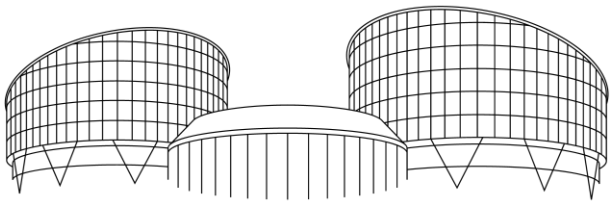

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAVENKOVA v. RUSSIA

(Application no. 30930/02)

JUDGMENT

STRASBOURG

4 March 2010

FINAL

04/06/2010

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

In the case of Savenkova v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 30930/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Tatyana Rafilovna Savenkova ("the applicant"), on 8 July 2002.

2. The applicant was represented by Ms O. Mikhaylova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and excessively long and that her applications for release had not been examined speedily.

4. On 8 June 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1958 and lives in Tambov.

The applicant's arrest and pre-trial detention

7. The applicant's father and Mrs K. co-owned a cottage in Tambov. The applicant's father decided to sell his share of the cottage and authorised the applicant to organise the sale.

8. On 4 July 2001 Mrs K. was murdered. On the same date Mr Z., who had carried out certain repair works for the applicant, was arrested by the police and confessed to the murder. He told the police that the applicant had instigated the crime and promised him remuneration for the murder. On the same day the police conducted a search of the applicant's flat.

9. The date and time of the applicant's arrest are disputed between the parties. According to the applicant, she was arrested at 6 p.m. on 4 July 2001. According to the Government, she was arrested at 2.40 a.m. on 5 July 2001, the time indicated in the arrest report drawn up by the investigator and signed by the applicant.

On 6 July 2001 the Prosecutor of the Oktyabrskiy District of Tambov authorised the applicant's pre-trial detention. The order stated as follows:

> "[Taking into account] the gravity of the crime committed by [Mrs] Savenkova, and also the fact that at the present time there are insufficient grounds for bringing charges against her, the fact that she may abscond from the investigation and fail to appear at court, commit another crime or interfere with the establishment of the truth in the criminal case, [the investigator] has decided to choose with regard to [Mrs] Savenkova Tatyana Rafailovna ... detention in the Tambov SIZO-1 as a measure of restraint ..."

10. On 13 July 2001 the applicant was charged with incitement to murder.

11. On 6 August 2001 the applicant changed her legal counsel.

12. On 9 August 2001 the applicant made an application for the measure of restraint to be changed to an undertaking not to leave her place of residence. She submitted that her second son, having been injured in an accident, was in hospital, and her younger daughter of three needed to be taken care of.

13. On 22 August 2001 the Oktyabrskiy District Court of Tambov dismissed the application as follows:

> "On 6 July 2001 a measure of restraint was chosen by the Prosecutor of the Oktyabrskiy District in respect of [Mrs] Savenkova.

> [Mrs] Savenkova requests that the measure of restraint be changed as she is not guilty, has three children, and her son has been injured in an accident.
>
> The measure of restraint was chosen lawfully and reasonably, and took into consideration the gravity of the charges.
>
> Pursuant to Article 220-2 of the [RSFSR] Code of Criminal Procedure, [the court] has decided to dismiss the complaint.
>
> This decision may be appealed against to the Tambov Regional Court within seven days."

14. The applicant did not appeal against the decision.

15. On 29 August 2001 the acting Prosecutor of the Oktyabrskiy District of Tambov extended the applicant's pre-trial detention to 5 October 2001, referring to the gravity of charges as grounds.

16. On 2 October 2001 the acting Deputy Prosecutor of the Tambov Region extended the applicant's pre-trial detention to 4 November 2001, referring to the gravity of charges and the risk of fleeing justice and obstructing the investigation.

17. On 29 October 2001 the acting Deputy Prosecutor of the Tambov Region extended the applicant's pre-trial detention to 4 December 2001, referring to the gravity of the charges and the risk of fleeing justice and obstructing the investigation.

18. On 4 December 2001 the criminal case file was submitted to the Tambov Regional Court for examination on the merits.

19. On 10 December 2001 the applicant's counsel sent a telegram to the Tambov Regional Court requesting it to terminate the applicant's prosecution and release her from custody.

20. On 19 December 2001 the Tambov Regional Court scheduled the first trial hearing to take place on 4 January 2004 and held that the preventive measure applied to the applicant, the detention in the Tambov SIZO-1, "should remain unchanged".

21. On 14 March 2002 the Tambov Regional Court found the applicant guilty of incitement to murder and sentenced her to eight years' imprisonment. Z. was found guilty of murder and sentenced to twelve years' imprisonment.

22. On 14 June 2002 the Supreme Court of the Russian Federation examined and dismissed an appeal by the applicant. The applicant and Z. were transferred to correctional facilities to serve their sentences.

23. On 30 August 2002 the Deputy Prosecutor General, at the applicant's request, lodged an application for supervisory review of the judgment.

24. On 23 October 2002 the Presidium of the Supreme Court of the Russian Federation granted the request for supervisory review, quashed the judgment on the grounds of inadequate legal assistance to Z., and remitted

the case to the first-instance court for fresh examination. The Supreme Court ordered the applicant and Z. to remain in custody.

25. On 13 November 2002 the case file was transferred to the Tambov Regional Court. On an unspecified date the applicant and Z. were transferred to the Tambov SIZO-1 and remained there awaiting the second trial.

26. On 20 November 2002 the Tambov Regional Court conducted a hearing of the criminal case where the applicant allegedly challenged the detention order and requested to be released. She provided a copy of the application, signed by her counsel Kh., but claims that the court did not examine it.

27. According to the applicant, on 9 December 2002 her lay representative, R., lodged another application with the Tambov Regional Court for the measure of restraint to be changed to an obligation not to leave her place of residence. According to the Government, this application was lodged on 20 January 2003.

28. On 20 January 2003, before the hearing of her case by the Tambov Regional Court, the applicant's counsel Kh. made an application to the court challenging the applicant's continued pre-trial detention and requesting that the measure of restraint be changed to an undertaking not to leave her place of residence. The application was examined and dismissed by the Tambov Regional Court with reference to the gravity of the charges.

29. On 9 April 2003 the Tambov Regional Court acquitted the applicant and Z. of all charges because of lack of evidence. They were released in the court room. The prosecutor appealed against the acquittal.

30. On 9 June 2003 the Supreme Court of the Russian Federation granted the prosecutor's appeal, reversed the judgment of 9 April 2003 and remitted the case for a fresh first-instance examination.

31. On 19 February 2004 the Tambov Regional Court found the applicant guilty as charged and sentenced her to eight years' imprisonment. Z. was sentenced to twelve years' imprisonment. They were taken into custody from the court room.

32. On appeal, on 16 April 2004 the Supreme Court of the Russian Federation upheld the judgment of 19 February 2004 in substance, but reduced the applicant's sentence to five years' imprisonment and Z.'s sentence to nine years' imprisonment.

33. On 14 January 2005 the Supreme Court of the Russian Federation granted the applicant's request for the suspension of her imprisonment and she was released.

II. RELEVANT DOMESTIC LAW

34. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the RSFSR (Law of 27 October 1960, "the old CCrP"). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the new CCrP").

A. Preventive measures

35. "Preventive measures" (*меры пресечения*) include an undertaking not to leave a town or region, personal security, bail and detention (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention

36. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or have his or her detention extended (Article 22).

37. Under the old CCrP, a decision ordering detention could be taken by a prosecutor or a court (Articles 11, 89 and 96).

38. The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1 and 3-6).

C. Grounds for ordering detention on remand

39. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

40. Before 14 March 2001, detention 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 old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment or if they had previously absconded or had no permanent residence in Russia, or if their identity could not be ascertained. The amendments of 14 March 2001 also repealed the provision that permitted defendants to be remanded in custody on the sole ground of the

dangerous nature of the criminal offence they had committed. The new CCrP reproduced the amended provisions (Articles 97 § 1 and 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

D. Time-limits for detention

1. Two types of detention

41. The Codes distinguished between two types of detention: detention "pending the investigation", that is, while a competent agency – the police or a prosecutor's office – investigated the case, and detention "before the court" (or "during the trial"), that is, while the case was being tried in court. Although there was no difference in practice between them (the detainee was held in the same detention facility), the calculation of the time-limits was different.

2. Time-limits for detention "pending the investigation"

42. After arrest the suspect is placed in custody "pending the investigation". The maximum permitted period of detention "pending the investigation" is two months but it can be extended for up to eighteen months in "exceptional circumstances". Extensions were authorised by prosecutors of ascending hierarchical levels (under the old CCrP) but must now be authorised by judicial decisions taken by courts of ascending levels (under the new CCrP). No extension of detention "pending the investigation" beyond eighteen months is possible (Article 97 of the old CCrP, Article 109 § 4 of the new CCrP).

43. The period of detention "pending the investigation" is calculated up to the day when the prosecutor sends the case to the trial court (Article 97 of the old CCrP, Article 109 § 9 of the new CCrP).

44. Access to the case file materials is to be granted no later than one month before the expiry of the authorised detention period (Article 97 of the old CCrP, Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge, at the request of a prosecutor, may grant an extension of detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

45. Under the old CCrP, the trial court had the right to remit the case for an "additional investigation" if it established that procedural defects existed that could not be remedied at the trial. In such cases the defendant's detention was again classified as "pending the investigation" and the relevant time-limit continued to apply. If, however, the case was remitted

for an additional investigation but the investigators had already used up all the time authorised for detention "pending the investigation", a supervising prosecutor could nevertheless extend the detention period for one additional month from the date he received the case. Subsequent extensions could only be granted if the detention "pending the investigation" had not exceeded eighteen months (Article 97).

3. Time-limits for detention "before the court"/"during the trial"

46. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial").

47. Before 14 March 2001 the old CCrP set no time-limit for detention "during the trial". On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention "during the trial" could not normally exceed six months from the date the court received the file. However, if there was evidence to show that the defendant's release might impede a thorough, complete and objective examination of the case, a court could – of its own motion or on at the request of a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with a particularly serious criminal offence.

48. The new CCrP establishes that the term of detention "during the trial" is calculated from the date the court receives the file to the date the judgment is given. The period of detention "during the trial" may not normally exceed six months, but if the case concerns serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

E. Proceedings to examine the lawfulness of detention

1. During detention "pending the investigation"

49. Under the old CCrP, the detainee or his or her counsel or representative could challenge a detention order issued by a prosecutor, and any subsequent extension order, before a court. The judge was required to review the lawfulness of and justification for a detention or extension order no later than three days after receipt of the relevant papers. The review had to be conducted in camera in the presence of a prosecutor and the detainee's counsel or representative. The detainee had to be summoned and a review in his absence was only permissible in exceptional circumstances if the detainee waived his right to be present of his own free will. The judge could either dismiss the challenge or revoke the pre-trial detention and order the detainee's release (Article 220-1).

50. An appeal to a higher court lay against the judge's decision. It had to be examined within the same time-limit as appeals against a judgment on the merits (Article 331 *in fine*).

51. Under the new CCrP, an appeal may be lodged with a higher court within three days of a judicial decision ordering or extending detention on remand. The appeal court must decide the appeal within three days of its receipt (Article 108 § 10).

2. During the trial

52. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 222 § 5 and 230 of the old CCrP, Articles 228 (3) and 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP). If the application is refused, a fresh application can be made once the trial has commenced (Article 223 of the old CCrP).

53. At any time during the trial the court may order, vary or revoke any preventive measure, including detention (Article 260 of the old CCrP, Article 255 § 1 of the new CCrP). Any such decision must be given in the deliberations room and be signed by all the judges of the bench (Article 261 of the old CCrP, Article 256 of the new CCrP).

54. An appeal against such a decision lies to the higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against a judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP).

F. Time-limits for trial

55. Under the old CCrP, within fourteen days of receipt of the case file (if the defendant was in custody), the judge was required either: (1) to fix the trial date; (2) to return the case for an additional investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court with jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing (*предварительное слушание*); or (3) to fix a date for trial (Article 227). The trial must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

56. The duration of the trial is not limited.

57. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days of its receipt. In exceptional circumstances or in complex cases, or in proceedings before the

Supreme Court, this time-limit could be extended by up to two months (Article 333). No further extensions were possible.

58. The new CCrP establishes that the appeal court must start the examination of the appeal no later than one month after its receipt (Article 374).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

59. The applicant complained under Article 5 § 1 (c) of the Convention that her detention had been unlawful. The relevant parts of Article 5 provide:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence, or fleeing after having done so ..."

A. Submissions by the parties

60. The Government argued that the applicant's detention had been lawful and had complied with the requirements of Article 5 § 1 of the Convention. It had been duly authorised and was justified not only by the gravity of the charges but also the likelihood that the applicant would flee, commit another crime or obstruct the course of justice. They further submitted that the applicant had not exhausted domestic remedies as regarded her detention before 14 March 2002. In particular, she had not appealed against the decision of the Oktyabrskiy District Court of Tambov of 22 August 2001, or the subsequent extensions by the prosecutor's office, and she had not made any requests for release while the case was being examined by the court. Between 14 March 2002 and 23 October 2002 the applicant had been serving her sentence in accordance with the judgment of the Tambov Regional Court. On the latter date the Presidium of the Supreme Court had quashed the judgment in supervisory review proceedings and remitted the case for fresh examination by the fist-instance

court. It had also ordered the applicant's detention pending a new trial; since the scope of the new trial was supposed to be based on the same facts, the grounds for the applicant's detention were, by implication, the same as during the first set of proceedings. For this reason the Presidium was absolved from stating any reasons for her detention. After 13 November 2002, when the case file had been transferred to the Tambov Regional Court, the applicant's detention had been covered by Article 255 of the new CCrP and had not required the court's authorisation because the supervisory instance had already authorised it. The length of the detention between 23 October 2002 and 9 April 2004, when the applicant had been acquitted and released, had not exceeded the statutory limit of 18 months and had been reasonable.

61. The applicant disagreed with the Government's position. Contesting their objection as to the non-exhaustion of domestic remedies as regarded the period between 4 July 2001 and 14 March 2002, she claimed that on 10 December 2001 she had complained about her detention to the Tambov Regional Court, but that the complaint had not been examined. Instead, on 19 December 2001, the court had ordered her detention to continue. She maintained that her detention had been neither lawful nor justified throughout the proceedings.

B. The Court's assessment

1. Admissibility

62. The Court observes that the applicant's complaints refer to her initial arrest on 4-5 July 2001, her pre-trial detention between 6 July 2001 and 4 December 2001, and also the period of detention after the transfer of the case file to the court which ended with the applicant's conviction on 14 March 2002 (the first set of proceedings); further complaints relate to her detention between 23 October 2002, when the case was remitted for fresh examination following the supervisory review, and 9 April 2003 when she was acquitted (the second set of proceedings). As regards the first set of proceedings, the Court notes that the last decision concerning the lawfulness of the applicant's detention during that period was taken by the Tambov Regional Court on 19 December 2001, that is, more than six months before 8 July 2002, when the applicant lodged her application with the Court. Accordingly this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Salmanov v. Russia* (dec.), no. 3522/04, 19 January 2006; *Korchuganova v. Russia*, no. 75039/01, § 44, 8 June 2006; *Pavlík v. Slovakia*, no. 74827/01, § 89, 30 January 2007; and *Ignatov v. Russia*, no. 27193/02, § 71, 24 May 2007).

63. The Court further observes that it has competence to examine the applicant's complaint relating to the second set of proceedings. The Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

64. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

65. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Application of the general principles to the present case

66. The Court notes that on 23 October 2002 the Presidium of the Supreme Court of the Russian Federation quashed the judgment by which the applicant had been convicted, and ordered that she should remain in custody while the case was re-examined. On 20 January 2003 the Tambov Regional Court dismissed the applicant's application for release.

67. The Court observes that the Presidium of the Supreme Court gave no reasons for its decision to remand the applicant in custody. Nor did it set a time-limit for the continued detention or for a periodic review of the preventive measure. The Tambov Regional Court, having received the case file on 13 November 2002, did not re-examine the detention matter. The Government argued that it was not incumbent on the Presidium of the

Supreme Court or the Tambov Regional Court to justify the detention order, provided that her detention did not exceed the statutory limit of eighteen months, since the charges against the applicant remained the same as in the previous set of proceedings.

68. The Court has already found violations of Article 5 § 1 (c) of the Convention in a number of cases against Russia concerning a similar set of facts (see, for example, *Solovyev v. Russia*, no. 2708/02, §§ 95-100, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 65-70, 28 June 2007; and *Belov v. Russia*, no. 22053/02, §§ 79-82, 3 July 2008). In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see also *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X).

69. The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 23 October 2002 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness which together constitute the essential elements of "lawfulness" of detention within the meaning of Article 5 § 1.

70. The Court therefore considers that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 23 October 2002 to 9 April 2003.

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

71. The applicant complained that her pre-trial detention had been excessively long and that it had been repeatedly extended without any indication of relevant and sufficient reasons. She relied on Article 5 § 3 of the Convention, which provides:

> "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. Submissions by the parties

72. The Government submitted that the length of the applicant's detention during the investigation and judicial proceedings had not been

excessive. The time-limits provided for by the domestic law had not been exceeded, and her detention was necessary in view of the gravity of charges and the likelihood of her fleeing or obstructing the course of justice.

73. The applicant maintained her complaints.

B. The Court's assessment

1. *Admissibility*

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

2. *Merits*

(a) General principles

75. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified 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, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

76. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

77. The Court further observes that 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 length of time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the facts submitted 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 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

78. 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). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific 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).

79. 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 continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, § 153).

(b) Application of the general principles to the present case

(i) Period to be taken into consideration

80. The Court reiterates 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 *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Klyakhin v. Russia*, no. 46082/99, § 57, 30 November 2004; and *Labita*, cited above, §§ 145 and 147).

81. The Court notes that the date and time of the applicant's initial arrest is disputed by the parties; however, the Court considers a difference of several hours immaterial for the purposes of assessing the length of the period at issue in the present case. It will assume that the applicant was taken into custody no later than on 5 July 2001, on which date the applicant was already in detention according to both parties. From that point on the applicant was detained within the meaning of Article 5 § 3 of the Convention until her conviction by the Tambov Regional Court on 14 March 2002. From the latter date until 23 October 2002, when the Presidium of the Supreme Court quashed the judgment of 14 March 2002, she was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a), and therefore that period of detention falls outside the scope of Article 5 § 3 (see *B. v Austria*, 28 March 1990, §§ 33-39, Series A no. 175, and *Kudła*, cited above, § 104). From

23 October 2002 to 9 April 2003 she was again in pre-trial detention falling under Article 5 § 3 of the Convention.

82. In order to assess the length of the applicant's pre-trial detention, the Court must make an overall evaluation of the accumulated periods of detention under Article 5 § 3 of the Convention (see, as recent authorities, *Belov*, cited above, § 102; *Mishketkul and Others v. Russia*, no. 36911/02, § 40, 24 May 2007; and *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, ECHR 2007-... (extracts)). Consequently, having added together the two aforementioned periods, the Court concludes that the applicant was detained within the meaning of Article 5 § 3 of the Convention for one year, one month and twenty-five days.

(ii) Grounds for the continued detention

83. The Court notes that the Government, with reference to the detention orders issued in this case, advanced three principal reasons for the applicant to remain in detention, namely, the serious nature of the offence, which carried a prison sentence of significant length, the fact that the applicant would be likely to abscond, and the risk of her obstructing the course of justice.

84. The Court notes that the applicant's detention could initially have been warranted by these considerations. However, the Court reiterates in this respect that the authorities cannot justify continuing detention by a mere reference to such risks; they must refer to specific facts concerning the applicant's behaviour, his personal circumstances, and so on (see *Vlasov*, cited above, § 108). Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005).

85. In the present case the domestic authorities did not refer to any concrete facts and did not indicate any circumstance which suggested that, if released, the applicant would abscond or otherwise upset the course of the trial. Even if the domestic authorities were aware of any such matters, none were mentioned in the decisions concerning detention and it is not the Court's task to establish such matters and take the place of the national authorities who ruled on the issue of detention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006). The Court therefore finds that the existence of such risks was not established.

86. The Court also notes that with the passing of time the courts' reasoning did not evolve to reflect the developing situation or to verify whether these grounds remained valid at the advanced stages of the proceedings. On the contrary, from 4 December 2001 to 19 December 2001 the detention continued automatically, without any detention order, and the

judicial decision taken on the latter date gave no reasons, nor did it state any time-limits, thus implying that the applicant would remain in detention until the end of the trial. The detention order issued on 23 October 2002 by the Presidium of the Supreme Court also dispensed with indicating any reasons or time-limits for the detention. The decision taken by the Tambov Regional Court on 20 January 2003 dismissing the applicant's request for release, however, referred clearly to the gravity of the charges.

87. The Court cannot accept the Government's argument that there had been no need for the courts to state reasons for the detention since these remained, by implication, the same as those indicated in the earlier orders, and that the time-limits were in any event set by law. The Court reiterates that the authorities' obligation to set out their reasons for maintaining the detention as a "preventive measure" takes on even greater importance at the later stages of proceedings (see, among other authorities, *Bykov v. Russia* [GC] no. 4378/02, §§ 61-64, 10 March 2009). In the present case, the judicial instances could not dispense with verification of the grounds for the applicant's detention precisely because the risks referred to in the previous detention orders, in particular that the applicant would obstruct the course of justice, were likely to have diminished at the advanced stages of the proceedings, especially at the stage of supervisory review.

88. The Court further emphasises that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). At no time during the entire period under consideration did the authorities consider the possibility of ensuring the applicant's attendance by the use of one of the other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. Their failure to do is made all the more inexplicable by the fact that from 1 July 2002 the new Code of Criminal Procedure expressly required the domestic courts to consider less restrictive measures as an alternative to custody.

89. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They took no account of the arguments in favour of the applicant's release pending trial. The Court therefore finds that the authorities failed to adduce relevant and sufficient reasons to justify extending the applicant's detention pending trial to one year, one month and twenty-five days.

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

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

91. The applicant further complained that the courts had not examined "speedily" the applications for release she had lodged in the period between 4 September 2001 and 14 March 2002, or her applications for release lodged on 20 November 2002 and 9 December 2002. She relied on Article 5 § 4 of the Convention, which provides:

> "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. Submissions by the parties

92. The Government submitted that the applicant had not exhausted domestic remedies as regarded the period of her detention which ended on 14 March 2002. They pointed out that her only application for release in this period was dismissed on 22 August 2001, and the applicant did not lodge an appeal against that decision. As to her complaint about the delay in the examination of her request of 9 December 2002, they contested the date on which the request had been lodged with the court. According to the Government, the copy of the request submitted by the applicant did not indicate any date and had been made by the applicant at the court hearing on 20 January 2003, where it had been immediately examined.

93. The applicant maintained her complaints. In reply to the Government's allegation that no request had been submitted by her on 9 December 2002, she provided a copy of that request, endorsed and signed by the recipient, allegedly a court official, on that date. She claimed that this application had been ignored, as had her earlier application lodged on 20 November 2002

B. The Court's assessment

1. Admissibility

94. The Court notes the Government's objection as to the exhaustion of domestic remedies in relation to the first period of her pre-trial detention, that is, before 14 March 2002. It notes that the applicant claimed that she had lodged an application for release by sending a cable to the Tambov Regional Court on 10 December 2001. It observes, however, that following this request, on 19 December 2001 the court took a decision authorising the applicant's further detention. As the Court found above (see paragraph 62), this was the last decision concerning the lawfulness of the applicant's

detention during the first set of proceedings and it was taken more than six months before the applicant lodged her application with the Court. Accordingly, the Court has competence to examine only the complaint related to the release application which was determined on 20 January 2003.

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

2. Merits

(a) General principles

96. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained the 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 on the lawfulness of the detention and the ordering of 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 detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given "speedily" is undeniably one such guarantee and 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 observes 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).

(b) Application of the general principles to the present case

97. The Court observes that the Government did not comment on the applicant's allegation that counsel Kh. had lodged an application for release on 20 November 2002, but they contested the one allegedly filed by lay representative R. on 9 December 2002. According to the Government, the latter application was lodged on 20 January 2003 and it was examined on the same day. The Court notes that the case file contains copies of two applications by counsel Kh.: one of 20 November 2002 and another one of 20 January 2003. It observes, next, that the Tambov Regional Court referred in its decision of 20 January 2003 to "an application by lay representative R. and counsel Kh." without specifying when the application had been lodged. The Court, further, observes that the copy of the application signed by R.

did not indicate a date, but contained an endorsement that it had been "received on 9 December 2002". The Court accepts that the signature of the recipient was that of a court official because the Government did not challenge the validity or the origin of the endorsement. In view of the foregoing, the Court finds it to be established that three applications for release were lodged on the applicant's behalf: on 20 November 2002 by counsel Kh., on 9 December 2002 by lay representative R. and on 20 January 2003 by counsel Kh.

98. As indicated above (see paragraph 97), it is not clear from the Tambov Regional Court's decision whether it examined all of these applications on 20 January 2003, or only two of them. The latter case would mean that one of the applications by counsel Kh. was left unexamined. However, the Court does not need to resolve the doubt because even assuming that all three applications were examined, this was done two months after the lodging of the application of 20 November 2002 and one month and eleven days after the lodging of that of 9 December 2002. There is nothing to suggest that the applicant had caused any delays in the examination of the applications. The Court considers that the impugned periods cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially taking into account that their entire duration was attributable to the authorities (see, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Khudoyorov*, cited above, §§ 198 and 203; and *Rehbock v. Slovenia*, no. 29462/95, §§ 85 and 86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were found not to have been "speedy").

99. The Court also observes that the fact that the applicant was found guilty of a criminal offence and that the duration of her pre-trial detention counted towards her sentence cannot in principle justify the failure to examine speedily her applications for release (see *Bednov v. Russia*, no. 21153/02, § 33, 1 June 2006).

100. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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."

103. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the unlawfulness of the applicant's detention from 23 October 2002 to 9 April 2003, the excessive length of her detention and the failure of the domestic authorities to decide "speedily" on the lawfulness of her detention ordered on 23 October 2002 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

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

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

5. *Holds* that that there is no call to award the applicant just satisfaction.

Done in English, and notified in writing on 4 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President