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

FIFTH SECTION

CASE OF SHUKHARDIN v. RUSSIA

(Application no. 65734/01)

JUDGMENT

STRASBOURG

28 June 2007

FINAL

28/09/2007

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 Shukhardin v. Russia,

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

Mr P. LORENZEN, *President,*
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr A. KOVLER,
Mr J. BORREGO BORREGO,
Mr M. VILLIGER, *judges,*

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 5 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 65734/01) 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 Valeriy Vladimirovich Shukhardin ("the applicant"), on 11 January 2001.

2. The applicant, who had been granted legal aid, was represented by Mrs Y. Liptser, 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 8 September 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 1967 and lived until his arrest in Moscow.

A. The applicant's arrest and detention until 8 September 2000

6. On 8 March 1999 the applicant was arrested on suspicion of having committed franchise fraud, that is, having organised a financial pyramid scheme in which more than one hundred persons had been enrolled and which had caused fraud losses of over 23,000,000 Russian roubles. Three days later a prosecutor authorised the applicant's placement in custody on the ground that he was charged with a serious criminal offence and did not have a permanent place of residence and work in the Omsk Region, thus being liable to abscond and pervert the course of justice.

7. On 6 May and 2 July 1999 the Omsk Regional Prosecutor extended the applicant's detention until 8 July and 8 September 1999 respectively, having regard to the gravity of the charges.

8. On 3 September and 29 November 1999 a deputy Prosecutor General of the Russian Federation, invoking the same grounds as in the previous detention orders, authorised the extension of the applicant's detention until 8 December 1999 and 8 March 2000 respectively.

9. On 25 February and 26 June 2000 the acting Prosecutor General of the Russian Federation authorised further extensions of the applicant's detention until 8 July and 8 September 2000 respectively. The reasons for both extensions were similar: the gravity of the charges and the applicant's liability to abscond and pervert the course of justice.

B. The applicant's consultation of the case file and detention until 8 March 2001

10. According to the Government, on 11 July 2000 the pre-trial investigation was closed and three days later the applicant began studying the case file. However, as appears from a report issued on 5 July 2000 by a senior investigator from the Omsk Regional Police Department, the applicant was provided with the case file on 11 May 2000. According to the same report, the applicant had “intentionally procrastinated in reading the material in the case file” because between 15 May and 1 June 2000 he had read from 26 to 42 pages each day and in June 2000 he had read from 2 to 50 pages each day. He was warned that such behaviour was not permissible. The applicant countersigned the report and made a handwritten note stating that he had been able to study the file from two to five hours each day, had made notes and had copied documents with which he had not been issued.

11. The Government submitted a detailed schedule showing the times and dates when the applicant had consulted the file and the volumes and pages of the file which he had studied. As appears from the schedule, in July and August 2000 the applicant studied from 20 to several hundred pages each day. On 17 August 2000 the applicant made a handwritten note in the schedule which reads as follows:

> "I have read the entire case file. I ask you to provide me with a copy of a record certifying that the pre-trial investigation has ended and that the defendants and counsel have finished reading the file in accordance with Articles 201-203 of the RSFSR Code of Criminal Procedure."

12. On 15 August 2000 the Omsk Regional Prosecutor asked the Omsk Regional Court to extend the applicant's detention for an additional six months because the applicant needed additional time to read the case file. The prosecutor also noted that the applicant and his co-defendants had participated in an organised criminal offence, had been charged with serious criminal offences, and had influenced other defendants, witnesses and victims. They were liable to abscond and pervert the course of justice.

13. On 23 August 2000 the President of the Omsk Regional Court wrote in the corner on the first page of the prosecutor's application that he authorised the extension of the applicant's and his co-defendants' detention until 8 March 2001.

14. On the same day the applicant was provided with several volumes of the case file for consultation. He refused to read them and an entry to this effect was made in the schedule. On 25 and 28 August 2000 an investigator brought the case file to facility no. 1, where the applicant was detained. The applicant confirmed his refusal to consult the file. According to a handwritten note made by the investigator in the schedule, on 29 August 2000 the applicant began reading volume no. 66. However, a subsequent handwritten note made by the applicant indicated that he had finished studying the file on 17 August 2000 and had no intention to do so any further. Statements with similar contents were made by the investigator and the applicant in the schedule on 30 and 31 August 2000. The schedule for September 2000 consisted of notes to similar effect by the applicant and the investigator.

15. On an unspecified date the applicant appealed against the order of 23 August 2000. He claimed that the maximum eighteen-month period of his detention would expire on 8 September 2000. An extension of the detention beyond eighteen months was only possible if the defendant needed more time to read the case file. The applicant insisted that on 17 August 2000 he had finished studying the file and that there were therefore no grounds for a further extension.

16. On 22 November 2000 the Supreme Court of the Russian Federation examined the applicant's and his co-defendants' appeals against the order of 23 August 2000, quashed it and remitted the matter to the Omsk Regional Court for a fresh examination. The relevant part of the Supreme Court's decision reads as follows:

> "By virtue of Articles 220-1 and 220-2 of the RSFSR Code of Criminal Procedure the judge has to examine the lawfulness and well-foundedness of the request for extension of the detention of Mr Shukhardin... and has to issue a reasoned decision as required by paragraph 8 of Article 220-2 of the RSFSR Code of Criminal Procedure.

Moreover, paragraph 2 of Article 102 of the RSFSR Code of Criminal Procedure requires that [a court] should prepare minutes of a court hearing in which the issue of extension of detention is examined... [the minutes] should indicate who participated in the hearing and should reflect the progress of the examination of the materials.

The minutes of the court hearing and the reasoned decision of the judge were not included in the materials presented to the Supreme Court of the Russian Federation, which constitutes a gross violation of the requirements of the RSFSR Code of Criminal Procedure.

Accordingly, the decision [of the President of the Regional Court] should be quashed and the case file should be sent for re-examination.

The Supreme Court cannot accept counsel's requests for release of Mr Shukhardin... because [the Supreme Court] is unable to conclude from the presented decision whether [he] is detained lawfully or unlawfully, and counsel's arguments are based on this circumstance.

In the course of the fresh consideration of the file, the [Regional] Court has to examine thoroughly all the arguments set out in the application by the Omsk Regional Prosecutor and to give a reasoned decision.

On the basis of the foregoing, and in accordance with Articles 332 and 339 of the RSFSR Code of Criminal Procedure, the Court decides:

To quash the decision of 23 August 2000 of the President of the Omsk Regional Court by which an extension of Mr Shukhardin's... detention was authorised and to refer the case back for fresh consideration...

The measure of restraint applied to Mr Shukhardin... should remain unchanged, namely detention on remand."

17. On 19 January 2001 the Omsk Regional Court extended the applicant's detention until 8 March 2001, noting the gravity of the charges against him. The Regional Court held that the gravity of the charges could serve as the sole ground for the detention, but it also pointed to the applicant's failure to finish studying the file.

18. According to the Government, on 21 February 2001 the applicant finished reading the file.

19. On 3 May 2001 the Supreme Court upheld the decision of 19 January 2001, stating that the applicant had been charged with especially serious criminal offences and his detention had been authorised and extended a number of times in accordance with the requirements of the RSFSR Code of Criminal Procedure. The request for extension of the applicant's detention until 8 March 2001 had also been lodged in compliance with Russian law. The applicant did not have a permanent place of residence in the Omsk Region, where the investigation was being conducted, and he was liable to abscond. The extension of the applicant's detention was necessary because he had refused to read all the material in the case file.

C. The applicant's committal for trial and his detention until 1 July 2002

20. On 2 March 2001 the bill of indictment was served on the applicant. He was charged with aggravated fraud, forgery of documents, money laundering and organisation of a criminal enterprise. Five days later the case was referred for trial.

21. On 10 July 2001 the Omsk Regional Court scheduled the first trial hearing. It also examined requests by the applicant and his co-defendants for release and dismissed them on the ground of the gravity of the charges.

22. In July 2001 the applicant and his lawyer appealed against the order, arguing that the Regional Court had failed to issue a reasoned decision concerning the extension of his detention.

23. On 25 October 2002 the Supreme Court of the Russian Federation upheld the decision of 10 July 2001, noting that the Regional Court had acted within its competence. The Supreme Court further held as follows:

> "By virtue of Article 96 § 1 of the RSFSR Code of Criminal Procedure... in force at the time the Regional Court issued its decision [of 10 July 2001], detention could be authorised as a measure of restraint in respect of persons suspected or accused of having committed a criminal offence punishable by more than two years' imprisonment.
>
> As appears from the presented materials, Mr Shukhardin... was charged with criminal offences punishable by more than two years' imprisonment. Having regard to this circumstance, the investigating authorities correctly applied the measure of restraint.
>
> By virtue of Article 222 of the RSFSR Code of Criminal Procedure, when a judge schedules a court hearing, he should, among other issues, determine matters concerning the adjustment or annulment of measures of restraint.
>
> When there is a necessity to annul a measure of restraint or to change it to a stricter or a more lenient one, a judge determines the matter and gives a decision accordingly.
>
> As appears from the materials submitted, the [Regional Court] did not determine an issue concerning the change or annulment of the measure of restraint, and accordingly there was no need to issue a decision on the matter."

D. The applicant's detention until 21 April 2003

1. Decision of 1 July 2002

24. On 1 July 2002 the new Code of Criminal Procedure became effective.

25. On the same day the Omsk Regional Court, by the same decision, extended the applicant's and his co-defendants' detention until 1 October

2002, holding that they were charged with especially serious criminal offences, had no place of residence in the Omsk Region and were liable to abscond.

26. Ten days later the applicant lodged an appeal against the decision of 1 July 2002. In October 2002 he amended his grounds of appeal, asking to be released on the basis of guarantees provided by two persons, the president of a regional NGO working in the field of human-rights protection and a representative of the Moscow-based NGO "Assistance to the Reform of Criminal Justice".

27. On 25 October 2002 the Supreme Court of the Russian Federation upheld the decision of 1 July 2002, confirming that the gravity of the charges could serve as the sole ground for the applicant's and his co-defendants' continuing detention.

2. Decision of 1 October 2002

28. On 1 October 2002 the Omsk Regional Court authorised a further extension of the applicant's and his co-defendants' detention until 1 January 2003. It relied on the gravity of the charges against them as the ground for the extension.

29. The applicant and his lawyer appealed, arguing that the gravity of the charges could no longer serve as the reason for the applicant's continuing detention and that his detention was excessively long.

30. On 17 April 2003 the Supreme Court of the Russian Federation upheld the decision of 1 October 2002, holding that the applicant and his co-defendants were charged with serious criminal offences and that that ground was sufficient to authorise their detention for an additional three months.

3. Decision of 25 December 2002

31. On 25 December 2002 the Omsk Regional Court, once again relying on the gravity of the charges, extended the applicant's and his co-defendants' detention for an additional three months, until 1 April 2003.

32. The applicant and his lawyer appealed. In the meantime, on 31 March 2003 the Omsk Regional Court authorised a further extension of the detention for an additional three months, until 1 July 2003, on the ground of the gravity of the charges.

33. On 17 April 2003 the Supreme Court of the Russian Federation quashed the decision of 25 December 2002 and authorised the applicant's release on a written undertaking not to leave the town. The relevant part of the decision reads as follows:

> "By virtue of Article 255 of the Russian Federation Code of Criminal Procedure, a court which has jurisdiction to examine a case has the right to extend the detention of a defendant after the expiry of the six-month period following the committal of the case for trial.

A court decision concerning a measure of restraint, the type of measure taken, an extension of detention or a change of a measure of restraint should be reasoned.

When indicating the grounds for its decision concerning the extension of the detention, the court has to take into account not only the seriousness of a criminal offence with which a defendant was charged, but also other grounds and circumstances, as indicated in Articles 97 and 99 of the Code of Criminal Procedure.

This requirement of the law was not complied with when the [Regional] Court determined the matter of the extension of the defendants' detention.

As follows from the materials submitted, when extending the detention of Mr Shukhardin... and identifying the grounds for the extension of the detention, the court referred only to the fact that the defendants were charged with serious and particularly serious criminal offences.

Furthermore, the court decision did not indicate what had served as the ground for the extension of the detention or whether the court could have concluded that the defendants would abscond, continue criminal activities, threaten witnesses and other parties to the proceedings, and so on.

When the gravity of the charges is taken into account, [the court] should also have regard to all the legal characteristics of the criminal offence and of the person who committed it.

In particular, it is necessary to consider the character and degree of a threat to society posed by the criminal offence in question, the state of health of the defendant, his family status, including the right of detainees to trial within a reasonable time or to release pending trial as provided for by Article 5 of the European Convention on Human Rights.

As is rightfully pointed out in the grounds of appeal, the court did not take into account those circumstances and did not examine the [defendants'] arguments.

...

Having regard to the fact that the court breached the requirements of the law while determining the issue of detention and that the case is currently at the final stage of court proceedings..., the [Supreme Court] considers that the defendants cannot influence other parties to the proceedings, that they have permanent places of residence, and that they were detained for a long time [over four years], which had a negative influence on the state of their health,... and the measure of restraint should be changed to written undertakings not to leave the town."

34. According to the Government, on 17 April 2003 a copy of the decision of the Supreme Court was sent by special courier to Omsk, where the applicant was being detained, and arrived there on 21 April 2003. The applicant was released on the same day. According to the applicant, a copy of the decision of 17 April 2003 was sent by regular mail and arrived in Omsk on 27 April 2003. However, his lawyer brought a certified copy of

that decision to Omsk on 21 April 2001. That is why he was released on the same day.

D. Trial and appeal proceedings

35. On 21 April 2004 the Omsk Regional Court found the applicant guilty of aggravated fraud and sentenced him to nine years' imprisonment. On 25 November 2004 the Supreme Court upheld the conviction and reduced the sentence by one year.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. 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

37. "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

38. The Russian Constitution of 12 December 1993 provides 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

39. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 89 of the old CCrP). It must also take into account the gravity of the charge,

information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 91 of the old CCrP, Article 99 of the new CCrP).

40. Before 14 March 2001, detention 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 detained on remand 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 detained on remand 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 detained on remand if a less severe preventive measure was available.

D. Time-limits for detention on remand

1. Two types of detention on remand

41. 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"

42. 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).

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

44. Access to the materials in the file 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 the detention until such time as the file has been read in full and the case sent for trial (Article 97 of the old CCrP, Article 109 § 8 (1) of the new CCrP). Under the old CCrP, such an extension could not be granted for longer than six months.

45. Under the old CCrP, the trial court had the right to refer the case back 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"

46. 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").

47. 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.

48. The new CCrP provides that the term of detention "during the judicial proceedings" is calculated from the date the court received the file up to the date on which 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

1. As regards detention "during the investigation"

49. 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*).

50. 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).

2. During the judicial proceedings

51. 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 (Article 222 § 5 and Article 230 of the old CCrP, Article 228 (3) and Article 231 § 2 (6) of the new CCrP) and rule on any application by the defendant for release (Article 223 of the old CCrP).

52. 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).

53. An appeal against such a decision lies to a 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).

F. Time-limits for trial proceedings

54. Under the old CCrP, within fourteen days after receipt of the case file (if the defendant was in custody), the judge was required either: (1) to

fix the trial date; (2) to refer the case back for further investigation; (3) to stay or discontinue the proceedings; or (4) to refer the case to a court having jurisdiction to hear it (Article 221). The new CCrP empowers the judge, within the same time-limit, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 239 of the old CCrP, Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

55. The duration of the entire trial proceedings is not limited in time.

56. Under the old CCrP, the appeal court was required to examine an appeal against the first-instance judgment within ten days after it was lodged. In exceptional circumstances or in complex cases or in proceedings before the Supreme Court this period could be extended by up to two months (Article 333). No further extensions were possible.

The new CCrP provides that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

THE LAW

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

57. The applicant complained under Article 5 § 1 (c) of the Convention that his detention on remand after 8 September 2000 had been unlawful. 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

58. The Government argued that the entire term of the applicant's detention was compatible with the domestic procedural rules and free from arbitrariness. They further submitted that owing to the expiry of the maximum (eighteen-month) permitted period of detention on 8 September

2000 and the fact that the applicant needed additional time to study the voluminous case file, the domestic courts had extended his detention for six months. In particular, on 23 August 2000 the President of the Omsk Regional Court had accepted the application by the Omsk Regional Prosecutor and extended the applicant's detention for a further six months. That decision had subsequently been quashed on appeal because it had been issued in violation of the requirements of the RSFSR Code of Criminal Procedure. However, when quashing the decision of 23 August 2000 the Supreme Court had decided that the applicant should remain in detention pending the re-examination of his case. On 19 January 2001 and 3 May 2001, the domestic courts had confirmed the lawfulness of the extension authorised for the purpose of providing the applicant with time to study the case file. The Government pointed out that the applicant had taken every possible step to procrastinate while consulting the file. They enclosed the detailed schedule for the months of May to September 2000 to confirm their assertion.

59. The Government stated that the subsequent decision extending the applicant's detention had been given on 10 July 2001 in compliance with the requirements of the RSFSR Code of Criminal Procedure. On 1 July 2002 the new Code of Criminal Procedure had become effective and the applicant's detention had been extended at regular intervals in accordance with the rules laid down in the Code. On 17 April 2003 the Supreme Court of the Russian Federation had ordered the applicant's release. It had taken five days to deliver a copy of that decision to Omsk, which was situated more than 2,500 km from Moscow. There were no other means of expediting the delivery as such means would not have guaranteed the authenticity of the decision. The applicant had been released on 21 April 2003.

60. The applicant argued that on 17 August 2000, twenty-two days before the expiry of the maximum (eighteen-month) permitted period of his detention, he and his lawyer had finished studying the case file and had made an entry in the schedule to that effect. There had therefore been no valid reasons for extending his detention by an additional six months. The Government had not provided any evidence showing that he had studied the file after 17 August 2000.

61. The applicant further submitted that from 8 March 2001 to 1 July 2002 he had been detained without any legal order having been given. Furthermore, his detention from 17 to 21 April 2003 had not had any legal grounds. The Government should have taken measures to ensure his release on the same day when the Supreme Court had given its decision on that matter. In any event, the decision of 17 April 2003 had been sent by regular mail and had arrived in Omsk on 27 April 2003. The applicant had been released on 21 April 2003 because his lawyer had been issued with a copy of that decision in Moscow and had brought it to Omsk.

B. The Court's assessment

1. Admissibility

62. 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

63. 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.

64. 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 is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law are clearly defined and that the law itself is 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) The applicant's detention from 8 September 2000 to 19 January 2001

65. The Court notes that on 23 August 2000 the President of the Omsk Regional Court accepted the application by the Omsk Regional Prosecutor and extended the applicant's detention for six months. On 22 November 2000 the Supreme Court quashed that decision on the ground that the President of the Regional Court had committed a "gross violation of the requirements" of the Russian law by failing to give a formal reasoned decision. It ordered a re-examination of the issue of detention and held that

the preventive measure applied to the applicant "should remain unchanged". On 19 January 2001 the Omsk Regional Court re-examined the matter and authorised the extension until 8 March 2001.

66. The Court observes that on 23 August and 22 November 2000 the President of the Regional Court and the Supreme Court, respectively, did not give any reasons for their decisions to remand the applicant in custody. The Court finds it particularly striking that on 23 August 2000 the President of the Regional Court merely made a note in the corner of the prosecutor's application, authorising the applicant's detention for an additional six months. Furthermore, the Court notes that the Supreme Court, when quashing the order of 23 August 2000, did not set a time-limit for the continued detention and for the re-examination of the detention by the Regional Court. Leaving aside the concurrent developments in the applicant's case, it transpires that for more than four months the applicant remained in a state of uncertainty as to the grounds for his detention from 8 September 2000 to 19 January 2001, when the Regional Court eventually re-examined the detention.

67. The Court has already examined and 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 has held that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *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).

68. The Court sees no reason to reach a different conclusion in the present case. It considers that the order of 23 August 2000 and the Supreme Court's decision of 22 November 2000 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.

69. The Court also finds that the Regional Court's decision of 19 January 2001, as upheld on appeal on 3 May 2001, could not have constituted a "lawful" basis for the applicant's detention in the preceding period (ibid., § 139). That decision authorised the applicant's detention from 8 September 2000 to 8 March 2001, out of which a period of four months and eleven days was thus authorised retrospectively. The Government did not indicate any domestic legal provision that permitted a decision to be taken

authorising a period of detention retrospectively. It follows that the applicant's detention, in so far as it had been authorised by a judicial decision in respect of the preceding period, was not "lawful" under domestic law. Furthermore, the Court reiterates that any *ex post facto* authorisation of detention on remand is incompatible with the "right to security of person" as it is necessarily tainted with arbitrariness (ibid., § 142).

70. The Court therefore considers that there was a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 8 September 2000 to 19 January 2001.

(c) The applicant's detention from 19 January to 8 March 2001

71. The Court notes that by 8 September 2000 the applicant had been detained for eighteen months. The rules on detention at the time permitted up to eighteen months' detention "during the investigation", plus up to six months when authorised by a judicial decision if the defendants required more time to study the file (see paragraph 44 above).

72. On 19 January 2001 the Omsk Regional Court authorised the applicant's detention for an additional six months, from 8 September 2000 to 8 March 2001, citing the need for him to study the case file as the main reason. On 3 May 2001 the Supreme Court of the Russian Federation upheld that order.

73. Having regard to its findings concerning the applicant's detention from 8 September 2000 to 19 January 2001 (see paragraphs 65-70 above), the Court will now consider whether the detention order of 19 January 2001 constituted a lawful basis for the applicant's detention from 19 January to 8 March 2001.

74. The Court once again reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 state the obligation to conform to the substantive and procedural rules of national law. The Court further observes that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *N.C. v. Italy*, no. 24952/94, § 42, 11 January 2001, with further references).

75. Turning to the domestic law, the Court observes that the RSFSR Code of Criminal Procedure, as in force at the material time, provided for a sole legal possibility of extending detention "during the investigation" after the expiry of the maximum (eighteen-month) period. Such an extension was legally possible only in a case when a defendant needed additional time to study the case file.

76. The Court notes that as follows from the documents presented by the parties the applicant began studying the case file on 11 May 2000 (see

paragraphs 10 and 11 above). The Court does not have to determine whether it was the applicant's behaviour, in particular his attempts to procrastinate in the consultation of the file, which allegedly compelled the investigating authorities to apply for the extension of his detention for an additional six months. What matters in the present case is that on 17 August 2000, that is twenty-two days before the expiry on 8 September 2000 of the maximum (eighteen-month) permitted period of the applicant's detention, he and his lawyer finished reading the file and made an entry to that effect in the schedule (see paragraph 11 above). Furthermore, the applicant persistently refused to read the file in August and September 2000, each time making a note in the schedule confirming that he had finished studying the file and had no intention to start reading it again (see paragraph 14 above). The Court further observes that the Government did not submit any evidence showing that after September 2000 the applicant was even given access to the case file.

77. The Court therefore finds that by 19 January 2001, when the Omsk Regional Court re-examined the issue of the applicant's detention and authorised an extension for the purpose of providing him with additional time to study the case file, there was no evidence showing that his consultation of the file was anything but completed. Since there is no evidence indicating that additional time was needed to study the file, the authorities exhausted the legal possibilities for extending the applicant's detention "during the investigation". The Government did not indicate any legal provision that permitted a defendant to be held in custody after the expiry of the eighteen-month time-limit, if the defendant, by that time, had finished studying the file. In these circumstances, no further extensions have been possible under the domestic law (see, *mutatis mutandis, Khudoyorov*, cited above, § 156). The Court also finds it particularly striking that being fully aware of the applicant's persistent refusals to read the file, the domestic courts extended his detention on the ground that he needed additional time to study the file (see paragraphs 17 and 19 above), thus denying him a right to decide for himself whether he had completed studying the file and had been ready to proceed with the trial.

78. 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 19 January 2001 to 8 March 2001.

(d) The applicant's detention from 8 March 2001 to 1 July 2002

79. The Court reiterates that on 8 March 2001 the period of the applicant's detention "during the investigation", authorised by the Regional Court's decision of 19 January 2001, expired. On the same day the pre-trial investigation was closed and the case was set down for trial. On 1 July 2002 the Regional Court extended the applicant's detention by three months in compliance with the requirements of the new Code of Criminal Procedure.

80. According to the applicant, between 8 March 2001 and the Regional Court's decision of 1 July 2002, there was no decision – either by a prosecutor or a judge – authorising his detention. The Government argued that the applicant's detention, at least after 10 July 2001, was based on the Regional Court's decision (see paragraph 21 above) by which his request for release had been dismissed.

81. The Court notes that the parties did not dispute that from 8 March 2001 to at least 10 July 2001 there was no legal order authorising the applicant's detention. As regards the period from 10 July 2001 to 1 July 2002, the Court does not need to examine whether on 10 July 2001 the Regional Court, in rejecting his request for release, implicitly authorised the applicant's continued detention because on 25 October 2002 the Supreme Court, when dealing with the applicant's appeal, found that on 10 July 2001 the Regional Court had not examined the issue of detention (see paragraph 23 above). As follows from the Supreme Court's reasoning, the decision of 10 July 2001 could not be construed as a formal order authorising the applicant's continued detention.

82. The Court further notes that the decision of 10 July 2001 did not refer to any legal provision which would have permitted the applicant's further detention and set no time-limit either for his continued detention or for a periodic review of the preventive measure, which would have been required for a detention order to comply with the requirements of clarity, forseeability and protection from arbitrariness (see *Korchuganova v. Russia*, no. 75039/01, § 58, 8 June 2006). The applicant's detention continued on obviously spurious grounds. Furthermore, the Court notes that, having found that on 10 July 2001 the Regional Court had not given a decision authorising an extension of the applicant's detention, the Supreme Court did nothing to rectify the situation.

83. Having regard to the above finding, the Court considers that there was no decision authorising the applicant's detention from 8 March 2001 to 1 July 2002. During that period the applicant was kept in detention on the basis of the fact that the criminal case against him had been referred to the court competent to deal with it.

84. The Court has already examined and found a violation of Article 5 § 1 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 court competent to try the case (see *Baranowski*, cited above, §§ 53-58, and *Ječius*, cited above, §§ 60-64). It 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 – is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (ibid.). The Court has repeated this finding

in several cases against Russia concerning a similar set of facts (see, for example, *Khudoyorov*, cited above, §§ 147-151, and *Korchuganova*, cited above, § 57).

85. 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 an accused to continue to be held once the authorised detention period had expired. The Russian Constitution and rules of criminal procedure vested the power to order or prolong detention on remand in prosecutors and courts (see paragraph 38 above). No exceptions to that rule were permitted or provided for, no matter how short the duration of the detention. As noted above, from 8 March 2001 to 1 July 2002 there was no formal decision authorising the applicant's detention. The applicant was in a legal vacuum that was not covered by any domestic legal provision.

86. It follows that from 8 March 2001 to 1 July 2002 there was no valid domestic decision or other "lawful" basis for the applicant's detention on remand. By itself, the fact that the case had been sent to the court for trial did not constitute a "lawful" basis, within the meaning of Article 5 § 1 of the Convention, for the applicant's continued detention. There has thus been a violation of Article 5 § 1 of the Convention in respect of that period.

(e) The applicant's detention from 1 July 2002 to 17 April 2003

87. The Court observes that the applicant's detention during the period from 1 July 2002 to 17 April 2003 was extended by the Regional Court on four occasions on the grounds that the charges against him were serious.

88. 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*, cited above, § 62).

89. The trial court acted within its jurisdiction 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 those decisions were otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds invoked being analysed below in the context of compliance with Article 5 § 3 of the Convention.

90. Accordingly, the Court finds that there has been no violation of Article 5 § 1 of the Convention in respect of the detention orders issued between 1 July 2002 and 17 April 2003.

(f) The applicant's detention from 17 to 21 April 2003

91. The Court observes that on 17 April 2003 the Supreme Court authorised the applicant's release subject to a written undertaking not to leave the town. The applicant was released on 21 April 2003. According to

the Government, the delay in his release was caused by the large distance between Moscow, where the Supreme Court is situated, and the Omsk Region, where the applicant was detained, and the time it took a courier to deliver a certified copy of the decision of 17 April 2003 to the Omsk Region.

92. In this connection, the Court notes that it is common ground between the parties that the applicant's detention from 17 to 21 April 2003 was not based on any legal order. Nor has it been disputed that the sole basis for his detention during those four days was the need to avoid the forgery of the decision of 17 April 2003 and to ensure that his release was effected in compliance with the established domestic procedure. At the same time the parties disputed the method of communication of that decision to the authorities responsible for the applicant's release (see paragraph 34 above). However, the Court does not consider it necessary to establish the veracity of the parties' allegations in this respect, because it finds a violation of Article 5 § 1 on the basis of the facts that have been presented and are undisputed by the respondent Government.

93. The Court reiterates that it must scrutinise complaints of delays in the release of detainees with particular vigilance (see *Nikolov v. Bulgaria*, no. 38884/97, § 80, 30 January 2003). Some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep it to a minimum (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42; *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25 *in fine*; *K.-F. v. Germany*, judgment of 27 November 1997, *Reports* 1997-VII, p. 2675, § 71; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (see *Nikolov*, cited above, § 82). It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty.

94. In the instant case the applicant remained in detention for four days after the Supreme Court's decision directing that he should be released. Having regard to the prominent place which the right to liberty holds in a democratic society, the respondent State should have introduced appropriate legislation and deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant as required by the relevant case-law. The Court is not satisfied that the Russian officials complied with that requirement in the present case.

95. The Court notes that the applicant's continued detention after 17 April 2003 was clearly not covered by sub-paragraph (c) of paragraph 1

of Article 5 and did not fall within the scope of any other of the sub-paragraphs of that provision. There has accordingly been a breach of Article 5 § 1 in this respect.

3. Summary of the findings

96. The Court has found a violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 8 September 2000 to 1 July 2002 and from 17 to 21 April 2003.

97. The Court has found no violation of Article 5 § 1 of the Convention on account of the applicant's detention on remand from 1 July 2002 to 17 April 2003.

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

98. 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

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

100. The applicant submitted in reply that his detention on remand had lasted four years, one month and twelve days. It had been extremely long, particularly taking into account the fact that neither the domestic courts nor the Government had put forward any valid reasons to justify such a lengthy detention. Furthermore, he had been released almost a year before his conviction. He had not attempted to abscond and had not perverted the course of justice in any way.

B. The Court's assessment

1. Admissibility

101. 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

102. 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).

103. 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).

104. 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

105. The Court observes that the applicant's detention on remand lasted from 8 March 1999, the date of his arrest, to 21 April 2003, the date of his

release. The overall duration thus amounted to four years, one month and fourteen days. In carrying out its assessment, the Court will not lose sight of its finding that from 8 September 2000 to 1 July 2002 and from 17 to 21 April 2003 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

106. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in large-scale franchise fraud. In the decision of 11 March 1999 a prosecutor cited the gravity of the charges and the need to prevent the applicant from absconding and obstructing as the grounds for his placement in custody. At that stage of the proceedings those reasons were sufficient to justify keeping the applicant in custody (see *Khudoyorov*, cited above, § 176).

107. However, with the passage of time those grounds inevitably became less and less relevant. Accordingly, the 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.

108. The Court reiterates that after 11 March 1999 the applicant's detention on remand was extended fourteen 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 and pervert the course of justice.

109. 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*, cited above, § 68; and *Ilijkov*, cited above, § 81). 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).

110. The other grounds for the applicant's continued detention were the domestic authorities' findings that the applicant could abscond and pervert the course of justice. 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.

111. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that he had been charged with serious criminal offences, thus facing a severe sentence. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, 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 reoffending 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, p. 19, § 43; 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 reference to his lack of a permanent place of residence and work. In this connection, the Court reiterates that the mere absence of a fixed residence and work does not give rise to a danger of absconding (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005). The Court further observes that 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.

112. The Court further emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja*, cited above, § 64, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. In this connection, the Court does not lose sight of the fact that the applicant offered guarantees by the two well-known persons to ensure his release. However, those guarantees were rejected without due consideration (see paragraphs 26 and 27 above). Furthermore, the Court finds it particularly striking that the applicant was kept in custody for six months, from 8 September 2000 to 8 March 2001, for the sole purpose of studying the case file. However, at no point did either the Regional Court or the Supreme Court, which examined the issue of the lawfulness of the applicant's detention during that period, consider having recourse to such

alternative measures or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

113. 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. It is of particular concern to the Court that the Russian authorities persistently used a stereotyped summary formula to justify the extension of the applicant's detention; the prosecutors reproduced the same formula in all their decisions. The Court also notes that the domestic authorities, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach is incompatible, in itself, with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable-time" requirement in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

114. Having regard to the above, the Court considers that by failing to refer to 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". They thus failed to justify the applicant's continued deprivation of liberty for a period of four years and almost two months. It is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

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

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

116. The applicant complained under Article 5 § 4 of the Convention that the courts had not decided the lawfulness of his detention "speedily". 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

117. The Government submitted that, according to information submitted by the Supreme Court of the Russian Federation, the domestic

courts had "speedily" examined the applicant's complaints concerning the lawfulness of his detention on remand. Delays in the examination of the applicant's appeals against the detention orders had been caused by "objective reasons" in that the applicant and his co-defendants had needed time to study court records and prosecutors' observations and to prepare grounds of appeal. The Government noted that the applicant had been found guilty of a criminal offence and that the term of his pre-trial detention had counted towards his sentence.

118. The applicant maintained his complaint. He argued that it had taken the domestic courts from three to fifteen months to examine his appeals against the detention orders.

B. The Court's assessment

1. Admissibility

119. 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

120. 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 detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 28, § 28, and *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, p. 23, § 84). The requirement that a decision be given "speedily" is undeniably one such guarantee; while one year per level of jurisdiction 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

121. The Court notes that it took the domestic courts approximately eight, fifteen, three, six and four months to examine the applicant's various requests for release or his appeals against the detention orders (see paragraphs 13-19, 21-23, 25-27, 28-30 and 31-33 above). There is nothing to suggest that the applicant caused delays in the examination of his requests for release or his appeals against the detention orders. The Government did not indicate any particular instance when the applicant had allegedly applied for a stay of the proceedings by which the lawfulness of his detention had been reviewed or had in any other way caused a delay in those proceedings. The Court therefore considers that these five 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 found not to have been "speedy").

122. 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 his sentence cannot in principle justify the failure to examine speedily his applications for release or his appeals against the detention orders (see *Bednov v. Russia*, no. 21153/02, § 33, 1 June 2006).

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

124. Lastly, the applicant complained that the decisions of 22 November 2000 and 3 May 2001 had been unfair in that the Supreme Court had not been impartial. In his observations lodged on 13 February 2006 the applicant further complained about the appalling conditions of his detention on remand and publications in the press in 2001 concerning the criminal proceedings against him.

125. In the light of all the material in its possession, and insofar as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

127. The applicant claimed 478,000 euros (EUR) in respect of non-pecuniary damage.

128. The Government argued that the sum was excessive and did not have any "factual or legal ground".

129. The Court observes that it has found a combination of particularly grievous violations in the present case. The applicant spent more than four years in custody. His detention was unlawful for almost two years and, during the period when it was "lawful", it was not based on sufficient grounds. Finally, on various occasions he was denied the right to have the lawfulness of his detention examined speedily. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

130. The applicant also claimed EUR 15,500 for the costs and expenses incurred before the domestic courts and the Court, broken down as follows: EUR 3,000 for his representation by Ms Liptser before the Court, EUR 4,500 for his representation by Ms Moskalenko and EUR 4,500 for his representation by Mr Shadrin before the domestic courts, EUR 1,500 in respect of travel expenses incurred by his lawyers, and EUR 2,000 in compensation for his expenses for buying food, medicines and stationery during his detention on remand.

131. The Government submitted that the applicant had not provided any documents to substantiate his claims.

132. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes, firstly, that the applicant was granted EUR 850 in legal aid for his representation by Ms Liptser. As the applicant did not provide justification of having incurred any expenses exceeding that amount, the Court makes no award under this head.

133. As to the remaining claims in respect of legal representation, the Court notes that the applicant submitted two letters in which he promised to pay Ms Moskalenko and Mr Shadrin certain sums on condition that the domestic courts found his arrest and detention to be unlawful and awarded him compensation. Those letters did not contain any information as to the express nature of the legal work, the due dates and the consent of the lawyers to perform such legal services. The Court therefore finds that in the circumstances of the present case those letters did not create a legally enforceable obligation on the applicant to pay any fee to Ms Moskalenko and Mr Shadrin. This part of the claim must also be rejected.

134. The Court further points out that the applicant did not produce any document (vouchers, certificates, invoices) justifying his claims in respect of travel and other expenses. Accordingly, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the unlawfulness of the applicant's detention after 8 September 2000, the excessive length of his detention on remand and the failure of the domestic authorities to decide "speedily" on the lawfulness of his detention 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 from 8 September 2000 to 1 July 2002 and from 17 to 21 April 2003;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 1 July 2002 to 17 April 2003;

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

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

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President