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

FIRST SECTION

CASE OF BROVCHENKO v. RUSSIA

(Application no. 1603/02)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Brovchenko v. Russia,

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

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

Having deliberated in private on 27 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 1603/02) 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, Mr Sergey Vasilyevich Brovchenko ("the applicant"), on 25 December 2000.

2. The applicant was represented by the Centre of Assistance for International Protection, a Moscow-based human rights organisation. 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, *inter alia*, that his pre-trial detention was excessively long and unlawful, that the criminal proceedings against him lasted unreasonably long and that he did not have an effective remedy against the excessive length of the proceedings.

4. On 1 June 2006 the Court declared the application partly inadmissible and decided to give notice of the remainder of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Moscow.

6. Until his arrest he was working as a lawyer in a private law office located in Moscow.

A. First trial

7. On 19 May 1997 the applicant was arrested on suspicion of involvement in drug dealing. His car was searched. According to the applicant, his personal effects and 300 US dollars disappeared from the car after the search.

8. On the same day the applicant was taken to the police station for interview and remanded in custody pending the investigation.

9. On 18 December 1997 the Savelovskiy District Court of Moscow found the applicant guilty of drug dealing and sentenced him to nine years' imprisonment. On 21 April 1998 the Moscow City Court upheld the conviction on appeal.

10. In May and June 1998 the applicant was being transported from Moscow to a correctional facility in the Irkutsk Region where he was to serve his sentence.

B. Second trial

11. On 3 March 1999 the Supreme Court of the Russian Federation quashed both the judgment of 18 December 1997 and the appeal decision of 21 April 1998, by way of supervisory review, and remitted the charges for fresh examination. The Supreme Court established, in particular, that the conviction had been based on insufficient evidence and that the courts had failed to examine all the relevant circumstances.

12. On 5 May 1999 the Savelovskiy District Court dismissed the applicant's request for release, referring to the gravity of the charges and the risk that he would interfere with the investigation or abscond. The decision was issued in the absence of the parties.

13. On 17 May 1999 the applicant was transported to Moscow for a new trial.

14. On 25 May 1999 the applicant was placed in remand centre no. 48/3 in Moscow where he remained until 13 July 2000.

15. On 28 June 1999 the District Court dismissed a request for the applicant's release lodged by his counsel, reproducing verbatim the reasoning of the decision of 5 May 1999.

16. On 25 November 1999 the District Court disallowed the applicant's appeal against the decisions of 5 May and 28 June 1999 on the grounds that they had been introduced outside the time-limit.

17. It appears that the District Court subsequently issued further extension orders, copies of which were not submitted to the Court.

18. On 9 March 2000 the District Court found the applicant guilty of drug dealing and sentenced him to nine years' imprisonment.

19. On 27 June 2000 the Moscow City Court upheld the conviction on appeal.

20. On 13 July 2000 the applicant was transported from Moscow to the Irkutsk Region where he was to serve his sentence. On 28 July 2000 he arrived at a correctional facility in the Irkutsk Region.

C. Third trial

1. Quashing of the conviction

21. On 19 September 2002 the Presidium of the Moscow City Court quashed the judgment of 9 March and the appeal decision of 27 June 2000 by way of supervisory review and remitted the charges for fresh examination. It noted, in particular, that the lower courts' findings of fact were based on inconclusive and contradictory evidence. The court did not indicate whether the applicant should remain in custody or be released.

22. The applicant claims that he asked the Kuybyshevskiy District Court of Irkutsk to release him but received no response.

2. The applicant's detention pending preparation for the third trial

23. On 17 October 2002 the Savelovskiy District Court scheduled the opening date of the trial and ordered that the applicant remain in custody. The applicant was neither present, nor represented. On 5 December 2002 the Moscow City Court rejected the applicant's appeal.

24. On 24 October 2002 the applicant was brought to Moscow for a new trial. On 11 November 2002 the applicant arrived at remand centre no. 77/2 where he remained until his release from custody on 12 January 2004.

25. On 13 March 2003 the applicant applied to the Savelovskiy District Court for release. Citing the gravity of the charges, the court rejected his request. It also noted that there was no certainty that the applicant would not abscond or would discontinue his criminal activities if released.

26. On 29 April 2003 the Moscow City Court upheld that decision on appeal. It noted that the circumstances had not changed since the applicant's arrest and, accordingly, there were no grounds for his release.

3. Extension of the applicant's detention until 14 July 2003

27. On 26 March 2003 the applicant lodged a complaint alleging that his detention was unlawful and asked the court to release him.

28. On 14 April 2003 the Savelovskiy District Court granted the prosecutor's request and extended the applicant's detention until 14 July 2003. In the same decision it dismissed the applicant's complaint of 26 March 2003. The court referred solely to the gravity of the charges against the applicant.

29. On 17 July 2003 the Moscow City Court upheld the decision of 14 April 2003 indicating that there were no circumstances which would justify the applicant's release.

30. On 9 June 2003 the District Court again dismissed the applicant's request for release.

4. Extension of the applicant's detention until 14 October 2003

31. On 14 July 2003 the Savelovskiy District Court, at the request of the prosecutor, extended the applicant's detention until 14 October 2003. It referred to the gravity of the charges and to the applicant's failure to submit evidence showing that he had a permanent residence in Moscow.

32. On 11 September 2003 the Moscow City Court upheld the decision of 14 July 2003.

5. Extension of the applicant's detention until 13 January 2004

33. On 13 October 2003 the Savelovskiy District Court granted the prosecutor's request and extended the applicant's detention until 13 January 2004. It noted the gravity of the charges and stated that there were no new circumstances which would have rendered the applicant's release possible.

34. On 17 November 2003 the Moscow City Court upheld the decision of 13 October 2003 on appeal, noting that the applicant was charged with a particularly serious offence and the criminal proceedings against him were still pending.

6. The applicant's release from custody

35. On 12 January 2004 the Savelovskiy District Court dismissed the prosecutor's request for a further extension of the applicant's detention. The applicant was released but ordered to remain within the town.

36. On 5 February 2004 the Moscow City Court upheld that decision.

6. The applicant's conviction

37. On 1 December 2005 the Savelovskiy District Court of Moscow found the applicant guilty of involvement in the preparation of drug trafficking and sentenced him to six years and seven months' imprisonment.

The term of imprisonment was calculated as having started on 19 May 1997, the date when the applicant had been arrested and placed in custody. The sentence imposed on the applicant was therefore considered as having already been served.

38. On 24 May 2006 the Moscow City Court upheld the judgment and it became final.

II. RELEVANT DOMESTIC LAW

39. For a summary of domestic law provisions on pre-trial detention, see *Khudoyorov v. Russia*, no. 6847/02, §§ 76-96, 11 October 2005.

THE LAW

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

40. The applicant complained that his detention from 19 September 2002 to 14 April 2003 was not covered by an appropriate court order as provided by Article 5 § 1 (c) of the Convention. The relevant parts of Article 5 read 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. Submissions by the parties

41. The Government contested that argument. They noted that on 19 September 2002 the Presidium of the Moscow City Court had quashed the judgment of 9 March 2000 and the appeal decision of 27 June 2000 by way of supervisory review and remitted the case for new examination for a trial with a differently composed bench. It made no decision as to whether or not the applicant should be kept in custody. The Government noted, however, that Article 388 of the Code of Criminal Procedure which regulated the powers of supervisory review hearings did not state that the question of custody was one which needed to be considered. Therefore the applicant continued to be detained under the custody order which had been

imposed on him prior to the quashing of the judgment in accordance with the law.

42. As regards the applicant's detention from 17 October 2002 to 14 April 2003, the Government noted that on 17 October 2002 the Savelovskiy District Court of Moscow had held a hearing and had ordered that the applicant should remain in custody. The Government observed that this decision had been made in compliance with the requirements of the Code of Criminal Procedure.

43. Further, the Government mentioned that Article 255 § 2 of the Code of Criminal Procedure provided for a time-limit of six months detention of the accused after the case file had been sent for trial. Article 255 § 3 provided for extension of this time-limit by a court in cases regarding grave and especially grave crimes, each time for no more than three months. In this connection on 14 April 2003 the Savelovskiy District Court of Moscow extended the applicant's detention by three months to 14 July 2003.

44. The applicant maintained that it was incumbent upon the Presidium of the Moscow City Court to check whether his detention was still lawful and well-founded after the judgment and the appeal decision had been quashed. He referred to the ruling of the Constitutional Court of 22 March 2005 as regards the necessity to review the measure of restraint in a case when previous judgments had been quashed by way of supervisory review. The ruling in its relevant part reads as follows: "The court shall bear in mind that the decision to remand in custody imposed during criminal proceedings expires after the judgment has become final. This measure does not automatically resume effect after the quashing of the judgment. In order to make an order for custody the court should establish, allowing for the participation of the interested parties, any factual circumstances showing the grounds for detention, account being taken of the new stage of the criminal proceedings". Thus, the Government's position reflected in their observation was contrary to the above ruling of the Constitutional Court.

45. As regards the period from 17 October 2002 to 14 April 2003, the applicant noted that the Savelovskiy District Court extended the applicant's detention on its own motion and in the absence of the applicant and his lawyer, in breach of the relevant legislative provision. No grounds for his detention were adduced.

46. The applicant further noted that the court had failed to indicate the term of his detention in its decision of 17 October 2002 which constituted a breach of the principal of legal certainty.

B. The Court's assessment

1. Admissibility

47. The Court notes that the present 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.

2. Merits

(a) General principles

48. 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.

49. 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; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Khudoyorov*, cited above, § 123).

(b) Scope of the Court's review

50. In its decision of 1 June 2006, the Court declared the application partly inadmissible and decided to give notice of the applicant's complaints concerning the lawfulness of his detention from 19 September to 14 April 2003.

Within that period two phases are to be distinguished:

(c) Detention from 19 September to 17 October 2002

51. The Court reiterates that on 19 September 2002 the Presidium of the Moscow City Court quashed the judgment of 9 March and the appeal decision of 27 June 2000 by way of supervisory review and remitted the charges for fresh examination. The court did not indicate whether the applicant should remain in custody or be released.

52. The Court observes, and it has not been disputed by the parties, that after the quashing of the applicant's conviction on 19 September 2002 and until the District Court's decision of 17 October 2002 ordering the applicant to remain in custody, there was no decision authorising the applicant's detention pending trial. During this time the applicant was kept in detention on the basis of the fact that the criminal case against him had been referred back to the court to retry the case.

53. The Court has already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment has been lodged with the trial court. The Court has held that the practice of keeping defendants in detention without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation – was incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Ječius*, cited above, §§ 60-64, and *Baranowski*, cited above, §§ 53-58).

54. The Court sees no reason to reach a different conclusion in the present case. It reiterates that for the detention to meet the standard of "lawfulness", it must have a basis in domestic law. The Government, however, did not point to any legal provision which permitted a defendant to continue to be held once his conviction had been quashed (see paragraph 41 for the Government's argument and paragraph

44 for the findings of the Constitutional Court).

55. In these circumstances, the Court considers that the Supreme Court's decision of 19 September 2002 did not afford the applicant the adequate protection from arbitrariness which is an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 of the Convention.

56. It follows that during the period from 19 September until 17 October 2002 there was no "lawful" basis for the applicant's detention pending trial. There has thus been a violation of Article 5 § 1 of the Convention.

(d) Detention from 17 October 2002 to 14 April 2003

57. The Court reiterates that on 17 October 2002 the District Court scheduled the opening date of the trial and ordered that the applicant remain in custody. On 14 April 2003 the Savelovskiy District Court granted the

prosecutor's request for extension of the applicant's detention and fixed a new time-limit for 14 July 2003.

58. The Court notes that in several cases it found that the trial court's decision to maintain a preventive measure "unchanged" had not, as such, breached Article 5 § 1 in so far as the trial court "had acted within its jurisdiction ... [and] had power to make an appropriate order" (see *Ječius*, cited above, § 69; *Stašaitis v. Lithuania* (dec.), no. 47679/99, 28 November 2000; and *Karalevičius v. Lithuania* (dec.), no. 53254/99, 6 June 2002). In the *Stašaitis* judgment it noted, however, that "the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1" (see *Stašaitis*, cited above, § 67).

59. The Court observes that the District Court did not give any reasons for its decision to remand the applicant in custody. Nor did it set a time-limit for the continued detention or for a re-examination of the issue of detention by court. As it happened, the District Court did not give a new decision concerning the term of the applicant's detention until six months later, on 14 April 2003, and the Moscow City Court upheld that decision in the final instance in July 2003. It transpires that from September 2002 until July 2003 the applicant remained in a state of uncertainty as to the grounds for his detention.

60. In these circumstances, the Court considers that the District Court's decision of 17 October 2002 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1.

61. The Court therefore finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 17 October 2002 until 14 April 2003.

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

62. The applicant complained of 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. Submissions by the parties

63. The Government noted that the length of the applicant's pre-trial detention could not be examined as a continuous period and that it should be divided into three following parts:

64. The first period started on 19 May 1997 when the applicant was arrested, and ended on 18 December 1997 when the District Court convicted him as charged. This period related to the date prior to the entrance of the Convention into force in respect of Russia. The Government noted that the Court did not thus have competence *ratione temporis* to examine the complaint in respect of the relevant period.

65. The second period started on 3 March 1999 when the Supreme Court quashed the judgment of 18 December 1997 by way of supervisory review and remitted the case for fresh examination, and ended on 9 March 2000 when the District Court delivered a new judgment. Since the applicant lodged his application on 25 December 2000, i.e. more than six months after the expiration of this period, the complaint is introduced to the Court out of time and should thus not be taken into consideration.

66. The third period started on 19 September 2002 when the second judgment of 9 March 2000 was quashed by way of supervisory review, and ended on 12 January 2004 when the District Court changed the measure of restraint and ordered the applicant's release. Consequently, only the third period should be subject to examination by the Court.

67. The Government submitted that the third period amounted to one year, three months and twenty-four days.

68. The Government submitted that it had been necessary for the applicant to remain in custody because he was charged with a particularly serious criminal offence, had no permanent residence in Moscow and thus would have been liable to abscond if released.

69. The applicant argued that the length of his pre-trial detention exceeded three years which was unreasonable. His case was not complex, he was the only defendant in the case and there was just one charge against him.

B. The Court's assessment

1. Admissibility

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

71. The Court observes that the applicant's overall detention lasted from 19 May 1997, the date on which he was detained, until 12 January 2004, the date of his release. The total duration of his detention thus amounted to six years, seven months, twenty-six days. The Court notes that it has competence *ratione temporis* to examine only the period after the date of the ratification of the Convention by Russia on 5 May 1998. Consequently, the complaint in respect of the applicant's pre-trial detention prior to this date is incompatible *ratione temporis* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

72. Further, the Court reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant's pre-trial detention on remand in respect of the period under the Court's competence *ratione temporis* started on 3 March 1999 when the judgment and the appeal decision were quashed and ended on 9 March 2000 when the District Court convicted him for a second time (see *Labita*, cited above, § 147). After that date the applicant's detention no longer fell within the ambit of Article 5 § 1 (c), but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *B. v. Austria*, 28 March 1990, §§ 36-39, Series A no. 175, and *Benediktov v. Russia*, no. 106/02, § 43, 10 May 2007). The applicant lodged his application with the Court on 25 December 2000, which is more than six months after his pre-trial detention within the ambit of Article 5 §1 (c) had ended. It follows that the complaint in respect of the applicant's pre-trial detention from 3 March 1999 until 9 March 2000 was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

73. Finally, the Court finds that the applicant's complaint under Article 5 § 3 concerning his pre-trial detention from 19 September 2002 (when the judgment of 9 March 2000 was quashed by way of supervisory review) until 12 January 2004 when the District Court ordered the applicant's release, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

74. In carrying out its assessment, the Court will not lose sight of the entire period of the applicant's detention pending criminal proceedings and of its above finding that the applicant's detention from 19 September 2002 until 14 April 2003 was not in accordance with the provisions of Article 5 § 1 of the Convention (see *Goral v. Poland*, no. 38654/97, §§ 58 and 61, 30 October 2003, and *Stašaitis*, cited above, §§ 81-85).

2. Merits

(a) General principles

75. The Court notes 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*, cited above, § 152).

76. 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*, 17 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II). 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 such factors 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).

77. The persistence of 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 (see, among other authorities, *Panchenko v. Russia*, no. 45100/98, § 100, 8 February 2005). 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*, 23 September 1998, § 102, *Reports* 1998-VII, and *Labita*, cited above, § 153).

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

78. The Court observes that during the period under consideration, i.e. from 19 September 2002 to 12 January 2004, the grounds for the applicant's continued detention were examined by the District Court on 13 March, 14 April, 9 June, 14 July and 13 October 2003 and by the City Court on 29 April, 17 July, 11 September and 17 November 2003. 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, the risk of his interfering with the administration of justice or absconding, as well as the lack of the applicant's permanent residence in Moscow.

79. The Court accepts that the suspicion that the applicant had committed a serious offence could initially have 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*, cited above, § 81).

80. 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. Furthermore, the Court takes into account that the period under consideration related to the applicant's third trial which was conducted after his conviction had been quashed by way of supervisory review on two occasions. The Court does not find it established that the prolonged detention of the applicant served the purpose of securing the proper course of the proceedings.

81. 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 they considered the risk of the applicant's absconding to be decisive. The only argument occasionally relied on by the court was the lack of any permanent residence in Moscow. The Court finds that the existence of such a risk was not established.

82. The Court finally observes that the decisions extending the applicant's detention on remand were stereotypically worded and summary-like. Moreover, it was not until 12 January 2004, that the authorities considered the possibility of ensuring his presence at trial by use of other "preventive measures" which are expressly provided for by Russian law. On

12 January 2004 the court examined this possibility and released the applicant under undertaking not to leave his place of residence.

83. In that context, the Court would emphasise that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring his appearance at trial when deciding whether a person should be released or detained. Indeed, the provision provides for not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). The obligation to consider alternative measures becomes all the more important in a case like the present one in which the applicant had already spent considerable periods in pre-trial detention.

84. The Court accordingly concludes that, by failing to address the 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".

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE CRIMINAL PROCEEDINGS

86. The applicant further complained that the criminal proceedings against him lasted too long.

87. In so far as relevant, Article 6 § 1 of the Convention 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. Submissions by the parties

88. The Government contested this statement. They argued that there had been no violation of the applicant's right to trial within a reasonable time.

89. The Government noted that the period subject to examination started on 26 September 2002 when the trial court received the case file and ended on 1 December 2005 with the delivery of the Savelovskiy District Court judgment. Thus, according to the Government, the proceedings lasted three years, two months and five days. They argued that the applicant and his lawyer had contributed to the protraction of the proceedings by their numerous requests and appeals. Finally, they noted that the fact that the

relevant period was calculated in line with the term of the sentence should also be taken into account by the Court.

90. The applicant contested the arguments of the Government. He argued that the proceedings started on 19 May 1997 when the police initiated criminal proceedings against him and he was arrested, and ended on 1 December 2005 when the Savelovskiy District Court of Moscow found him guilty and sentenced him to six years and seven months' imprisonment.

91. He further noted that the first and second judgments were both quashed by way of supervisory review on the basis of the same grounds that the applicant had previously relied upon in his ordinary appeals.

B. The Court's assessment

1. Admissibility

92. The Court recalls that the criminal proceedings against the applicant started on 19 May 1997. In this respect the Court notes that it has competence *ratione temporis* to examine only the period after the ratification of the Convention by Russia on 5 May 1998. Consequently, the complaint in respect of the length of the proceedings prior to this date is incompatible *ratione temporis* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. The Court also recalls that while its jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Russia on 5 May 1998, the Court will however take into account the state of proceedings existing on the material date (see, among other authorities, *mutatis mutandis*, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A).

93. The remainder of the complaint under Article 6 § 1 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

94. The Court reiterates 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 (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

95. First, the Court notes that neither the Government's, nor the applicant's calculation of the overall length of the proceedings is correct for the purposes of Article 6 § 1 of the Convention. 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 (see, among other authorities, *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57, and *Imbriosca v. Switzerland*, 24 November 1993, § 36, Series A no. 275). It ends with the day on which a charge is finally determined or the proceedings are discontinued.

96. The Court observes that the criminal proceedings against the applicant began on 19 May 1997 when the police arrested the applicant and ended on 24 May 2006 when the Moscow City Court upheld the judgment on appeal and it became final. The overall proceedings thus lasted nine years, seven days.

97. However, the Court notes that the case was heard three times at two levels of jurisdiction whereas the judgments and the appeal decisions were quashed twice by way of supervisory review. If the periods when the judgments were final and no proceedings were pending are excluded (see *Yemanakova v. Russia*, no. 60408/00, § 41, 2 September 2004), the proceedings lasted (i) from 19 May 1997 until 21 April 1998, (ii) from 3 March 1999 until 27 June 2000 and (iii) from 19 September 2002 to 24 May 2006, of which sixty months, i.e. five years, fall within the Court's competence *ratione temporis*.

98. The Court notes that the case does not appear particularly complex. On both occasions the appeal issues were decided at a single hearing.

99. On the other hand, the Court does not discern any appreciable delay caused by the applicant's conduct. As regards his procedural requests, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his or her interest (see *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). Furthermore, the fact that the applicant was held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI). Having regard to the above circumstances, the Court considers that the length of the proceedings exceeded a "reasonable time".

100. There has thus been a violation of Articles 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF THE LACK OF AN EFFECTIVE REMEDY AGAINST THE EXESSIVE LENGTH OF THE PROCEEDINGS.

101. Finally, the applicant argued that there was no effective domestic remedy available in order to challenge the length of the proceedings. He relied on Article 13 of the Convention.

102. Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions by the parties

103. The Government argued that the applicant could have lodged a complaint about the length of the proceedings with the Supreme Court which he failed to do.

104. The applicant contested this argument. He noted that the Government had failed to refer to any provision of the Code of Criminal Procedure or any other law, which would have allowed for a complaint to be made against the excessive length of the proceedings.

B. The Court's assessment

1. Admissibility

105. The Court notes that the present 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.

2. Merits

106. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the Government did not indicate any concrete remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Kormacheva v. Russia*, no. 53084/99, § 64, 29 January 2004). The Government's referral to a claim which the applicant could have lodged with the Supreme Court was not sufficiently reasoned in order for the Court to accept it. It was not suggested that this remedy could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred. Nor did the Government supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such relief (see *Kudła*, cited above, § 159; *Kormacheva*, §§ 61 and 62, 29 January 2004; and *Kuzin v. Russia*, no. 22118/02, §§ 42-46, 9 June 2005).

107. Accordingly, the Court considers that in the present case the applicant did not have at his disposal a remedy under domestic law whereby he could have obtained redress for a violation of his right to have his case

tried within a reasonable time, as set forth in Article 6 § 1 of the Convention.

108. There has, accordingly, been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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."

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible
   (a) the complaint under Article 5 § 1 concerning the alleged unlawfulness of the applicant's detention from 19 September 2002 to 14 April 2003;
   (b) the complaint under Article 5 § 3 concerning the length of the applicant's pre-trial detention in respect of the period from 19 September 2002 until 12 January 2004;
   (c) the complaint under Article 6 § 1 concerning the length of criminal proceedings against the applicant in respect of the period after 5 May 1998;
   (d) the complaint under Article 13 concerning the lack of an effective remedy in respect of the alleged violation of the right to trial within a reasonable time; and
   inadmissible the remainder of the complaints;

2. *Holds* that there has been a violation of Article 5 § 1 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 6 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President