CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 24552/02
by Yelena Yuryevna MELNIKOVA
against Russia

The European Court of Human Rights (First Section), sitting on 30 June 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 May 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Yelena Yuryevna Melnikova, is a Russian national, who was born in 1967 and lives in Penza. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. First set of criminal proceedings

On 15 October 1996 the applicant was arrested and detained on suspicion of murder. On 6 June 1997 the criminal proceedings were terminated and she was released.

2. Second set of criminal proceedings

On 17 October 2001 new criminal proceedings were initiated against the applicant. This time she was suspected of fraud.

On 13 December 2001 the applicant was put on a list of persons wanted by the police.

On 5 January 2002 she was arrested.

On 8 January 2002 the investigation authorities charged her, as a principal offender, with fraud and decided to remand her in custody pending trial. Later the investigation authorities decided to carry out a psychiatric examination of the applicant. On 19 February 2002 she was transferred from prison to a psychiatric hospital. The preventive measure was changed from detention to the requirement that she give a written undertaking not to leave the place without permission.

On 22 March 2002, after the psychiatric examination, the applicant was re-detained.

On 1 April 2002 a public prosecutor extended the applicant's detention until 17 April 2002.

On 8 April 2002 the applicant and the co-accused were informed that the preliminary investigation was complete. On 10 April 2002 they began studying the case file.

On 17 April 2002 the prosecutor extended the applicant's detention until 5 May 2002.

On 30 April 2002 the prosecutor extended the detention until 5 June 2002 in order to let the applicant study the case file.

On an unspecified date the applicant filed an application for release pending trial on the grounds, *inter alia*, of her state of health and two dependent children.

On 6 May 2002 the Oktyabrskiy District Court of Penza dismissed the application. The court held:

> "The offence the accused is charged with belongs to the category of "serious" [offences]. Taking into account the social danger of the offence the preventive measure applied to [Ms] Melnikova is lawful and well-grounded. At present, there are no reasons to change it."

The applicant appealed.

On 31 May 2002 she finished studying the case file.

On 5 June 2002 the case was transmitted to court.

On the same date the Penza Regional Court quashed the decision of 6 May 2002 and remitted the case for a fresh examination by the same court.

On an unspecified date the applicant again filed an application for release pending trial, referring to her two dependent children.

On 24 June 2002 the Leninskiy District Court of Penza dismissed the application. The court held:

> "... the application [for release] ... must be dismissed, because ... the detention ... was applied to the applicant by the investigator and authorised by the Prosecutor lawfully, and because there had been a risk that she might abscond.
>
> It can be seen from the case file that before her arrest [Ms] Melnikova had been on the wanted list ..., she does not have a permanent residence in Penza."

On 6 November 2002, in the course of the trial, the applicant again filed an application for release.

On the same day the Leninskiy District Court of Penza dismissed the application on the following grounds:

> " ... [the applicant] is charged with serious offences, has neither a permanent residence nor a job in Penza..."

On 6 November 2002, at the trial hearing, the applicant challenged the lay judges because in her view her case should be tried by a single professional judge. The court dismissed the challenge.

On an unspecified date the applicant's lawyer requested the court to remit the case to the investigating authorities for the charges to be re-formulated. He also asked for the applicant's interim release.

On 28 November 2002 the Leninskiy District Court of Penza returned the case to the prosecutor for the bill of indictment to be amended but refused to release the applicant. The court said in particular:

> "... as [Ms] Melnikova is accused of having committed serious offences ... the court finds no grounds for change of the preventive measure..."

On 6 December 2002 the Leninskiy District Court of Penza extended the applicant's detention until 10 January 2003 relying on the gravity of the offence the applicant was charged with.

The applicant appealed against the decisions of 28 November 2002 and 6 December 2002 arguing, *inter alia*, that she had two dependent children and, therefore, if released could not abscond.

On 18 December 2002 the Penza Regional Court dismissed the appeal. The court held:

> "The [trial] court rightfully refused to release [Ms] Melnikova, because during the preliminary investigation it was decided to detain her and because less than six months had elapsed between the transmission of the case to the court and the ruling of 28 November 2002, and also because [she] was charged with serious offences there were no reasons to apply a different preventive measure."

On 25 December 2002 the prosecutor remitted the case for additional investigation.

On 26 December 2002 the investigator accepted the case for additional investigation. On the same date the Zheleznodorozhniy District Court of Penza ordered extension of the applicant's detention until 28 February 2003.

The applicant appealed.

On 31 December 2002 the Penza Regional Court dismissed the appeal. The court held:

> "[Ms] Melnikova faces serious charges and has sought to evade investigation. If released, she may abscond and obstruct the establishment of the truth. In the present case it is necessary to correct the defects [of the investigation] discovered in the course of the trial, to carry out investigative acts for this purpose, to submit a final indictment and to familiarise the accused with the file. The judge was right not to find grounds for the cancellation of detention as a preventive measure in respect of [Ms] Melnikova."

It appears that on 22 February 2003 the case was referred to the court.

It appears that the applicant remained in detention until the delivery of the sentence.

On 23 May 2003 the Leninskiy District Court of Penza convicted the applicant of fraud and sentenced her conditionally to 5 years' imprisonment.

B. Relevant domestic law

1. Code of Criminal Procedure of 1960 in force until 30 June 2002.

Article 11 (1). Personal inviolability

> "No one may be arrested otherwise than on the basis of a judicial decision or a prosecutor's order. [...]"

Article 89 (1). Application of preventive measures

> "When there are sufficient grounds for believing that an accused person may evade an inquiry, preliminary investigation or trial or will obstruct the establishment of the truth in a criminal case or will engage in criminal activity, or in order to secure the execution of a sentence, the inquirer, the investigator, the prosecutor or the court may apply one of the following preventive measures in respect of the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or taking into custody. [...]"

Article 91. Circumstances to be considered in applying a preventive measure

"When the need for application of a preventive measure is considered and the type of measure is chosen... the circumstances to be taken into account shall include... the gravity of the charges brought and the personality of the suspect or the accused, occupation, age, health, family status and other circumstances."

Article 92. Order or decision to apply a preventive measure

"A preventive measure shall be applied under an order made by an inquirer, an investigator, or a prosecutor, or a reasoned decision given by a court, which shall specify the offence of which the person is suspected or accused and the grounds for application of the preventive measure. The person concerned shall be informed of the order or decision and at the same time the person shall be provided with explanations concerning the procedure for appealing against the preventive measure applied.

A copy of the order or the decision on the application of the preventive measure shall be immediately handed to the person concerned."

Article 96. Taking into custody

"Taking into custody as a preventive measure shall be effected in accordance with the requirements of Article 11 of this Code in respect of a person charged with criminal offences for which the law prescribes a penalty in the form of deprivation of liberty for a period of more than two years. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of liberty for a period of less than two years is prescribed by law. [...]"

Article 97. Time-limits for pre-trial detention

"A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension up to six months from the day of taking into custody may be effected only in cases of special complexity by a prosecutor of a subject of the Russian Federation ...

An extension of the time-limit for such detention beyond six months shall be permissible in exceptional cases and solely in respect of persons accused of committing grave or very grave criminal offences. Such an extension shall be effected by a deputy of the Prosecutor General of the Russian Federation (up to one year) and by the Prosecutor General of the Russian Federation (up to one year and a half) [...]."

Article 101. Cancellation or modification of a preventive measure

"A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the circumstances of the case so require. The cancellation or modification of a preventive measure shall be effected by a reasoned

order of the person carrying out the inquiry, the investigator or the prosecutor, or by a reasoned court decision after the case has been transferred to a court.

The cancellation or modification, by the inquirer or by the investigator, of a preventive measure chosen on the prosecutor's instructions shall be permissible only with the prosecutor's approval."

Article 222. Issues to be decided when scheduling a hearing

"When scheduling a hearing a judge shall decide in respect of each accused:

...5) whether the preventive measure applied to the accused is subject to modification or cancellation . [...]"

Article 239.1. Time-limits for detention of the accused during the trial

"The term of detention of a person whose case is before a court may not exceed six months from the date when the case is transmitted to the court. In instances where detention as a preventive measure is applied by a court according to the procedure provided [in the present Code] the above-mentioned term starts to run from the moment when the accused is taken into custody.

If there is evidence that the release of the accused will significantly impede [the examination of the case] the court may, either of its own motion or upon the prosecutor's request, extend the term of the [detention] but for no more than three months. Such decision shall be taken before the expiry of the term of the detention provided in paragraph 1 of the present Article.

[...]

The provisions of the present Article are not applicable to persons charged with particularly serious offences."

Under Article 220-1, complaints about a decision to take the suspect into custody as a preventive measure should be lodged by the detainee or his representative with a court. By Article 220-2, judicial review of the lawfulness and validity of an arrest should be conducted by a judge *in camera* at the place of detention within three days of receipt of the material justifying the arrest.

2. Code of Criminal Procedure of 2001 in force from 1 July 2002.

Article 97. Grounds for applying a preventive measure

"1. An inquirer, an investigator, a prosecutor or a court within their competence may apply to an accused one of the preventive measures provided for in the present Code when there are sufficient grounds to believe that the accused:
1) will evade an inquiry, preliminary investigation or trial;
2) may continue criminal activity;

3) may threaten a witness or other participants in the criminal proceedings, destroy evidence or otherwise interfere with the course of the criminal proceedings.

2. A preventive measure may also be applied in order to secure enforcement of the sentence."

Article 99. Circumstances to be considered in applying a preventive measure

"When the need for application of a preventive measure is considered and the type of measure is chosen ... the circumstances to be taken into account shall include the gravity of the charges brought, the personality of the accused, his age, health, family status, occupation and other circumstances."

Article 101. Order or decision to apply a preventive measure

"1. A preventive measure shall be applied under an order made by an inquirer, an investigator, a prosecutor or a judge, or a decision given by a court, which shall specify the offence of which the person is suspected or accused and the grounds for application of the preventive measure.

2. A copy of the order or decision on the application of the preventive measure shall be handed to the person concerned and to his lawyer or legal representative upon their request.

3. At the same time the procedure for appealing against application of the preventive measure... shall be explained to the person concerned."

Article 108. Taking into custody

"1. Taking into custody as a preventive measure shall be effected pursuant to a court decision in respect of a person suspected or accused of committing criminal offences for which the law prescribes a penalty in the form of deprivation of liberty for a period of more than two years when application of a milder preventive measure is impossible. ...the judge's decision shall specify concrete factual circumstances which constitute the grounds for such decision. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of liberty for a period of less than two years is prescribed by law, provided that:

1) the suspect or accused does not have a permanent residence within the territory of the Russian Federation;

2) his identity has not been established;

3) he has breached the terms of a previously applied preventive measure; or

4) he has fled from the investigative authorities or from the court. [...]

3. When it is necessary to apply taking into custody as a preventive measure a prosecutor, or an investigator, or an inquirer with the prosecutor's consent, shall file an application with the court. The application must set out reasons and grounds making it necessary to take a suspect or an accused into custody and which make

application of another preventive measure impossible. Evidence supporting the grounds set out in the application shall be attached. If the application is filed in respect of a [detained] suspect, the order [on detention] and the indicated evidence shall be submitted to a judge not later than eight hours before the expiration of the term of detention.

4. [The application] shall be considered by a judge alone... with the participation of the suspect or the accused, a prosecutor and counsel if the latter participates in the criminal case, either at the place of preliminary investigation or at the place of detention of the accused within eight hours after the receipt of the file by the court. ...

7. Having examined the application a judge shall deliver one of the following decisions:

1) to [take into custody] the suspect or the accused;

2) to refuse the application;

3) to extend the term of detention. Provided the detention is recognised by the court as lawful and well-grounded, the term of detention may be extended up to 72 hours from the moment of delivering a court decision on application of one of the parties for the submission of additional evidence with regard to the sufficiency or insufficiency of the grounds for... taking into custody. The date and time until which the term of detention is extended shall be indicated in the ruling on extension of the term of detention. ...

10. If the question of application of taking into custody as a preventive measure in respect of the defendant arises in court, the court shall decide on this issue upon the application of a party or of its own motion, and shall make the requisite orders.

11. A ruling of a judge on application or refusal to apply taking into custody as a preventive measure shall be subject to appeal within three days after its delivery. The appeal court shall decide [on the appeal] within three days after it is lodged. [...]

Article 109. Time-limits for pre-trial detention

"1. A period of detention during the investigation of criminal offences may not last longer than two months.

2. If it is impossible to complete a preliminary investigation within two months and if there are no grounds for modification or cancellation of the preventive measure this time-limit may be extended up to six months by a judge of a district or garrison court of the requisite level according to the procedure provided in Article 108 of the present Code. A further extension of this term up to 12 months may be effected in respect of persons accused of committing grave or particularly grave criminal offences only in cases of special complexity of the criminal case and provided there are grounds for application of this preventive measure by a judge of the same court upon application of the investigator filed with the consent of a prosecutor of a subject of the Russian Federation or a military prosecutor of equal status.

3. A term of detention beyond 12 months may be extended to 18 months only in exceptional cases and in respect of persons accused of committing grave or

particularly grave criminal offences by [a judge] upon application of an investigator filed with the consent of the Prosecutor General of the Russian Federation or his deputy.

4. Further extension of the time-limit is not allowed. [...]

Article 110. Cancellation or modification of a preventive measure

"1. A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the grounds for its application ... change.

2. The cancellation or modification of a preventive measure shall be effected by an order of the person carrying out the inquiry, the investigator, the prosecutor or the judge or by a court decision.

3. A preventive measure applied at the pre-trial stage by the prosecutor or by the investigator or the inquirer upon his written instructions may be cancelled or changed only with the prosecutor's approval."

Article 255. Decision concerning a preventive measure

"1. In the course of a judicial hearing the court may apply, change or cancel a preventive measure in respect of the defendant.

2. If taking into custody is applied to the defendant as a preventive measure, the term of detention from the date when the criminal case is submitted to the court and until the sentence is delivered may not exceed six months except as provided in paragraph 3 of this Article.

3. ...[U]pon expiry of six months from the date when the criminal case was submitted to it, the [trial] court may extend the term of detention... only in respect of a criminal case concerning grave and particularly grave criminal offences and for not more than three months each time.

4. A court decision on extension of the term of detention of the defendant may be appealed against. The appeal does not suspend the criminal proceedings."

COMPLAINTS

1. The applicant complained under Article 5 of the Convention about the length of her detention on remand. She also alleges that the detention was unjustified and unlawful.

2. The applicant complained under Article 6 § 1 of the Convention about the length of the second set of criminal proceedings against her.

3. The applicant also invoked Article 6 § 1 of the Convention complaining that her case was examined with the participation of lay judges despite her request to be tried by a single professional judge.

4. The applicant complained under Article 5 of the Convention, Article 3 of Protocol No. 7 and Article 1 of Protocol 4 about her detention in 1996-1997.

THE LAW

1. The applicant complained under Article 5 of the Convention that her pre-trial detention had been unlawful and there had been no reasonable grounds for her to be held in prison during such a lengthy period.

The Court will examine the complaint under Article 5 §§ 1 (c) and 3, which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Detention "in accordance with a procedure prescribed by law".

The Government submitted that the applicant's pre-trial detention had been authorised by a proper authority. In particular, as regards the period between 5 June and 6 December 2002, the bill of indictment and the case file had been transmitted on 5 June 2002 to the Leninskiy District Court, which received them on 10 June 2002 and fixed a hearing for 24 June 2002. On the date of the hearing the applicant had filed an application for release pending trial, which was dismissed by the court. On 28 November 2002 the Leninskiy District Court had refused another application for release pending trial made by the applicant. On 6 December 2002 the same court had extended the applicant's detention until 10 January 2003. Her appeal against both rulings had been dismissed on 18 December 2002 by the Penza Regional Court. As regards the period between 28 February and 23 May

2003 the Government submitted that the applicant had been detained because her case was before the court and the issues concerning her detention were decided in accordance with the legislation on criminal procedure.

The Government concluded that between 5 June and 6 December 2002 and between 28 February and 23 May 2003 the applicant had been detained in accordance with Article 255 of the Code of Criminal Procedure and, therefore, her pre-trial detention had been compatible with Article 5 § 1.

The applicant did not contest the Government's submissions as regards the period of her detention between 5 June and 6 December 2002. She contended, however, that the prosecutor's order of 25 December 2002 had been unlawful and, therefore, her subsequent detention until 23 May 2003 had been unlawful as well.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore 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. Right "to trial within a reasonable time or to release pending trial"

The Government noted, referring to *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 24, § 10, that the reasonableness of continued detention must be assessed in each case according to its special features. They further noted that according to the Court's case-law the principal grounds for detention besides reasonable suspicion are the danger of absconding, the risk of collusion and the need to prevent the accused committing further offences (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 14, § 31). The Government submitted that when imposing detention as a preventive measure in respect of the applicant the investigation authorities and the courts had taken into consideration the fact that in 2001 she had sought to evade the investigation authorities, had had no place of residence and, therefore, being free could evade the trial. Furthermore, she had been accused of having committed a grave offence. In the Government's view the domestic authorities and courts had sufficient grounds to consider the applicant's detention necessary to prevent her from committing further offences and evading justice.

The applicant averred that the overall term of her pre-trial detention, that is almost 1 year and 5 months, had been excessive and unreasonable. Furthermore, she contended that the reasons for her continued detention had not been sufficiently specified. She also submitted that the reference to her having sought to evade the investigation in 2001 does not correspond to the

facts of the case because in fact she had not been notified about the institution of the criminal proceedings against her and had become aware of having been placed on a list of persons wanted by the police only when studying the case file.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore 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.

2. The applicant complained under Article 6 § 1 of the Convention that the second set of criminal proceedings against her had been unreasonably lengthy. Article 6 § 1 of the Convention provides, as far as relevant:

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

The Court recalls 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 and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

The Court notes that the proceedings in question commenced on 17 October 2001 and ended on 23 May 2003. The period under consideration thus lasted slightly more than a year and a half. The Court considers that this period does not exceed a reasonable time within the meaning of Article 6 § 1 and does not find that the conduct of the domestic authorities led to any significant delays in the proceedings.

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

3. The applicant complained under Article 6 § 1 of the Convention that despite her request to be tried by a single professional judge she had been tried with the participation of lay judges.

The Court must first examine whether the applicant has complied with the rule of exhaustion of domestic remedies as required under Article 35 § 1 of the Convention.

The Court notes that the applicant did not appeal against the judgment of the Leninskiy District Court of Penza of 23 May 2003. Accordingly, she did not avail herself of the right to bring the complaint before domestic courts.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

4. Invoking Article 5 of the Convention, Article 3 of Protocol No. 7 and Article 1 of Protocol 4 the applicant complained about her detention in 1996-1997.

The Court notes that the complaint relates to the period prior to 5 May 1998, the date of the entry into force of the Convention with respect to Russia.

It follows that this part of the application is outside the competence *ratione temporis* of the Court and therefore incompatible with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the length and lawfulness of her pre-trial detention;

Declares inadmissible the remainder of the application.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President