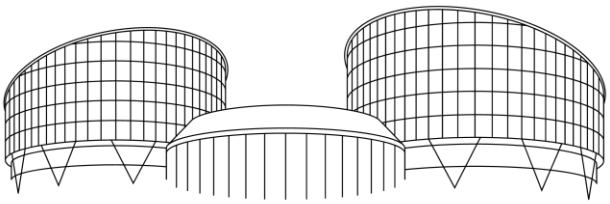

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF SHANNON v. LATVIA

(Application no. 32214/03)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

24/02/2010

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 Shannon v. Latvia**,**

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

Josep Casadevall, *President,*
Elisabet Fura, *appointed to sit in respect of Latvia,*
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 32214/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an American national, Mr Lindsey Hughes Shannon ("the applicant"), on 25 September 2003.

2. The applicant was represented by Mr J. Močuļskis, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. On 12 July 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. Ineta Ziemele, the judge elected in respect of Latvia, was unable to sit in the case. The Government accordingly appointed Elisabet Fura, the judge elected in respect of Sweden, to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and is a citizen of the United States of America.

6. On 25 September 2002, while the applicant was temporarily staying in Olaine (Rīga District, Latvia), the Latvian police initiated criminal proceedings concerning sexual assault of juveniles purportedly committed by him during his previous trip to Latvia, in November 2001.

7. On 1 October 2002 the applicant was apprehended by the police and taken into custody on suspicion of having committed sexual assault of juveniles. According to the arrest report, the applicant had been identified by an eyewitness whose name was not indicated. The charges against the applicant were explained to him in English by an officer from the Latvian National Interpol Bureau. The arrest report noted that the applicant had confirmed that he had understood the substance of the report but had refused to sign to that effect.

8. On 4 October 2002 the applicant was brought before a judge of the Rīga City Centre District Court, who decided to detain him on remand. The judge filled in a standard pre-typed form by writing her name, the date of the detention order and other details of the case. In substantiating the decision, the judge had simply to underline the pre-typed text of the standard form, choosing from the following list of grounds for detention: risk of absconding, risk of impeding the investigation, risk of committing crimes, severity of the crime the arrested person is suspected of, his or her personality, occupation, state of health, and "other circumstances". The judge underlined all of the aforementioned grounds, except the "risk of absconding", the "state of health", the "occupation", and the "other circumstances". The applicant received the English translation of this order on 10 February 2003.

9. The applicant's attorney appealed against the detention order to the Rīga Regional Court on 15 October 2002. The attorney did not attend the hearings that had been scheduled for 18 and 29 October 2002. By a final decision of 5 November 2002, taken after a hearing with the applicant's lawyer's participation, the Rīga Regional Court dismissed the appeal, finding that the impugned order had been taken in accordance with the applicable law. No other reasons were given.

10. In the meantime, on 31 October 2002 the applicant was officially charged with sexual assault.

11. On 29 November 2002, a judge of the Rīga City Centre District Court, on the request of the public prosecutor in charge of investigation, extended the applicant's detention on remand until 1 February 2003. This decision was not written on a standard form with a pre-typed text. According to that decision, the applicant's detention was extended on the basis of the reasonableness of the suspicion against the applicant, the severity of the crime with which he was charged, the fact that he had no legal and/or fixed residence in Latvia, the danger of his absconding and the possibility that he could impede the investigation. It also mentioned the risk that the applicant could put pressure on witnesses or endanger them.

12. The applicant appealed against that decision to the Rīga Regional Court. According to the requirements of the law, he submitted his appeal, written in English, to the court that had adopted the disputed order, in order for it to be transmitted to the Regional Court. On 13 December 2002 the Regional Court sent the applicant's appeal back to the Centre District Court, directing that it should be first translated into Latvian. It also directed the Centre District Court to provide the applicant with an English translation of its decision, which was done on 8 January 2003. The competent judge of the Centre District Court sent the applicant's appeal back to him, in order for him to make the translation.

13. The applicant complained again to the Rīga Regional Court. By a decision of 21 January 2003 the Regional Court declared that, by compelling the applicant to translate his appeal himself rather than sending it for translation at the State's expense, the first instance judge had "grossly violated" his fundamental procedural rights guaranteed by law. Consequently, the Regional Court suspended the proceedings and ordered the Centre District Court to remedy the above-mentioned shortcomings. The case was also reported to the Ministry of Justice, competent in disciplinary matters involving the judiciary. The case was later assigned to another judge of the Centre District Court.

14. On 30 January 2003, a judge of the Rīga City Centre District Court, on the request of the public prosecutor in charge of investigation, again extended the applicant's detention on remand, this time until 1 April 2003. The reasoning of this detention order was similar to the first two orders. The applicant's detention was extended on the basis of almost the same grounds: the reasonableness of the suspicion against the applicant, the severity of the crime with which he was charged, the danger of his absconding and the possibility that he could impede the investigation. Contrary to the earlier decisions on the applicant's detention, this order in addition referred to the possibility that he could "flee after having committed an offence" and specifically mentioned the fact that he had no legal and/or fixed residence in Latvia as well as no permanent residence permit there.

15. By a decision of 14 February 2003 the Rīga Regional Court dismissed the applicant's appeal against the detention order of 30 January 2003. Although the decision set out the applicant's arguments in detail, the court's reasoning consisted of repeating the reasons given by the court of first instance and declaring that the latter had acted in conformity with the law. The Regional Court further noted that the appeal against the detention order of 29 November 2002 was still pending.

16. On 25 February 2003 the Rīga Regional Court finally examined and dismissed the applicant's appeal against the detention order of 29 November 2002, by which his detention had been extended until 1 February 2003. The court observed that there continued to be grounds for applying the exceptional measure – detention. Those grounds included the

fact that the applicant had been charged with committing a serious crime, that he had no permanent residence permit in Latvia and that he had no permanent place of residence there, as well as the grounds mentioned by the judge of the first instance court.

17. On 28 February 2003 the applicant was examined by a board of psychiatrists which established that he had suffered from a mental disorder in the past and that he had undergone treatment in a psychiatric hospital in the United States. However, the board declared itself unable to reach a precise conclusion and recommended the applicant's internment in a psychiatric hospital for further examination. On 23 May 2003 experts of the State Psychiatry Centre, after having observed the applicant in a psychiatric hospital over a period of one month, found that he was of a sound mind.

18. On 31 March 2003, a judge of the Rīga City Centre District Court again extended the applicant's detention on remand until 1 June 2003. The reasoning was practically identical to that in the decision of 30 January 2003. The applicant's appeal, in which he *inter alia* complained that the decision to leave him in detention solely because his residence permit had expired was discriminatory, was dismissed by the Rīga Regional Court on 9 May 2003, which used similar reasoning to the previous decisions.

19. On 30 May 2003, the competent judge of the Rīga City Centre District Court, on the request of the public prosecutor in charge of the investigation, extended the applicant's detention on remand until 1 August 2003. Besides the usual grounds, the judge's decision noted:

> "...Having assessed the gravity of the offence allegedly committed, [as well as] the particularities of investigating a case where the victims are children, I consider that... the length of the remand measure prohibiting Lindsey Hughes Shannon from exercising his freedom of movement is consistent with the character of the socially dangerous act of which he has been accused..."

20. On 13 June 2003 the Rīga Regional Court upheld the aforementioned detention order, repeating in substance the reasons given by the first instance judge.

21. On 18 June 2003 the prosecutor expanded the charges against the applicant, also accusing him of having molested young boys on the occasion of another trip to Latvia, in July, August and September 2001. Besides the existing charge of sexual assault, the applicant was accused of having committed aggravated forcible sexual assault, forcible sodomy, inducing or compelling a juvenile to engage in prostitution, and engaging a juvenile under fourteen years of age in production of pornography. On 10 July 2003 the preliminary investigation was completed and the case-file was handed over to the defence, who finished acquainting themselves with the case on 28 July 2003.

22. On 30 July 2003 the applicant and his lawyer were presented with the final bill of indictment and its English translation. On the same day the case was sent to the Rīga Regional Court for trial.

23. On 1 August 2003 a single judge of the Rīga Regional Court adopted a decision to commit the applicant for trial and to keep him in detention. The decision to keep the applicant in detention was reasoned as follows: "The preventive measure has been chosen in accordance with the accused person's personality and the gravity of the charges brought [against him], and there is no reason to alter [that measure]". There was no possibility to appeal against that decision (see below paragraph 33).

24. After having adjourned hearings of 9 and 12 January 2004, by a judgment of 20 January 2004 the Rīga Regional Court found the applicant guilty of all the crimes he had been accused of and sentenced him to five years' imprisonment. According to Article 43 of the Criminal Law, the court ordered his deportation from Latvia after having served the sentence. The applicant appealed against this judgment.

25. On 13 October 2004 the Criminal Chamber of the Supreme Court acquitted the applicant of the charges of producing child pornography and reduced the penalty to four years' imprisonment. The remainder of the appeal was dismissed.

26. The applicant then filed an appeal on points of law, by submitting himself a short handwritten letter that was translated into Latvian by a court interpreter. On 10 January 2005 the Senate of the Supreme Court by a decision of a preparatory meeting declared the appeal inadmissible for lack of arguable points of law. Ten days later, on 20 January 2005, the applicant's lawyer tried to submit to the Senate a more elaborate memorial; however, it was returned to him since the time-limit for appeal on points of law had elapsed and since the applicant's own appeal had already been examined and rejected.

27. After the applicant had served three quarters of his sentence, he was released on parole on 10 July 2006 and was expelled from Latvia three days later.

II. RELEVANT DOMESTIC LAW

28. The former Code of Criminal Procedure (KPK), a legacy of the Soviet era which was amended on numerous occasions, was applicable at the material time. It remained in force until 1 October 2005, when it was replaced by the new Criminal Procedure Law (*Kriminālprocesa likums*).

29. Under the terms of Article 68 of the KPK, a preventive measure could be applied where plausible reasons existed to suspect that the accused would seek to evade investigation or hinder the determination of the truth in the case. Eight types of preventive measure existed: an undertaking not to change one's residence, personal guarantees, financial guarantees, police surveillance, house arrest, detention in prison and two measures specifically applicable to minors and members of the armed forces.

30. Under Article 72 of the KPK, a preventive measure had to be chosen and implemented on the basis of the following criteria: the seriousness of the alleged offence; the personality of the accused; the likelihood that he or she would seek to evade investigation and hinder the determination of the truth in the case; and the accused's occupation, age, domestic circumstances and health and other relevant criteria. Any preventive measure had to be applied on the basis of an order giving sufficient reasons.

31. By virtue of Article 83 of KPK, a preventive measure had to be terminated if it had been applied unlawfully or it ceased to be necessary, or could be changed to a more severe or lenient one if the circumstances of the case so required. The termination or alteration of detention on remand applied by a judge or a court during the preliminary investigation had to be effected by a reasoned decision of a prosecutor, or it could be terminated by a court decision in the cases provided for in Article 222^1.

32. Pursuant to Article 222^1, all decisions given by a judge at the pre-trial stage regarding the detention on remand and its extension could be appealed to a higher instance court by a suspected or accused person or his counsel or representative within seven days after they found out about that decision. The appeal had to be examined and a decision taken within seven days as of its receipt. The decision was final and not subject to further appeal.

33. After drawing up and signing the final indictment, the public prosecutor's office had to forward the file to the trial court (Articles 209-11 of the KPK). Within fourteen days of receiving the file, a single judge of the trial court, without ruling on the accused's guilt, had to decide whether the file provided a sufficient basis for committing the accused for trial and whether the preventive measure had been chosen correctly. If he had no objections, the single judge adopted a final decision to commit the accused for trial and leave the preventive measure unchanged (*lēmums par apsūdzētā nodošanu tiesai*). Such a decision could not be appealed.

34. If the single judge disagreed with the conclusions of the bill of indictment or considered that a preventive measure had to be applied to the accused or that the preventive measure that had been applied previously had to be altered, he convened a preparatory meeting (*rīcības sēde*). The preparatory meeting took a decision either to commit the accused for a trial or to terminate the proceedings or to refer the case back for additional investigation. It also had to decide the question about the preventive measure. The order given following a preparatory hearing was amenable to appeal before a higher court.

35. Article 241 set time-limits for examination of a case and provided that the examination of a case before a court had to start no later than within twenty days or, under exceptional circumstances, no later than within one month, after the case was received by the court. However, this provision

was very rarely complied with by the Latvian courts (see *Svipsta v. Latvia*, no. 66820/01, § 62, ECHR 2006-III (extracts)).

THE LAW

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

36. The applicant complained that his detention on remand had been *per se* illegal and unjustified, since it had been based on insufficient evidence and since he had had no intention of fleeing Latvia. Accordingly he alleged that there had been a violation of Article 5 § 1 (c) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

37. The Government firstly argued that the applicant had not raised this issue in his submissions to the Court and that the Court had decided to consider this issue *ex officio*, on the basis of documentary evidence in the case file. In this regard, the Court notes that in his application to the Court the applicant specifically referred to Article 5 § 1 (c) of the Convention and argued that his detention had been unlawful. Accordingly, this objection of the Government is unfounded.

38. The Government also argued that the applicant had never raised the issue of the allegedly unlawful character of the deprivation of his liberty before the national authorities. Accordingly, it considered that with regard to the complaint under Article 5 § 1 (c) the domestic remedies had not been exhausted as required by Article 35 § 1 of the Convention.

39. The applicant alleged that the Government's objection was ill-founded and had been proffered for the purpose of avoiding the Government's responsibility.

40. The Court notes that the applicant appealed against the initial decision to detain him on remand, which had been adopted on 4 October 2002, as well as against all of the subsequent decisions to prolong his detention. From the decisions that were adopted in response to the applicant's complaints, it appears that he had been disputing the necessity to keep him in custody and accordingly the legality of the above-mentioned decisions. Therefore, it appears that the applicant had given the national authorities ample opportunity to address the issues raised in his application to the Court. Accordingly, the Court rejects the Government's preliminary objection.

41. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Finally, it notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

42. The Government submitted that the applicant's pre-trial detention during the period from 4 October 2002 until 1 August 2003 had been continuously authorised by court decisions. After the applicant had finished consulting the case file, on 1 August 2003 the Rīga Regional Court decided to commit him for trial and keep him in detention on remand. In the Government's submission, subsequently there had been no need to prolong the applicant's detention until he was eventually convicted by a judgment of the Rīga Regional Court on 20 January 2004. Accordingly, the Government submitted that during the entire time that the applicant had been detained on remand he had remained within the scope of competence of judicial authorities and that thus the guarantees of Article 5 § 1 of the Convention had been observed.

43. The applicant noted that the violations of his rights were “obvious”, but did not provide any further arguments.

44. It is common ground between the parties that the applicant's detention was imposed in accordance with the applicable national law; therefore no question arises with regard to the “lawfulness” of that detention.

45. As to the existence of a reasonable suspicion against the applicant, the Court reiterates that the “reasonableness” of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Labita v. Italy* [GC], no. 26775/95, § 155, ECHR 2000-IV). However, the “reasonable suspicion” referred to in Article 5 § 1 (c) does not mean that the suspected person's guilt must at that stage

be established (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). Sub-paragraph (c) of Article 5 § 1 does not even presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody (see *Erdagöz v. Turkey*, judgment of 22 October 1997, *Reports* 1997-VI, p. 2314, § 51).

46. In the present case, it appears that the initial suspicion against the applicant had been based on statements from four victims and testimony from an unnamed "eyewitness". The Court considers that such evidence is sufficient to have created "reasonable suspicion" against the applicant within the meaning of the previously cited case-law.

47. Furthermore, the Court finds that the suspicion against the applicant did not decrease during the time of his pre-trial detention. On the contrary – from the materials in the case file it appears that the applicant had partially admitted his guilt at some point during that stage of proceedings. Furthermore, with time further evidence was obtained raising additional suspicion that the applicant had submitted further – although related – crimes (see above, paragraph 21). Thus there existed reasonable suspicion against the applicant throughout the period until his case was transferred to the Rīga Regional Court for adjudication on 30 July 2003 (*cf. Svipsta*, cited above, § 82).

48. With regard to the period from 1 August 2003, when the Rīga Regional Court accepted the applicant's case for adjudication, until 20 January 2004, when the applicant was convicted by that court, even though the applicant's detention had a different legal basis than before (the decision of 1 August 2003, which was adopted in accordance with Article 225 of the Code of Criminal Procedure), the Court finds that the character of the suspicion against him had not changed (see *Svipsta*, cited above, § 88). Furthermore, the Court has previously held that the fact that a court decides to leave a preventive measure imposed "unchanged" as such does not breach Article 5 § 1 of the Convention (see, among others, *Khudoyorov v. Russia*, no. 6847/02, § 135, ECHR 2005-X (extracts)).

49. As follows from the text of Article 5 § 1 (c), reasonable suspicion of having committed an offence and risk of flight are alternative (and not cumulative) justifying reasons for imposing a pre-trial detention. In the present case, even if the applicant had been able to prove that he had no intention to flee Latvia upon release from detention, the reasonable suspicion of his having committed a crime, which with time was supported by new evidence, was a sufficient ground to consider that his detention corresponded to the requirements of Article 5 § 1 (c).

50. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 5 § 1 (c) of the Convention.

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

51. The applicant complained under Article 5 § 1 (b) of the Convention about the improper, too abstract and too concise reasoning of the court orders extending his pre-trial detention. He pointed out that these orders simply repeated some of the reasons for applying pre-trial detention listed by the law, without explaining to what extent they actually applied in his particular case. Invoking Article 6 § 1 of the Convention, the applicant complained that his appeals against the extension of his detention on remand had been examined belatedly. Finally, the applicant complained under Articles 5 § 2 and 6 § 3 (e) of the Convention about a belated communication to him of English translations of the detention orders against him. The Court considers it appropriate to examine these complaints under Article 5 § 4, which 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. Admissibility

52. The Government noted that the applicant's pre-trial detention had been authorised by five different decisions of the Rīga City Centre District Court. It submitted that each of those decisions had dealt with a different stage of the applicant's detention and that they had all contained different reasoning. Furthermore, in his application to the Court the applicant allegedly had not complained about his pre-trial detention in its entirety, but had merely singled out certain decisions. Accordingly, the Government proposed to deal with each of those periods separately, as, according to the Government, the Court has previously done, taking into account the type and stage of the proceedings, and/or the responsible authority. In that regard they referred to the Court's approach in the earlier cases *Estrikh v. Latvia*, no. 73819/01, §§ 121-127, 18 January 2007; and *Svipsta*, cited above, §§ 80-90. Accordingly, the Government submitted that the applicant's complaint with regard to the period from 4 October 2002 until 1 April 2003, which had been covered by the Rīga City Centre District Court's decisions of 4 October and 29 November 2002 and 30 January 2003, was inadmissible because it had been lodged out of time.

53. The applicant did not submit any observations on this point.

54. In this regard the Court notes that it has previously held that for the purposes of Article 35 § 1 of the Convention, a period of detention should be regarded in principle not as an instantaneous act, but as a continuing situation (see *Svipsta*, cited above, § 116). Even though in certain situations the Court has previously derogated from this principle (see the explanation in *Svipsta*, cited above, § 117, and the jurisprudence cited there), the Court

sees no reason to do so in the present case. For the sake of completeness, it should be noted that in the *Svipsta* and *Estrikh* judgments, which were invoked by the Government, the periods of the applicants' pre-trial detention had been split up for reasons of clarity, which had no practical impact on the running of the six-months period for the purposes of Article 35 § 1 of the Convention. As to the Government's allegation that the applicant had not complained about the decisions authorising his pre-trial detention in their entirety, but had merely singled out certain of those decisions, the Court notes that in his original application the applicant did in fact lodge general complaints, which concerned the nature of the domestic decisions generally, along with specific grievances about particular decisions. Therefore that argument is ill-founded.

55. Having regard to the above, the Court dismisses the Government's preliminary objection. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It finally notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

56. The Government did not submit any observations with regard to the substance of the applicant's complaints concerning the decisions which authorised and extended the applicant's pre-trial detention during the period from 4 October 2002 until 30 March 2003, since they considered that the complaints with regard to those decisions were time-barred (see above, paragraph 52).

57. With regard to the remaining decisions of the Rīga City Centre District Court, which were subsequently confirmed by decisions of the Rīga Regional Court, the Government emphasized that on each occasion the applicant's detention was evaluated by two courts: the first instance court carefully evaluated the grounds for the detention and the second instance court examined the quality and legitimacy of the decisions adopted by the first instance court.

58. The Government recalled that among other grounds for keeping the applicant in detention it was noted that the applicant's residence permit in Latvia had expired and that he had no domicile there. In this regard the Government referred to the Court's judgment in *Estrikh* (cited above, § 122), in which, according to the Government's submissions, the Court had held that "having no valid residence permit may amount to a sufficient reason for continuous detention". According to the Government, that was also the primary reason why the applicant had been continuously held in detention after the case had been transferred for adjudication to the Rīga Regional Court on 1 August 2003, since the fact that applicant had no

domicile in Latvia and no valid residence permit made the application of a different preventive measure impossible.

59. With regard to the requirement of speediness, the Government noted that all of the decisions of the Rīga City Centre District Court had been adopted in a timely manner and within the time-limits established by the Code of Criminal Procedure. As for the promptness of the examination of the applicant's complaints in the Rīga Regional Court, the Government noted that certain delays had occurred because of the exceptional nature of the applicant's case, in which all of the decisions had to be translated into English and the translations had been carried out by the Ministry of Justice. It was further noted that the option of not translating the respective decisions into English and thus speeding up the proceedings would have violated other procedural safeguards and had been accordingly unacceptable.

60. The applicant maintained his arguments and pointed out that after his complaint had been lodged with the Court, the Latvian Government had amended the legal regulation of criminal procedure in such a way as to avoid similar violations in future.

61. The Court notes that the applicant's complaints primarily address the fact that the domestic courts' reasoning in extending his detention had been too abstract and concise and the fact that his complaints and the courts' decisions had to be translated to and from English, which had created delays. The Court will address these two complaints in turn.

1) Abstract and concise reasoning

62. The Court recalls that on several occasions it has had an opportunity to critically analyse the quality of Latvian courts' decisions authorising and extending pre-trial detention (see *Lavents v. Latvia*, no. 58442/00, §§ 72-75, 28 November 2002; *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, §§ 93-97, 9 February 2006; *Kornakovs v. Latvia*, no. 61005/00, § 108, 15 June 2006; *Svipsta*, cited above, §§ 130-134, *Estrikh*, cited above, §§ 122 and 125; and *Ž. v. Latvia*, no. 14755/03, § 72, 24 January 2008). In those cases the Court as a rule criticised the use of pre-typed forms in decisions and held that the courts' reasoning had been too concise and abstract and that their decisions had mainly listed the grounds of detention provided by law and had not explained how those grounds had been applicable to the applicants' situations.

63. The Court points out that in the present case, even though the domestic courts had abolished the use of pre-typed forms, they largely continued to recount the grounds for detention provided by law and did not provide detailed explanation as to how those grounds were relevant to the applicant's case.

64. However, the Court notes that from the decision of 29 November 2002 onwards the domestic courts referred to the fact that the applicant had

no valid residence permit in Latvia. He also did not have a place of residence there. The courts invoked this consideration to substantiate the assumption that there existed a danger of him absconding. In this way the courts' reasoning contrasts with that used by the domestic courts in the situation which was under the Court's scrutiny in *Estrikh* (cited above, § 122), where the domestic courts had failed to explicitly or implicitly refer to the fact that the applicant had resided in Latvia illegally.

65. As was mentioned by the Court in *Estrikh*, an illegal residence status in a country can be a reason to justify an accused person's detention (§ 122). The Court has previously taken into account the fact that a person resides illegally in a country and has concluded that such a fact significantly increases the risk of absconding (see *Dzelili v. Germany*, no. 65745/01, § 73, 10 November 2005, and *Čevizović v. Germany*, no. 49746/99, § 41, 29 July 2004). Since the applicant had no other link to the territory of Latvia, the illegality of his residence status could legitimately be taken into account by the national courts.

66. Accordingly, even though in other respects the reasoning used by the domestic courts in decisions to apply and to extend the applicant's pre-trial detention continued to be fairly abstract and concise and thus, under different circumstances, problematic, the Court concludes that in the specific circumstances of the case the guarantees of Article 5 § 4 have not been violated.

2) Speediness of review

67. The Court recalls at the outset that Article 5 § 4, in guaranteeing to detained persons a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (*Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B; *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given "speedily" is undeniably one such guarantee. In that context, the Court also recalls 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).

68. The Court has already noted that the entire period of the applicant's detention should be regarded as a continuing situation (see above, paragraph 54). In the present case, insofar as is relevant for the analysis of the speediness of review of the lawfulness of the applicant's detention, this

issue was decided by two levels of jurisdiction on five occasions, the first decisions being adopted by the Rīga City Centre District Court on 4 October and 29 November 2002, and 30 January, 31 March and 30 May 2003 respectively. In order to better assess the speediness of review, the Court – without any prejudice to the conclusion about the applicant's detention being a continuous situation – will assess each of those occasions under its own heading.

a) Decision of 4 October 2002

69. The applicant's detention was first authorised by a decision of the Rīga City Centre District Court on 4 October 2002. Pursuant to his lawyer's appeal against that decision, the Rīga Regional Court adopted its decision on 5 November 2002, that is, 1 month and 2 days later. However, the applicant's lawyer on two occasions failed to attend court hearings, causing them to be postponed (see above, paragraph 9). Therefore, the Court considers that the delays that could be attributable to the national authorities were not such as to raise any issues under Article 5 § 4.

b) Decision of 29 November 2002

70. The applicant's and his lawyer's appeal against the 29 November 2002 decision of the Centre District Court was dismissed by a decision of the Regional Court, which was adopted on 25 February 2003 (89 days later). The Court notes that the delays were chiefly caused by the Centre District Court's erroneous decision to return the applicant's appeal to him for translation, even though the domestic legislation provided that the translation is to be ensured by that court, and its failure to provide the applicant with a translation of its decision in a timely manner.

71. Taking into account that the Government in their observations have not provided information on any facts that would allow the Court to conclude that the delay in deciding on the applicant's and his lawyer's appeals or any part thereof could be attributable to the applicant, and taking into account the Court's case-law on such delays (see, for example, *M.B. v. Switzerland*, no. 28256/95, §§ 32-43, 30 November 2000, *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, and *Mitev v. Bulgaria*, no. 40063/98, §§ 124-125, 22 December 2004), there has been a violation of Article 5 § 4 in respect of the delay in examining the appeal against the Rīga City Centre District Court of 29 November 2002.

c) Decision of 30 January 2003

72. The Rīga Regional Court took a decision with regard to the applicant's and his lawyer's appeals against the 30 January 2003 decision of the Centre District Court on 14 February 2003 – 15 days later. The Court has no information as to the date when the applicant and his lawyer submitted their appeals. However, taking into account the time-limits

provided in the domestic legislation (7 days for the accused person to submit his appeal and a further 7 days for the competent court to issue its ruling – see above, paragraph 32), and taking into account the necessity to translate the applicant's appeal and the inevitable delay caused by that, it considers that the requirement of speediness was observed in the respective period and accordingly the guarantees of Article 5 § 4 were not violated.

d) Decision of 31 March 2003

73. The Rīga Regional Court adopted a decision to dismiss the applicant's and his lawyer's appeals against the 31 March 2003 decision of the Centre District Court on 9 May 2003 (1 month and 8 days later). The Government did not provide any explanations as to the reasons for this delay, apart from noting that the delay had been caused by the necessity to translate the first instance court's decision into English and the applicant's appeal into Latvian. Thus, even though the task of the Regional Court was virtually identical to the one it had faced in connection with the appeal against the decision of 30 January 2003 (see above, paragraph 72), the process lasted more than three weeks longer. Against this background, and taking into account the previously cited case-law (see above, paragraph 71), the Court concludes that there has been a violation of Article 5 § 4.

e) Decision of 30 May 2003

74. The applicant and his lawyer appealed against the Centre District Court's decision of 30 May 2003. The Regional Court dismissed their appeals by a decision of 13 June 2003, thus within 14 days. Considering that such a delay was permitted by domestic law and there is nothing in the case file to suggest that it was unreasonable at that specific moment, the Court concludes that there has been no violation of Article 5 § 4.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. The applicant complained under Article 6 § 1 of the Convention about the overall length of criminal proceedings against him. In the light of all the material in its possession, and taking into account the particular circumstances of the case, the Court finds that the overall length of the criminal proceedings against the applicant (approximately two years and three months) does not disclose any appearance of a violation of Article 6 § 1. Accordingly, this complaint is inadmissible as manifestly ill-founded.

76. The applicant further complained that the pre-typed standard form of the initial detention order adopted by the Rīga City Centre District Court on 4 October 2002 contained the expression: "...taking into account: the gravity of the crime committed; ..." which had allegedly infringed his right to the presumption of innocence. In this respect he invoked Article 6 § 2 of the

Convention. The Court finds that this complaint is inadmissible as being manifestly ill-founded, since the aforementioned formula does not logically imply that the accused has committed a crime; it merely states the objective fact that a crime has been committed and assesses its gravity.

77. Finally, the applicant complained under Article 8 of the Convention that in extending his detention on remand, the Latvian courts had neglected his state of health, the fact that he had been placed under psychiatric supervision in the United States, and that he had a disabled brother in his care. The Court observes that this complaint pertains to the quality of decisions extending the applicant's detention on remand. Accordingly, it has to be viewed from the angle of Article 5 of the Convention. That complaint has been analysed above (see paragraphs 62-66). For that reason the Court concludes that this complaint is inadmissible as being manifestly ill-founded.

78. Finally, by reference to Article 8 the applicant also complained that the Latvian authorities had done nothing to secure his property in Florida. The Court notes that there is no indication in the materials before it that the applicant has raised this complaint – either in form or in substance – before the domestic authorities. Therefore, without analysing whether the situation described by the applicant would be covered by Article 8 of the Convention or by Article 1 of Protocol No. 1, the Court finds that in this respect domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention. Accordingly this complaint is also inadmissible.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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."

80. The applicant claimed 100,000 US dollars, which encompassed compensation for all his pecuniary and non-pecuniary damages as well as all costs and expenses. He did not specify the amounts to be paid under each of those heads.

A. Pecuniary damage

81. The Government noted that the applicant's claim for pecuniary damage had not been sufficiently specific and that it any case there did not exist any causal link between the damage claimed and the alleged violations of the Convention.

82. The Court fails to see any causal link between the violation of Article 5 § 4 of the Convention and the sums claimed by the applicant, which furthermore have not been supported by any documentary or other evidence, and accordingly dismisses his claims under this head (see, for example, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II).

B. Non-pecuniary damage

83. The Government alleged that the applicant's claim for 100,000 USD under this head was unjustified, excessive and exorbitant. It furthermore considered that it was impossible to establish that the applicant had suffered any non-pecuniary damage and that in any case there was no causal link between the alleged damage and the alleged violations of the Convention.

84. The Court considers that the finding of a violation of Article 5 § 4 of the Convention with regard to the delays in issuing a ruling with regard to the applicant's appeals against the Rīga City Centre District Court's decisions of 29 November 2002 and 31 March 2003 constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have sustained.

C. Costs and expenses

85. The Government stated that the applicant's claim for costs and expenses was unsubstantiated.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). The Court points out that under Rule 60 of the Rules of Court "the applicant must submit itemised particulars of all claims, together with any relevant supporting documents failing which the Chamber may reject the claim in whole or in part" (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 71, 7 February 2008).

87. The Court notes that the applicant did not submit any supporting documents or particulars in respect of his claim for the costs and expenses incurred in the proceedings before it. Accordingly, it does not award any sum under this head (see *Parizov*, cited above, § 72).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 5 §§ 1 (c) and 4 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 (c) of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention with regard to the delays in issuing a ruling with regard to the applicant's appeals against the Rīga City Centre District Court's decisions of 29 November 2002 and 31 March 2003;

4. *Holds* that there has been no violation of Article 5 § 4 of the Convention with regard to the remainder of the applicant's complaints under that provision;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have sustained;

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

Done in English, and notified in writing on 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President