld the detention.

29. On 27 June and 24 September 2008 the Regional Court extended the applicant's detention on the same grounds as were given in the order of 8 April 2008.

30. The trial resumed on 14 August 2008. On 14 December 2008 the jury convicted the applicant as charged. On 29 December 2008 the trial judge sentenced the applicant to life imprisonment.

31. On 4 June 2009 the Supreme Court quashed the conviction on one count and upheld the remainder of the verdict and the sentence. It appears

that the applicant obtained a copy of the appeal decision on an unspecified date in July 2009.

II. RELEVANT DOMESTIC LAW

32. Pursuant to Article 109 § 1 of the Code of Criminal Procedure, detention of an accused pending investigation should not exceed two months. It may, however, be extended to six months. Further extensions to up to twelve months are possible only in relation to persons accused of serious or very serious criminal offences, in view of the complexity of the case and if there are grounds justifying detention. An investigator's request for extension must be approved by the regional prosecutor (§ 2). Further extension of detention beyond twelve months and up to eighteen months may be authorised only in exceptional circumstances in respect of persons accused of very serious offences, upon an investigator's request approved by the Prosecutor General or his deputy (§ 3). Extension of detention beyond eighteen months is prohibited and the detainee must be released, unless the court decides to extend his detention to the date when the accused has finished studying the case file and the case has then been submitted for trial (§§ 4 and 8 (1)). After the completion of the investigation, an accused kept in detention must be provided with access to the case file no later than thirty days preceding the expiry of the maximum period of detention indicated in paragraphs 2 and 3 (§ 5). If such access was given later than that, the detainee must be released after the expiry of the maximum period of detention (§ 6). If the thirty-day time-limit was complied with, but was insufficient for the accused, the investigator, with the approval of the regional prosecutor, may request the court to extend the accused's detention. Such a request should be submitted no later than seven days before the expiry of the maximum detention period (§ 7).

33. Under Article 255 of the Code, after a criminal case has been submitted for trial to a court, the latter may, on the party's request or *proprio motu*, vary or annul a measure of restraint in respect of the defendant, including placement in custody or detention pending trial. The period of detention pending trial cannot normally exceed six months from the date when the case was submitted to a court and up to delivery of a judgment in the case. However, after the expiry of that period the trial court may extend the detention of a defendant charged with a serious or very serious offence. Each extension must not exceed three months.

THE LAW

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

34. The applicant complained that his detention before and during the first trial and the retrials had been in breach of Article 5 § 3 of the Convention, which reads as follows:

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

35. The Government submitted that the authorities' initial and persisting reasonable suspicion against the applicant had been based on his admissions and his subsequent retraction, which indicated that he would abscond or tamper with evidence or witnesses, if at large. At the remand hearings before the start of the trial the defence adduced no evidence to suggest that the initial circumstances justifying detention had changed. Equally, the applicant's detention pending trial was also based on relevant considerations such as the nature of the offences, the fact that he had committed murder motivated by his gambling addiction, the fact that the offences had been planned and that he had destroyed any evidence of them.

36. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

1. Periods under consideration

38. The Court observes that the applicant was arrested on 27 March 2003 and convicted on 20 April 2004, the date on which the sentence was pronounced by the trial judge after the jury verdict. The Court reiterates in that connection that detention comes to an end for the purposes of Article 5 §§ 1 (c) and 3 of the Convention with the finding of guilt and the sentence imposed at first instance (see *Solmaz v. Turkey*, no. 27561/02, § 26, ECHR 2007-II (extracts)).

39. The applicant's subsequent detention until 8 June 2005 was authorised under Article 5 § 1 (a) of the Convention. The periods from

8 June 2005 to 22 May 2007 and from 27 February to 29 December 2008, when the proceedings were resumed and were pending, also fall under Article 5 §§ 1 (c) and 3.

40. The Court further observes that the first period of the applicant's detention under Article 5 § 1 (c) ended on 20 April 2004, while the applicant first applied to the Court in October 2005. The Court considers, however, that all three periods of the applicant's detention falling within the scope of Article 5 § 1 (c), and thus also paragraph 3, should be taken as a whole (see *Solmaz*, cited above, §§ 34-37, and *Bordikov v. Russia*, no. 921/03, §§ 76-85, 8 October 2009). The six-month time-limit should only start to run from the end of the last relevant period, namely 29 December 2008, when the trial judge adopted the most recent jury verdict and pronounced the sentence.

41. The Court will thus make a global evaluation of the applicant's detention for the purposes of Article 5 § 3 of the Convention between 2003 and 2009. Consequently, the Court concludes that, after deducting the periods when the applicant was detained after conviction for the purposes of Article 5 § 1 (a) of the Convention from the total time that he was deprived of his liberty, the cumulative period to be taken into consideration in the instant case is three years and nearly ten months.

2. *The Court's assessment*

42. The applicant was arrested on suspicion of murder and robbery following a search of his flat and the seizure of evidence (see paragraphs 5 and 6 above). Moreover, he made admissions in connection to the above criminal offences. The Court is satisfied in the circumstances that the suspicion against the applicant was a reasonable one and that the existence of this suspicion justified the applicant's arrest and the initial period of detention. The jury verdicts were quashed on appeal. In the Court's view, the appeal court, having full knowledge of the case, could be said to have made its decision on both occasions on the basis of the facts before it, that there was still a case for the applicant to answer and one sufficient to warrant a retrial. The persistence of reasonable suspicion may therefore be said to have derived from the same basis as the decision to order a retrial. It has not been alleged that this suspicion was dispelled at any point in the subsequent proceedings or ceased to be "reasonable" on account of any change in the relevant circumstances. The Court finds no reason to reach a different conclusion.

43. The Court further reiterates that while 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, with the lapse of time this no longer suffices. Thus, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03,

§ 44, ECHR 2006-...). Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings.

44. The Court further observes that the main thrust of the applicant's grievance before the Court relates to the second (8 June 2005 to 22 May 2007) and third (27 February to 29 December 2008) periods of his detention. It is also noted that at least until September 2005 the applicant did not put forward any specific arguments relating to the subject of his remand, leaving the matter to the judges' discretion (see paragraphs 9, 17 and 18 above). However, it did not absolve the national authorities from establishing specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, §§ 62 and 63, ECHR 2009-...).

(a) The risk of perverting the course of proceedings

45. The Court observes that the applicant was arrested in relation to violent offences and that the domestic courts referred to the risk that he would pervert the course of proceedings mainly in relation to the preliminary investigation and the first trial. This matter is not, however, without relevance in the subsequent proceedings in so far as the courts referred back to the persistence of the grounds, including that risk, which justified the applicant's arrest in 2003 and the extension of his detention.

46. The Court observes that the national authorities did not specify any form in which the above risk could materialise, despite the applicant's admissions made after the arrest in 2003. Nor did they have regard to pertinent factors such as the advancement of the investigation or judicial proceedings and their resumption or any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed, for instance, at the falsification or destruction of evidence (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A).

47. It is not apparent that the reasoning of the remand judges was based on certain other arguments put forward by the respondent Government before this Court, for instance that the offences had been planned and that he had destroyed any evidence of them (cf. *Boyle v. the United Kingdom*, no. 55434/00, §§ 38 and 42, 8 January 2008). The Court reiterates in that connection that it is not its task to take the place of the national authorities who ruled on the applicant's detention (see *Ilijkov v. Bulgaria*, no. 33977/96, § 86, 26 July 2001).

48. Thus, the Court is not satisfied that the risk was established that the applicant would pervert the course of proceedings.

(b) The risk of reoffending

49. The risk of reoffending, 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*, judgment of 12 December 1991, § 40, Series A no. 225, and *A.J.P. v. France*, no. 17020/05, § 71, 29 October 2009).

50. The domestic courts mentioned that the applicant had previously been prosecuted for unspecified criminal offences. The Court accepts that such matters may be relevant in assessing the danger of reoffending. However, the national courts did not attempt to assess the relevant risk, including whether the previous facts and charges were comparable, either in nature or in the degree of seriousness, to the charges in the pending proceedings (*ibid*; see also *Popkov v. Russia*, no. 32327/06, § 60, 15 May 2008, and *Shteyn (Stein) v. Russia*, no. 23691/06, § 115, 18 June 2009).

51. In 2008 the courts also referred to the applicant's gambling addiction to support their conclusion on the risk of reoffending. The Court does not exclude that this consideration could be relevant to the question of remand. The Court observes that the psychiatric report dated back to February 2007 and concluded that the applicant's psychiatric condition had required no compulsory treatment at that time (see paragraph 24 above). The conclusions of the report in the part relating to the events of 2003 are not sufficient for justifying the risk that the applicant would reoffend in 2008 (see *Richet v. France*, no. 34947/97, § 64, 13 February 2001, and, by contrast, *Bouchet v. France*, no. 33591/96, § 46, 20 March 2001). In any event, any preventive measure against the applicant could have been accompanied by the appropriate medical supervision. The parties did not inform the Court whether the applicant received any relevant treatment during his detention.

52. Thus, the Court is not convinced that the risk of reoffending was sufficiently established.

(c) The risk of flight

53. The national courts considered that there was a risk of flight on account of (i) the gravity of the criminal offences leading, if convicted, to long custodial sentences or life imprisonment; (ii) the fact that the applicant had previously been prosecuted for unspecified criminal offences.

54. The Court reiterates that the risk of flight should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8).

55. While there is no clear indication of the way in which any alleged previous criminal record was capable of confirming that risk, the Court cannot but note that the applicant was accused of serious offences and made admissions. While the applicant retracted during the first trial, the jury found him guilty (in 2004 and 2007) and the maximum sentence (life imprisonment) was imposed on both occasions. It is also noted that while setting aside the first verdict on account of irregularities in the jury selection procedure, the appeal court rejected the remaining points of appeal as unfounded. In the particular circumstances of the case the Court is ready to accept that at the time the relevant factors disclosed a heightened risk of flight (cf. *Gault v. the United Kingdom*, no. 1271/05, § 22, 20 November 2007).

(d) Special diligence

56. The finding in paragraph 55 notwithstanding, the Court is not satisfied that the national authorities displayed due diligence in the conduct of the proceedings. The Court fully appreciates that the right of an accused in detention to have his case examined with particular expedition should not unduly hinder the efforts of the courts to carry out their tasks with proper care (see *Tomasi v. France*, 27 August 1992, § 102, Series A no. 241-A). The available material shows, nevertheless, that in this case the national courts did not act with the necessary promptness. The Court observes in that connection that the applicant spent more than three years in detention on remand and that there were considerable delays before the start of the second trial, as well as between the guilty verdict in June 2006 and the pronouncement of the sentence in May 2007. At the same time, the length of the contested detention would not appear to be essentially attributable either to the complexity of the case or to the applicant's conduct. Thus, the Court considers that the applicant's right to trial within a reasonable time was not complied with.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

58. The applicant complained that the length of the criminal proceedings against him had exceeded a reasonable time, in breach of Article 6 § 1 of the Convention, which reads as follows:

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

59. The Government submitted that the proceedings were complex on account of the number and nature of the charges, as well as given the inherent complexity of jury trials. There had been no significant periods of

inactivity attributable to the State. The re-examination of the case on several occasions had been directed at rendering justice and correcting errors. The applicant had delayed the study of the case file during the preliminary investigation; he had studied it again on seven occasions during the court examination of the case; his numerous requests (examination of additional witnesses, replacements of counsel, personal participation in appeal hearings in Moscow) had required additional time; counsel had failed to attend hearings on several occasions; and the applicant had changed his versions of the events.

60. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

62. The proceedings started on 27 March 2003, when the applicant was arrested, and ended on 4 June 2009. Thus, they took more than six years and two months for the pre-trial proceedings and the court proceedings at two levels of jurisdiction.

63. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). The Court has examined the applicant's complaint, bearing in mind that it essentially concerned the proceedings before national courts (see *Dawson v. Ireland* (dec.), no. 21826/02, 8 July 2004).

64. The Court is not convinced that the case was particularly complex, *inter alia*, given that the applicant made admissions at the initial stage of the investigation. While it is true that jury trials may entail certain difficulties, they were not such as to justify the overall length of the proceedings.

65. As to the applicant's conduct, the Court reiterates that an applicant cannot be required to cooperate actively with the judicial authorities, nor can he be criticised for having made full use of the remedies available under the domestic law in the defence of his interests (see, among others, *Rokhlina v. Russia*, no. 54071/00, § 88, 7 April 2005). It is not apparent from the material in the case file that the applicant or his counsel defaulted, went beyond the limits of legitimate defence by lodging frivolous petitions or unsubstantiated requests or otherwise significantly contributed to the length

of the proceedings (see *Komarova v. Russia*, no. 19126/02, § 50, 2 November 2006).

66. On the other hand, the Court considers that certain delays were attributable to the domestic authorities. In addition to certain specific delays such as between August 2005 and March 2006 or between October 2006 and May 2007, the length of the proceedings was due to the re-examination of the case on several occasions on account of the defects in the composition of the jury panels. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see *Oblov v. Russia*, no. 22674/02, § 28, 15 January 2009, with further references).

67. Lastly, the Court takes into account that during the proceedings the applicant remained in custody and thus particular diligence on the part of the authorities was required.

68. Making an overall assessment, the Court concludes that in the circumstances of the case the “reasonable time” requirement has not been respected. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant also complained under Article 3 of the Convention that he had been subjected to inhuman treatment and deprived of food. He complained under Article 5 of the Convention that there had been no judicial authorisation of his detention from 14 July 2004 to 8 June 2005; that he had not been afforded an opportunity to be present at the remand hearing on 21 February 2007 and on appeal on 14 June 2007.

70. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed monetary compensation in respect of non-pecuniary damage, leaving its amount to the Court's discretion.

73. The Government contested this claim, indicating that the applicant should have applied to the Russian courts for relief.

74. There is no indication that the internal law of the respondent State allowed or allows for reparation in respect of the violations found (see, among others, *Korshunov v. Russia*, no. 38971/06, §§ 61-63, 25 October 2007, and *Borzhonov v. Russia*, no. 18274/04, §§ 34-37, 22 January 2009). Having regard to the nature of the violations, the Court awards the applicant 4,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

75. The applicant submitted copies of various receipts without claiming any specific amount or explaining its relevance to the case.

76. The Government considered that no claim had been made.

77. 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 are reasonable as to quantum. In the present case, the Court does not consider it necessary to make any award on this head.

C. Default interest

78. 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 the length of the detention and the length of the criminal proceedings against the applicant 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President