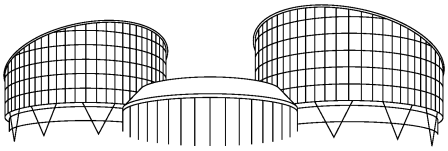

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STAROKADOMSKIY v. RUSSIA (No. 2)

(Application no. 27455/06)

JUDGMENT

STRASBOURG

13 March 2014

FINAL

13/06/2014

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

In the case of Starokadomskiy v. Russia (no. 2),

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 27455/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Anatolyevich Starokadomskiy ("the applicant"), on 15 May 2006.

2. The applicant was represented by Ms Y. Liptser and Mr R. Karpinskiy, lawyers practising in Moscow. 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, in particular, that his detention from 2 October to 10 November 2004 had been unlawful; that the domestic authorities had decided to conduct his criminal trial in camera without a valid reason; and that the criminal proceedings had been excessively lengthy. He relied on Articles 5 and 6 of the Convention.

4. On 9 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Moscow.

A. Criminal proceedings against the applicant

1. Preliminary investigation

6. On 31 January 1998 the applicant was arrested on suspicion of murder. On 6 February 1998 he was charged with aggravated murder. Subsequently, the applicant and a number of other individuals (see *Salmanov v. Russia*, no. 3522/04, 31 July 2008) were accused of other violent crimes. The proceedings in relation to all these offences were joined into one case, which was investigated by a group of investigators from the Moscow prosecutor's office. The investigation was completed in December 1998.

7. The applicant studied the case file in June and July 1999 and requested a trial by a jury.

2. Determination of the trial venue

8. On 19 July 1999 the Moscow city prosecutor approved the indictment and the case was submitted to the City Court for trial. The applicant was committed to stand trial on charges relating to a number of offences including conspiracy to commit murder. Fifteen other co-defendants were committed to stand trial on similar charges.

9. On 5 August 1999 the City Court noted that the majority of the defendants had opted to exercise their constitutional right to a trial by jury. However, as there were no juries in the City Court, it decided to send an inquiry to the Supreme Court of the Russian Federation as to where the case should be tried. The Supreme Court referred the case to the Moscow Regional Court, where juries were available.

10. On an unspecified date a judge of the Regional Court sent a request to the Constitutional Court of the Russian Federation, inviting it to rule on the compatibility of the Supreme Court's interpretation of the jurisdictional rules with the Russian Constitution. On 17 February 2000 she suspended the proceedings pending a decision by the Constitutional Court and held that the defendants were to remain in custody because of the dangerousness of the criminal offences they had been charged with, which were classified as serious or particularly serious.

11. On 13 April 2000 the Constitutional Court issued a decision to the effect that the decision on the change of venue had been incompatible with the Russian Constitution.

12. In accordance with that ruling, on 14 June 2000 the Regional Court returned the case file to the Supreme Court, which decided on 6 September 2000 that the City Court was competent to try the case.

3. Trial

13. On 29 September 2000 the City Court scheduled the first hearing for 13 October 2000 before a bench consisting of a professional judge and two lay judges, but it was adjourned on the day because the presiding judge was sitting in another case.

14. In 2001 and 2002 the presiding judge was replaced by other judges of the City Court. The lay judges were replaced several times.

15. On 24 December 2001 the applicant asked the judge for additional time to study the case file. His request was left without reply.

16. Numerous hearings were scheduled between 2001 and early 2003. They were adjourned for various reasons, mainly because the prosecutor, interpreter and some of the defence lawyers failed to appear, but also because the presiding judge was involved in other proceedings in May and October 2001 and May, September and October 2002.

17. It appears that consideration of the merits began in March 2003, but hearings scheduled for 4 March and 29 April 2003 were again adjourned, *inter alia*, because several of the lawyers failed to appear.

18. On 12 March 2003 the trial judge ordered that the applicant be removed from the courtroom "until the closure of the oral pleadings" for contempt of court during the reading out of the indictment. He was kept away from the hearings that followed on 17 to 19, 24 and 25 March 2003.

19. The applicant was taken to a hearing on 9 April 2003, where he asked to be provided with a list of people to be called as witnesses at the trial. His request was left without reply.

20. Hearings scheduled for 26 January and 2 February 2004 were also adjourned. From February 2004 onwards the trial hearings were held in remand centre no. 77/1, where the applicant was being detained. On 11 and 16 February 2004 the trial judge refused to deal with a request from the applicant to be given reasons for the change of venue and a copy of the relevant court order.

21. On 10 March 2004 the trial judge ordered bailiffs to summons the absent witnesses and victims to a hearing scheduled for 16 March 2004, but not all of them were summonsed. On a number of occasions between March and July 2004 the judge reiterated his request.

22. On 1 July 2004 the trial bench (presiding judge M. and lay judges O. and L.) extended the defendants' detention until 1 October 2004.

23. On 12 August 2004 the court closed the trial and started deliberations.

24. In October 2004 the governor of remand centre no. 77/1 wrote to the Moscow City Court on several occasions to say that the detention order in respect of the applicant had expired on 1 October 2004, and that a new detention order was required without delay.

25. On 18 October 2004 the City Court replied that since the trial bench was deliberating, it could not issue decisions concerning the detention of any of the defendants, including the applicant.

26. On 27 October 2004 the trial bench found the applicant guilty of a number of offences including conspiracy to commit murder, and sentenced him to ten and a half years' imprisonment. The court held that the time he had spent in detention since 31 January 1998 should be counted towards his sentence.

27. On 10 November 2004 the court concluded its delivery of the judgment. It appears from its operative part of the judgment (dated 27 October 2004) that the trial bench decided to keep the applicant in detention as a preventive measure until the conviction became final and enforceable.

28. The applicant and the other defendants lodged an appeal. On 15 November 2005 the Supreme Court upheld the conviction, but reduced the applicant's sentence to ten years' imprisonment.

B. Proceedings relating to the applicant's detention after 1 October 2004

29. The applicant instituted proceedings under Article 125 of the Code of Criminal Procedure ("the CCrP"), alleging inaction on the part of the governor of the remand centre in failing to release him on 1 October 2004. On 17 January 2005 the Preobrazhenskiy District Court of Moscow dismissed the complaint, holding that the inaction in question could not be made the subject of proceedings under Article 125 of the CCrP. On 5 April 2005 the Moscow City Court set aside that decision and ordered a re-examination of the case, holding that a complaint in respect of a governor of a remand centre could not be processed under Article 125 of the CCrP.

30. According to the Government, on 14 October 2005 the authorities dismissed the applicant's complaint and refused to initiate criminal proceedings against the governor of the remand centre for lack of *corpus delicti*.

31. In the meantime, in separate proceedings under Article 125 of the CCrP, the applicant argued that the prosecutor responsible for supervising detention facilities had acted unlawfully by failing to deal with the complaint concerning his detention after 1 October 2004. By a judgment of 4 February 2005 the Zamoskvoretskiy District Court of Moscow dismissed his case. On 7 April 2005 the City Court upheld that judgment.

32. Subsequently, the applicant brought civil proceedings against the remand centre, arguing that its governor had failed to release him on 1 October 2004. By that time, the most recent detention order had expired and thus between 1 October 2004 and the trial judgment there had been no valid order authorising his continued detention pending trial. By a judgment

of 12 July 2005, the Preobrazhenskiy District Court of Moscow rejected his claim. On 24 November 2005 the Moscow City Court upheld that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention pending trial

33. During a trial the court is empowered to order, vary or cancel a preventive measure in respect of the defendant (Article 255 § 1 of the CCrP). In particular, "the court dealing with the case" is empowered to order extensions of the defendant's detention (Article 255 § 3). If after the trial judge has started deliberations in the criminal case the term of detention meanwhile expires, it is not against the requirements of the CCrP for another judge of the same court to order an extension of the detention (Appeal Section of the Supreme Court of Russia decision nos. 47-O09-13 of 16 March 2009 and 44-O09-90 of 14 January 2010).

34. Deliberations take place in the deliberations room (Article 298 § 1), where the trial bench reaches its judgment and decides on the preventive measure (Article 299 § 1). After signing the judgment, the trial bench returns to the courtroom so that the presiding judge can deliver the judgment (Article 310 § 1). If only the introductory and operative parts of the judgment are read out, the court should explain the procedure for becoming acquainted with its full terms (Article 310 § 2).

35. Section 50 of the Custody Act (Federal Law no. 103-FZ of 15 July 1995) required at the relevant time that the governor of a detention facility should release a detainee upon receipt of an order to this effect. The governor should notify the authority in charge of the case that the authorised period of detention expires within twenty-four hours. If no extension order is received by the time the authorised period of detention expires, the governor must release the detainee.

B. Public hearing of criminal cases

36. Article 241 of the CCrP provides that criminal cases should be heard in public. A court may issue an order for a hearing in camera (i) if a public hearing could result in the disclosure of State secrets or other sensitive data; (ii) in cases concerning defendants under sixteen years of age; (iii) if a public hearing could result in the disclosure of information relating to the private life of the trial participants; or (iv) to guarantee the safety of the trial participants or their next of kin.

THE LAW

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

37. The applicant complained that his detention from 2 October to 10 November 2004 had been unlawful, in breach of Article 5 § 1 of the Convention. The relevant parts read as follows:

> "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:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (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. The parties' submissions

38. The applicant submitted that there had been no court decision authorising his continued detention between 2 October 2004, the day after the detention order of 1 July 2004 expired, and 10 November 2004, when the trial judgment had been delivered. He argued that the governor of the remand centre had failed to release him in the absence of any legal basis for his continued detention and in breach of national law (see paragraph 35 above). His situation was aggravated by the fact that the domestic legislation set forth no specific procedure or time-limits for detention during the deliberations stage of a trial.

39. The Government submitted that the term of the applicant's detention had been lawfully extended until 1 October 2004. In the meantime, on 12 August 2004 the court had started deliberations, which had lasted until 27 October 2004 when the trial judgment had been issued. It had then been delivered on 10 November 2004. The court could not have dealt with the detention issue while deliberating in the criminal case. The lawfulness of the applicant's detention had been confirmed in the subsequent civil claim brought by him and by the authorities' refusal to institute criminal proceedings against the governor of the remand centre.

B. The Court's assessment

1. Admissibility

40. 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.

2. Merits

41. The Court notes that the parties did not take a clear stance as to whether the applicant's detention from 2 to 27 October 2004 (between the expiry of the most recent detention order and the issuing of the trial judgment) and from 27 October to 10 November 2004 (until its delivery) should be distinguished, in particular in so far as it fell within the scope of Article 5 § 1 (a) and/or (c) of the Convention.

42. For its part, the Court observes that it previously considered that the period of the applicant's detention that fell within scope of Article 5 § 3 of the Convention lasted from 31 January 1998 to 10 November 2004, "the date when the City Court gave judgment in his criminal case" (see *Starokadomskiy v. Russia*, no. 42239/02, § 68, 31 July 2008). As far as the applicant's present complaint relating to the lawfulness of detention is concerned, the Court finds it sufficient to reiterate that it is possible that detention falls within one or two subparagraphs simultaneously (see *Polonskiy v. Russia*, no. 30033/05, § 143, 19 March 2009).

43. The Court notes that the most recent detention order of 1 July 2004 expired on 1 October 2004 and could not have, under Russian law, served as a legal basis for the applicant's detention after this date. The Government did not submit, and the Court does not find, any other valid court order which served as a legal basis for his continued detention. It has not been submitted, and the Court does not find, that the applicant's detention was otherwise authorised by the operation of any specific legal provision regulating detention during the deliberations stage of a trial.

44. The Government submitted that the court (meaning the trial bench) could not, or rather was not empowered to, deal with the detention issue while deliberating on the criminal case against the applicant. Assuming this interpretation of the domestic law was correct (see, however, more recent examples to the contrary in paragraph 33 above), the Court cannot but conclude that the applicant was left in a state of uncertainty as to the legal basis for his continued detention, at least between 2 and 27 October 2004.

45. Furthermore, the Government have not specified whether the trial judgment started to serve a legal basis for the applicant's detention from 27 October 2004. It is unclear whether on 27 October 2004 the court started delivering the judgment by announcing his sentence. Also, it appears from

the operative part of the judgment (dated 27 October 2004) that the trial bench decided to keep the applicant in detention as a preventive measure until the judgment became final and enforceable. However, it remains unclear whether the court's ruling concerning detention pending appeal effectively served as a legal basis for the applicant's detention from as early as 27 October 2004. In such circumstances, the Court is not satisfied that the applicant's detention from 27 October to 10 November 2004 had a legal basis in domestic law.

46. In view of the foregoing, the Court concludes that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention from 2 October to 10 November 2004.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (PUBLIC HEARING)

47. The applicant alleged that the trial in his criminal case had been held in camera without a valid reason, in breach of Article 6 § 1 of the Convention. The relevant part reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. The parties' submissions

48. The applicant argued that there had been no formal decision to close the trial to the public. Nor had the court made any formal order justifying the relocation of the ongoing trial from the courtroom of the City Court to the premises of remand centre no. 77/1. Since it had been held in the remand centre's common room, the general public had been prohibited from entering. Nothing in the Custody Act or other legislation provided for such access. This constituted a significant impediment to the public's presence at the trial. The national authorities had not provided any sufficient reason based on verifiable facts. Nor had they put in place any safeguards or measures to ensure observance of the right to a "public hearing".

49. The Government confirmed that no formal decision had been taken to close the trial to the public. The CCrP did not require the court to issue any separate decision concerning the relocation of the trial from the courtroom to another place, this being a "mere matter of logistics". The relocation had been necessary because the criminal case had been pending for a long time, mainly because there had been problems with the prison

transport service in charge of taking the defendants, including the applicant, to and from the courthouse. The relocation of the trial had been aimed at remedying this problem. Holding the hearings in the remand centre had not impinged upon the public character of the trial. The witnesses could gain access and aside from the applicant, none of the witnesses, defendants or counsel had raised any concerns or objections about the public character of the trial. No one had been refused access to the premises of the remand centre. In any event, the City Court itself had had security checks in place which required people to report to the court ushers in order to gain access. The Government concluded that there had been no violation of the right of "access to a court", and that the proceedings had been adversarial.

B. The Court's assessment

1. Admissibility

50. 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.

2. Merits

(a) General principles

51. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 § 1 of the Convention. It protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts can be maintained. The administration of justice, including trials, derives legitimacy from being conducted in public. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6 § 1, namely a fair trial (see *Gautrin and Others v. France*, 20 May 1998, § 42, *Reports of Judgments and Decisions* 1998-III, and *Pretto and Others v. Italy*, 8 December 1983, § 21, Series A no. 71). There is a high expectation of publicity in criminal proceedings (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 87, Series A no. 80).

52. The requirement to hold a public hearing is subject to exceptions. This is apparent from the text of Article 6 § 1 itself, which contains the provision that the press and public may be excluded from all or part of the trial in the interests of national security in a democratic society, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Thus, it may on

occasion be necessary under Article 6 to limit the open and public nature of proceedings for a valid reason (see *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 37, ECHR 2001-III, with further references).

53. The mere fact that the trial took place in the premises of a detention facility does not necessarily lead to the conclusion that it had not been held in public. Nor does the fact that witnesses, other participants in the trial and potential spectators would have had to undergo identity or security checks in itself deprive the hearing of its public nature (see *Riepan v. Austria*, no. 35115/97, § 28, ECHR 2000-XII, referring to *Allen v. the United Kingdom*, no. 35580/97, Commission decision of 22 October 1998, unreported).

54. Having said this, it must be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 144, 29 November 2007). A trial complies with the requirement of publicity only if the general public is able to obtain information about the date and place of the hearings and if the place is easily accessible to them (see *Riepan*, cited above, § 29). In many cases these conditions will be fulfilled by the simple fact that a hearing is held in a regular courtroom large enough to accommodate spectators. However, conducting a trial outside a courtroom, in places like a detention facility, to which the general public in principle has no access, presents a serious obstacle to its public character. In such cases, the State is under an obligation to take compensatory measures to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access (ibid., § 30).

(b) Applications of the principles to the present case

55. Turning to the present case, the Court observes that the City Court did not issue a decision to hold a trial in camera but relocated the trial to the remand centre. The Court reiterates in this connection that hindrance in fact can contravene the Convention just like a legal impediment (see *Airey v. Ireland*, 9 October 1979, § 25, Series A no. 32). The Court's task in the present case therefore is to establish whether the practical arrangements for hearing the applicant's criminal case in the remand centre were such as to allow the public to be present at the trial; and, if not, whether the resulting adverse effect on the publicity of the trial was justified by a compelling interest.

56. Firstly, it has not been suggested that the national authorities took any measures to inform the public and the media about the time and place of the hearings. In fact, the domestic court gave no proper consideration to any domestic legislation regarding the public's access to the remand centre, the matter also being treated by the Government as a "mere matter of logistics". The Government referred to the restricted access measures at the City Court

in support of their submission that it was only natural that such measures applied in the remand centre.

57. In the absence of any information concerning domestic legislation relating to the public's ability to obtain information and access to a criminal trial in a detention facility, the Court concludes that no compensatory measures were taken in that regard and that the public were not granted effective access.

58. The Court thus finds that the national authorities failed to take adequate compensatory measures to counterbalance the detrimental effect which holding the applicant's trial in a restricted area of the detention facility had on its public character.

59. Secondly, the Court considers that the resulting failure to conduct the trial in public was unjustified for the reasons set out in the second sentence of Article 6 § 1. No compelling interest was shown to be at stake in the present case. For its part, the Court does not overlook that in the applicant's previous application (see *Starokadomskiy v. Russia*, no. 42239/02, § 56, 31 July 2008) it took note of the national authorities' acknowledgement that in 2002 there had been problems relating to existing breaches by the prison transport service (late return from the courts, overcrowded prison vans, use of unauthorised routes). However, no reasoned decision was taken as to the relocation of the trial to the premises of the remand centre. In this context, there is no indication that the Government's explanation for this relocation, delays caused by the prison transport service, was part of the reasoning guiding the City Court.

60. Similarly, there is no indication that the "reasonable time" requirement was part of the domestic court's reasoning. Indeed, Article 6 commands that judicial proceedings be completed within a reasonable time, but it also lays down the more general principle of the proper administration of justice (see *Boddaert v. Belgium*, 12 October 1992, § 39, Series A no. 235-D). However, in the circumstances of the case, the Court is not satisfied that the authorities succeeded in maintaining the fair balance between various aspects of this fundamental requirement.

61. Furthermore, it is noted that the parties did not specify whether the appeal hearing before the Supreme Court was in camera and whether the appeal proceedings remedied the failure to conduct the trial before the City Court in public.

62. Lastly, the Court accepts that there is some affinity between the requirement under Article 6 § 1 relating to a "public hearing" and other related but separate matters concerning the notions of an oral and fair hearing, including the question of the defendant's presence during the determination of the criminal charge against him (see *Göç v. Turkey* [GC], no. 36590/97, § 46, ECHR 2002-V, and cases cited in paragraph 51 above). However, with due regard to the considerations in the preceding paragraphs, the Court finds that the Government's reference to the oral hearing and the

admittedly adversarial nature of the proceedings in which the trial court heard both parties, did not by itself resolve the matter of the criminal trial being conducted in public, which is precisely the issue before the Court in the present case.

63. There has accordingly been a violation of Article 6 § 1 of the Convention because of the lack of a public hearing at the applicant's criminal trial.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF PROCEEDINGS)

64. The applicant also argued that the length of the criminal proceedings against him had violated the "reasonable time" requirement under Article 6 § 1 of the Convention (cited above).

A. The parties' submissions

65. The applicant argued that he had not contributed to the length of proceedings. He invited the Court to endorse the findings in relation to the remaining relevant factual and legal issues as made by the Court in the case of *Salmanov v. Russia* (no. 3522/04, 31 July 2008), which concerned the applicant's co-defendant in the same domestic proceedings.

66. The Government argued that the applicant had intentionally protracted the proceedings at the stage when he had been given an opportunity to study the case file before the criminal case could be submitted to the City Court for trial. The case had been particularly complex and had required, *inter alia*, determination of a complex jurisdictional issue. There had been numerous adjournments owing to the absence of the defendants' lawyers for various valid and invalid reasons, or for no reason. In late 2003 a number of hearings had had to be adjourned because the defendants had not been taken to the courthouse from the detention facility.

B. The Court's assessment

1. Admissibility

67. 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.

2. Merits

68. The Court reiterates that the period under consideration in the present case began on 31 January 1998, when the applicant was arrested, and ended on 15 November 2005, when the appellate court upheld the conviction. The overall length of the proceedings was thus seven years and ten months, of which seven years and six months fall within the Court's competence *ratione temporis*.

69. It has not been alleged, and the Court does not consider, that there were any significant periods of inactivity attributable to the State during the preliminary investigation. Thus, the Court has examined the applicant's complaint bearing in mind that it essentially concerned the court proceedings in his case.

70. Furthermore, in the *Salmanov* case (§§ 84-90) cited by the applicant, the Court made the following findings concerning the length of the relevant proceedings:

> "84. The Court accepts that the case revealed a certain degree of complexity; it concerned a large number of defendants who had been charged with several counts of serious criminal offences. While admitting that the task of the trial court was rendered more difficult by these factors, the Court cannot accept that the complexity of the case, taken on its own, was such as to justify the overall length of the proceedings ... It took more than one year to determine which court was competent to try the case; however, the procedural complexity because of the need to transfer the case between various courts cannot justify the delay either ...
>
> 85. As to the applicant's conduct, the Court recalls that an applicant cannot be required to co-operate actively with the judicial authorities, nor can he be criticised for having made full use of the remedies available under the domestic law in the defence of his interests ... It has not been alleged by the Government that the applicant defaulted, went beyond the limits of legitimate defence by lodging frivolous petitions or unsubstantiated requests or otherwise contributed to the length of the proceedings ... It appears that the absence or illness of the applicant's counsel was a cause of delay on only four occasions. On balance, the Court finds that the applicant did not contribute significantly to the length of the proceedings.
>
> 86. On the other hand, the Court considers that certain delays were attributable to the domestic authorities. The Court has already noted the one-year delay in resolving the jurisdictional issue. After the case had been assigned to the City Court in September 2000 there were unjustified gaps in the proceedings between May and September 2001, April and June 2002, July and September 2002. It was not in dispute between the parties that many hearings had been adjourned, in particular because the presiding judge had been sitting in another case or because other defendants' lawyers had defaulted. The actual examination of the case started only in March 2003, that is two years and five months after the case had been listed for trial. It also transpires from the case file that on several occasions in 2004 the trial judge ordered the bailiffs to bring the defaulting witnesses, victims and the interpreter.
>
> 87. Although the State cannot be held responsible for every shortcoming on the part of a legal-aid lawyer and, even less, of a privately-retained lawyer (see *Hermi v. Italy* [GC], no. 18114/02, § 96, ECHR 2006-...), that does not absolve the State from the

> duty to organise its legal system in such a way that its courts can meet the obligation to hear cases within a reasonable time (see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, 8 June 2006). The Government submitted no explanation as to whether the orders given to the bailiffs had been complied with. No evidence was adduced as to whether any measures available under national law to discipline the defaulting participants in the proceedings had been taken ...
>
> 88. Nor have the Government provided any convincing explanation for temporarily replacing the presiding judge and lay judges in the course of the proceedings, which undeniably contributed to their overall duration ...
>
> 89. Finally, the Court takes into account that throughout the proceedings the applicant remained in custody, so that particular diligence on the part of the authorities was required. The Court also does not lose sight of its conclusions in relation to the applicant's complaint about the conditions of his transport and confinement on the days of the court hearings, most of which resulted in adjournment ...
>
> 90. Making an overall assessment, the Court concludes that in the circumstances of the case the "reasonable time" requirement has not been respected. There has accordingly been a violation of Article 6 § 1 of the Convention."

71. The Government in the present case have not substantiated their argument that the applicant or his counsel significantly contributed to the length of the proceedings. The Court also notes that throughout the proceedings the applicant, like Mr Salmanov, remained in custody, so particular diligence on the part of the authorities was required.

72. Having examined the parties' submissions, the Court finds no reason to depart from the remaining findings made in the *Salmanov* judgment.

73. The Court concludes that in the circumstances of the case the "reasonable time" requirement has not been respected. There has accordingly also been a violation of Article 6 § 1 of the Convention on this account.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. Lastly, the applicant complained that another period of his detention had been unlawful and that the criminal proceedings had been unfair for a variety of reasons.

75. The Court has examined the above complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government contested this claim as excessive and unsubstantiated.

79. Having regard to the nature of the violations and making assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

80. The applicant also claimed EUR 3,000 for legal fees for representation before the Court by two lawyers.

81. The Government contested this claim as excessive.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and that certain complaints were declared inadmissible, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

83. 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* the complaints concerning the lawfulness of the applicant's detention from 2 October to 10 November 2004, the lack of a public hearing and the length of the criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in relation to the applicant's detention from 2 October to 10 November 2004;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President