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

FIRST SECTION

CASE OF IGNATOV v. RUSSIA

(Application no. 27193/02)

JUDGMENT

STRASBOURG

24 May 2007

FINAL

24/08/2007

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

In the case of Ignatov v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 27193/02) 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 Mikhail Vyacheslavovich Ignatov ("the applicant"), on 29 May 2002.

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

3. On 25 May 2005 the Court decided to give notice 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.

4. 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

5. The applicant was born in 1963 and lives in Moscow. At the time of his arrest he was a high-ranking police officer, working in the Central Police Division for the Fight against Organised Crime.

A. Applicant's arrest and extension of his detention until 25 December 2001

6. On 4 May 2001 the applicant was summonsed to the Moscow prosecutor's office for questioning. Following that interview he was arrested on suspicion of incitement to bribery and fraud and placed in the temporary confinement ward of the Moscow police department.

7. Three days later a deputy Moscow prosecutor authorised the applicant's detention on remand. The detention order indicated that the applicant had been remanded on suspicion of having promised Mr A. that he would discontinue criminal proceedings against N. and to obtain his release from custody in exchange for a bribe. It was alleged that the applicant could re-offend, abscond or obstruct justice.

8. On 11 May 2001 the applicant was transferred to detention facility no. 77/1 in Moscow. According to the applicant, police officers visited him on several occasions and pressed him to confess. After he refused to admit his guilt, he was placed in a punishment cell for six days.

9. On 19 June 2001 the acting prosecutor of Moscow issued a new order, extending the applicant's detention until 3 September 2001. The detention was subsequently extended on 27 August 2001 until 25 October 2001. The prosecutor provided similar reasons for both extensions: the applicant was charged with serious criminal offences and, if released, he could abscond and pervert the course of justice.

10. In August 2001 the applicant was charged with abuse of position committed with the use of force and weapons. In October 2001 he was additionally charged with unlawful possession of weapons and aggravated bribery.

11. On 16 October 2001 a deputy Prosecutor General of the Russian Federation extended the applicant's detention until 25 December 2001. The grounds for the extension were similar to those in the detention orders of 19 June and 27 August 2001.

B. First request for release

12. On 8 October 2001 the applicant petitioned the Preobrazhenskiy District Court of Moscow for release. He argued that he had positive references, had received awards, had permanent residence in Moscow, was employed and had to take care of his mother, who was seriously ill. He did not intend to abscond or pervert the course of justice and his continued detention was therefore unnecessary.

13. On 20 November 2001 the Preobrazhenskiy District Court dismissed the applicant's request for release. The District Court held that, in view of the applicant's personality and the seriousness of the criminal offences with which he had been charged, his arrest and detention had been lawful.

14. The decision of 20 November 2001 was upheld on appeal by the Moscow City Court on 18 December 2001. The City Court endorsed the District Court's reasoning.

C. Detention order of 17 December 2001 (extension until 4 April 2002)

15. On 17 December 2001 the Prosecutor General authorised the applicant's detention until 4 April 2002, giving the same reasons as in the previous detention order of 16 October 2001.

16. A week later the applicant complained to the Preobrazhenskiy District Court that the extension had been unlawful. He petitioned for release.

17. On 31 January 2002 the Preobrazhenskiy District Court held that the extension order of 17 December 2001 had been lawful, taking into account "the seriousness of the offences with which the applicant was charged, his personality and the particular circumstances of the case". There were no procedural violations and therefore no grounds for the applicant's release.

18. On 20 March 2002 the Moscow City Court upheld the decision of 31 January 2002.

D. Detention order of 20 March 2002 (extension until 4 June 2002)

19. On 20 March 2002, having regard to the gravity of the charges against the applicant and the necessity to carry out certain investigatory activities, the Prosecutor General of the Russian Federation extended the applicant's detention until 4 June 2002.

20. The applicant appealed against the extension order to the District Court.

21. On 10 April 2002 the Preobrazhenskiy District Court held, that having regard to the applicant's personality and the seriousness of the charges against him, the extension order had been lawful.

22. The applicant appealed against that decision on the following day.

23. On 28 May 2002 the Moscow City Court quashed the decision of 10 April 2002 because the applicant had not been served with the Prosecutor General's decision of 20 March 2002. The City Court remitted the matter for a fresh examination.

24. On 6 June 2002 the applicant complained to the Preobrazhenskiy District Court that his request for release had not been considered. On 17 June 2002 he submitted the same complaint to the Moscow City Court.

25. On 1 July 2002 the Preobrazhenskiy District Court discontinued the proceedings concerning the detention matter on the ground that the new Code of Criminal Procedure had entered into force. On 4 July 2002 the District Court notified the applicant of its decision of 1 July 2002.

E. Detention order of 29 April 2002 (extension until 4 August 2002)

26. On 22 May 2002 the applicant was informed that on 29 April 2002 the Prosecutor General had extended his detention until 4 August 2002. On the same day he lodged an appeal with the Preobrazhenskiy District Court. The applicant claims that he was twice brought to the District Court but the hearings were adjourned.

27. According to the Government, the Preobrazhenskiy District Court listed two hearings which were adjourned because the applicant's lawyer defaulted. They further submitted that no decision on the merits of the applicant's complaint had been taken, but that on 1 July 2002 the District Court had discontinued the proceedings concerning the detention matter because the new Code of Criminal Procedure had entered into force.

F. Trial proceedings and the applicant's detention during the trial proceedings

1. Detention order of 12 July 2002

28. On 28 June 2002 the case was referred to the Moscow City Court for trial.

29. On 12 July 2002 the Moscow City Court held a preliminary hearing and declared that the applicant's detention "should remain unchanged".

2. Return of the case to the prosecutor's office and detention order of 2 August 2002

30. On 2 August 2002 the Moscow City Court returned the case to the prosecutor for correction of procedural defects in the bill of indictment. The City Court held that the applicant's detention "should remain unchanged".

31. The Moscow prosecutor and the representatives of the victims appealed against that decision to the Supreme Court of the Russian Federation. At the same time the applicant's lawyer asked the Supreme Court to uphold the decision of 2 August 2002 in the part concerning the correction of procedural defects but to have the applicant released.

32. On 9 October 2002 the Supreme Court quashed the decision of 2 August 2002, remitted the case to the Moscow City Court for trial and ordered that the applicant's detention "should remain unchanged". The Supreme Court indicated that there were no grounds for release.

3. Extension order of 28 November 2002

33. On 28 November 2002 the Moscow City Court listed a preliminary hearing for 19 December 2002. The City Court, without indicating any

reason or setting a time-limit, held that the applicant should remain in detention.

34. That decision was quashed on appeal by the Supreme Court on 18 March 2003 due to certain procedural violations. The Supreme Court held that the applicant should remain in detention. No reasons were given.

4. Extension order of 27 December 2002 (until 28 March 2003)

35. On 27 December 2002 the Moscow City Court extended the applicant's detention until 28 March 2003. The court held that he had been charged with extremely serious criminal offences and his detention should therefore be extended.

36. The applicant appealed on the following day. On 18 March 2003 the Supreme Court upheld the Moscow City Court's decision. It held that, given that the applicant had been charged with serious offences and that the authorised period of his detention had expired, the Moscow City Court had made the correct decision.

5. Extension order of 17 March 2003 (until 28 June 2003)

37. On 17 March 2003 the Moscow City Court held that the applicant's detention should be extended until 28 June 2003 because the applicant had been charged with serious offences.

38. Two days later the applicant appealed against that decision.

39. On 14 August 2003 the Supreme Court upheld the decision, finding that the applicant had been charged with serious criminal offences and that there were insufficient grounds for his release.

6. Request for release on 13 May 2003

40. On 13 May 2003 the Moscow City Court held a preliminary trial hearing. At that hearing the applicant asked for release. The Moscow City Court listed the first trial hearing for 17 June 2003 and dismissed the request for release. The City Court noted that the applicant had been charged with serious offences and "the circumstances of the case suggested that he could pervert the course of justice".

41. On 23 May 2003 the applicant appealed against that decision.

42. On 13 August 2003 the Supreme Court upheld that decision, noting the seriousness of the charges against the applicant as the reason for the dismissing the request for release.

7. Extension order of 24 June 2003 (until 28 September 2003)

43. On 24 June 2003 the Moscow City Court held that, in view of the complexity of the case and the seriousness of the charges, the applicant's detention on remand should be extended until 28 September 2003.

44. On 4 July 2003 the applicant appealed.

45. On 4 September 2003 the Supreme Court upheld the Moscow City Court's decision, finding that the applicant had been charged with serious offences and that his arguments were not sufficient to secure his release.

8. Conditions of the applicant's transport and detention on the days of the hearing

46. On the days of the hearings the applicant was usually woken up at 4.00 a.m. and taken to the courthouse, where he was kept for the entire day and then returned to the detention facility late at night. According to the applicant, he was not given any food or drink on such days.

9. Trial and appeal proceedings

47. On 18 August 2003 the Moscow City Court found the applicant guilty of aggravated abuse of position, acquitted him of the other charges and sentenced him to three years' imprisonment. The applicant was prohibited from holding positions in State law enforcement bodies for three years.

48. On 25 November 2003 the Supreme Court of the Russian Federation upheld the judgment of 18 August 2003.

49. On 30 December 2003 the Preobrazhenskiy District Court of Moscow ordered the applicant's release on licence.

II. RELEVANT DOMESTIC LAW

50. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (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

51. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, a personal guarantee, bail and detention on remand (Article 89 of the old CCrP, Article 98 of the new CCrP).

B. Authorities ordering detention on remand

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

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

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, 3-6).

C. Grounds for ordering detention on remand

53. 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 re-offend (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).

54. Before 14 March 2001, detention on remand was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment or if there were "exceptional circumstances" in the case (Article 96). On 14 March 2001 the old CCrP was amended to permit defendants to be remanded in custody if the charge carried a sentence of at least two years' imprisonment, if they had previously defaulted, 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 allegedly 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 on remand

1. Two types of detention on remand

55. The Codes make a distinction between two types of detention on remand: the first being "during the investigation", that is while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being "before the court" (or "during the trial proceedings"), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

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

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

57. The period of detention "during the investigation" is calculated 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).

58. Access to the 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, on a request by 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.

59. Under the old CCrP, the trial court had the right to remit the case for "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 "during the investigation" and the relevant time-limit continued to apply. If, however, the case was remitted for additional investigation but the investigators had already used up all the time authorised for detention "during the investigation", a supervising prosecutor could nevertheless extend the detention period for one additional month starting from the date he received the case. Subsequent extensions could only be granted if the detention "during the investigation" had not exceeded eighteen months (Article 97).

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

60. From the date the prosecutor refers the case to the trial court, the defendant's detention is classified as "before the court" (or "during the judicial proceedings").

61. Before 14 March 2001 the old CCrP set no time-limit for detention "during the judicial proceedings". On 14 March 2001 a new Article 239-1 was inserted which established that the period of detention "during the judicial proceedings" could not generally 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 a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences.

62. The new CCrP establishes that the term of detention "during the judicial proceedings" is calculated from the date the court received the file up to the date the judgment is given. The period of detention "during the judicial proceedings" 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).

E. Proceedings to examine the lawfulness of detention

During detention "during the investigation"

63. Under the old CCrP, the detainee or his or her counsel or representative could challenge the 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 was to be conducted *in camera* in the presence of a prosecutor and the detainee's counsel or representative. The detainee was to be summoned and a review in his absence was only permissible in exceptional circumstances 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). 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 (see paragraph 96 below) (Article 331 *in fine*).

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

During the judicial proceedings

65. Upon receipt of the case file, the judge must determine, in particular, whether the defendant should be held in custody or released pending the trial hearings (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).

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

67. 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 the judgment on the merits (Article 331 of the old CCrP, Article 255 § 4 of the new CCrP – see paragraph 96 below).

THE LAW

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

68. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand 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

69. The Government argued that the entire term of detention had been compatible with the domestic procedural rules and free from arbitrariness. The applicant's detention had been extended at regular intervals by the competent domestic authorities, a prosecutor or a court. His complaint under Article 5 § 1 (c) was therefore manifestly ill-founded and should be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

70. The applicant argued that the decision concerning his placement in custody and the subsequent decisions extending his detention on remand had been issued in violation of the domestic requirements. The entire period of his detention was therefore unlawful. Furthermore, there had been no

reasons for his arrest on 4 May 2001 and his detention from 17 May to 19 June 2001 had not been based on any legal order.

B. The Court's assessment

1. Admissibility

71. The Court observes at the outset that a part of the applicant's complaint refers to detention orders issued more than six months before he lodged the application with the Court on 29 May 2002. The most recent detention order that the Court may examine was issued on 17 December 2001. The final decision concerning the lawfulness of that order was given on 20 March 2002, that is, within the six months preceding the lodging of the application. The Court therefore considers that the part of the applicant's complaints concerning the detention orders issued before 17 December 2001 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; and *Pavlík v. Slovakia*, no. 74827/01, § 89, 30 January 2007, with further references).

72. The Court further notes that the remainder 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.

2. Merits

(a) General principles

73. 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.

74. 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

(i) Detention on remand from 17 December 2001 to 12 July 2002

75. The Court reiterates that on 17 December 2001 the Prosecutor General authorised the applicant's detention until 4 April 2002. On 20 March 2002 the Prosecutor General issued another order extending the detention to 4 June 2002. On 29 April 2002 another extension, to 4 August 2002, followed. The grounds for the three extensions were similar: the applicant had been charged with serious criminal offences and, if released, he could abscond or obstruct the examination of the case. On 28 June 2002 the applicant was committed for trial. From that moment on, his detention was considered "before a court" (see paragraphs 60 and 62 above). On 12 July 2002 Moscow City Court held a preliminary hearing and noted that the applicant should remain in custody.

76. The Court has to ascertain whether the detention from 17 December 2001 to 12 July 2002 was "lawful". The Court notes that the Prosecutor General acted within its powers in making the extension orders and there is nothing to suggest that they were invalid or unlawful under domestic law (see paragraphs 56 and 57 above). The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3. The Court has already accepted on a number of occasions that similar decisions by a prosecutor or a district attorney were compatible with the requirements of Article 5 § 1 of the Convention (see, for example, *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, § 25). There is nothing in the present case to warrant a different conclusion.

77. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 17 December 2001 to 12 July 2002.

(ii) Detention on remand from 12 July to 27 December 2002

78. The Court reiterates that on 12 July 2002 the Moscow City Court noted that the applicant's detention "should remain unchanged". At the following hearing on 2 August 2002 the Moscow City Court, when returning the file to the investigation authorities for the correction of certain

procedural defects, again declared that the preventive measure imposed on the applicant should not be changed. On 9 October 2002 the Supreme Court, having quashed the City Court's decision of 2 August 2002, declared that the applicant should remain in detention. On 28 November 2002 the Moscow City Court listed a preliminary hearing and held that the applicant's detention "should remain unchanged". On 27 December 2002 the City Court issued an order extending the applicant's detention until 28 March 2003 due to the gravity of the charges against him. The decision of 27 December 2002 was upheld on appeal.

79. The Court notes that on 12 July, 2 August, 9 October and 28 November 2002 the City and Supreme courts did not give any reasons for their decisions to remand the applicant in custody. Nor did they set time-limits for the continued detention. Leaving aside the concurrent developments in the applicant's case (discussed below), it transpires that for more than five months the applicant remained in a state of uncertainty as to the grounds for his detention, that is, from 12 July to 27 December 2002, when the City Court extended the applicant's detention until 28 March 2003 and set out certain grounds for the extension.

80. The Court has already found a violation of Article 5 § 1 (c) of the Convention in a number of cases concerning a similar set of facts. In particular, the Court held that the absence of any grounds given by the judicial authorities in their decisions authorising the detention for a prolonged period of time is incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *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 on remand 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).

81. The Court sees no reason to reach a different conclusion in the present case. It considers that the City Court's decisions of 12 July, 2 August and 28 November 2002 and the Supreme Court's decision of 9 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 (c).

82. The Court therefore considers that there was a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 12 July to 27 December 2002.

(iii) Detention on remand from 27 December 2002 to 18 August 2003

83. The Court observes that the applicant's detention in that period was extended by the City Court on three occasions on the ground of the gravity of the charges against him and the fact that the trial was still pending.

84. The Court reiterates that the trial court's decision to maintain a custodial measure would not breach Article 5 § 1 provided that the trial court "had acted within its jurisdiction... [and] had power to make an appropriate order" (see *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006).

85. The trial court acted within its competence in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. It has not been claimed that these decisions were otherwise incompatible with the requirements of Article 5 § 1 (c), the question of sufficiency and relevance of the invoked grounds being analysed below in the context of compliance with Article 5 § 3 of the Convention.

86. Accordingly, the Court finds that there has been no violation of Article 5 § 1 (c) of the Convention in respect of the detention orders issued between 27 December 2002 and 18 August 2003.

3. Summary of the findings

87. The Court has found no violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 17 December 2001 to 12 July 2002 and from 27 December 2002 to 18 August 2003.

88. The Court has found a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 12 July to 27 December 2002.

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

89. The applicant complained that his detention on remand had been excessively long. The Court considers that this complaint falls to be examined under 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..."

A. Submissions by the parties

90. The Government submitted that the length of the applicant's detention on remand had not been excessive. It did not exceed the maximum period of detention established under Russian law for persons accused of serious and particularly serious criminal offences. The Government further

noted that the extensions of the applicant's detention had been necessary in the circumstances of the case, in particular taking into account the applicant's lawyers' failure to attend two hearings and the possibility that, if released, the applicant could re-offend, abscond or obstruct the examination of the case.

91. The applicant responded that the domestic courts had not provided any evidence showing that he was in fact likely to re-offend, abscond or pervert the course of justice. The only reason for his continued detention had been the gravity of the charges against him.

B. The Court's assessment

1. Admissibility

92. 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.

2. Merits

(a) General principles

93. 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. 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 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 true facts mentioned 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).

94. 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 concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

95. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, § 153).

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

(i) Period to be taken into consideration

96. The Court observes that the applicant's detention on remand lasted from 4 May 2001, the date of his arrest, to 18 August 2003, the date of his conviction. The overall duration thus amounted to two years, three months, and fifteen days. In carrying out its assessment, the Court will not lose sight of its finding that from 12 July to 27 December 2002 the applicant's detention was not in accordance with the provisions of Article 5 § 1 (c) of the Convention (see *Goral v. Poland*, no. 38654/97, §§ 58 and 61, 30 October 2003, and *Stašaitis*, cited above, §§ 81-85).

(ii) The reasonableness of the length of detention

97. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in bribery and corruption. In the decision of 7 May 2001 a deputy Moscow prosecutor cited the gravity of the charges and the need to prevent the applicant from re-offending, absconding and obstructing as the grounds for his placement in custody. At that stage of the proceedings those reasons could justify keeping the applicant in custody (see *Khudoyorov*, cited above, § 176).

98. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, authorities were under an obligation to analyse the applicant's personal situation in greater detail and to give specific reasons for holding him in custody.

99. The Court reiterates that after 7 May 2001 the applicant's detention on remand was extended thirteen times. When extending the applicant's detention or examining the lawfulness of, and justification for, his continued detention, the domestic authorities consistently relied on the gravity of the charges as the main factor and on the applicant's potential to abscond, pervert the course of justice or re-offend.

100. As regards the domestic authorities' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180).

101. The other grounds for the applicant's continued detention were the domestic authorities' findings that the applicant could abscond, pervert the course of justice or re-offend. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. 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). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of concrete facts in support of their conclusions.

102. The Court notes that the domestic authorities gauged the applicant's potential to abscond or re-offend by reference to the fact that he had been charged with serious criminal offences, thus facing a severe sentence. In this respect the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and re-offending 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, § 431; and *Panchenko*, cited above, § 106). In the present case the domestic authorities did not mention any concrete facts warranting the applicant's detention on that ground, save for a quick reference to the applicant's “personality”. The authorities did not indicate a single circumstance suggesting that, if released, the applicant would abscond or evade justice, or that he would otherwise upset the course of the trial. The Court finds that the existence of such a risk was not established.

103. 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 trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February

2005; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). At no point in the proceedings in the present case did the domestic courts explain in their decisions why alternatives to the deprivation of liberty would not have ensured that the trial could follow its proper course. This failure is made all the more inexplicable by the fact that the new Code of Criminal Procedure expressly requires the domestic courts to consider less restrictive measures as an alternative to custody (see paragraph 54 above).

104. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial, such as his family situation. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify extension of detention: the prosecutors reproduced the same formula in all their decisions. The Court also does not lose sight of the fact that the Moscow City Court's decisions of 12 July, 2 August and 28 November 2002 and the Supreme Court's decision of 9 October 2002 gave no grounds whatsoever for the applicant's continued detention. The courts only noted that the applicant should remain in custody. It is even more striking that by that time the applicant had already spent more than a year in custody, the investigation had been completed and the case had been referred for trial.

105. Having regard to the above, the Court considers that by failing to address concrete relevant facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities prolonged the applicant's detention on grounds which cannot be regarded as "sufficient". The authorities thus failed to justify the applicant's continued deprivation of liberty for the period of two years and almost four months. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period as such a period cannot be considered reasonable within the meaning of Article 5 § 3 of the Convention (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

106. There has therefore been a violation of this provision.

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

107. The applicant complained under Article 5 § 4 of the Convention that the courts had not pronounced "speedily" on the lawfulness of his detention and that his appeals against the detention orders of 20 March and 29 April 2002 had not been examined. Article 5 § 4 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

108. The Government submitted that, according to information presented by the Supreme Court of the Russian Federation, the domestic courts had failed on several occasions to comply with the time-limits established by the Russian law on criminal procedure for examination of the complaints concerning the lawfulness of detention on remand. Furthermore, the applicant's complaint of 22 May 2002 against the detention order of 29 April 2002 had not been examined speedily. The Government noted that the applicant had been found guilty of a criminal offence and the term of his pre-trial detention had been counted towards the term of his sentence.

109. The applicant maintained his complaints.

B. The Court's assessment

1. Admissibility

110. 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.

2. Merits

(a) General principles

111. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, § 28, and *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per instance may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also 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

(i) Speediness of review

112. The Court notes that it took the domestic courts approximately seventy, eighty-four, sixty-seven, one hundred and eight, eighty, one hundred and forty-six, eighty-one and sixty days to examine the applicant's various requests for release or his appeals against the detention orders (see paragraphs 12-14, 16-18, 30-32, 33-34, 36, 38-39, 41-42 and 44-45 above). Nothing suggests that the applicant caused delays in the examination of his request for release or appeals against the detention orders. The Court considers that these eight 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, §§ 85-86, ECHR 2000-XII, where review proceedings which lasted twenty-three days were not "speedy").

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

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

(ii) Appeals against the detention orders of 20 March and 29 April 2002

115. The Court notes that on 20 March 2002 the Prosecutor General extended the applicant's detention until 4 June 2002. On 10 April 2002 the District Court upheld that detention order. However, on 28 May 2002 the City Court quashed the decision of 10 April 2002 and remitted the matter to the District Court for fresh examination. In the meantime, on 29 April 2002 the Prosecutor General again extended the applicant's detention, this time to 4 August 2002. On 22 May 2002 the applicant appealed against the order of 29 April 2002 to the District Court. On 1 July 2002 the Preobrazhenskiy District Court discontinued the proceedings in respect of the both extension orders of 20 March and 29 April 2002. It reasoned that the new Code of Criminal Procedure had entered into force on 1 July 2002.

116. The Court recalls that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and

substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Grauslys v. Lithuania*, no. 36743/97, § 53, 10 October 2000). In order to satisfy the requirements of Article 5 § 4 of the Convention, a "review of the lawfulness of the applicant's detention" must comply with both the substantive and procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5, namely to protect the individual against arbitrariness (see *Keus v. the Netherlands*, judgment of 25 October 1990, Series A no. 185 C, § 24).

117. On the fact of the present case, the Court notes that on 1 July 2002 the District Court refused to examine the applicant's allegations concerning the unlawfulness of his continued detention because of the alleged bar created by the new Code of Criminal Procedure. However, the Government did not indicate any domestic legal provision which permitted the District Court to take a decision refusing to examine an appeal against a detention order. Nor did the decision of 1 July 2002 set out such a legal basis.

118. Having regard to the District Court's express refusal to examine the issue of the applicant's continued detention and to take cognisance of any arguments concerning the aspects of the lawfulness of his detention, the Court considers that such a decision did not constitute an adequate judicial response for the purposes of Article 5 § 4 and that it infringed the applicant's right to take proceedings by which the lawfulness of his detention would be decided.

119. It follows that there has been a violation of Article 5 § 4 of the Convention on account of the failure to consider the substance of the applicant's appeals against the detention orders of 20 March and 29 April 2002.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The applicant further complained under Articles 3, 5, 6, 13 and 18 of the Convention that he had not been promptly informed about the charges against him, that the domestic courts had not examined his requests concerning investigation actions or that they had dismissed such requests, that he had been detained in the temporary confinement ward for seven days after his arrest and that, after his transfer to detention facility no. 77/1, he had been placed in a punishment cell, that his rights had been restricted for reasons other that those prescribed, that the length of the criminal proceedings had been excessive, and that the conditions of his transport to and from the courthouse had been inadequate and could have potentially resulted in violation of his right to prepare his defence.

121. Having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence *ratione materiae*, it finds that the evidence discloses no 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

122. 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."

123. 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* the complaints concerning the unlawfulness of the applicant's detention after 17 December 2001, the excessive length of his detention on remand, the failure of the domestic authorities to pronounce "speedily" on the lawfulness of his detention and to examine his appeals against the detention orders of 20 March and 29 April 2002 admissible 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 on remand from 12 July to 27 December 2002;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 17 December 2001 to 12 July 2002 and from 27 December 2002 to 18 August 2003;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's detention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the delays in examining the lawfulness of the detention and the failure to consider the substance of the applicant's appeals against the detention orders of 20 March and 29 April 2002;

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

Done in English, and notified in writing on 24 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Christos ROZAKIS President