CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF PANCHENKO v. RUSSIA

(Application no. 45100/98)

JUDGMENT

STRASBOURG

8 February 2005

FINAL

08/05/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Panchenko v. Russia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr A. KOVLER,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 45100/98) against the Russian Federation lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Igor Vladilenovich Panchenko, on 26 May 1998.

2. The applicant was represented before the Court by Mr R. Karpinskiy and Ms M. Issayeva, lawyers of the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by their Agent, Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, violations of Article 5 §§ 3 and 4 of the Convention because of the excessive length of his detention on remand and the lack of diligence in the examination of his appeal against the court decision of 26 July 1999 rejecting his application for release. He also complained under Article 6 § 1 of the Convention that the criminal charge against him had not been determined with a "reasonable time".

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 16 March 2004, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1962 and lives in St. Petersburg.

A. The applicant's arrest and placement in custody

10. On 29 August 1995 the North-Western transport prosecutor's office instituted criminal proceedings against several police officers of the St. Petersburg transport police department where the applicant, in the rank of police major at that time, held the position of senior operational officer. The investigation established that the applicant had colluded with other police officers to detain individuals who had just arrived in St. Petersburg on the pretext of an identity check and to misappropriate their money.

11. On 31 August 1995 the applicant was detained on remand.

12. On 7 September 1995 the applicant was charged with criminal offences under Articles 144 § 2 (concerted theft), 145 § 3 (concerted large-scale robbery), 148 § 3 (large-scale extortion) and 170 § 1 (abuse of power or office) of the RSFSR Criminal Code, committed on several occasions between 1992 and 1995, in collusion with two other police officers.

B. Proceedings before the trial court

1. Preparation for examination of the merits

13. On 18 June 1996 the case was referred to the Smolninskiy District Court of St. Petersburg for trial.

14. On 9 October 1996 the Smolninskiy District Court found that the bill of indictment was incomplete and remitted the case to the prosecutor's office for additional investigation.

15. On 24 December 1996 the St. Petersburg City Court quashed the decision of 9 October 1996 and remitted the case to the Smolninskiy District Court for examination on the merits.

16. On 24 February, 31 March and 15 September 1997 the Smolninskiy District Court dismissed the applicant's requests for release from custody, each time referring generically to the gravity of the charges against him and to his personal characteristics.

2. Examination of the merits

17. According to the Government, on 10 February 1997 the applicant refused to go to the court and the hearing was adjourned until 24 February. The applicant refuted the allegation. He contended that as a detainee he had had no choice whether to be escorted to the court house or not.

18. The parties agreed that subsequent hearings had been held on 24 and 25 February, 31 March and 1 April 1997.

19. On 15 September 1997 the Smolninskiy District Court granted the applicant's request for additional time to read the case file and transcripts of the court hearings. The Government alleged that at that hearing the applicant had prevented the court from examining witnesses and victims, falsely accusing them of criminal offences and perjury. The applicant contested this allegation as not supported by any documents. The next hearing was fixed for 11 December 1997.

20. On 11 or 22 December 1997 the applicant challenged the presiding judge, alleging that he had had an intimate relationship with her. The challenge was dismissed as unsubstantiated. The hearing was then adjourned until 9 February 1998 because the applicant fell ill.

21. Subsequent hearings in the Smolninskiy District Court took place on 9, 11 and 12 February 1998.

22. On 12 February 1998 (8 February, according to the Government) the Smolninskiy District Court suspended the proceedings and ordered a forensic psychiatric examination of the applicant.

23. On 5 May 1998 the Convention entered into force in respect of the Russian Federation.

24. On 22 May 1998 the experts found the applicant to be of sound mind at the time of examination and at the time when the incriminated acts had been committed. On 1 July 1998 the proceedings were resumed.

25. On 17 July 1998 the Smolninskiy District Court refused the applicant's request for release from custody, finding that his placement in custody had been "imposed in accordance with the law" and that "at this stage of the proceedings (the court investigation is about to be finished)... a change of the preventive measure is not opportune (*нецелесообразно*)".

26. On the same day the Smolninskiy District Court delivered a judgment in the applicant's case. It found him guilty on most counts and sentenced him to six years' imprisonment, including the time already served, and also ordered confiscation of his property.

C. Proceedings before the appeal court

27. The applicant appealed against the judgment to the St. Petersburg City Court.

28. On 26 October 1998 the Smolninskiy District Court advised the applicant that the appeal hearing would take place on 17 November 1998. However, on 11 November 1998 (29 October, according to the Government) the St. Petersburg City Court returned the case-file to the Smolninskiy District Court because the applicant had not had adequate time and facilities to study it after the judgment had been given.

29. The Government submitted that between November 1998 and January 1999 the Smolninskiy District Court had "taken measures" to examine the applicant's requests. They did not provide any details about the nature of these measures. The applicant disagreed. He contended that during that period the Smolninskiy District Court had not taken any steps to grant him access to the file and that it had not decided on his requests. He indicated that he had been first granted access to the requested materials on 22 February 1999, after seven months of procrastination on the part of the court, and then he had only had access to the file for 21 non-consecutive days until 8 April 1999.

30. On 18 April 1999 the applicant filed an addendum to his points of appeal. The appeal hearing was listed for 11 May 1999, but later adjourned until 3 June.

31. On 3 June 1999 the St. Petersburg City Court quashed the judgment of 17 July 1998 on procedural grounds and remitted the case for a new examination. The court ruled that the applicant was to remain in custody pending trial, without giving any reasons for the continued detention.

On the same day the City Court issued a "special finding" (*частное определение*) acknowledging that the length of the trial had been excessive and ordered the President of the Smolninskiy District Court to pay special attention to this fact and to take measures to remedy the situation.

D. Additional investigation of the case

1. First re-opening of investigation and review of the lawfulness of detention

31. On 26 July 1999 the Smolninskiy District Court examined the prosecutor's application to return the case for additional investigation to the North-Western transport prosecutor's office in order to remedy certain procedural defects. The applicant and his counsel agreed with the prosecutor's application and filed a request for the applicant's release, arguing that there were no grounds justifying his continued detention.

32. The court granted the application and remitted the case for additional investigation, but refused the request for release on the following grounds: the applicant's detention had been extended in accordance with the law, he was charged with a serious criminal offence and he could obstruct the additional investigation and trial or flee from justice, including by leaving Russia.

33. On 29 July and 1 August 1999 the applicant and his lawyer lodged appeals against the decision of the Smolninskiy District Court.

34. According to the Government, the St. Petersburg City Court had originally fixed the hearing date for 24 August 1999. However, the applicant's lawyer failed to appear and the hearing was adjourned until 31 August. On 31 August 1999 the applicant informed the court that his lawyer was on leave and requested an adjournment of the hearing. His request was granted and the new date was fixed for 28 September 1999. It appears that on 28 September 1999 the hearing before the St. Petersburg City Court took place. According to the Government, the court established that it needed the materials in the case file that was at that time in the North-Western transport prosecutor's office pending completion of the additional investigation. The proceedings were suspended until such time as the case file was made available to the court.

35. On 21 September 1999 the North-Western transport prosecutor's office accepted the case for an additional investigation. On 28 September 1999 the acting North-Western transport prosecutor set a time-limit for the additional investigation and extended the applicant's detention for one month, i.e. until 28 October 1999.

36. On 18 October 1999 the Smolninskiy District Court informed the applicant that his case-file was with the North-Western transport prosecutor's office for an additional investigation.

37. On 19 October 1999 the applicant complained to the prosecutor's office that the re-opening of investigation had been unlawful because his appeal against the decision of 26 July 1999 was still pending.

38. On 26 October 1999 the North-Western transport prosecutor's office reversed the decision of 28 September 1999 on the ground that the court decision of 26 July 1999 had not yet become final and the appeal was pending. On the same day the case-file was forwarded to the Smolninskiy District Court to be joined with the appeal and sent to the St. Petersburg City Court.

39. On 2 November 1999 the St. Petersburg City Court upheld the decision of 26 July 1999, finding as follows:

> "The [city court] does not see any substantial violations of the requirements of the RSFSR Code on Criminal Procedure ["CCrP"] during the examination, by the [district] court, of the issues related to the preventive measure imposed on [the applicant], adjournment of hearings, examination of applications for release and appointment of an expert study...

> Judging from the case materials, the [district] court had no grounds to revoke or amend the preventive measure... The norms of the CCrP... do not provide for any time-limits for detention on remand pending trial; they regulate the time-limits for fixing the first hearing and beginning of the trial, yet non-compliance with these time-limits is not an unconditional ground for revoking the preventive measure...
>
> The [city court] comes to the conclusion that during the preliminary investigation and trial, there were no violations of the rules of criminal procedure as regards the examination of issues related to the preventive measure. When remitting the case for additional investigation and deciding on the preventive measure, [the district court] correctly referred to the absence of any grounds for revoking the preventive measure, taking into account that, once released, [the applicant] could abscond or interfere with the additional investigation or judicial examination; [the district court] correctly had regard to [the applicant's] personality and to the nature of the charges against him."

2. Second re-opening of the investigation

40. On 17 November 1999 the North-Western transport prosecutor's office accepted the case for investigation and requested an extension of the applicant's detention. The request was granted by the acting North-Western transport prosecutor on the same day, for a period of one month, i.e. until 17 December 1999.

41. The applicant appealed against the extension order. He argued, in particular, that it had been the second time that his detention in connection with the additional investigation had been extended for one month.

42. On 26 November 1999 the Oktyabrskiy Court of the Admiralteyskiy District of St. Petersburg upheld the order of 17 November 1999, finding as follows:

> "Article 96 § 2 of the CCrP provides that persons charged with serious criminal offences may be detained on remand on the sole ground of the dangerousness of the offence. Furthermore, for an extension of [the applicant's] detention on remand, there are of relevance such grounds as the defendant's potential to free from investigation or trial and to interfere with the establishment of the truth".

43. On 17 December 1999 the bill of indictment was served on the applicant and his lawyer and they were given several hours to study the materials of the additional investigation. On the same day a prosecutor of the North-Western transport prosecutor's office refused the applicant's requests for release pending trial and for additional time to study the case-file.

44. On 20 December 1999 the case was referred to the Smolninskiy District Court for trial.

3. Third re-opening of the investigation and release from custody

45. On 30 December 1999 the Smolninskiy District Court again remitted the case to the prosecutor's office for additional investigation because the prosecutor had failed to respect the applicant's right to study all of the case

materials and not just new ones. The court confirmed that the applicant was to remain in custody. The court grounded the applicant's detention as before: the applicant was charged with a serious criminal offence and, in view of his personal circumstances, he could obstruct the investigation or flee from justice, including by leaving Russia. The applicant appealed against this decision.

46. On 29 February 2000 the St. Petersburg City Court quashed the decision of 30 December 1999 and ordered the applicant's release from custody against his undertaking not to leave the city. The court noted that the applicant had already spent more than four years in custody while procedural delays in the examination of the case could not be attributed to his conduct. The court noted that the applicant had a permanent residence and family, that he had received positive references at his former place of work, that he had no criminal record and that there were no indications that the applicant would abscond or interfere with the establishment of the truth. On the same day the court also quashed the decision of the Oktyabrskiy District Court of 26 November 1999 and remitted the matter for a new examination because of a procedural defect in the trial record.

47. On or about 29 February 2000 the applicant was released from custody.

48. It appears that on 6 March 2000 the North-Western transport prosecutor's office accepted the case for an additional investigation ordered by the Smolninskiy District Court on 30 December 1999. The investigation was completed on 23 August 2000 and the case was referred to the trial court.

49. On 5 April 2000 a prosecutor with the North-Western transport prosecutor's office granted the applicant permission to pay a visit to his parents in Kharkov, Ukraine, from 6 to 11 April 2000.

50. On 13 April 2000 the Oktyabrskiy Court examined the applicant's complaint concerning the lawfulness of his detention after 21 September 1999. The applicant supplemented his initial complaint with a request to declare inadmissible all evidence obtained by the investigation between 21 September and 26 October 1999 and between 17 November and 20 December 1999. The court held that the order of the prosecutor's office of 26 October 1999, by which the order of 28 September 1999 had been reversed, amounted to an admission of the fact that the investigation between 21 September and 26 October 1999 had been unlawful. As to the admissibility of evidence obtained during that period, the court referred this issue to the trial court.

51. On 22 August 2000 the North-Western transport prosecutor's office gave the applicant a new permit to visit his parents in Kharkov, Ukraine, provided that he returned by 30 August 2000.

4. Fourth re-opening of the investigation

52. On 10 January 2001 the Smolninskiy District Court, at the applicant's request, ordered the case to be remitted for an additional investigation. The court established that the applicant had not been given adequate time to have access to the case file and that the investigator had failed to decide on his requests. The court referred the remainder of the applicant's complaints concerning admissibility of evidence to the trial court. Following the appeal of the North-Western transport prosecutor against the decision, on 13 February 2001 it was upheld by the St. Petersburg City Court.

53. It appears that at that time the North-Western transport prosecutor's office was undergoing reorganisation and its staff were transferred to the St. Petersburg city prosecutor's office. On 26 March 2001 the applicant was advised about a transfer of his case to the St. Petersburg city prosecutor's office. On 19 April 2001 a senior investigator with the anti-corruption and economic crimes unit of the Department for especially important cases of the St. Petersburg prosecutor's office accepted the case for the additional investigation.

54. On the same day a deputy prosecutor of St. Petersburg authorised an extension of the investigation for one additional month.

55. On 11 May 2001 a deputy Prosecutor General authorised a further extension until 19 July 2001, i.e. for a total of 13 months and 23 days.

56. On 17 July 2001 the first deputy Prosecutor General extended the investigation until 19 September 2001, i.e. for a total of 15 months and 23 days.

57. On 18 September 2001 the first deputy Prosecutor General authorised an extension until 19 November 2001, i.e. for a total of 19 months and 23 days.

5. Review of the lawfulness of extensions of additional investigation

58. The applicant's lawyer challenged the orders extending the investigation, in court. He complained about the excessive length of the proceedings and contested the lawfulness of the extensions, alleging that the case was of average complexity and that there were no exceptional circumstances of the kind required by the domestic law to justify such a lengthy investigation. He also requested the court to find a violation of Article 6 § 1 of the Convention in that the applicant had been denied a fair trial within a reasonable time.

59. On 22 October 2001 the Oktyabrskiy Court rejected the complaint. On 27 November 2001 the St. Petersburg City Court, on the applicant's appeal, quashed and remitted that decision for a new examination. The court found that the first instance court had failed to take into account certain periods of the pre-trial investigation.

60. On 18 May 2002 the Oktyabrskiy Court examined the matter *de novo* and dismissed the complaint again. As regards the authorities' compliance with the "reasonable time" requirement, the court pronounced as follows:

> "...Having regard to the fact that the court has not established any violations of the rules of criminal procedure in the extensions of the time-limit for the preliminary investigation to 13 months and 23 days, 15 months and 23 days, and 17 months and 23 days, and taking into account that the contested extension orders were justified, the court considers that the extensions of the said time-limits were lawful and justified. In this connection, the court also considers that the additional investigation was completed within a reasonable time because the additional investigation was needed and it did not violate the defendant's right under Article 6 § 1 of the ECHR... This conclusion of the court is also grounded on the fact that the overall duration of the preliminary investigation was 17 months and 23 days, of which seven months were used for an additional investigation by the St. Petersburg prosecutor's office. The latter time period, as established in the court hearing, was required to carry out many investigative actions in the light of the substantial size of the criminal case, the remoteness [in time] of the criminal offences and the extent of the charges, and it was reasonable and necessary for the establishment of the truth and, in particular, for the protection of the victims' rights."

61. On 10 September 2002 the St. Petersburg City Court, on the applicant's appeal, upheld the decision of 18 May 2002.

E. Second trial

62. On 27 September 2001 the applicant was charged with repeated and concerted bribery, fraud, theft, robbery, abuse of power, and document forgery. In particular, the applicant was accused of illegal detention of persons whom he had stopped for identity checks at the railway station, taking or stealing their money and valuables and using forged documents to obtain social benefits. On 19 October 2001 the bill of indictment, with some textual amendments, was served again on the applicant.

63. Subsequently the applicant was given access to the case file. It appears the applicant and his lawyer had access to the case file for the first time on 5 November 2001.

64. On 11 April 2002 an investigator with the St. Petersburg city prosecutor's office established that the applicant had intentionally procrastinated in reading the file and ordered that the reading should be completed by 1 June 2002. On 3 June 2002 the investigator refused the applicant's request for additional time for access to the file.

65. On 17 June 2002 the case file comprising 20 volumes was forwarded to the St. Petersburg City Court for trial.

66. In July-August 2002 the judge to whom the case had been assigned went on annual leave.

67. On 30 October 2002 the judge fixed the first preliminary hearing for 18 November 2002.

68. On 26 November 2002 the court discontinued the criminal proceedings in the part concerning the charges in respect of which the prosecution had become time-barred and declared some evidence inadmissible. The applicant was afforded two months to study the case-file. The next hearing was fixed for 27 January 2003.

69. On 27 January 2003 the hearing was adjourned to 17 February 2003 because victims and witnesses did not appear. Between 17 February and 22 September 2003 further hearings were scheduled and adjourned for various reasons, such as the counsel's medical treatment and annual leave, and absence of witnesses. From 22 July to 12 September 2003 the applicant was on annual leave in Kharkov and Khost.

70. On 22 September 2003 the proceedings were stayed pending the applicant's in-patient treatment. Following his convalescence, a hearing was fixed for 24 December 2003. On that day it was adjourned until 5 January 2004 at the requests by the prosecutor and the applicant's lawyer.

71. On 5 January 2004 the court discontinued the proceedings in respect of certain other charges which had meanwhile become time-barred. Between 9 January and 4 February 2004 further hearings were held.

72. On 4 February 2004 the St. Petersburg City Court made a decision to close the criminal case against the applicant (*постановление о прекращении уголовного дела*). Several charges against him were dropped by the prosecution and, as to the remainder, the court established that the prosecution was time-barred. The decision was not appealed against and on 17 February 2004 it became final.

II. RELEVANT DOMESTIC LAW

A. Preventive measures

73. The Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic ("the old Code") of 27 October 1960 (effective until 30 June 2002) listed as "preventive measures", *inter alia*, an undertaking not to leave a specified place and placement in custody (Article 89).

B. Grounds for ordering detention on remand

74. A decision to order detention on remand could only be taken by a prosecutor or a court (Articles 11, 89 and 96). In making this decision the relevant authority was to consider whether there were "sufficient grounds to believe" that the accused would flee from investigation or trial or obstruct the establishment of the truth or re-offend (Article 89), as well as to take into account the gravity of the charge, information on the personality of the

accused, his (her) profession, age, state of health, family status and other circumstances (Article 91).

75. Until 14 March 2001, detention on remand was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were "exceptional circumstances" in the case (Article 96). On 14 March 2001 the Code was amended to provide for placement in custody if the charge carried a sentence of at least two years' imprisonment or if the defendant had previously defaulted or if he had no permanent residence in Russia or if his identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted the defendant's placement in custody on the sole ground of dangerousness of the criminal offence imputed to him.

76. A prosecutor's order, or a court decision, ordering detention on remand was to be reasoned and justified (Article 92). The accused was to be informed of the detention order and to have explained the procedure for lodging an appeal against it (Article 92).

C. Time-limits for detention on remand

Types of detention on remand

77. The Code distinguished between two types of detention on remand: one was "pending the investigation", i.e. when an authorised agency – the police or a prosecutor's office – undertook investigative measures, and the other was "before the court" (or "pending the trial"), i.e. when a trial court examined the case. Although there was no difference in practice between them (the detainee was normally held in the same detention facility), the calculation of the time-limits was different.

Time-limits for detention "pending the investigation"

78. After arrest the person was placed in custody "pending the investigation". The maximum permitted period of the detention "pending the investigation" was two months but it could be extended for up to eighteen months in "exceptional circumstances". Extensions were authorised by prosecutors of ascending hierarchical levels, up to the Prosecutor General of the Russian Federation. No extensions beyond eighteen months were permitted (Article 97).

79. The time-limit of detention "pending the investigation" was calculated until the day when the investigation was considered completed and the defendant was given access to the case file (Articles 97, 199, 200 and 201). The access was to be granted no later than one month before the authorised detention period expired (Article 97). If the defendant needed additional time to study the case-file, a judge acting on a request by a

prosecutor could grant an extension of the defendant's detention on remand until such time as the reading of the file was completed, but for no longer than six months.

80. The case could also be remitted for "additional investigation" by the trial court if it established procedural defects that could not be remedied during the trial. In such case the person's detention was again "pending the investigation" and the running of the time-limits "pending the investigation" resumed. If, however, the case was remitted for additional investigation, but the investigators had already used up all the time authorised for the detention "pending the investigation", a supervising prosecutor could nevertheless extend the detention period for one additional month starting from the day he received the case. Any subsequent extension could only be granted if the detention "pending the investigation" had not exceeded eighteen months.

Time-limits for detention "before the court"

81. Once the investigation was considered to be complete and the defendant had received the bill of indictment and finished reading the case file, the file was transferred to a trial court. From that day the defendant's detention was "before the court" (or "pending the trial"). Until 14 March 2001 the Code set no time-limit for detention "pending the trial".

D. Proceedings to examine the lawfulness of detention

During detention "pending the investigation"

82. The detainee or his (her) counsel or representative could challenge the detention order, and any subsequent extension order, in court (Article 220^1). The judge was required to review the lawfulness and justification of a detention or extension order no later than three days after receipt of the relevant materials. The review was to be conducted *in camera* in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances when the detainee waived his right to be present of his own initiative. The judge could either dismiss the challenge or revoke the detention on remand and order the detainee's release. A judge's decision was to be reasoned (Article 220^2).

During the trial

83. After a judge received the case-file and before the trial began, the judge had to decide, in particular, whether the defendant was to stay in custody or to be released pending trial (Article 222 § 5) and to rule on the defendant's application for release, if submitted (Article 223). If the

application was refused, it could be re-introduced after the beginning of the trial (Article 223).

84. At any moment during the trial the court could order, amend or revoke any preventive measure, including detention on remand (Article 260). Such decision was to be delivered in the form of a procedural order signed by all judges on the bench (Article 261).

85. Pursuant to the ruling of the Constitutional Court of 2 July 1998, all procedural orders made during the trial and having the effect of extending the applicant's detention on remand could be appealed against to a higher court, separately from the judgment on the merits.

86. The time-limits for examination of the appeal against the procedural order rejecting the application for release were the same as those established for appeals against the judgment (see § 89 below) (Article 331 *in fine*).

E. Time-limits for trial

87. The case examination was required to start no later than fourteen days after the judge issued a procedural order fixing a hearing date (Articles 223^1 and 239). The duration of the trial was not limited in time.

88. The appeal court was required to examine an appeal against the first-instance judgment within ten days upon its receipt. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court of the Russian Federation this time-limit could be longer, up to two months (Article 333). No possibility of further extensions was provided for.

THE LAW

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

89. The applicant complained about a violation of his right to be tried within a reasonable time or to be released pending trial. He invoked Article 5 § 3 of the Convention which provides 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. Period to be taken into consideration

90. The Court first recalls that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken

into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV).

91. The Court has competence *ratione temporis* to consider the period which elapsed between the ratification of the Convention by the Russian Federation on 5 May 1998 and the applicant's release from custody on 29 February 2000. However, when determining whether the applicant's continued detention after 5 May 1998 was justified under Article 5 § 3 of the Convention, it must take into account the fact that by that date the applicant, having been placed in detention on 31 August 1995, had already been in custody for more than two years and eight months (see *Mansur v. Turkey*, judgment of 8 June 1995, Series A no. 319-B, § 51).

92. Furthermore, the Court recalls that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI; *Barfuss v. the Czech Republic* (dec.), no. 35848/97, 7 September 1999). Accordingly, the applicant's detention from 17 July 1998, the date of his original first-instance conviction, to 3 June 1999, the date on which that conviction was quashed and his case remitted, cannot be taken into account for the purposes of Article 5 § 3. The Court consequently finds that the period to be taken into consideration consisted of two separate terms, the first lasting from 5 May 1998 (on which date the applicant had been in detention for two years and eight months) to 17 July 1998 and the second from 3 June 1999 to 29 February 2000, and amounted to eleven months and eight days.

B. Reasonableness of the period of detention

1. Arguments before the Court

93. The applicant indicated that the domestic courts had justified his continued detention on remand by reference to the gravity of the charges against him and his potential to abscond or obstruct justice. Although these grounds were arguably compatible with the domestic law and the Court's case-law, the domestic decisions did not point to any specific facts corroborating the hypothesis that he would flee from justice or obstruct the proceedings. In this sense, the reasons given in the decisions of the Smolninskiy District Court of 26 July and 30 December 1999, cited by way

of example, were "general and abstract". The district court did not take notice of the fact that the applicant had had a permanent residence and family ties, and no criminal record. Moreover, on 29 February 2000 the St. Petersburg City Court ordered the applicant's release from custody, having found that there was no reason to believe that the applicant would abscond or interfere with the establishment of the truth. The applicant pointed out that this decision had been grounded on the very same circumstances which the district court had previously relied upon to reach the opposite conclusions. Furthermore, only one month after his release against the undertaking not to leave the town, the investigator granted him permission to visit his parents in the Ukraine, which showed that the authorities had no reasons to fear his absconding. His return to Russia on time, while the criminal proceedings were still pending, also confirmed that he had no intention to flee from justice.

94. The applicant further submitted that the domestic authorities had failed to display special diligence in the conduct of the proceedings. The case was not particularly complex; in late 1999 the case-file comprised eleven volumes and in the first trial only nine witnesses had been heard. Significant delays were due to the lack of due diligence on the part of the domestic authorities and the poor quality of the investigation. On several occasions the investigation had to be re-opened for the sole reason that the trial court established a procedural defect or a violation of the applicant's procedural rights.

95. The Government submitted that the applicant had been placed in custody and detained on remand in accordance with the then current RSFSR Code on Criminal Procedure account being taken of the gravity of the charges against him and his potential to abscond to Kharkov in the Ukraine where he had been born and where his parents had lived. Moreover, at the court hearings in February 1998 the applicant allegedly exercised pressure on witnesses, falsely accusing them of crimes; such conduct gave rise to doubts as to his sanity and the court ordered a forensic psychiatric examination of the applicant. Taking into account the applicant's behaviour and his previous employment with the St. Petersburg transport police, the domestic authorities had valid reasons to believe that he could collude with others in order to interfere with the establishment of the truth. The Government contended that on several occasions the appeal court had upheld the first-instance court's decisions extending the applicant's detention on remand.

96. The Government further indicated that upon his release, the applicant had submitted many requests for permission to leave St. Petersburg for various reasons. He also unsuccessfully asked for the lifting of the undertaking not to leave the town. In the Government's view, these facts attested to the applicant's intention to change his place of residence and to delay the proceedings in his case.

2. Principles established by the Court's case-law

97. The Court recalls that the issue of whether a period of detention is reasonable cannot be assessed in the abstract. This must be assessed in each case according to its special features, the reasons given in the domestic decisions and the well-documented facts mentioned by the applicant in his applications for release. Continued detention 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 (see, among other authorities, *Labita v. Italy* [GC], cited above, § 152).

98. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable 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 requirement 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 well-documented 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*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35). The arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Furthermore, where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

99. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, among others, *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], cited above, § 153).

3. Application of the above principles to the present case

100. The Court observes that during the period under consideration the grounds for the applicant's continued detention were examined by the district court on 17 July 1998, 26 July, 26 November and 30 December

1999 and by the city court on 2 November 1999 and 29 February 2000. Each time the domestic courts noted that the applicant's detention was extended in accordance with the rules of criminal procedure and referred to the gravity of the charge against him and the risk of his interfering with the administration of justice or absconding.

101. The Court accepts that the suspicion against the applicant of having committed serious offences could have initially warranted his detention. It agrees that at the initial stage of the proceedings the need to ensure the proper conduct of the investigation and to prevent the applicant from absconding or re-offending could justify keeping him in custody. However, even though the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the Court recalls that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, cited above, § 81).

102. As regards the applicant's presumed potential to interfere with the establishment of the truth, the Court notes that with the passage of time this ground inevitably became less and less relevant. The applicant was detained throughout the investigation and the first trial while evidence was being collected and statements were being taken from witnesses. However, he remained in custody even after his conviction had been quashed on appeal. On 3 June 1999 the St. Petersburg City Court admitted that the proceedings had been excessively long, but nevertheless it prolonged the applicant's detention for an indefinite period pending new trial (see paragraph 31 above).

103. The Court does not find it established that the prolonged detention served the purpose of securing the proper course of the proceedings. In fact, whilst in the first trial only nine witnesses had been heard, in the second round of proceedings which began almost a year after the applicant's release, the district court took evidence from 33 witnesses. It is not alleged that the applicant attempted to exercise pressure on those called to the witness stand in the course of the renewed proceedings and, in any event, these proceedings were eventually discontinued, in part due to the prosecution's abandoning of the charges and, as to the rest, as being time-barred.

104. As regards the Government's submission concerning the risk of collusion because of the applicant's past employment with the police, the Court reiterates that it is not its task to take the place of the national authorities who ruled on the applicant's detention. It falls to them to examine all the facts arguing for or against detention and set them out in their decisions (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003; *Labita v. Italy*, cited above, § 152). These specific allegations were made for the first time in the proceedings before the Court and the domestic courts never mentioned them in their decisions during the period under consideration.

105. As regards the existence of the risk of absconding, the Court recalls that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 43). In the present case the decisions of the domestic authorities give no reasons why, notwithstanding the arguments put forward by the applicant in support of his applications for release, they considered the risk of his absconding to be decisive. In this connection the Court cannot overlook the applicant's submission that he was granted permission to visit his parents – not just in another town but in another state – barely three months after the district court had held for the last time that holding him in custody had been the only certain means to prevent him from absconding. A further permit was granted to him in August 2000, a mere six months after his release. The granting of such permits demonstrates that the domestic authorities considered the flight risk to be negligible. As no new factors reducing such risk appear to have come into being between the applicant's release and the issuing of the permits, the Court considers that during the final phase of the applicant's detention the authorities cannot have had reasonable grounds to keep him in custody in order to prevent his absconding.

106. The Court finally observes that the decisions extending the applicant's detention on remand were stereotypically worded and in summary form. They did not describe in detail the applicant's personal situation beyond a mere reference to his "personality" and were not accompanied with any explanation as to what his personality actually was and why it made his detention necessary. In fact, it was not until 29 February 2000 that the city court, when ordering the applicant's release from custody, took stock of the applicant's personal circumstances, such as his permanent residence and family ties, positive work references and the absence of a criminal record, which mitigated, if not removed, the risk of his absconding or interfering with the administration of justice. The Court notes that this decision appears to be the first one in the four years of the applicant's detention when the domestic courts addressed the arguments concerning his personal situation, which he repeatedly – and unsuccessfully – raised in his appeals against the prolonged detention. This is all the more remarkable, taking into account that these arguments referred to facts of which the domestic authorities had had full knowledge from the first days of the proceedings.

107. The Court accordingly concludes that, by failing to address pertinent facts, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "sufficient". In those circumstances it

is not necessary to examine whether the proceedings were conducted with "special diligence".

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

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

109. The applicant complained that the final decision concerning his appeals against the order of 26 July 1999 rejecting his application for release, namely the decision of the St. Petersburg City Court of 2 November 1999, had not been rendered "speedily" in breach of Article 5 § 4 of the Convention which provides 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. Arguments before the Court

110. The applicant submitted that it had taken the St. Petersburg City Court three months and four days to examine his appeals lodged on 29 July and 1 August 1999 against the decision of the Smolninskiy District Court. He and his lawyer lodged the appeals in good time and the only delay which could be arguably attributed to their fault was the period between 24 and 31 August 1999 when the lawyer could not be present at the hearings. The next hearing, scheduled for 28 September 1999, did not take place because the appeal court was not in possession of the case-file. In the applicant's view, this fact, which is in itself bizarre, not only shows an impermissible lack of care on the part of the domestic authorities, but also provokes doubts as to whether the appeal could have been considered on 24 or 31 August 1999, had the lawyer been present on these dates. The applicant noted that the national authorities had had sufficient time to obtain the case-file and ensure speedy examination of his appeal, which had not been done because of the unlawful re-opening of the investigation. The applicant interpreted the admission contained in the decision of the Oktyabrskiy Court of 13 April 2000 to the effect that the investigation between 21 September and 26 October 1999 had been unlawful as a clear indication that the delays during that period had been attributable to the authorities.

111. The Government conceded that the decision of the Oktyabrskiy Court of 13 April 2000 had established the unlawfulness of the additional investigation between 21 September and 26 October 1999, as well as the unlawfulness of the applicant's detention during that period. They claimed, however, that the applicant had not applied for compensation in accordance

with the procedure described in Articles 135 and 136 of the Russian Code on Criminal Procedure.

112. The Government further submitted that the forwarding of the case-file to the North-Western transport prosecutor's office had not been the sole reason for the belated examination of the applicant's appeal against the decision of 26 July 1999. In fact, the investigation lasted only from 21 September to 26 October 1999, i.e. only a third of the period during which the appeal was not examined. For a much longer period of approximately one and a half months the appeal could not be considered due to the vacation of the applicant's lawyer.

B. The Court's assessment

1. The Government's preliminary objection

113. The Government, in their additional observations following the Court's decision as to the admissibility of the application, contended for the first time that the applicant had not exhausted domestic remedies in respect of his complaint under Article 5 § 4 of the Convention because he had not applied for compensation in connection with the domestic courts' finding of the unlawfulness of the additional investigation between 21 September and 26 October 1999.

114. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). The Government's submissions referred to the events that had occurred before the application was declared partly admissible by the Court and there had been no relevant legal developments thereafter. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the Court's decision as to the admissibility of the application on 16 March 2004.

115. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings. The Government's objection must therefore be dismissed.

2. Compliance with Article 5 § 4 of the Convention

116. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of

such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (*Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, § 28; *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per instance may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also recalls that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

117. In the present case the Court observes that the applicant made an application for release at the hearing on 26 July 1999 and the trial court rejected it on the same day. His appeal against rejection and that of his lawyer were examined on 2 November 1999, i.e. ninety-eight days later.

118. The Court observes that, pursuant to the then Code of Criminal Procedure, an appeal against the order rejecting the application for release was to be considered within ten days upon its receipt (see paragraphs 87 and 89 above). The applicant and his lawyer submitted their appeals on 29 July and 1 August 1999, respectively. However, the first hearing was only listed twenty-four days later, i.e. more than twice the time afforded by the domestic law. The Government did not offer any explanation for this delay.

119. The Government averred, and it was conceded by the applicant, that the appeals had not been examined on either 24 or 31 August 1999 due to the absence of the applicant's lawyer. The Court accepts that a certain delay was attributable to the applicant; its duration, however, cannot be determined precisely because neither party indicated whether the date of the next hearing (28 September) had been fixed by the court of its own motion or whether such had been the applicant's preference.

120. The Court further observes that the remaining delays were entirely due to the conduct of the domestic authorities. The forwarding of the case-file to the North-Western transport prosecutor's office made the examination of the appeal impossible at least between 21 September and 26 October 1999, i.e. for one month and five days, plus several days required for its transfer between the district court, city court and the prosecutor's office.

121. Taking into account that the unlawfulness of the investigation during that period had been acknowledged by the domestic authorities (see

paragraphs 51 and 112 above) and that no exceptional grounds justifying the delays were invoked, the Court finds that these proceedings were not conducted "speedily", as required by Article 5 § 4 of the Convention. Accordingly, there was a violation of that provision.

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

122. The applicant complained that the criminal charge against him had not been determined within a reasonable time, as required by Article 6 § 1 of the Convention which reads as follows:

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

A. Period to be taken into consideration

123. The Court recalls that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see, among many authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI).

124. The period to be taken into consideration in the present case thus began on 29 August 1995 when the prosecutor opened a criminal case against the applicant. It ended on 4 February 2004 when the criminal proceedings were discontinued. The proceedings thus lasted eight years, five months and six days.

125. The Court has jurisdiction *ratione temporis* to examine the period after the entry into force of the Convention with respect to Russia on 5 May 1998 and until the discontinuation of the proceedings on 4 February 2004, which amounts to five years and nine months. It may take into account the state of the proceedings existing on the ratification date (*ibid*.).

B. The reasonableness of the length of proceedings

1. Arguments before the Court

126. The applicant submitted that the length of proceedings in his case had been excessive and that the domestic authorities failed to discharge the duty of special diligence owed to persons kept in detention pending trial. His case was not particularly complex because he was the only defendant and because the trial court only interviewed 9 (in the first trial) and 33 (in the second trial) witnesses. He did not substantially contribute to the length of the proceedings. On the other hand, as he noted above (§ 95), many

prolonged delays had been due to the poor quality of the investigation and procedural shortcomings. There was also an unexplained three-year delay between the return of the case for additional investigation in 1999 and the opening of the new trial on 17 June 2002. The applicant also relied on the "special finding" by the St. Petersburg City Court of 3 June 1999 which established that the length of the trial had been excessive and instructed the president of the trial court to take measures to remedy the situation.

127. The Government submitted that the length of the proceedings in the applicant's case had been due to "objective reasons", such as, in particular, the obligation to consider many requests lodged by the applicant and his counsel, as well as to the applicant's own conduct because he had "evidently sought to protract the judicial proceedings".

2. The Court's assessment

128. The Court recalls that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. On the latter point, what is at stake for the applicant has also to be taken into consideration (see, among many other authorities, *Kalashnikov v. Russia*, cited above, § 125).

129. As regards the complexity of the case, the Court notes that the proceedings at issue concerned several incidents of theft, robbery, misappropriation and abuse of power and required the questioning of victims and witnesses, a majority of whom lived outside St. Petersburg or even outside Russia. It observes, however, that in the first trial only nine of them had been interviewed before the district court delivered the judgment. It also has regard to the "special finding" of the appeal court (see paragraph 31 above) which acknowledged that the length of the trial had been excessive and urged the trial court to expedite the proceedings.

It was thus not the complexity of the case which accounted for the length of the proceedings.

130. The Court further notes that throughout the domestic court proceedings the applicant filed many requests in connection with his case, both during his trial and between hearings. It reiterates that Article 6 does not require a person charged with a criminal offence to co-operate actively with the judicial authorities. In particular, applicants cannot be blamed for taking full advantage of the resources afforded by national law in their defence (see *Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A no. 319-A, § 66).

131. The Government did not point to any specific manifestations of the applicant's intent to obstruct or delay the proceedings during the period under consideration. Even though the applicant can be criticised for his difficult behaviour towards the presiding judge and witnesses at the

hearings in September and December 1997, these events occurred before the beginning of the period in question. It does not appear that during the second trial the applicant went beyond the limits of legitimate defence or lodged any frivolous petitions with the courts.

The Court finds that, whilst the applicant can be held responsible for certain delays, his conduct did not contribute substantially to the length of the proceedings.

132. As regards the conduct of the domestic authorities, the Court notes that their actions or rather failures to act contributed to many delays in the proceedings. In this connection it recalls that throughout a significant part of the proceedings the applicant was kept in custody – a fact which required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Kalashnikov v. Russia*, cited above, § 132).

133. The repeated failures of the domestic authorities to respect the rights of the defence and, in particular, the applicant's right to study the case-file lay at the origin of the longest delays in the proceedings. On 11 November 1998, 26 July and 30 December 1999, 10 January 2001 the courts determined that they could not proceed with examination of the case because the applicant had not been given sufficient time to access the file or because other procedural violations had been established. As a consequence, the proceedings were adjourned for periods ranging from three to nine months. The Court considers that it is unimportant whether the procedural defect that prompted the adjournment had been identified by the prosecution, by the applicant or by the court itself and whether the applicant consented to the adjournment, it being incumbent on the State authorities to organise the investigation in such a way so as to comply with time-limits, without prejudicing the rights of defence.

134. The poor quality of the investigation also contributed to the prolongation of the proceedings. Although a criminal case had been opened barely a year after the offences imputed to the applicant had been last committed, ten years later the prosecution became time-barred in respect of most charges and, as to the remainder, the prosecutor dropped the charges because evidence sufficient for securing a conviction had not been collected. It is also remarkable that, in dismissing the applicant's complaint about a violation of the "reasonable time" requirement, on 18 May 2002 the district court explained the reasonableness of the overall duration of the investigation by reference to, in particular, "the remoteness [in time] of the criminal offence", disregarding the fact that the investigation had been pending throughout all that time.

135. Lastly, the Court notes that further delays in the proceedings were due to infrequent hearings during the second trial. It appears from the parties' submissions that between 17 June 2002 when the case was referred for trial and the end of the proceedings on 4 February 2004 fewer than

twenty hearings were listed, with significant delays between them, such as the one in summer 2002 when the judge went on leave. Although the applicant was not in custody, the Court finds that the trial court should have fixed a tighter hearing schedule in order to speed up the proceedings (cf. *Čevizović v. Germany*, no. 49746/99, 29 July 2004, §§ 51 and 60).

136. Having regard to the foregoing, the Court considers that the length of the proceedings did not satisfy the "reasonable time" requirement. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

137. 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

138. The applicant claimed compensation for non-pecuniary damage, leaving the determination of the amount to the Court.

139. The Government contested his claim.

140. The Court considers that the applicant must have suffered frustration, helplessness and a feeling of injustice as a consequence of the domestic authorities' decision to hold him in custody without sufficient reasons, the prolonged determination of his application for release and the particularly slow pace of the criminal proceedings against him. It finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation (see *Smirnova v. Russia*, cited above, § 105; *Kalashnikov v. Russia*, cited above, § 142; and, by contrast, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II). Accordingly, making its assessment on an equitable basis, the Court awards the applicant 4,000 euros, plus any tax that may be chargeable on that amount.

B. Costs and expenses

141. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

142. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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.

Done in English, and notified in writing on 8 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President