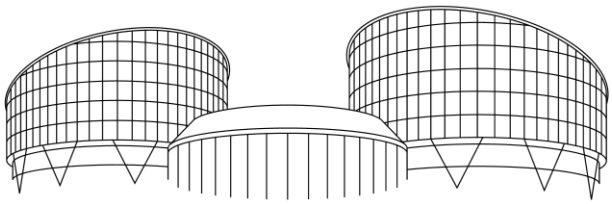

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHULENKOV v. RUSSIA

(Application no. 38031/04)

JUDGMENT

STRASBOURG

17 June 2010

FINAL

17/09/2010

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

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

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 38031/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Nikolayevich Shulenkov ("the applicant"), on 15 July 2004.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya from the International Protection Centre, a Moscow-based human-rights NGO, and Mr S. Obolentsev, a lawyer practising in Tula. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that a period of his detention had not been authorised in accordance with the law and that his appeals against the orders for his detention had not been properly examined.

4. On 25 July 2007 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 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and is now serving a prison sentence in the Tula Region.

6. On 10 April 2003 the police apprehended the applicant and two other individuals near a psychiatric hospital which had been robbed shortly before. The applicant was carrying a firearm and offered resistance to the arresting officers.

7. The applicant claimed that the police officers had ill-treated him and compelled him to make a confession. On 23 October 2003 a deputy Leninskiy District prosecutor of the Tula Region found the applicant's allegations of ill-treatment unsubstantiated and decided not to institute criminal proceedings. An appeal against that decision lay to a court of general jurisdiction; the applicant did not make use of that procedure.

8. On 12 April 2003 the Leninskiy District Court of the Tula Region remanded the applicant in custody for an initial two-month period.

9. On 16 April 2003 the applicant was charged with the armed robbery of the hospital. On 8 May and 7 June 2003 the applicant was additionally charged with five offences of theft and robbery committed in 2002 and 2003.

10. On 5 June, 5 August and 14 October 2003 the Uzlovaya Town Court extended the applicant's detention until 31 December 2003.

11. On 15 September 2003 the applicant was transferred to Moscow for an in-patient psychiatric examination at the State Scientific Centre for Forensic Psychiatric Examinations. On 26 December 2003 the examination was completed and the applicant was transferred to remand centre no. IZ-77/2 in Moscow. On 15 January 2004 he left IZ-77/2 and on the following day he returned to the remand centre in Tula.

12. In the meantime, on 30 December 2003 the Uzlovaya Town Court heard an application by the prosecutor for a further extension of the applicant's detention. On the previous day legal-aid counsel Mr S., who had been appointed to represent the applicant, had informed the Town Court that he would not be able to attend because of his involvement in another trial. Mr L. was appointed instead to represent the applicant.

13. Counsel for the applicant pleaded for his release, maintaining that there were no lawful grounds for granting a further extension. The prosecutor submitted that there were no reasons to vary the preventive measure.

14. The Town Court granted the application for an extension, finding as follows:

> "...Taking into account the gravity of the charge concerning a premeditated particularly serious crime against property, information about the defendant's character, arguments by the State prosecutor to the effect that Mr Shulenkov may commit a more serious crime, flee from the investigation and justice and thereby interfere with the establishment of the truth, as well as the impossibility of finalising the pre-trial investigation within the remaining time because many investigative steps must be carried out in several areas of the region, the court finds that there are no grounds for revoking or varying the preventive measure in the form of remand in custody and that there exist justified grounds for extending the defendant's detention..."

15. On 30 January 2004 the applicant lodged an appeal against the extension order. He submitted that by 26 December 2003 the forensic examination had already been completed and that his presence at the hearing on 30 December could easily have been secured. He pointed out that the prosecutor's arguments concerning the risk of his fleeing or reoffending had not been corroborated with any facts. Furthermore, the court had not given consideration to the fact that he had to provide for his ailing parents and under-age daughter. On 19 March 2004 the Tula Regional Court dismissed the appeal. It found that the Town Court had correctly cited the gravity of the charges against the applicant as the ground for extending his detention. It also held that the examination of the applicant's detention in his absence had been compatible with Article 109 § 13 of the Code of Criminal Procedure because at that time the applicant had been held in a remand centre in Moscow "in connection with a forensic psychiatric examination" and because he had been represented by counsel, Mr L.

16. On 13 February 2004 the Uzlovaya Town Court granted a further extension of the applicant's detention until 10 April 2004. The applicant was represented at the hearing by counsel Mr L.

17. On 9 April 2004 the case against the applicant and two of his co-defendants was sent to the Uzlovaya Town Court for trial.

18. On 22 April 2004 the applicant complained to the governor of the remand centre and the Tula regional assistant prosecutor that, following the expiry of the last detention order on 10 April 2004, there was no legal basis for his continued detention. He did not receive a reply.

19. On 23 April 2004 the Uzlovaya Town Court gave a decision fixing the date of the preliminary hearing. The decision did not mention the question of the applicant's detention.

20. At the preliminary hearing on 13 May 2004 the Town Court determined that the bill of indictment was procedurally defective in that it contained incorrect information about the applicant's personal details. The court decided to return the case to the prosecutor for five days so that he could remedy these defects. It also rejected applications for release by the applicant and his co-defendants, noting that the preventive measure had been imposed lawfully and that there were no grounds for varying it.

21. The applicant lodged an appeal, which was dismissed on 9 June 2004 by the Tula Regional Court. Its decision stated that the grounds for holding the defendants in custody still obtained and that the Code of Criminal Procedure did not require that a court set a time-limit for detention when returning a case to a prosecutor.

22. On 17 May 2004 the prosecutor again sent the case for trial.

23. On 31 May 2004 the Uzlovaya Town Court set the opening date for the trial and held that all three defendants should remain in custody, without citing any grounds for the continuation of their detention on remand or setting a time-limit for it. On 7 June 2004 the applicant appealed against that decision. On 23 August and 20 October 2004 he asked the President of the Uzlovaya Town Court whether his appeal had been considered. He did not receive any response to his enquiry. According to the Government, his statement of appeal had been received by the Town Court on 11 June 2004 but, for reasons that remained unknown, it had not been forwarded to the Tula Regional Court for consideration.

24. On 4 November 2004 the Uzlovaya Town Court heard an application by the prosecutor for a further extension of the applicant's detention. The applicant and his co-defendants pleaded for release, maintaining that the initial six-month period of their detention pending trial had expired on 9 October 2004.

25. The Town Court held that the six-month period of detention should be calculated from the date when the case had been sent for trial again, that is, from 17 May 2004. It extended all the co-defendants' detention by three months, citing as the ground the complexity of the case and the large number of victims and witnesses who had not yet been examined. The applicant appealed. On 17 December 2004 the Tula Regional Court dismissed his appeal in a summary fashion, endorsing the reasoning of the Town Court.

26. On 10 February 2005 the Uzlovaya Town Court granted a further extension of the defendants' detention until 17 May 2005. On 15 April 2005 the Tula Regional Court upheld that decision on an appeal by the applicant.

27. On 19 July 2005 the Town Court convicted the defendants of four robberies and sentenced the applicant to nine years' imprisonment in a high-security institution.

28. In his statement of appeal the applicant complained, in particular, that his presumption of innocence had been compromised by publications in local newspapers which quoted high-ranking police officials.

29. The applicant submitted copies of three articles published in the regional press in 2004. The articles described the robbery of the hospital and two other robberies for which the applicant and his co-defendants were said to be responsible. The perpetrators were described as “jackals from Petelino”, “robbers” or a “gang”. The same photograph accompanied all

three articles; the face and upper body of the person on the photograph were covered with a jacket.

30. On 25 January 2006 the Tula Regional Court dismissed the appeal. With regard to the newspaper publication, it held that "information in the mass media about the robbery committed in the regional psychiatric hospital [was] not a violation of the convict Shulenkov's rights".

II. RELEVANT DOMESTIC LAW

31. The Russian Constitution provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

32. The Code of Criminal Procedure ("CCrP") provides that the term of detention "during the trial" (that is, after the case has been sent for trial) is calculated from the date on which the court received the file up to the date on which the judgment is given. The period of detention "during the trial" may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3 of the CCrP).

33. An application for an extension of the defendant's detention may not be examined by a court in the defendant's absence, except in cases where the defendant has been admitted for an in-patient forensic psychiatric examination or where other circumstances making his presence impossible have been shown to exist by appropriate documents. Participation of the defendant's counsel is mandatory (Article 109 § 13 of the CCrP, as amended on 4 July 2003 by Law no. 92-FZ). If the defendant's presence is impossible, the court must give a separate decision setting out the reasons which made his presence impossible (Article 109 § 14).

THE LAW

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

34. The applicant complained that his detention had not been compatible with the requirements of the domestic law and Article 5 § 1 the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

A. Admissibility

35. The Court observes that starting from 12 April 2003, the applicant's detention was authorised and extended at regular intervals by the Leninskiy District Court and the Uzlovaya Town Court of the Tula Region. The last detention order issued by the Town Court expired on 10 April 2004. It does not appear that during that period there were deviations from the domestic procedure that were incompatible with the requirements of the Convention. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

36. Following the expiry of the detention order on 10 April 2004, a new extension order setting a specific time-limit for the applicant's detention was not made until 4 November 2004. The applicant's position in the intervening period was arguably at variance with the requirements of the Convention. Accordingly, the Court considers that this part of the complaint 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.

37. Finally, the Court notes that from 4 November 2004 to 19 July 2005, when the applicant was convicted, the applicant's detention was extended by successive decisions of the trial court. The trial court acted within its powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law or incompatible with the Convention requirements. It follows that this part of the complaint is also manifestly ill-founded and must be rejected.

B. Merits

38. The applicant submitted that from 10 April to 13 May 2004 he had been held in custody without judicial authorisation. On 13 May 2004 the trial court had returned the criminal case to the prosecutor but it had not given any reasons for extending the detention or limited it in time; this was arbitrary and incompatible with the requirements of the Convention (here the applicant referred to *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006). From 17 to 31 May 2004 the applicant had once again remained in custody without judicial authorisation. Lastly, the applicant pointed out that on 9 October 2004 the initial six-month period of his

detention "during the trial" had expired and from that date onwards his detention had been unlawful.

39. The Government submitted that at the time when the applicant's case had been under consideration the domestic courts had interpreted Article 255 of the Code of Criminal Procedure as permitting the detention of an accused without a court order for up to six months from the date of receipt of the case file by the trial court. Even though in 2005 the Constitutional Court had found that that practice was tainted with arbitrariness and therefore incompatible with the Constitution, at the material time such interpretation of Article 255 had been valid and endorsed by all Russian courts, including the Supreme Court. For that reason, the applicant's detention after the date on which the case file had been referred to the trial court (9 April 2004) was lawful in domestic terms. The decision of 13 May 2004 did not breach the requirements of legal certainty and the protection from arbitrariness because it had established that the prosecutor was to return the case within five days. After the case had been returned to the trial court on 17 May 2004, the applicant's detention had again been governed by the same interpretation of Article 255 of the Code of Criminal Procedure. Finally, the Government claimed that the return of a case to the prosecutor interrupted the running of the six-month period.

40. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back 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 (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X).

41. On the facts, the Court observes that on 10 April 2004, that is, one day after the trial court received the case file from the prosecutor, the period of the applicant's detention authorised by the decision of 13 February 2004 expired. However, no further decision on his detention was taken.

42. The Court has already found a violation of Article 5 § 1 of the Convention in many cases against Russia concerning the practice of holding defendants in custody solely on the strength of the fact that their case had been referred to the trial court. It held that the practice of keeping defendants in detention without judicial authorisation or clear rules governing their situation was incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Isayev v. Russia*, no. 20756/04, §§ 131-133, 22 October 2009; *Yudayev v. Russia*, no. 40258/03, §§ 59-61, 15 January 2009; *Belov v. Russia*, no. 22053/02,

§§ 90-91, 3 July 2008; *Lebedev v. Russia*, no. 4493/04, §§ 55-58, 25 October 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 84-85, 28 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 88-90, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich*, cited above; and *Khudoyorov*, cited above, §§ 147-151).

43. The Court's findings in the above cases are applicable in the instant case and the Government did not advance any argument warranting a departure from the established case-law. Following the expiry of the detention order on 10 April 2004, the applicant's detention was not covered by a judicial authorisation. The Town Court's decision of 23 April 2004 did not mention the applicant's detention and its subsequent decision of 13 May 2004, upheld on appeal by the Tula Regional Court on 9 June 2004, merely rejected his application for release rather than constituting a formal detention order required under the domestic law. As the Court has already found in a similar case, applications for release filed by a defendant in custody do not exempt the domestic authorities from the obligation to authorise his or her detention "in accordance with a procedure prescribed by law" by issuing a formal detention order, as provided by Article 5 § 1. Finding otherwise would place on the defendant, rather than on the authorities, the burden of ensuring a lawful basis for his or her continued detention (see *Melnikova v. Russia*, no. 24552/02, § 61, 21 June 2007).

44. It is further noted that on 31 May 2004 the Town Court set the opening date for the trial and held that the defendants "should remain in custody". It did not, however, give any grounds for maintaining the custodial measure or fix a time-limit for the extended detention. This situation has also been examined in many cases against Russia, in which the Court found that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time was incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1. 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 *Avdeyev and Veryayev v. Russia*, no. 2737/04, §§ 45-47, 9 July 2009; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 112-114, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-114, 23 April 2009; *Shukhardin*, cited above, §§ 65-70; *Ignatov v. Russia*, no. 27193/02, §§ 79-81, 24 May 2007; *Solovyev v. Russia*, no. 2708/02, §§ 97-98, 24 May 2007; *Nakhmanovich*, cited above, §§ 70-71; and *Khudoyorov*, cited above, §§ 134 and 142). The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 31 May 2004 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness and that the ensuing period of the applicant's detention was not

"lawful" within the meaning of Article 5 § 1. This finding makes it unnecessary to examine whether the applicant's detention was also unlawful after 9 October 2004 on account of its being in excess of the maximum six-month period of detention "during the trial".

45. In the light of the foregoing considerations, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 10 April to 4 November 2004.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ABSENCE FROM THE HEARING ON 30 DECEMBER 2003

46. The applicant complained under Article 5 § 3 and Article 6 § 3 (c) of the Convention that he had not been brought to the hearing of 30 December 2003, which concerned the extension of his detention period, and that he had been represented by counsel Mr L., whom he had never seen before. In line with the Court's settled approach (see *Lebedev*, cited above, §§ 69-73; *Włoch v. Poland*, no. 27785/95, §§ 125 et seq., ECHR 2000-XI; and *Graužinis v. Lithuania*, no. 37975/97, § 33, 10 October 2000), this complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

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

A. Admissibility

47. The Court notes that this complaint 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.

B. Merits

48. The applicant pointed out that, following the completion of the in-patient examination, he had returned to a remand centre in Moscow on 26 December 2003, four days before the hearing in the Tula Town Court. Admittedly, his transfer from the remand centre in Moscow to one in Tula had presented some difficulties; however, four days had easily been sufficient for the transfer, given that the distance between Moscow and Tula was just 500 kilometres. His previous counsel Mr S. had asked for an adjournment of the hearing, but the Town Court had instead approved a different representative, Mr L., whom the applicant had never seen before.

He had not had an opportunity to talk to Mr L. before the hearing and instruct him accordingly. The Town Court, for its part, had not made available any facilities, such as for instance a video link, to ensure the applicant's effective participation in the hearing.

49. The Government submitted that the Town Court had decided to examine the question of the applicant's detention in his absence because at that time he had been referred for an in-patient psychiatric examination and he had not returned to the remand prison until 16 January 2004. However, his counsel had taken part in the hearing.

50. The Court reiterates that the proceedings which an arrested or detained person is entitled to bring by virtue of Article 5 § 4 for the review of the "lawfulness" of his or her deprivation of liberty must be adversarial and must always ensure equality of arms between the parties. The possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Mamedova v. Russia*, no. 7064/05, § 89, 1 June 2006; *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII; and *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

51. On the facts, the Court observes that on 30 December 2003 the prosecutor's application for an extension of the applicant's detention was examined. The hearing was attended by the prosecutor and Mr L., newly appointed to represent the applicant, whereas the applicant himself was in a remand prison in Moscow.

52. A detainee should, as a general rule, have a right to participate in a hearing at which his detention is discussed (see *Lebedev*, cited above, § 113). Moreover, in the present case the applicant's absence from the hearing concerning his detention was at variance with the requirements of the domestic law, in particular Article 109 § 13 of the Code of Criminal Procedure (see paragraph 33 above), which provided that the personal presence of the defendant was mandatory at extension hearings. The exception envisaged in that Article and relied upon by the appeal court and the Government, namely that the applicant had been admitted for an in-patient examination, had not been applicable in the instant case because the examination had already been completed by 26 December 2003, four days before the hearing took place. It appears therefore that the domestic courts did not exercise adequate care to establish the applicant's whereabouts and take appropriate measures for securing his personal participation at the hearing, as required by Article 109 § 13 of the Code of Criminal Procedure. While the applicant's transfer would certainly have required some logistical arrangements, they could not have been particularly complex, taking into account the short distance between Moscow and Tula and also the fact that his transfer two weeks later took just one day (from 15 to 16 January 2004).

53. Furthermore, the Court is not convinced that the participation of legal-aid counsel Mr L. was sufficient to ensure the fairness of the remand proceedings. It notes that Mr S., the applicant's previous counsel, was unavailable on the day of the hearing and Mr L. was appointed to take his place. This being a last-minute replacement, Mr L. did not have time to travel to Moscow to take instructions from the applicant or discuss the matter with him. However, the Town Court did not consider the possibility of adjourning the hearing with a view to either ensuring the participation of Mr S., who had the benefit of knowing the applicant and his case, or allowing Mr L. sufficient time and facilities to confer with the applicant and to study the case file.

54. Lastly, the Court notes that the Regional Court did nothing to cure on appeal the shortcomings of the proceedings before the Town Court. It rejected the applicant's complaints concerning his absence from the hearing and upheld the extension order issued by the Town Court.

55. In sum, the Court finds that the applicant was deprived of an effective review of the lawfulness of his continued detention. There has therefore been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF THE FAILURE TO EXAMINE THE STATEMENT OF APPEAL OF 7 JUNE 2004

56. The applicant further complained under Article 5 § 4 that his appeal against the extension order of 31 May 2004 had not been examined.

57. The Government submitted that the statement of appeal had been received by the Town Court but that it had not been forwarded to the Regional Court for consideration.

A. Admissibility

58. The Court notes that this complaint 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.

B. Merits

59. The applicant pointed out that, after his case had been sent for trial, his status as a detainee had changed according to the domestic classification from “detention during the investigation” to “detention during the trial”. On 31 May 2004 the Town Court had extended his detention, without verifying whether the grounds for holding him in custody still obtained. In those circumstances, the consideration of his appeal by the Regional Court had

acquired particular importance. However, his appeal had never been examined.

60. The Government accepted that there had been a violation of Article 5 § 4 on account of the failure to forward the applicant's appeal to the Regional Court for consideration.

61. The Court takes note of the Government's admission. It considers that the failure by the domestic authorities to secure the examination of a validly lodged appeal against an order extending the applicant's detention is a serious shortcoming undermining the guarantees of Article 5 § 4 (see *Khudoyorov*, cited above, §§ 200-202). Accordingly, there has been a violation of that provision.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Lastly, the applicant complained under Article 3 of the Convention that he had been ill-treated after the arrest and that his parents' life had become harder without his assistance. He also complained under Article 6 § 2 that he had been portrayed as a criminal in the local media.

63. The Court notes that the prosecutor's decision in respect of the applicant's complaint about his alleged ill-treatment was given on 23 October 2003, that is, more than six months before he lodged his application with the Court. It follows that this complaint has been brought out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. The complaint about the deterioration of the applicant's parents' quality of life is inadmissible *ratione personae* because the applicant is not the victim of the alleged violation of Article 3.

64. The Court lastly observes that the newspaper publications did not mention the applicant by name or reveal his photograph and did not contain any statements by a public official as to his guilt (see *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 140,050 euros (EUR) in respect of non-pecuniary damage in connection with his unlawful detention on remand.

67. The Government submitted that the amount claimed was excessive.

68. The Court likewise considers that the applicant's claims in respect of non-pecuniary damage are excessive. Making its assessment on an equitable basis, it awards the applicant EUR 9,000 under his head, plus any tax that may be chargeable.

B. Costs and expenses

69. The applicant also claimed EUR 1,680 for the costs and expenses incurred before the Court, representing 28 hours' work by his counsel at the rate of EUR 60 per hour.

70. The Government claimed that the legal services had been rendered *pro bono* and should not give rise to compensation.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the amount of EUR 850 has already been paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

72. 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. *Declares* admissible the complaints concerning the lawfulness of the applicant's detention from 10 April to 4 November 2004, his absence from the hearing on 30 December 2003 and the failure to examine his statement of appeal of 7 June 2004, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 10 April to 4 November 2004;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's absence from the hearing on 30 December 2003;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the failure to examine the applicant's appeal against the detention order of 31 May 2004;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
(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;

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

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President