Status: Positive or Neutral Judicial Treatment

*450 Smirnova v Russia

Application Nos 46133/99 and

48183/99

Before the European Court of Human Rights

24 July 2003

(2004) 39 E.H.R.R. 22

(The President , Judge Ress ; Judges Cabral Barreto , Türmen , Zupan#i# , Tsatsa-Nikolovska , Traja and Kovler)

July 24, 2003

Detention; Identification papers; Just satisfaction; Length of proceedings; Passports; Prescribed by law; Reasonable time; Remand; Right to fair trial; Right to liberty and security; Right to respect for private and family life

H1 The applicants, YS and IS, were twin sisters living in Moscow. Criminal proceedings were brought against them on suspicion of fraud. They were both remanded in custody four times during the criminal investigation. Nine years after the proceedings started they were convicted of large scale fraud and sentenced to eight years' and six years' imprisonment respectively. Their convictions were later set aside and they were discharged from serving their sentence since the time-limit for establishing their criminal liability had expired.

H2 The first applicant's national identity paper was taken away from her when she was arrested and withheld for four years. Because she was not able to produce this document, she had been refused medical care, she had been unable to register her marriage and she had been refused employment. The applicants complained under Art.5 that their repeated detention on remand had been unjustified and unlawful, and that the length of the proceedings amounted to a violation of Art.6 . The first applicant also complained under Art.8 about the withholding of her internal passport.

H3 **Held** unanimously:

(1) that there had been a violation of Art.5(1) and Art.5(3) of the Convention;

(2) that there had been a violation of Art.6(1) of the Convention;

(3) that there had been a violation of Art.8 of the Convention;

(4)

(a) that the respondent State was to pay the first applicant, within three months from the date on which the judgment became final, in accordance with Art.44(2) , €3,500 and €2,000 to the second applicant in respect of non-pecuniary damage and €1,500 in respect of costs and expenses;

(b) that from the expiry of the above mentioned three months until settlement simple interest should be payable on the above amounts at a rate equal to *451 the marginal lending rate of the European Central Bank during the default period plus 3 percentage points;

(5) that the remainder of the applicant's claim for just satisfaction be dismissed.

1. Right to liberty and security: repeated detention on remand; insufficiently argued reasons (Art.5(1)(c) and Art.5(3)).

H4 (a) The Convention case law has developed four basic acceptable reasons for refusing bail:

the risk that the accused will fail to appear for trial, the risk that the accused, if released, would take action to prejudice the administration of justice or commit further offences or cause public disorder. [59]

H5 (b) Whether a period of detention is reasonable cannot be assessed in abstract. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. [61]

H6 (c) Applicants' discharge from serving the sentence did not deprive them of their status of victims of the alleged Convention breaches, since no acknowledgement of the breaches was made by the Government. [65]

H7 (d) YS was detained four times, in total a period of 4 years, 3 months and 29 days. Of this period, only 2 years and 15 days fell within the Court's competence ratione temporis . IS was also detained four times, in total a period of 1 year, 6 months and 16 days. [66]

H8 (e) The present case differs from the majority of cases under Art.5(3) in that the Court must examine not only whether the total time the applicants spent in custody was reasonable, but also whether the repetitiveness of the detention complied with Art.5(3) . [67]

H9 (f) Reasons given by the domestic authorities to justify the detention were insufficient, remarkably terse and do not describe in detail characteristics of the applicants' situation. The repeated redetaining of the applicants in the course of one criminal investigation on the basis of insufficiently reasoned decision amounts to a violation of Art.5(1) and (3) . [69]–[71]

2. Right to a fair trial: reasonable time requirement (Art.6(1)).

H10 (a) The reasonableness of the length of proceedings was to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. The fact that a person is kept in detention is to be considered in assessing whether the requirement has been met. [82]–[83]

H11 (b) In respect of YS, the proceedings lasted in total 9 years, 2 months and 4 days. Only 3 years, 11 months and 4 days fall within the Court's jurisdiction ratione temporis . A period of 6 months and 15 days should be excluded from the total period because during this period YS was unlawfully at large. The period to be taken into consideration was therefore 3 years, 4 months and 19 days. In respect of IS, the overall length of the proceedings was 7 years, 6 months and 23 days. Only 3 years, 10 months and 9 days fall within the Court's jurisdiction ratione temporis . Two periods when IS was unlawfully at large should be excluded, so the period to be taken into consideration was 2 years, 5 months and 27 days. [84] ***452***

H12 (c) The charges the applicants faced were not particularly complex. [85]

H13 (d) The Court was not convinced that the applicants were always willing to submit to the courts' jurisdiction since both of them absconded for months from the investigating authorities. Furthermore, filing dozens of complaints — even well-grounded — may unnecessarily distract the authorities from concentrating on the main issues. [86]

H14 (e) As to the conduct of the authorities, there have been significant periods of inactivity on their part which find no convincing justification. Furthermore, by giving sparsely reasoned recurring decisions to detain and release the applicants the authorities aroused in them a sense of insecurity and mistrust towards justice thereby indirectly urging them to abscond. In all the circumstances of the present case, the length of the proceedings fails to satisfy the reasonable time requirement, and there had been a breach of Art.6(1) . [87]–[88]

3. Right to respect for private life: continuing violation; “in accordance with the law” (Art.8).

H15 (a) YS's passport was seized on August 26, 1995 and returned on October 6, 1999. The interference with YS's private life was peculiar in that it allegedly flowed not from an instantaneous act, but from a number of everyday inconveniences taken in their entirety which lasted till October 6, 1999. Therefore, the Court had the temporal jurisdiction over YS's situation, at least as regards the period subsequent to May 5, 1998. [96]

H16 (b) In their everyday life, Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant's private life. [97]

H17 (c) The principal issue was whether this interference was justified under Art.8(2) , notably whether it was “in accordance with the law”. The Government had not shown that the non-return of YS's passport upon her release from remand custody had any basis in domestic law. There had accordingly been a violation of Art.8 . [98]–[100]

4. Just satisfaction: damage; costs and expenses; default interest (Art.41).

H18 (a) Some forms of non-pecuniary damage by their very nature cannot always be the object of concrete proof. It is reasonable to assume that the applicants suffered distress, anxiety and frustration exacerbated by the repeated detention on remand and unreasonable length of the proceedings. Deciding on an equitable basis, the Court awarded €3,500 to YS and €2,000 to IS. [105]–[106]

H19 (b) The applicants had failed to show that the pecuniary damage pleaded was actually caused. The Court found no justification for making an award to the applicants under that head. [109]–[110]

H20 (c) The applicants incurred legal costs and expenses in connection with their attempts to secure their release on bail. However, they only provided partial documentary substantiation of the sum claimed. The Court awarded €1,000 for legal costs and expenses. [113]–[114] ***453**

H21 (d) The default interest should be based on the marginal lending rate of the European Central Bank, to which should be added 3 percentage points.

H22 The following cases are referred to in the Court's judgment:

1. *Abdoella v Netherlands (A/248-A): (1995) 20 E.H.R.R. 585* .
2. *Abdulaziz, Cabales and Balkandali v United Kingdom (A/94): (1985) 7 E.H.R.R. 471* .
3. *Ciulla v Italy (A/148): (1991) 13 E.H.R.R. 346* .
4. *Dalban v Romania: (2001) 31 E.H.R.R. 39* .
5. *Goodwin v United Kingdom: (2002) 35 E.H.R.R. 18* .
6. *Kemmache v France (A/218): (1992) 14 E.H.R.R. 520* .
7. *Letellier v France (A/207): (1992) 14 E.H.R.R. 83* .
8. *Malone v United Kingdom (A/82): (1985) 7 E.H.R.R. 14* .
9. *Matznetter v Austria (A/10): (1979–80) 1 E.H.R.R. 198* .
10. *Nielsen and Johnson v Norway: (2000) 30 E.H.R.R. 878* .

11. *Peck v United Kingdom: (2003) 36 E.H.R.R. 41* .

12. *Stögmüller v Austria (A/9): (1979–80) 1 E.H.R.R. 155* .

13. *Toth v Austria (A/224): (1992) 14 E.H.R.R. 551* .

14. *Unión Alimentaria Sanders SA v Spain (A/157): (1990) 12 E.H.R.R. 24* .

15. *W v Switzerland (A/254-A): (1994) 17 E.H.R.R. 60* .

16. *Wemhoff v Germany (A/7): (1979–80) 1 E.H.R.R. 55* .

17. *X and Y v Netherlands (A/91): (1986) 8 E.H.R.R. 235* .

18. *Yagci and Sargin v Turkey (A/319-A): (1995) 20 E.H.R.R. 505* .

19. *Application No.6959/75, Brüggeman and Scheuten v Germany, Comm. Rep. 12.07.1977* .

20. Application No.7438/76, Ventura v Italy, Dec. 09.03.1978 .

21. *Application No.12718/87, Clooth v Belgium, December 12, 1991* .

22. *Application No.13324/87, Girolami v Italy (A/196-E), February 19, 1991* .

H23 **Representation**

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THE FACTS

I. The circumstances of the case

7 The applicants, Ms Yelena Pavlovna Smirnova (“YS”) and Ms Irina Pavlovna Smirnova (“IS”) are twin sisters. They are Russian nationals, who were born in 1967 and live in Moscow.

A. Criminal proceedings

Charges. First detention of YS

8 On February 5, 1993 criminal proceedings were initiated against the applicants on suspicion of defrauding a Moscow bank on a credit matter. The prosecution's ***454*** case was that the applicants acted together to obtain a loan in the bank on the security of a flat which did not in fact

belong to them.

9 On August 26, according to the applicants, on August 27, 1995, according to the Government, YS was arrested and remanded in custody. Several days later, on August 31, 1995, she was charged with large-scale concerted fraud.

10 On September 5, 1995 the proceedings against IS were discontinued.

11 Following YS's arrest, her lawyer lodged an application for release with the Tverskoy District Court of Moscow. On September 13, 1995 the court held that it was too late to examine the application for release as by that time the preliminary investigation had finished.

12 On March 26, 1996 the investigating authorities sent YS's case to the Tverskoy District Court for trial.

13 On March 21, 1997 the Tverskoy District Court found that the evidence gathered against YS, although serious, did not embrace all offences possibly committed by her. The court also found that the proceedings against IS should not have been stopped because there had been evidence of her involvement in the offence too. It was decided to remit the case against YS for further investigation. The court of its own motion re-instituted criminal proceedings against IS and joined them to YS's case. It was furthermore ordered that YS should stay in detention, and that IS, at large at the moment, should be imprisoned as soon as the police established her whereabouts.

14 Both applicants lodged appeals against the decision of March 21, 1997, but on July 23, 1997 the Moscow City Court disallowed them.

15 Since IS continued to hide from the investigating authorities, it was decided to sever her case from that of her sister and to stay it. The term of YS's detention was extended.

First release of YS

16 On December 9, 1997 the Lyublinskiy District Court of Moscow ordered that YS should be released from custody because the extension of her detention had been unlawful and because of her poor health. She was released conditionally under the undertaking not to leave her permanent residence.

17 On December 15, 1997 the case against YS was for the second time sent to the Tverskoy District Court for trial.

First detention of IS

18 On March 30, 1999, the police arrested IS and took her into custody. The proceedings against her were resumed.

Second detention of YS

19 The second examination of the case against YS by the Tverskoy District Court took place on March 31, 1999. The court noted that IS had by that time been arrested, and that given close factual links between the offences imputed to the ***455*** sisters, the proceedings against them should be joined. The court also noted that YS had not had sufficient opportunity to familiarise herself with the prosecution file before the hearing. As a result, the case against YS was joined to that against IS and remitted for further investigation.

20 On the same day YS was imprisoned on the ground of the gravity of the accusation.

21 The decision of March 31, 1999 became final on May 13, 1999 after it had been upheld on appeal by the Moscow City Court.

First release of IS

22 On April 29, 1999 the Lyublinskiy District Court granted IS's application for release from custody because the investigating authorities had not submitted convincing material to justify her continued detention. The investigating authorities appealed against this decision, and on May 19, 1999 the Moscow City Court allowed the appeal. However, by that time IS had already left the prison.

23 On May 20, 1999 the Tverskoy District Court considered that the case against IS should be returned to the investigating authorities to be joined with the case against YS.

Second detention of IS

24 On September 3, 1999, IS was arrested and detained.

Second release of both applicants

25 On October 2, 1999 YS was released from prison because the investigation had finished and because the detention period set by the General Prosecutor's Office had expired.

26 Shortly afterwards, on October 7, 1999, IS was also released. Both applicants signed an undertaking not to leave their permanent residence.

Trial. Third detention of YS and IS

27 On October 29, 1999 the investigating authorities handed over the case file they had prepared to the Tverskoy District Court. On November 10, 1999 the judge who had accepted the case for consideration ruled that the applicants should be remanded in custody pending trial in view of the gravity of the accusations and “the applicants' character”.

Proceedings before the Constitutional Court. Third release of IS

28 On January 14, 2000 the Constitutional Court examined an application lodged earlier by IS. The court ruled that Art.256 of the Code of Criminal Procedure was ***456*** unconstitutional as far as it empowered criminal courts to initiate of their own motion criminal prosecution of third persons not being party to the original proceedings, to apply measures of restraint and to order further investigations. The court held that by initiating criminal proceedings the courts in essence assumed prosecutorial functions in violation of the principle of the separation of powers.

29 Based on the judgment of the Constitutional Court, on an unspecified date, the acting president of the Moscow City Court lodged an application for supervisory review of the applicants' case.

30 On February 24, 2000 the Presidium of the Moscow City Court granted the application. The decisions of March 21 and July 23, 1997 were quashed in respect of IS. The decision of March 31, 1999 was quashed in respect of both applicants. The decisions of May 13 and 20 and November 10, 1999 were also quashed. The case against the applicants was sent for further investigation. IS was released, but her sister remained in prison.

Third release of YS

31 On March 20, 2000 the Prosecutor of the Tverskoy District reinstituted criminal proceedings against IS. The case against IS was joined to that of YS.

32 On April 20, 2000 the investigation of the applicants' case was finished. On April 25, 2000 the prosecution file and indictment were submitted to the Tverskoy District Court. The same day, YS was released because of the expiry of the custody period.

Trial. Fourth detention of YS and IS. Their release

33 The examination of the applicants' case was scheduled for June 9, 2000. However, the hearing did not take place because the applicants had failed to appear even though they had been several times summoned for the service of the indictment.

34 The hearing was adjourned until August 22, 2000 but it again failed to take place since the applicant had not appeared before the court.

35 As the applicants persistently avoided the court proceedings and did not live at their permanent address, on August 28, 2000 the Tverskoy District Court ordered their arrest. The proceedings were stayed until the applicants were arrested.

36 On March 12, 2001 the applicants were arrested and detained. The court proceedings

resumed and on September 24, 2001 the court extended the custody period for a further three months.

37 On January 9, 2002 the Tverskoy District Court found the applicants guilty and sentenced YS to eight years' imprisonment with forfeiture of her estate, and IS to six years' imprisonment with forfeiture of her estate.

38 On April 9, 2002 the Moscow City Court annulled the judgment, closed the proceedings and discharged the applicants from serving the sentence under the statute of limitations.

39 The applicants were released in the courtroom. ***457**

B. Proceedings concerning YS's passport

40 When the investigating authorities were arresting YS on August 26, 1995, they withheld her national identity paper — the “internal passport”. The passport was enclosed in the case file at the Tverskoy District Court. YS made several unsuccessful attempts to recover the document, filing complaints to courts and prosecutors of various instances.

41 The lack of passport made YS's everyday life difficult. In December 1997 and April 1998 the Moscow Social Security Service and a law firm both refused to employ her because she did not have a passport. In December 1997 a Moscow clinic informed YS that free medical care could only be provided to her if she presented an insurance certificate and her passport. For the same reason, in April 1998 the Moscow Telephone Company refused to install a telephone line in YS's home. On June 2, 1998 the Moscow City Notary Office notified YS that she needed to verify her identity, for example, with a passport, if she wished to obtain notarial acts. On December 10, 1998 YS was refused the registration of her marriage. On March 19, 1999 she was stopped by a police patrol for an identity check. As she was unable to produce the passport, she was taken to a police station and had to pay an administrative fine.

42 On April 29, 1998 the Office of the Moscow Prosecutor requested the Tverskoy District Court to return the passport.

43 On an unspecified date the President of the Tverskoy District Court informed YS that the passport could be made available to her for certain purposes. But it should nonetheless remain in the case file because otherwise the authorities would not be able to tell YS from her twin sister, who was in hiding.

44 On June 29, 1998 the President of the Tverskoy District Court confirmed that the passport should be retained in the case file.

45 On March 31, 1999 a police patrol came to the applicants' home to escort YS to a court hearing. Both applicants were at home. Perplexed by their almost identical appearance, the police demanded that the applicants identify themselves or produce identity papers. Having met a refusal, and knowing that IS was also being looked for by the police, the patrol decided to arrest both applicants and took them to a police station.

46 On October 6, 1999, the investigation officer in charge of YS's case returned the passport to her.

II. Relevant domestic law

A. Code of Criminal Procedure of 1964

“Article 11 (1) — Personal inviolability

No one may be arrested otherwise than on the basis of a judicial decision or a prosecutor's order.

Article 89 (1) — Application of preventive measures

When there are sufficient grounds for believing that an accused person may evade an

inquiry, preliminary investigation or trial or will obstruct the ***458*** establishment of the truth in a criminal case or will engage in criminal activity, as well as in order to secure the execution of a sentence, the person conducting the inquiry, the investigator, the prosecutor or the court may apply one of the following preventive measures in respect of the accused: a written undertaking not to leave a specified place, a personal guarantee or a guarantee by a public organisation, or placement in custody.

Article 92 — Order and decision on the application of a preventive measure

Upon application of a preventive measure a person conducting an inquiry, an investigator or a prosecutor shall make a reasoned order, and a court shall give a reasoned decision specifying the criminal offence which the individual concerned is suspected of having committed, as well as the grounds for choosing the preventive measure applied. The order or decision shall be notified to the person concerned, to whom at the same time the procedure for appealing against the application of the preventive measure shall be explained.

A copy of the order or decision on the application of the preventive measure shall be immediately handed to the person concerned.

Article 96 — Placement in custody

Placement in custody as a preventive measure shall be effected in accordance with the requirements of Art.11 of this Code concerning criminal offences for which the law prescribes a penalty in the form of deprivation of freedom for a period of more than one year. In exceptional cases, this preventive measure may be applied in criminal matters for which a penalty in the form of deprivation of freedom for a period of less than one year is prescribed by law.

Article 97 — Time-limits for pre-trial detention

A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or municipal prosecutor … if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension up to six months from the day of placement in custody may be effected only in cases of special complexity by a prosecutor of a subject of the Russian Federation …

An extension of the time-limit for such detention beyond six months shall be permissible in exceptional cases and solely in respect of persons accused of committing serious or very serious criminal offences. Such an extension shall be effected by a deputy of the Prosecutor General of the Russian Federation (up to one year) and by the Prosecutor General of the Russian Federation (up to 18 months). ***459***

Article 101 — Cancellation or modification of a preventive measure

A preventive measure shall be cancelled when it ceases to be necessary, or else changed into a stricter or a milder one if the circumstances of the case so require. The cancellation or modification of a preventive measure shall be effected by a reasoned order of the person carrying out the inquiry, the investigator or the prosecutor, or by a reasoned court decision after the case has been transferred to a court.

The cancellation or modification, by the person conducting the inquiry or by the investigator, of a preventive measure chosen on the prosecutor's instructions shall be permissible only with the prosecutor's approval.

Article 223–1 — Setting a date for a court hearing

If the accused is kept in custody, the question of setting a date for a court hearing must be decided no later than 14 days after the case reaches the court.

Article 239 — Time-limits for examination of the case

The examination of a case before the court must start no later than 14 days as from the fixing of a hearing date".

B. Laws concerning national identity papers

Section 1 of the Rules regarding the passport of a citizen of the Russian Federation adopted by the Decree of the Russian Government No. 828 of July 8, 1997 provides that the passport of a citizen represents the basic document proving the citizen's identity on the territory of Russia.

Pursuant to s.5, the passport shall contain information about the citizen's residence, liability to military service, marital status, minor children, issue of other identity documents.

Section 21 provides that the passport of convicted persons and persons remanded in custody shall be seized by investigating authorities or a court and adduced to the case file. When the citizen is released, the passport shall be returned.

Article 178 of the Code of Administrative Offences of 1984 establishes that residing without a valid passport or residential registration shall be punishable with an official warning or a fine.

The Moscow Government Decree No.713 of July 17, 1995, concerning the rules of residential registration, establishes a fine of up to five times the minimum wage if residential registration cannot be shown, and up to 50 times the minimum wage in case of repeated violations.

JUDGMENT

I. Alleged violation of Article 5 of the Convention

47 Article 5 of the Convention provides, as far as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be ***460** 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;

…

3. Everyone arrested or detained in accordance with the provisions of para.1(c) of this Article shall be … entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial".

A. Arguments of the parties

The applicants

48 The applicants submitted that there had been no good reasons to justify their repeated remand in custody.

49 First, there had been no risk that they would abscond. They only had one residence and their only income came from jobs in Moscow. Since the applicants received much correspondence from Russian authorities and international organisations, they needed to stay at home most of the time. The applicants were law-abiding citizens because they worked as lawyers and valued their reputation. The applicants' moral condition was undermined by years of criminal prosecution, arrests and interrogations. Besides, YS suffered from a serious disease — Schonlein-Henoch (weak capillaries). The applicants wished the case to be tried as soon as

possible. They had never before absconded from justice, and all their arrests took place either at their permanent residence or in court when they appeared for hearings.

50 Secondly, there had been no risk that the applicants would interfere with the course of justice. They did not destroy documents or any other evidence, nor did they put pressure on the victims of the alleged offence.

51 Thirdly, the detention was not necessary for prevention of further crimes. The applicants' personalities and lack of past criminal record in no way suggested that they might engage in criminal activities.

52 Lastly, there had been no grounds to suspect that the applicants' release could lead to disturbance of public order.

53 Furthermore, the detention was in fact the State's reprisal for the applicants' appeals to international organisations, including the Court, because it coincided with important procedural events. By placing the applicants in custody the State intended indirectly to punish them since the conditions of detention were inadequate and since YS spent in prison significantly more than 18 months permitted by law. ***461**

The Government

54 The Government stressed that the complaint is partly outside the Court's competence ratione temporis as far as it concerns the detention before May 5, 1998 — the date when the Convention came into force in respect of Russia.

55 The Government further submitted that the authorities had to detain the applicants because they fled from justice and violated the conditions of bail in that they did not inform the investigating authorities of their moves. They did not appear for trial even though they knew that their case would soon be tried. The taking of the applicants into custody was in accordance with the domestic law. It was mainly justified by the risk that the applicants may flee, for example, abroad. The applicants' systematic hindering of the investigation accounted for the lengthy detention. Besides, by its decision of April 9, 2002 the Moscow City Court discharged the applicants from serving the sentence, and this decision was by itself a just satisfaction for the time spent in prison.

B. The Court's assessment

General principles

56 Article 5(1)(c) of the Convention must be read in conjunction with Art.5(3) which forms a whole with it. [1]

57 In examining the length of detention undergone subsequent to the date of entry of the Convention into force, the Court takes account of the stage which the proceedings had reached. To that extent, therefore, it may have regard to the previous detention. [2]

58 A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention. [3]

59 The Convention case law has developed four basic acceptable reasons for refusing bail: the risk that the accused will fail to appear for trial [4] ; the risk that the accused, if released, would take action to prejudice the administration of justice [5] or commit further offences [6] or cause public disorder. [7]

60 The danger of absconding cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify pre-trial detention. In this context regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts. ***462** [8]

61 The issue of whether a period of detention is reasonable cannot be assessed in abstract. 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 in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. [9]

62 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 on 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 Art.5(3) of the Convention. [10]

63 Arguments for and against release must not be “general and abstract”.[11]

64 Where a suspect is on remand, he is entitled to have his case given priority and conducted with special diligence. [12]

Application to the present case

65 The Court notes that the applicants' discharge from serving the sentence does not deprive them of their status of victims of the alleged Convention breaches, since no acknowledgement of the breaches was made by the Government. [13]

66 The Court now needs to determine the period of the applicants' detention which it may take into consideration.

YS was detained four times: from August 26, 1995 to December 9, 1997; from March 31 to October 2, 1999; from November 10, 1999 to April 25, 2000; and from March 12, 2001 to April 9, 2002. In sum, this gives 4 years, 3 months and 29 days. Since the Convention came into force in respect of Russia on May 5, 1998, of this period only 2 years and 15 days fall within the Court's competence ratione temporis .

IS was also detained four times: from March 30 to April 29, 1999; from September 3 to October 7, 1999; from November 10, 1999 to February 24, 2000; and from March 12, 2001 to April 9, 2002. In sum this gives 1 year, 6 months and 16 days.

67 In the majority of cases under Art.5(3) the Court dealt with the situation where the authorities refused for a long uninterrupted time to release a suspect from remand custody. The present case differs in that the Court must examine not only whether the total time the applicants spent in custody was reasonable, but also whether the repetitiveness of the detention complied with Art.5(3) . ***463**

68 The time of the applicants' detention is not short in absolute terms. Nevertheless, the Court cannot rule out the possibility that it might have been justified in the circumstances.

69 But to reach such a conclusion the Court would first need to evaluate the reasons given by the domestic authorities to justify the detention. And it is these reasons that appear insufficient.

70 Indeed, the decisions which the Court has at its disposal are remarkably terse and do not describe in detail characteristics of the applicants' situation. The decision of the Tverskoy District Court of March 31, 1999 only referred to the seriousness of the charge against YS to justify her detention. The decision of November 10, 1999 referred to the applicants' “character” without explaining what the character actually was and why it made the detention necessary. Likewise, on August 28, 2000 the Tverskoy District Court ordered the applicants' detention because they had persistently failed to appear for trial without giving specific details or considering any alternative measures of restraint.

71 In other words, the repeated redetaining of the applicants in the course of one criminal investigation on the basis of insufficiently reasoned decisions amounts to a violation of Art.5(1) and (3) .

II. Alleged violation of Article 6(1) of the Convention

72 The applicants alleged that the criminal proceedings against them lasted unreasonably long in breach of Art.6(1) of the Convention which provides, as far as relevant, as follows:

> "In the determination of … any criminal charge against him, everyone is entitled to a … hearing within a reasonable time by [a] … tribunal …".

A. Arguments of the parties

The applicants

73 The applicants submitted, first, that neither the facts nor the legal aspects of their case were complex. The number of defendants and witnesses was small, and their interrogation should not have taken much time.

74 Secondly, the applicants did their best to quicken the proceedings. They filed more than 100 complaints demanding the fastest resolution of the case. The applicants had no interest in dragging out the proceedings because that would prolong their remand in custody and because they did not consider themselves guilty. Their conduct corresponded to the requirements set forth in the Convention case law to "show diligence in carrying out the procedural steps relating to [them], to refrain from using delaying tactics and to avail [themselves] of the scope afforded by domestic law for shortening the proceedings".[14]

75 By contrast, the State authorities unreasonably delayed the investigation. Their case remained virtually static for nine years.

The investigating authorities acted indolently. After the case had been remitted to them for further investigation, they idled for several years. The authorities ***464*** delayed the proceedings under various formal pretences such as consolidation and severance of cases, remittal for further investigation and so on.

The investigators many times threatened the applicants with a fiveyear pre-trial detention if they did not stop complaining.

The first hearing of the case was fixed for six months after the case had been submitted to the court. At the first hearing the judge did not start the examination of the merits of the case but postponed it for another three-and-a-half months. The subsequent hearings were also delayed without good reason.

The length of the proceedings was also in breach of domestic law.

76 Much was at stake for the applicants. During the proceedings they spent a considerable time in prison. They risked losing their property in case of an unfavourable sentence. The applicants could not find a good job because of the recurring arrests and because nobody wanted to employ persons known to be under trial. They had to stop their studies in the Calgary and Moscow universities, their professional careers suffered. The prosecution and detention affected their privacy, health and reputation.

The Government

77 The Government submitted that the proceedings had to be adjourned whilst the applicants were in hiding. The court had to spend its time on the decision to detain the applicants instead of considering the merits of the charge. In sum, YS was on the wanted fugitive list for 2 years, 2 months and 6 days; her sister — for 2 years, 9 months and 15 days.

78 When in March 2001 the Tverskoy District Court received the case for trial, it could not proceed because YS a number of times asked for extra time to study the case file. YS's lawyer did not appear for hearings. YS overwhelmed the court with her numerous complaints and motions, often unsubstantiated. The court nonetheless had to spend its time on answering them.

79 The Government concluded that the length of the proceedings was mainly caused by the applicants' unwillingness to submit themselves to justice.

B. The Court's assessment

General principles

80 In examining the length of the proceedings undergone subsequent to the date of entry of the Convention into force, the Court takes account of the stage which the proceedings had reached. To that extent, therefore, it may have regard to the previous proceedings. [15]

81 Periods for which the applicant was on the run should be excluded from the overall length of the proceedings. [16]

82 The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities. ***465** [17]

83 Where a person is kept in detention pending the determination of a criminal charge against him, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met. [18]

Application to the present case

84 The Court first needs to determine the period of the proceedings which it may take into consideration.

In respect of YS, the proceedings began on February 5, 1993 when the authorities started the criminal investigation of her activity. They ended on April 9, 2002 with the appeal judgment of the Moscow City Court. They have therefore lasted in total 9 years, 2 months and 4 days. Of this period only 3 years, 11 months and 4 days fall within the Court's jurisdiction ratione temporis . The period from August 28, 2000 to March 12, 2001 (6 months and 15 days) should be excluded from the total period because during this period YS was unlawfully at large. The period to be taken into consideration is therefore 3 years, 4 months and 19 days.

In respect of IS, the proceedings also began on February 5, 1993. They were discontinued on September 5, 1995 and resumed on March 21, 1997. On February 24, 2000 the proceedings were discontinued for a second time, and for a second time resumed on March 20, 2000. They ended on April 9, 2002 with the appeal judgment of the Moscow City Court. The overall length of the proceedings was 7 years, 6 months and 23 days. Of this period only 3 years, 10 months and 9 days fall within the Court's jurisdiction ratione temporis . Furthermore, since from March 21, 1997 to March 30, 1999 and from August 28 to March 12, 2001 IS was unlawfully at large, these periods should be excluded. So then, the period to be taken into consideration is 2 years, 5 months and 27 days.

85 As to the complexity of the case, the Court agrees with the applicants that the charges they faced were not particularly complex. The investigation of the offence imputed to the applicants — credit fraud and misappropriation of others' property — if carried out diligently, should not have taken years.

86 As to the applicants' conduct, the Court is not convinced that the applicants were always willing to submit to the courts' jurisdiction since both of them absconded for months from the investigating authorities. Furthermore, filing dozens of complaints — even well-grounded — may unnecessarily distract the authorities from concentrating on the main issues.

87 As to the conduct of the authorities, the Court finds that there have been significant periods of inactivity on their part which find no convincing justification. The initial investigation lasted from February 1993 to March 1996. The first examination of the case took place on March 21, 1997, almost one year after the investigation had been finished. The second examination of the case took place on March 31, 1999, two years after the first one. The final trial took place on January 9, 2002, almost three years after the second one. The decision of the Constitutional Court, on the one hand, remedied the situation in connection with the charge brought unlawfully against IS, yet on the other hand, caused another delay in the proceedings. Furthermore, by giving sparsely reasoned recurring decisions to ***466** detain and release the applicants the authorities aroused in them a sense of insecurity and mistrust towards justice thereby indirectly urging them to abscond.

88 Accordingly, in all the circumstances of the present case, the Court considers that the length

of the proceedings fails to satisfy the “reasonable time” requirement. There has accordingly been a breach of Art.6(1) .

III. Alleged violation of Article 8 of the Convention

89 YS alleged that the withholding of her identity paper, a document essential for everyday living in the country, amounted to a violation of Art.8 of the Convention which reads as follows:

> “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

A. Arguments of the parties

The applicant

90 YS submitted that a Russian citizen holding no passport is impaired in his rights to a degree amounting to an interference with his private life. The law requires that a person who wishes to find employment, receive free medical care, receive mail, marry, vote, use notarial services, install a telephone line, save money by buying foreign currency or travel by train or aeroplane must be able to produce a passport. Furthermore, not having a passport is in itself an administrative offence. The applicant could do none of the above, and in March 1999 she was fined for not holding a passport.

91 YS further submitted that the interference was not in accordance with the law. According to the law, State authorities may withdraw a passport only after final conviction. The passport must be returned once the citizen is released. Secondary legislation gives the prosecuting authorities and courts the additional right to withdraw the passport of unconvicted prisoners for the period of their pre-trial detention. However, in this case too, the passport must be returned to the citizen as soon as he or she is released.

92 The withholding of the passport did not serve the interests of national security because the charges of fraud were not amongst crimes undermining fundamental principles of Constitutional system or State security. National security would not have suffered, had the applicant been able to find a job, go to a clinic, marry and so on. Nor was the applicant's offence a threat to public safety. And, in any event, without a passport YS would have been able to threaten public safety had she so wished, as well as if she had the document. The withholding of the passport could ***467** not improve the economic well-being of the country, lead to public disorder or crime. It did not serve the interests of protecting health or morals or the rights and freedoms of others. It was not necessary in a democratic society either.

93 The only reason the authorities gave for keeping the passport in the case file was their own convenience of telling YS from her twin sister. This reason was not only beyond the law but also beyond common sense as it is not clear how attaching the passport to the case file could make her identification easier.

The Government

94 The Government submitted that the Tverskoy District Court needed to keep the passport in the case file because the sisters had several times used their similar appearance to confuse the investigating authorities. The police report of March 31, 1999 serves as an example. The authorities even had to check the applicants' fingerprints in order to tell them from one another. The court was ready to make the passport available to YS for certain crucial purposes and informed her about it, but she never came to collect the passport. The court issued a certificate of withdrawal which could have temporarily replaced the passport, but YS refused to collect it too.

B. The Court's assessment

Whether Article 8 is applicable

95 The Court has a number of times ruled that private life is a broad term not susceptible to exhaustive definition. [19] It has nevertheless been outlined that it protects the moral and physical integrity of the individual, [20] including the right to live privately, away from unwanted attention. It also secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his or her personality. [21]

96 The Court notes that YS's passport was seized on August 26, 1995 and returned on October 6, 1999. YS has not substantiated any concrete event which happened after May 5, 1998 — the day when the Convention became effective in respect of Russia — and which would as such constitute, at least arguably, a disrespect of her private life. However, the interference with YSs private life is peculiar in that it allegedly flows not from an instantaneous act, but from a number of everyday inconveniences taken in their entirety which lasted till October 6, 1999. Therefore, the Court has the temporal jurisdiction over YS's situation, at least as regards the period subsequent to May 5, 1998.

97 The Court finds it established that in their everyday life Russian citizens have to prove their identity unusually often, even when performing such mundane tasks as exchanging currency or buying train tickets. The internal passport is also required for more crucial needs, for example, finding employment or receiving medical care. The deprivation of the passport therefore represented a continuing interference with the applicant's private life. ***468** [22]

Whether the interference was “in accordance with the law”

98 The principal issue is whether this interference was justified under Art.8(2) , notably whether it was “in accordance with the law” and “necessary in a democratic society”, for one of the purposes enumerated in that paragraph.

99 The Court recalls that the phrase “in accordance with the law” requires, in the first place, that the measure complained of must have some basis in domestic law. [23]

100 The Government have not shown that the non-return of YS's passport upon her release from remand custody had any basis in domestic law. There has, accordingly, been a violation of Art.8 .

IV. Application of Article 41 of the Convention

101 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”.

102 The applicants claimed compensation for the non-pecuniary damage suffered by them and reimbursement of their pecuniary losses and their legal costs and expenses. The Government contested these claims.

A. Non-pecuniary damage

103 The applicants claimed $350,000 in respect of non-pecuniary loss. They underlined the emotional distress they suffered as a consequence of repeated and unjustified detention on remand, often in overcrowded and unsanitary prison cells. Their health declined so badly that they cannot enjoy an active life, they feel unhappy and miserable. According to medical reports, they would not be able to give birth to healthy children. The applicants were not able to find steady well-paid jobs because employers knew that the applicants could have been arrested at any time and because persons under investigation are generally disliked. The applicants' professional careers crashed, they could not pursue their studies, and seeing others' success makes them suffer. Remand in custody deprived them of their privacy, their good name and

reputation were damaged.

104 The Government argued that the taking of the applicants into custody was legitimate, therefore any claims arising from it should be dismissed. But even if the Court found a violation, such a finding would constitute sufficient just satisfaction in itself because the applicants never served their sentence.

105 The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof. [24] This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered injury requiring financial compensation. In the present case, it is reasonable to assume that the applicants suffered distress, anxiety and frustration exacerbated by the repeated detention on remand and unreasonable length of the proceedings. Furthermore, YS suffered ***469** frustration over not being able to engage fully in her everyday life due to the confiscation of her passport.

106 Deciding on an equitable basis, the Court awards €3,500 to YS and €2,000 to IS.

B. Pecuniary damage

107 The applicants claimed that they have sustained significant materials losses as a direct result of their pre-trial detention and criminal prosecution, including a salary loss of $253,530. They also claimed $9,050 as compensation for the damage for their property inflicted by police officers during their arrests and $5,000 as compensation for necessities passed by IS to YS whilst the latter was in prison.

108 The Government argued that there is no causal connection between the violations established and any damage. They underlined that the periods of the applicants' pre-trial detention were deducted from the final sentence, and that even though the sentence was later set aside it was so only on technical grounds. The Government also argued that the applicants had not proved that they lost their employment or that it was because of the actions of the authorities. The applicants had not proved that the damage to their property was caused by the police or that they had paid the repair bill. Neither had they proved that IS bought necessities for YS.

109 The Court concludes, on the evidence before it, that the applicants have failed to show that the pecuniary damage pleaded was actually caused by the protracted length of their detention and trial. Furthermore, the entire period of pre-trial detention was deducted from the sentence. [25]

110 Consequently, the Court finds no justification for making an award to the applicants under that head.

C. Costs and expenses

111 The applicants claimed $19,300 for legal expenses arising out of the domestic proceedings and $18,737 plus €9,807.20 for legal expenses arising out of their application to this Court. They also claimed $1,004 for medical and security bills.

112 The Government argued that the applicants had not shown that the expenses had been incurred in connection with the violations alleged; that there were not enough documents to prove that the applicants had actually paid the lawyers' bills; and that the bills themselves were inflated. The Government also emphasised that even though the Council of Europe had granted to the applicants legal aid due to their poverty, they were able, for some reason, to afford the legal services of an expensive American law firm.

113 The Court recalls that in order for costs and expenses to be included in an award under Art.41 , it must be established that that they were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum. [26] It may be concluded from the material submitted that the applicants incurred legal costs and expenses in connection with their attempts to secure their release on bail. However, they only provided partial documentary substantiation of the sum claimed. ***470**

114 Taking into account the legal aid paid by the Council of Europe, the Court awards

€1,000 for legal costs and expenses.

D. Default interest

115 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 3 percentage points.

Order

For these reasons, THE COURT unanimously

1. *Holds* that there has been a violation of Art.5(1) and (3) of the Convention in respect of both applicants;

2. *Holds* that there has been a violation of Art.6(1) of the Convention in respect of both applicants;

3. *Holds* that there has been a violation of Art.8 of the Convention in respect of the first applicant;

4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Art.44(2) of the Convention, the following amounts:

(i) to the first applicant €3,500 in respect of non-pecuniary damage;

(ii) to the second applicant €2,000 in respect of non-pecuniary damage;

(ii) to the applicants jointly €1,000 in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus 3 percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction. ***471**

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1. See *Ciulla v Italy (A/148): (1991) 13 E.H.R.R. 346* , para.[38].

2. See App. No.7438/76, Ventura v Italy, Dec. 09.03.1978 .

3. See, as a classic authority, *Wemhoff v Germany (A/7): (1979–80) 1 E.H.R.R. 55* , para.[12]; *Yagci and Sargin v Turkey (A/319-A): (1995) 20 E.H.R.R. 505* , para.[52].

4. See *Stögmüller v Austria (A/9): (1979–80) 1 E.H.R.R. 155* , para.[15].

5. See *Wemhoff v Germany* , cited above, para.[14].

6. See *Matznetter v Austria (A/10): (1979–80) 1 E.H.R.R. 198* , para.[9].

7. See *Letellier v France (A/207): (1992) 14 E.H.R.R. 83* , para.[51].

8. See *W v Switzerland (A/254-A): (1994) 17 E.H.R.R. 60* , para.[33] with further references.

9. *ibid.* para.[30].

10. See *Letellier v France* , cited above, para.[35].

11. See *App. No.12718/87, Clooth v Belgium (A/225), December 12, 1991* , para.[44].

12. See *Matznetter v Austria* , cited above, para.[12].

13. See *Dalban v Romania: (2001) 31 E.H.R.R. 39* , para.[44].

14. See *Unión Alimentaria Sanders SA v Spain (A/157): (1990) 12 E.H.R.R. 24* , para.[35].

15. See Ventura v Italy , cited above.

16. See *App. No.13324/87, Girolami v Italy (A/196-E), February 19, 1991* , para.[13].

17. See, among many other authorities, *Kemmache v France (A/218): (1992) 14 E.H.R.R. 520* , para.[60].

18. See *Abdoella v Netherlands (A/248-A): (1995) 20 E.H.R.R. 585* , para.[24].

19. See, as a recent authority, *Peck v United Kingdom: (2003) 36 E.H.R.R. 41* , para.[57].

20. See *X and Y v Netherlands (A/91): (1986) 8 E.H.R.R. 235* , paras [22]–[27].

21. See *App. No.6959/75, Brüggeman and Scheuten v Germany, Comm. Rep. 12.07.1977* , para.[55].

22. See, *mutatis mutandis* , *Goodwin v United Kingdom: (2002) 35 E.H.R.R. 18* , para.[77].

23. See *Malone v United Kingdom (A/82): (1985) 7 E.H.R.R. 14* , para.[66].

24. See *Abdulaziz, Cabales and Balkandali v United Kingdom (A/94): (1985) 7 E.H.R.R. 471* , para.[96].

25. See *Toth v Austria (A/224): (1992) 14 E.H.R.R. 551* , para.[91].

26. See, *e.g.* *Nielsen and Johnson v Norway: (2000) 30 E.H.R.R. 878* , para.[43].