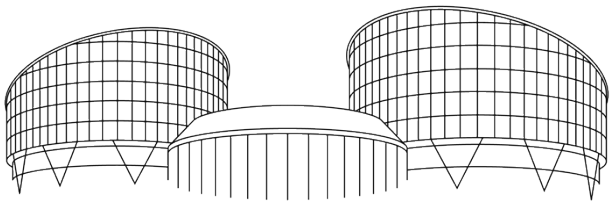

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOROLEVA v. RUSSIA

(Application no. 1600/09)

JUDGMENT

STRASBOURG

13 November 2012

FINAL

13/02/2013

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

In the case of Koroleva v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 1600/09) 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, Ms Yuliya Viktorovna Koroleva ("the applicant"), on 11 February 2009.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that her pre-trial detention had been unlawful and unreasonably long and that there had been shortcomings in the proceedings for review of the lawfulness of her detention.

4. On 1 December 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lived before her arrest in Ufa, Republic of Bashkortostan. She is currently detained in Ufa IZ-3/1 remand prison.

A. The applicant's arrest and detention pending investigation

6. On 24 November 2006 the applicant was arrested and charged with large-scale drug trafficking.

7. On 25 November 2006 Leninskiy District Court (Ufa) examined the investigator's request to remand the applicant in custody. The court held as follows:

> "Ms Koroleva Yu.V. is charged with serious offences, which are punishable by a term of imprisonment of more than two years.
>
> Moreover, Ms Koroleva Yu.V. committed the above crimes while she was standing trial before the Ordzhonikidzevskiy District Court (Ufa). Ms Koroleva Yu. V. has no fixed abode and is not registered.
>
> Furthermore, Ms Koroleva Yu. V. is a drug addict and, if released, she might engage in further criminal activities related to drugs in order to provide herself with drugs and improve her financial situation."

8. Taking into account the above elements, the danger to society presented by the offences imputed to the applicant and the need to secure the execution of her sentence, Leninskiy District Court remanded the applicant in custody. The applicant did not appeal against that decision.

9. On 23 January 2007 Leninskiy District Court extended the applicant's detention until 17 May 2007, referring to the gravity of the charges against her. The court further held that the applicant was a drug addict and if released she might abscond, continue her criminal activities or interfere with the proceedings, and noted that her detention was necessary in order to secure the execution of her sentence. The applicant did not appeal against that decision.

10. On 11 May 2007 Kirovskiy District Court (Ufa) extended the applicant's detention until 17 August 2007. The court held, in particular, that the period fixed by the court for the applicant's detention was not sufficient to allow a judge, who would receive the case for examination on the merits, to take a decision concerning the applicant's detention during trial. The court also held that the applicant was charged with a serious offence presenting a danger to society, and that if released she might continue criminal activities, abscond or interfere with the proceedings. The court also noted that the applicant's detention was necessary in order to secure the execution of the sentence.

11. On 15 August 2007 Kirovskiy District Court extended the applicant's detention until 17 November 2007, on the same grounds as given in its decision of 11 May 2007.

12. On 26 September 2007 the applicant was presented with the final version of the charges. She was accused of several episodes of large-scale drug trafficking committed as a member of an organised criminal group.

13. On 26 October 2007 the applicant and her counsel started familiarising themselves with the materials of the criminal case as did other twenty-nine defendants. According to the Government, the file consisted of 160 volumes.

14. On 15 November 2007 the Supreme Court of the Republic of Bashkortostan ("the Supreme Court") extended the applicant's detention until 17 February 2008, referring to the gravity of the charges against her. The Supreme Court also stated that if released she might flee from justice, engage in criminal activities or obstruct the establishment of the truth.

15. On 7 February 2008 the Supreme Court extended the applicant's detention until 17 May 2008, bringing its total duration to seventeen months and twenty-four days. The court held as follows:

> "Ms Koroleva is charged with particularly serious offences punishable by more than two years' imprisonment. The grounds on which she was initially remanded in custody...had not changed. The investigation of the criminal case is particularly complex. These circumstances should be regarded as extraordinary circumstances which can serve as a basis for the extension of the defendant's detention."

16. On 15 May 2008 the Supreme Court extended the applicant's detention until 24 May 2008, thus bringing its total duration to eighteen months. The court held as follows:

> "....The term of Ms Koroleva's detention is to expire on 17 May 2008. As required by Article 109 § 5 of the CCrP [the Code of Criminal Procedure], the investigation was completed and the materials of the criminal case presented to the applicant and her counsel no later than thirty days before the expiry of the maximum period of detention. However, the investigating authorities need additional time in order to comply with the requirements of Article 217 of the CCrP.

> The preventive measure applied to Ms Koroleva had been duly justified in accordance with Article 108 of the CCrP since she was charged with a number of particularly serious offences as a member of an organised criminal group, and if released she might interfere with the proceedings or abscond and therefore the court does not see any reason to alter the preventive measure ...”

17. It appears that the applicant did not appeal against that detention order.

B. Further extension of the applicant’s detention pending the investigation

18. On 20 May 2008 the Supreme Court extended the applicant’s detention until 17 August 2008, bringing its total duration to twenty-one months. The court cited the same legal provision and referred to the same grounds as in its decision of 15 May 2008. On 13 August 2008 the Supreme Court of the Russian Federation upheld that detention order.

19. The Supreme Court further extended the applicant’s detention on 14 August until 17 November 2008, and on 12 November 2008 until 17 February 2009, referring to the same grounds as in the decision of 15 May 2008.

20. On 27 November 2008 the Supreme Court of the Russian Federation upheld the detention order of 14 August 2008.

21. On an unspecified date the applicant appealed against the detention order of 12 November 2008 and requested to be released under a written undertaking. She submitted that the extension of her detention beyond eighteen months had been unlawful. She could no longer interfere with the proceedings, since she and her co-defendants had already started familiarising themselves with the materials of the case. The applicant also asked the court to take into account the state of her health and the fact that her dependent grandfather had been placed in an old people’s home.

22. On 27 January 2009 the Supreme Court of the Russian Federation examined and dismissed the applicant’s appeal against the detention order of 12 November 2008. It held, in particular, that extension of the applicant’s detention had been in accordance with law and had been duly reasoned. It further noted that the grounds on which the applicant had been initially remanded in custody had not changed and that it had not been established that the state of the applicant’s health was incompatible with her detention. The court also found no grounds to cancel or alter the preventive measure.

23. On 11 February 2009 the applicant and her counsel finished familiarising themselves with the materials of the criminal case.

24. On 12 February 2009 the Supreme Court extended the applicant’s detention until 17 May 2009, still on the same grounds as before, and thus brought the total length of the applicant’s detention to twenty-nine months and twenty-four days.

25. On 24 February 2009 the applicant appealed to the Supreme Court of the Russian Federation against the detention order of 12 February 2009. She submitted that the extension of her detention had been unlawful and poorly reasoned and requested to release her under a written undertaking. The investigation of the case was complete; therefore she could no longer interfere with the proceedings if released. The court had not advanced any arguments to show that there was a danger of her absconding. The applicant considered that the detention order of 12 February 2009 had violated her rights under Articles 5 and 6 of the Convention. She requested the appeal court to examine the appeal in her presence.

26. On 7 April 2009 the investigator in charge of the case informed the applicant that while the defendants were familiarising themselves with the criminal case twenty volumes of the case file had been stolen. On 16 January 2009 criminal proceedings had been initiated in this respect and the lost volumes had been restored. The investigator informed the applicant that she could now familiarise herself with those volumes of the case file.

27. On 22 April 2009 the Supreme Court of the Russian Federation examined the applicant's appeal against the detention order of 12 February 2009. The court dismissed the applicant's request for leave to appear at the appeal hearing. The court held, with reference to the position of the Constitutional Court (see paragraph 61 in Relevant domestic law and practice below), that the applicant had stated her position in her grounds of appeal. She had not indicated any circumstances which would require her personal presence at the appeal hearing. Therefore, the refusal of leave to appear at the appeal hearing would not violate her procedural rights and would not prevent the appeal court from taking a lawful and reasoned decision on her appeal.

28. As to the merits of the applicant's appeal, the appeal court found that the extension of the applicant's detention had been lawful and duly reasoned. It held, in particular, that taking into account the large number of defendants in the criminal case at hand, the volume of the case, the familiarisation of all of the defendants with the materials of the case as well as the drafting of the bill of indictment could not have been finished within the term of the applicant's detention fixed by a previous court order. It further noted that the grounds on which the applicant's detention had been ordered initially had not changed and that it had not been established that the state of the applicant's health was incompatible with her detention. The court found no grounds to cancel or alter the preventive measure. The court further held that the applicant's complaint that her rights under Articles 5 and 6 of the Convention had been violated were unsubstantiated. The applicant's counsel was not present at the appeal hearing. The prosecutor was not present either.

29. On 8 May 2009 the Supreme Court extended the applicant's detention until 17 August 2009, bringing its total duration to thirty-two months and twenty-four days. That detention order was worded in the same terms as the detention order of 15 May 2008.

30. On 15 May 2009 the applicant appealed against the detention order of 8 May 2009 to the Supreme Court of the Russian Federation. She submitted, in particular, that her detention had been unlawfully extended beyond eighteen months, and the court had not taken into account her poor health and her complaints of a lack of appropriate medical assistance in the remand prison. The investigating authorities had requested the extension of her detention on the grounds of the need for her to familiarise herself with the materials of the case, but those materials had been stolen. In any event she had finished familiarising herself with the materials of the criminal case. The applicant requested the appeal court to examine her appeal in her presence.

31. On 16 July 2009 the last of the applicant's co-defendants finished familiarising herself with the materials of the case.

32. On 28 July 2009 the Supreme Court of the Russian Federation examined the applicant's appeal against the detention order of 8 May 2009. It dismissed the applicant's request for leave to appear at the hearing, finding that the criminal case against the applicant and her co-accused had not yet arrived at the court for trial and had not yet been examined, that the applicant had sent her written submissions to the court and that the prosecutor was not taking part in the examination of her appeal. As to the merits of the applicant's appeal, the Supreme Court held that the detention order of 8 May 2009 was lawful and duly reasoned. The applicant's counsel was not present at the appeal hearing.

C. The applicant's detention during the trial and her release

33. On 3 August 2009 the criminal case against the applicant and her co-defendants was referred to the Supreme Court for trial.

34. On 5 August 2009 the Supreme Court set the preliminary hearing of the case for 13 August 2009. However, two of the applicant's co-defendants (M. and T.), who were under a written undertaking, did not appear on that date.

35. At the preliminary hearing of 14 August 2009 the trial court held that the crimes of which the absconded co-defendants were accused were closely linked to crimes allegedly committed by other co-defendants, and that it would therefore be impossible to examine the charges against them separately. The court accordingly decided to put the missing co-defendants on the warrant list and suspended criminal proceedings against all defendants until the missing co-defendants were captured. Regarding the other co-defendants, including the applicant, the court held as follows:

> "... [the other co-defendants] are charged with serious and particularly serious offences. The grounds on which they had been placed in detention ... still remained valid. The defendants' and their counsel's arguments about their permanent place of residence and job, family situation, and serious health problems cannot be regarded as grounds for changing the measure of restraint. In such circumstances, the preventive measure applied to them in the form of detention should not be changed until the preliminary hearing of the case. However, taking into account the requirements of Article 255 § 2 [of the CCrP], they should not stay in detention for more than six months after the criminal case has come to court.
>
> ... the measure of restraint [applied to other co-defendants, including the applicant] should be detention on remand, for a period which should not go beyond 3 February 2010 ..."

At the hearing of 14 August 2009 the applicant was represented by legal counsel.

36. On 12 November 2009 the Supreme Court of the Russian Federation upheld the detention order of 14 August 2009 having found that the applicant's detention had been extended in compliance with Article 255 § 2 of the CCrP and that it was based on sufficient reasons.

37. On 24 November 2009 the trial court resumed the proceedings and set the preliminary hearing of the case for 14 December 2009. On the same date the trial court held that the measure of restraint applied to the applicant and some of her co-defendants should remain unchanged.

38. The case was adjourned on 14 December and 18 January 2010 because two of the applicant's co-defendants were sick.

39. On 29 January 2010, after holding a preliminary hearing, the trial court set the examination of the case for 10 February 2010. By the same decision the trial court severed the proceedings against co-defendant T., who was still at large, into separate proceedings. The trial court further held, having regard to the applicant's medical condition and also to the fact that among the defendants in those proceedings she was the only woman who had been detained for a long period of time, that the applicant should be released under a written undertaking.

D. The applicant's conviction

40. On 20 April 2011 the Supreme Court found the applicant guilty of attempted drug trafficking and acquitted her of the remaining charges. The applicant was sentenced to eight years' imprisonment. It appears that appeal proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure of the Russian Federation ("the CCrP") of 2001, in force since 1 July 2002

1. Preventive measures

41. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (Article 112).

42. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

43. Detention may be ordered by a court in respect of a person suspected or charged with a criminal offence punishable by more than two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

2. Time-limits for detention "pending investigation"

(a) Initial detention and its extensions

44. After arrest the suspect is placed in detention "pending investigation". Detention "pending investigation" must not exceed two months (Article 109 § 1).

45. A judge may extend the detention up to six months. Further extensions to up to twelve months may be granted by a judge only in relation to those accused of serious or particularly serious criminal offences, provided that the criminal case is particularly complex and there are grounds justifying detention (Article 109 § 2).

46. An extension of detention beyond twelve months and up to eighteen months may be authorised by a court only in exceptional circumstances in respect of those accused of particularly serious offences, upon an investigator's request approved by the Prosecutor General or his Deputy (Article 109 § 3).

47. Extension of detention beyond eighteen months is prohibited and the detainee must be immediately released, unless the prosecution's request for an extension for the purpose of studying the case has been granted by a court in accordance with Article 109 § 8 of the CCrP (Article 109 § 4).

(b) Supplementary extension for study of the case file

48. Upon completion of the investigation, the detainee must be given 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 of Article 109 (Article 109 § 5).

49. If access was granted at a later date, the detainee must be released after the expiry of the maximum period of detention (Article 109 § 6).

50. If access was granted thirty days before the expiry of the maximum period of detention but the thirty-day period proved to be insufficient to read the entire case file, the investigator may request the court to extend the period of detention. The request must be submitted no later than seven days before the expiry of the detention period. If several defendants are involved in the proceedings and the thirty-day period is insufficient for at least one of them to read the entire case file, the investigator may request the court to extend the period of detention in respect of those defendants who have completed reading the case file, provided that the need to apply a custodial measure to them persists and that there are no grounds for choosing another preventive measure (Article 109 § 7).

51. Within five days of receipt of the request for an extension the judge must decide whether to grant it or reject it and release the detainee. If the extension is granted, the period of detention is extended until such time as would be sufficient for the detainee and counsel to finish reading the case file and for the prosecution to submit the case to the trial court (Article 109 § 8).

3. Time-limits for detention "during trial"

52. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during trial"). The period of detention "during trial" is calculated from the date on which the court receives the criminal case and to the date on which the judgment is adopted. Detention "during trial" may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

4. Proceedings before the appeal court

53. An appeal against a judicial decision ordering or extending detention may be lodged with a higher court within three days. The appeal court must decide on the appeal within three days of its receipt (Article 108 § 11).

54. If a convict wishes to attend an appeal hearing, he should indicate that wish in his statement of appeal (Article 375 § 2).

55. Upon receipt of the criminal case and the statement of appeal, the judge fixes the date, time and place for a hearing. The parties shall be notified of the date, time and venue of the hearing no later than fourteen days before the scheduled hearing. The court shall decide whether the detainee should be summoned to the hearing. A detainee held in custody who expresses a wish to be present at the examination of the appeal shall be entitled to participate either directly in the court session or to state his case by video link. The court shall make a decision with respect to the form of participation of the detainee in the court hearing. If individuals who have

been given timely notice of the venue and time of the appeal hearing fail to appear, this shall not preclude examination of the case (Article 376).

B. Practice of domestic courts

1. Detention pending investigation and trial

56. By its decision no. 184-O of 6 June 2003 the Constitutional Court of the Russian Federation ("the Constitutional Court") declined to examine a complaint by Mr Yest., in which he challenged compliance with the Constitution of Article 109 § 8 of the Code of Criminal Procedure, in so far as it allowed the extension of detention pending investigation beyond the maximum time-limit and indefinitely while the defendant finished reading the material in the case file. The Constitutional Court held that such an extension was only possible if there still existed "sufficient grounds to believe" that the accused might abscond during the investigation or trial, reoffend or otherwise obstruct the establishment of the truth, as provided by Article 97 of the Code of Criminal Procedure. In so far as the challenged provision did not set a specific time-limit for holding the defendant in custody while he studied the case file, the Constitutional Court considered that it allowed for the possibility of determining such a time-limit for each particular case, depending on its specific features, on condition that the grounds for detention established in Article 97 had been sufficiently confirmed. The court concluded that the challenged provision could not be interpreted as providing for superfluous or unlimited detention. Neither did it deprive the defendant and his counsel of the right to challenge before a higher court the lawfulness and validity of the extension order, as well as the right to make an application for the custodial measure to be overturned or altered.

57. In its ruling no. 245-O-O of 20 March 2008, the Constitutional Court noted that it had reiterated on several occasions (rulings nos. 14-П, 4-П, 417-O and 330-O of 13 June 1996, 22 March 2005, 4 December 2003 and 12 July 2005 respectively) that a court, when taking a decision under Articles 100, 108, 109 and 255 of the CCrP on the placement of an individual in detention or on the extension of a period of an individual's detention, was under obligation, *inter alia*, to calculate and specify a time-limit for such detention.

58. By its decision no. 271-O-O of 19 March 2009, the Constitutional Court declined to examine a complaint by Mr R. With reference to its previous decisions of 13 June 1996, 25 December 1998 and 6 June 2003, the Constitutional Court held that even though Article 109 § 8 did not define the maximum period within which an extension could be granted for the purpose of studying the case file, it did not imply the possibility of excessive or unlimited detention because, in granting an extension, the court

should not rely solely on a well-founded suspicion that the defendant had committed the offence, but should mainly base its decision on specific circumstances justifying the continued detention, such as his potential to exert pressure on witnesses or an established risk of his absconding or reoffending, as well as the importance of the subject matter of the proceedings, the complexity of the case, the conduct of the defendant and other relevant factors.

59. In its decision no. 22 of 29 October 2009 "On the Practice of Application by the Courts of Preventive Measures in the Form of Remand in Custody, Bail and House Arrest" the Plenum of the Supreme Court of the Russian Federation held as follows:

> "18. ... Pursuant to Article 109 § 7 of the CCrP [Code of Criminal Procedure], following a request by an investigator the court may extend an accused's detention until such time as he and his defence counsel have finished studying the case file and the prosecutor has submitted it to the [trial] court, if upon completion of the pre-trial investigation the accused has been given access to the case file no later than thirty days before the expiry of the maximum period of detention indicated in Article 109 §§ 2 and 3 [six, twelve or eighteen months]. In that case the relevant extension order should indicate the exact period for which the extension is made ...
>
> 20. After a court accepts for examination a criminal case in which the defendant is remanded in custody, it should verify whether the time-limit set by a court order for that detention has expired ... The court decision to maintain the applicant in detention [taken after arrival of the criminal case to the court for examination on the merits] should have an indication of the end-date of the defendant's detention".

2. Proceedings before the appeal court

60. On 22 January 2004 the Constitutional Court delivered decision no. 66-O on a complaint about the refusal to permit a detainee to attend appeal hearings on the issue of detention. It held:

> "Article 376 of the Code of Criminal Procedure regulating the presence of a defendant remanded in custody before the appeal court... cannot be read as depriving the defendant held in custody ... of the right to express his opinion to the appeal court, by way of his personal attendance at the hearing or by other lawful means, on matters relating to the examination of his complaint about a judicial decision affecting his constitutional rights and freedoms ..."

61. By its decision no. 432-O of 24 November 2005 the Constitutional Court declined to examine a complaint by Mr G. With reference to its previous decisions of 10 December 2002 and 25 March 2004, the Constitutional Court held that convicts, but also others, including suspects in criminal proceedings and those charged with criminal offences and remanded in custody, had to be given the right to bring to the knowledge of the appeal court their position in respect of issues which would be examined by that court either by way of personal participation in the hearing or by

other means. This position was later confirmed in its decision no. 538-O of 16 November 2006.

THE LAW

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

62. The applicant complained under Article 5 § 1 of the Convention that her detention between 24 May 2008 and 14 August 2009 had been unlawful because after the expiry of the maximum statutory period of detention pending the investigation the domestic courts had repeatedly extended her detention. The Court decided of its own motion to examine the lawfulness of the applicant's detention ordered by decision of 14 August 2009.

The relevant parts of Article 5 provide 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; ..."

A. Admissibility

63. The Court notes that those complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

64. The applicant maintained her complaints.

65. The Government submitted that after the expiry of the maximum eighteen-month period of detention the domestic courts had extended the applicant's detention in accordance with Article 109 §§ 7 and 8 of the CCrP (cited in paragraphs 50 and 51 above), which provided for the possibility of extending a defendant's detention pending investigation beyond the maximum period on the ground of the need for him or her or to study the case file or when some of his co-defendants had not finished studying the case file. In particular, the extension of the applicant's detention until 17 February 2009 was necessary to allow her and her counsel to finalise familiarising themselves with the materials of the case. After that date the applicant's detention was further extended, because some of her co-defendants had not finished familiarising themselves with the materials of the case. Referring to the decisions of the Constitutional Court (cited in paragraphs 56 and 58 above), the Government submitted that the above provisions of the CCrP fully complied with the requirements of Article 5 of the Convention since, aside from the need to study the case file, they made such an extension conditional on the existence of relevant and sufficient reasons for continued detention and the impossibility of applying another preventive measure.

66. The Government further submitted that on 14 August 2009 the domestic court had extended the applicant's detention in accordance with Article 255 § 2 (cited in paragraph 52 above), which provided that the term of a defendant's detention after the case has come to court and adoption of the judgment should not exceed six months. Therefore, in its decision the court indicated that the applicant should stay in detention but not beyond 3 February 2010, and thus has set a clear time-limit for the applicant's detention.

2. The Court's assessment

(a) General principles

67. It is well established in the Court's case-law under the sub-paragraphs of Article 5 § 1 that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty

may be lawful in terms of domestic law, but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

68. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, §§ 51-52, ECHR 2000-III, and *Khudoyorov v. Russia*, no. 6847/02, §125, ECHR 2005-X (extracts)).

(b) Application of these principles in the present case

(i) detention between 24 May 2008 and 14 August 2009

69. The Court observes that the applicable provisions of domestic law permitted up to eighteen months' detention during investigation (hereinafter "the maximum detention period") in respect of individuals accused of particularly serious offences (Article 109 § 3, cited in paragraph 46 above). The domestic law further provided that the period in question could be extended by a judicial decision if the defendant was granted access to the case file no later than thirty days before the expiry of the maximum detention period, and if the thirty-day period proved insufficient for him or her to read the entire file. If several defendants were involved in the proceedings and the thirty-day period was insufficient for at least one of them to read the entire case file within the thirty-day period, the maximum detention period could be extended in respect of those defendants who had completed reading the case file, provided that the necessity for a custodial measure for them persisted and there were no grounds for choosing another preventive measure (Article 109 §§ 5, 7 and 8, cited in paragraphs 48, 50 and 51 above).

70. In the present case, involving the applicant and twenty-nine co-defendants, the maximum detention period expired on 24 May 2008 (see paragraph 16 above). The applicant was granted access to the case file on 26 October 2007, which was over thirty days before the expiry of the maximum detention period (see paragraphs 13 above), but the thirty-day period proved insufficient for her to read all the volumes of the criminal case. For that reason, at the request of the investigator, on 20 May 2008 the

Supreme Court extended the applicant's detention until 17 August 2008. The court relied on Article 109 of the CCrP.

71. Subsequently, the Supreme Court extended the applicant's detention on four occasions for the same purpose and by reference to the same legal provision (see paragraphs 19, 24 and 29 above), bringing the overall duration of the applicant's detention pending the investigation to thirty-two months and twenty-four days. Each of these extensions was limited to a specific date.

72. The Court has previously examined a similar situation in the case of *Tsarenko v. Russia* (no. 5235/09, §§ 60-61, 3 March 2011). The Court applied the following line of reasoning:

> "60. In the present case, the eighteen months' detention of the applicant during the investigation expired on 12 September 2008. Upon request of the investigator, the City Court granted an extension until 4 October 2008 for the purpose of studying the case file. It relied on Article 109 §§ 7 and 8 of the Code of Criminal Procedure. Subsequently, further extensions for the same purpose and by reference to the same legal provision were granted by the City Court on 1 October and 3 December 2008, 3 February, 1 and 28 April 2009. The parties disagreed on whether such repeated extensions were permitted under the applicable provisions of the domestic law. The Court has already examined a similar situation in the *Korchuganova v. Russia* case, in which it had regard to the interpretation given by the Russian Constitutional Court of the relevant provisions of the Code of Criminal Procedure (§ 51, case cited above). The Court noted that, according to the Constitutional Court's binding clarifications of 13 June 1996 and 25 December 1998..., in the absence of an express legal provision for repeated extensions of detention on the ground that the defendant has not finished studying the file, the granting of such repeated applications for extension of the defendant's detention was not permitted by law and was incompatible with the guarantee against arbitrary detention. The restrictive interpretation adopted by the Constitutional Court is consonant with the requirements of Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see, among others, *Sherstobitov v. Russia*, no. 16266/03, § 113, 10 June 2010; *Shukhardin v. Russia*, no. 65734/01, § 67, 28 June 2007; *Nakhmanovich v. Russia*, no. 55669/00, § 79, 2 March 2006; and *Khudoyorov*, cited above, § 142).
>
> 61. The case-law of the Russian Constitutional Court required that a possibility to grant multiple extensions on the same ground be expressly mentioned and provided for in the criminal-procedure law. The adoption of a new Code of Criminal Procedure in 2003 did not affect the validity or applicability of the Constitutional Court's case-law, and the text of new Article 109 closely followed that of the former Article 97. The Constitutional Court's decision of 19 March 2009, to which the Government referred, did not alter the Constitutional Court's position ... The courts of general jurisdiction in the instant case, and the Government in their submissions before the Court, adopted an extensive interpretation of Article 109, claiming that, in the absence of an express prohibition on multiple extensions on the same ground, the competent court should remain free to grant as many extensions as it considered appropriate in the circumstances of the case. However, neither the domestic courts nor the Government were able to show that the new Article 109 contained an express provision for repeated extensions of the detention period for this purpose. It follows that their extensive interpretation of this provision sat ill with the restrictive

> interpretation adopted by the Russian Constitutional Court and was incompatible with the principle of the protection from arbitrariness enshrined in Article 5 of the Convention. Accordingly, the legal basis for the extension orders of 1 October and 3 December 2008, 3 February, 1 and 28 April 2009, which covered the period of the applicant's detention from 4 October 2008 to 20 May 2009, was deficient and the applicant's detention for that period was in breach of Article 5 § 1."

73. In the present case the Court sees no reason to depart from its previous conclusion to the effect that the provisions of Russian law governing detention pending study of the case file by a defendant or his or her co-defendants are not foreseeable in their application and fall short of the "quality of law" standard required under the Convention in so far as they do not contain any express rule regarding the possibility of repeated extensions of a defendant's detention pending study of the case file.

74. The Court considers, therefore, that in so far as the applicant's complaint concerned the period between 24 May and 17 August 2008 there has been no violation of Article 5 § 1 of the Convention, since the applicant's detention in the above period had a legal basis in Article 109 § 7 of the CCrP, which permitted the court to extend the detention beyond the maximum period, if that was necessary to allow the defendant or his or her co-defendants to study the case file. However, as regards the subsequent period between 17 August 2008 and 14 August 2009, in the absence of any express provision in Article 109 for repeated extensions of the detention period for this purpose, the Court finds that there has been a violation of Article 5 § 1 of the Convention.

(ii) detention on the basis of detention order of 14 August 2009

75. The Court observes that the applicable provisions of domestic law (Article 255 § 2 of the CCrP, cited in paragraph 52 above) provided that the detention "during trial" should not exceed six months, but if the case concerned serious or particularly serious offences, the trial court could approve one or more extensions of no longer than three months each.

76. In the present case the detention "during trial" started on 3 August 2009, when the prosecutor forwarded the criminal case against the applicant and her co-defendants to the trial court (see paragraph 33 above). At the preliminary hearing of the case on 14 August 2009 the trial court decided to suspend the criminal proceedings against the applicant and her co-defendants until the capture of the two absconded defendants. On the same date the court held that the grounds on which the applicant had been placed in detention still remained valid and there were no reasons to alter the preventive measure. It therefore considered that the applicant had to stay in detention. Referring to Article 255 § 2 the court held that the applicant's detention after the arrival of the case at the court should not exceed six months and therefore she had to stay in detention during the period which should not go beyond 3 February 2010 (see paragraph 35 above). On

12 November 2009 the Supreme Court of the Russian Federation upheld the decision of 14 August 2009, having found that the applicant's detention had been extended in compliance with Article 255 § 2 of the CCrP and that it was based on sufficient reasons. On 29 January 2010 the applicant was released under a written undertaking.

77. The question is whether the decision of 14 August 2009 had set a specific time-limit for the applicant's detention.

78. In that respect the Court notes that the national legislation, as interpreted by the Russian judicial authorities, imposed on the domestic courts an obligation to set a specific time-limit when ordering an individual's placement in, or extending the period of, detention at any stage of criminal proceedings (see paragraphs 57 and 59 above).

79. Having regard to the operative part of the decision of 14 August 2009 (cited in paragraph 35 above) the Court considers that the decision in question had set a specific time-limit for the applicant's detention, which was 3 February 2010. Even assuming that the way in which the decision was formulated might have been unclear to the applicant, her counsel, who had represented her at the hearing of 14 August 2009, could have explained to her until which date her detention had been extended.

80. Having regard to the above, the Court considers that the decision of 14 August 2009 served as a legal basis for the applicant's detention from 14 August 2009 until her release on 29 January 2010 and was in conformity with the domestic law. Furthermore, there is nothing to indicate that the applicant's detention during that period could have been said to be arbitrary or that the domestic law in itself was not in conformity with the Convention.

81. The Court finds therefore that there has been no violation of Article 5 § 1 of the Convention with regard to the detention order of 14 August 2009, which served as the basis for the applicant's detention between 14 August 2009 and 29 January 2010.

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

82. The applicant complained that her pre-trial detention was not properly justified. She relied on 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."

A. Admissibility

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

B. Merits

1. Submissions by the parties

84. The applicant maintained her complaint.

85. The Government submitted that the entire period of the applicant's detention had been based on "relevant and sufficient" reasons and the proceedings were conducted with "special diligence". The applicant had been suspected of having committed a criminal offence as a member of an organised criminal group and had stood trial along with twenty-nine co-defendants. Therefore, the investigation of that criminal case had been very complex.

2. The Court's assessment

(a) General principles

86. 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 *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7, and *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

87. Under Article 5 the presumption is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *Neumeister v. Austria*, 27 June 1968, p. 37, § 4, Series A no. 8; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; and *Bykov v. Russia* [GC], no. 4378/02, § 61, 10 March 2009).

88. 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 therefore can be justified in a given case 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 laid down in Article 5 of the Convention (see *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

89. The responsibility falls in the first place on the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned demand of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Muller v. France*, 17 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II; *Labita*, cited above, § 152; and *McKay*, cited above, § 43).

90. 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 with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, *Letellier v. France*, 26 June 1991, § 35, Series A no. 207; *Yağcı and Sargın v. Turkey*, 8 June 1995, § 50, Series A no. 319-A; and *Bykov,* cited above, § 64).

(b) Application of these principles in the present case

91. The applicant was arrested on 24 November 2006. On 29 January 2010 she was released under a written undertaking not to leave the town. She remained under a written undertaking until her conviction on 20 April 2011. It follows that the applicant's pre-trial detention lasted from 24 November 2006 until 29 January 2010, which is three years, two months and six days. In that respect the Court notes that it has found above that the applicant's detention from 17 August 2008 to 29 January 2010 was unlawful, and therefore in breach of Article 5 § 1 of the Convention. These findings may, in principle, make it unnecessary to discuss, from the standpoint of Article 5 § 3 of the Convention, the sufficiency and relevance

of the grounds given by the domestic courts to justify the applicant's detention during that period. Nevertheless, for the sake of clarity the Court considers it appropriate to examine the entire period of the applicant's detention (see, for a similar approach, *Fedorenko*, cited above, § 64).

92. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion that she had been involved in large-scale drug trafficking. The Court therefore has to ascertain whether the other grounds given by the authorities continued to justify the deprivation of liberty.

93. The Court notes that pending the investigation of the case the domestic courts authorised the applicant's detention relying mainly on the seriousness of the charges against her and her potential to abscond, reoffend or obstruct the establishment of the truth if released. Occasionally they cited other factors, such as the "public danger" of the offence with which the applicant had been charged (decisions of 25 November 2006 and 11 May 2007), the need to secure the execution of the sentence (decisions of 25 November 2006 and 23 January and 11 May 2007), the complexity of the criminal case (decision of 7 February 2008), and the need to allow additional time for the trial court to take a decision on application of a custodial measure to the applicant during the trial (decision of 11 May 2007). The applicant's detention between 24 May 2008 and 14 August 2009 was, in addition, justified by the need to familiarise herself with the materials of the case.

94. As regards the courts' reliance on the seriousness of charges, the Court has repeatedly held that this reason cannot of itself serve to justify long periods of detention (see, among other authorities, *Khudoyorov*, cited above, § 180). Although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier*, cited above, § 51; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005).

95. The Government have laid particular emphasis on the organised nature of the alleged criminal activities. Indeed, the applicant was charged with membership of a criminal gang, which is an offence under the Criminal Code, and with particularly serious offences committed as part of such an organised group. As the Court has previously observed, the existence of a general risk flowing from the organised nature of criminal activities may be accepted as a basis for detention at the initial stages of the proceedings (see *Celejewski v. Poland*, no. 17584/04, §§ 37 and 38, 4 May 2006, and *Kučera v. Slovakia*, no. 48666/99, § 95, ECHR 2007-... (extracts)). The Court cannot agree, however, that the nature of those activities could form the basis of the detention orders at an advanced stage of the proceedings. Thus,

the above circumstances alone could not constitute a sufficient basis for holding the applicant in detention for such a long period of time.

96. It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of specific facts in support of their conclusions that the applicant could abscond, obstruct justice or reoffend.

97. The Court observes that the domestic courts justified the risk that the applicant might abscond, reoffend or obstruct the proceedings by reference to the applicant's drug addiction. The Court agrees that that ground might have been relevant for the assessment of the need to keep the applicant in detention. However, the judiciary merely cited it, without providing any further explanation. Neither did they assess other aspects of the applicant's personality and her personal circumstances, or refer to any other facts or evidence which could have substantiated the above risks.

98. In any event, the Court considers the risks referred to by the domestic courts became less important in the course of time and, in particular, after the investigation of the case was completed. However, after the referral of the case for trial, the domestic courts kept the applicant in detention for several more months. Their reasoning did not evolve to reflect the developing situation. They merely stated in their decisions that the grounds on which the applicant's detention had been ordered still remained valid.

99. Having regard to the above the Court considers that the domestic courts did not establish, nor did they convincingly demonstrate, the existence of specific facts in support of their conclusions that the applicant could abscond, obstruct justice or reoffend.

100. As for the other grounds cited by the domestic courts when extending the applicant's detention (see paragraph 93 above), the Court notes that they were cited occasionally, became negligible in the course of time and, in any event, were not such as to outweigh the applicant's right to trial within a reasonable time or release pending trial.

101. Overall, the Court considers that that the authorities failed to adduce relevant and sufficient reasons to justify extending the applicant's detention pending trial to three years, two months and six days. In those circumstances it is not necessary to examine whether the case was complex or whether the proceedings were conducted with "special diligence".

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

103. The applicant complained that the appeal hearings of 27 January, 22 April and 28 July 2009 did not comply with the requirements of Article 5 of the Convention. In particular, she submitted that:

(a) on 22 April and 28 July 2009 the appeal court examined her appeals against the detention orders of 12 February and 8 May 2009 respectively in her absence, despite her request to attend those hearings;

(b) at the appeal hearings of 27 January and 22 April 2009 the appeal court did not address any of her grounds of appeal against detention orders of 12 November 2008 and 12 February 2009 respectively.

The Court will examine these complaints under Article 5 § 4, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

104. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

105. The applicant submitted that under domestic law she had the right to appear at the appeal hearings, either in person or via video link. However, the domestic authorities had not ensured that right by either of those means. She also claimed that her counsel had not been notified of the appeal hearings in question.

106. The Government considered that the proceedings by which the lawfulness of the applicant's detention had been examined had fully complied with the requirements of Article 5 § 4. The appeal court refused the applicant leave to appear at the appeal hearings on lawful grounds. According to the position of the Constitutional Court, a defendant's right to bring to the knowledge of the appeal court his arguments concerning the lawfulness of a decision to remand him in custody could be effected either by means of his personal attendance at the hearing or by other means

provided for by law (see Relevant domestic law and practice above). The applicant explained her position to the appeal court by submitting detailed grounds of appeal. She did not refer to any particular circumstances which would require her personal attendance at the hearings. Bringing the applicant to the appeal hearings could have delayed the proceedings and would breach the rights of the other accused. The Government further pointed out that the applicant's counsel had been duly informed of the dates of the appeal hearings. They also submitted that the prosecutor had not attended the appeal hearings and therefore, the applicant's right to adversarial proceedings had not been violated. Finally, the scope of review of the lawfulness of the applicant's detention carried out on 27 January and 22 April 2009 had fully complied with the requirements of Article 5 § 4.

2. The Court's assessment

(a) General principles

107. The Court reiterates that by virtue of Article 5 § 4 an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 154-B).

108. Although the Convention does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84, and *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, § 28).

109. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009). Although it is not always necessary for a procedure under Article 5 § 4 to be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005- ..., with further references). The proceedings must be adversarial and must always ensure equality of arms between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters

of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

110. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the "lawful" detention of a person according to Article 5 § 1 (see *E. v. Norway*, 29 August 1990, § 50, Series A no. 181-A).

(b) Application of these principles in the present case

111. The Court observes that on 22 April and 28 July 2009 the appeal court examined and dismissed the applicant's appeals against the detention orders of 12 February and 8 May 2009 respectively. The appeal hearings were held without the attendance of the applicant, her counsel or the prosecution.

112. The Court has previously held that, in principle, it was permissible for the court of appeal reviewing a detention order issued by a lower court to examine it only in the presence of the detainee's lawyer, provided that the hearing before the first-instance court offered sufficient procedural guarantees (see *Lebedev v. Russia*, no. 4493/04, § 114, 25 October 2007). The Court has also held that, depending on the circumstances of the case, the detainee's personal presence was required in order to be able to give satisfactory information and instructions to his counsel (see *Graužinis v. Lithuania*, no. 37975/97, §§ 34-35, 10 October 2000 and *Mamedova v. Russia*, no. 7064/05, §§ 91 - 93, 1 June 2006).

113. In the present case the applicant complained that the domestic court had refused her leave to appear at the appeal hearings. The Court will therefore have to determine whether, in the particular circumstances of the present case the applicant's personal presence was required at those hearings.

114. The Court observes that the applicant's counsel did not appear at either of the appeal hearings. The Government claimed that she had been duly notified of the hearings. However they have not provided the Court with any evidence to confirm that the summonses had been in fact served on the applicant's counsel. In such circumstances the Court is not persuaded that the applicant's counsel had been duly notified of the hearings in question. Therefore, taking into account that the applicant's counsel was not present at the appeal hearings and also what was at stake for the applicant, who by the moment of examination of her appeals had spent more than two years in detention, the Court considers that the appeal court could not properly examine the applicant's appeals in her absence. The Court also considers that this conclusion is not undermined by the fact that the prosecutor was not taking part in those hearings.

115. In view of the above, the Court considers that by refusing the applicant leave to take part at the appeal hearings of 22 April and 28 July 2009 the appeal court deprived her of an effective control of the lawfulness of her detention. There has therefore been a violation of Article 5 § 4 of the Convention in that respect.

116. Having regard to the content of the appeal decisions of 27 January and 22 April 2009, the Court considers that the scope of the review of the lawfulness of the applicant's detention carried out by the appeal court on those dates complied with the requirements of Article 5 § 4 of the Convention. Therefore, there has been no violation of that provision in that respect.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

117. Lastly, the Court has examined the other complaints submitted by the applicant, and, having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant claimed compensation in respect of non-pecuniary damage sustained as a result of violation of her rights under Article 5 of the Convention. In particular, she claimed 15,000 euros (EUR) for each year spent in pre-trial detention.

120. The Government considered that in the event that a violation of the applicant's rights was found, such a finding would constitute sufficient just satisfaction.

121. The Court considers that the applicant must have suffered distress and frustration as a result of the violations of her rights. However, the amount claimed appears to be excessive. Having regard to the nature of the

violations found, and making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

122. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

123. The Court considers it appropriate that the default interest rate 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* admissible the complaints about unlawfulness of the applicant's detention between 24 May 2008 and 14 August 2009 and the detention ordered by the decision of 14 August 2009, the length of her pre-trial detention, the applicant's absence from the appeal hearings of 22 April and 28 July 2009 and the scope of review of the lawfulness of the applicant's detention carried out on 27 January and 22 April 2009, and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention between 24 May and 17 August 2008;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention between 17 August 2008 and 14 August 2009;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention ordered by the decision of 14 August 2009;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's absence from the appeal hearings of 22 April

and 28 July 2009 concerning the review of the lawfulness of her pre-trial detention;

7. *Holds* that there has been no violation of Article 5 § 4 of the Convention on account of the scope of the review of the lawfulness of the applicant's detention carried out on 27 January and 22 April 2009;

8. *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 10,000 (ten thousand euros), to be converted into the currency of the respondent State at the rate applicable on the date of settlement, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President