CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF ESTRIKH v. LATVIA

(Application no. 73819/01)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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

In the case of Estrikh v. Latvia,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 73819/01) 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 a Russian national, Mr Vladimir Aleksandrovich Estrikh ("the applicant"), on 4 September 2001.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged that his detention on remand was excessively long and partly unlawful, that during the pre-trial detention on remand his right to family life was infringed, that the proceedings against him were unreasonably long and that his expulsion from Latvia was unlawful.

4. On 9 May 2005 the Court decided to give notice of the application to the Government and to invite the Government to submit written observations concerning the complaints under Articles 5 § 3, 6 § 1 and 8 of the Convention. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Krasnoyarsk in the Russian Federation.

1. The applicant's arrest and detention on remand

6. The applicant arrived in the Republic of Latvia as a member of the ex-USSR armed forces located in the territory of Latvia. On an unspecified date in the beginning of the 1990s he and Ms B., a Latvian citizen, started living together in *de facto* partnership. In 1993 a child was born to the applicant and his partner.

7. After the military forces were withdrawn from Latvia, the applicant resided there between 11 June 1993 and 31 March 1994 on the basis of a temporary residence permit. On 31 March 1994, upon the expiry of the residence permit, he left Latvia.

8. Between 1994 and 1997 the applicant visited Latvia three times on the basis of a visa. The validity of the last visa expired on 17 November 1997 but the applicant continued to reside in Latvia illegally.

9. On 19 February 1998 the applicant was apprehended by the police and taken into custody on suspicion of having committed robbery and criminal proceedings were initiated against him and seven co-accused persons.

10. On 20 February 1998 the applicant was brought before a judge of the Ziemeļu District Court of the City of Riga who decided to detain him on remand. The judge filled in a standard form by typing in the date, the names of the court and the applicant and other details of the case. In substantiating the decision, the judge had to choose from and underline the pre-typed text of the standard form. She took into account the severity of the crime the applicant was suspected of, the danger of his possible absconding and the possibility that he could impede the investigation. However, the judge did not underline the pre-typed text as to whether or not a preventive measure should be imposed on the applicant. He did not appeal this decision.

11. On 17 March 1998 the applicant was officially charged with robbery.

12. On 9 April, 11 June, 10 August and 13 October 1998 a judge of the Ziemeļu District Court of the City of Riga, on the request of the prosecutor in charge of investigation, extended the applicant's detention on remand until 19 June, 19 August, 19 October and 12 December 1998 respectively. The applicant was not brought before the judge. The decisions were drafted using a standard form and repeated from one decision to the next the same grounds in the same words, i.e. the severity of the crime the applicant was charged with, the danger of his possible absconding and the possibility that he could impede the investigation. The applicant did not appeal any of these decisions.

13. On 30 October 1998 the prosecutor in charge of investigation and the applicant discussed the possibility of releasing him on bail.

14. On 25 November 1998, according to the prosecutor's permission, the applicant and his partner met in order to discuss the details of the applicant's release on bail without reaching any agreement in this respect.

15. On 10 December 1998, 11 January, 29 January, 20 February and 19 March 1999 a judge of the Ziemeļu District Court of the City of Riga, on the request of the prosecutor in charge of investigation, extended the applicant's detention on remand until 12 January, 29 January, 20 February, 20 March and 20 April 1999 respectively. The applicant was not brought before the judge. The decisions were drafted using a standard form and repeated, from one decision, the same grounds and in the same words, i.e. the severity of the crime the applicant was charged with, the danger of his possible absconding and the possibility that he could impede the investigation. The applicant did not appeal any of these decisions.

16. On 21 April 1999 the applicant was given access to the case file in order to take cognisance of its contents, which he completed on 29 October 1999.

17. On 7 August 2000 the last of the co-accused persons completed the reading of the case file.

18. On 23 August 2000 the investigating prosecutor N. informed all accused persons that the examination of the case file had been completed. The prosecutor, considering the fact that the applicant resided in Latvia illegally, the danger of his possible absconding and the possibility that he could impede the investigation, refused the applicant's request to alter the preventive measure imposed on him. The applicant did not appeal this decision. On the same day the final indictment, drafted by the prosecutor N., was presented to the applicant.

19. On an unspecified date the case was transmitted to the Riga Regional Court for adjudication.

2. The applicant's contacts with his family during his detention

20. During the preliminary investigation the applicant asked the prosecutor in charge of investigation for permission to correspond with his relatives; these requests, using a standard form, were refused as being contrary to the interests of investigation.

21. On 1 February 1999 the applicant asked the prosecutor for permission to meet his partner. His request was refused on 8 February 1999.

22. On 27 June 1999 the applicant asked the prosecutor for permission to exchange correspondence with his parents, who were living in Russia.

23. On 5 July 1999 the prosecutor informed the applicant that he was not allowed to meet his partner or to exchange correspondence with his parents.

24. On 22 July 1999 the applicant asked the prosecutor for permission to exchange correspondence with his relatives and to meet his partner and their child. These requests were refused on 2 August 1999.

25. On 10 August 2000 the applicant asked the prosecutor for permission to exchange correspondence with his mother and his partner.

26. On 16 August 2000 the prosecutor allowed the applicant to exchange correspondence with his mother.

27. On 13 September 2000 a judge of the Riga Regional Court allowed the applicant to exchange correspondence with his partner.

28. The applicant spent the whole period of detention from 19 February 1998 to 19 August 2002 in a remand prison. According to the Instruction on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons (hereinafter referred to as "the Instruction"), approved by the Minister of the Interior, and Transitional Provisions on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons (hereinafter referred to as "the Transitional Provisions"), approved by the Minister of Justice, long-term family visits were prohibited in remand prisons.

3. Court proceedings against the applicant

29. On 4 September 2000 the Riga Regional Court received the case file.

30. On 7 September 2000 a judge of the Riga Regional Court committed the applicant for trial and scheduled the hearing for 13 May – 10 June 2002. The applicant was not summoned. The judge decided to continue his detention on remand without giving reasons. The decision was not subject to appeal.

31. On 4 November 2000 the applicant asked the Riga Regional Court to schedule a separate court hearing in order to determine the date of trial and to reconsider the preventive measure imposed on him.

32. On 20 November 2000 a judge of the Riga Regional Court replied that the trial date had not been set.

33. On unspecified dates the applicant complained to the President of the Riga Regional Court and the Ministry of Justice that his right to trial within a reasonable time had been infringed. On 5 December 2000 the Ministry of Justice notified the applicant that the trial date had not been scheduled.

34. On 28 November 2000 the applicant asked the Riga Regional Court to hold a hearing in his case within a reasonable time. On 8 January 2001 the applicant repeated this request.

35. On 29 January 2001 a judge of the Riga Regional Court replied that the trial date had not been set.

36. On 26 February 2001 the applicant announced a hunger strike to protest against the lack of progress in the proceedings.

37. On 2 March 2001 the Riga Regional Court informed him that the hearing had been scheduled for May 2001 and he discontinued the hunger strike.

38. On 13 March 2001 the Riga Regional Court informed the applicant that the trial had been scheduled for 13 May – 1 July 2002.

39. On 15 March 2001, in reply to the applicant's earlier complaint, the Ministry of Justice informed him that the hearing had been set for 13 May – 1 July 2002.

40. On 27 March 2001 the Riga Regional Court confirmed that the trial date had been scheduled for 13 May – 1 July 2002.

41. On 5 April 2001 the Ministry of Justice confirmed that the trial dates were set for 13 May – 1 July 2002 and not May 2001 as erroneously stated by the Riga Regional Court in its letter of 2 March 2001. The applicant was also informed that, due to the court's case load, it was not possible to begin the trial within the time limit provided for in Article 241 of the Criminal Procedure Code.

42. On 11 April 2001, on the applicant's request of 2 April 2001 to alter his detention on remand, a judge of Riga Regional Court informed him that he had been committed for trial and that there was no reason to alter the preventive measure imposed on him.

43. On 13 May 2002 the Riga Regional court commenced adjudication of the applicant's case.

44. On 16 and 20 May 2002 the Riga Regional court adjourned the hearing as several witnesses did not appear. The court ordered the police to ensure the appearance of these witnesses under constraint.

45. On 11 June 2002 the Riga Regional Court found the applicant guilty of robbery and unlawful ammunition storage. The prosecuting authorities were represented by the prosecutor N. and his colleague. The court sentenced him to four years and six months' imprisonment and, according to Article 24^{2} of the Criminal Code, ordered his deportation from Latvia after having served the sentence. The applicant appealed this judgment.

46. On 21 November 2002 the Criminal Chamber of the Supreme Court acquitted the applicant of the charge of unlawful ammunition storage and quashed the first instance court's sentence in regard to his deportation, upholding the remainder of the first instance court's judgment. The prosecutor N. represented the prosecuting authorities together with his colleague. The applicant did not file an appeal on points of law and thus the judgment became final.

4. Proceedings concerning the applicant's expulsion from Latvia

47. On 29 July 2002 the Citizenship and Migration Authority (hereinafter referred to as the "CMA") took a decision on forced expulsion of the applicant, stating that the applicant, a Russian national, arrived in Latvia on 20 August 1997 on the basis of a visa. It observed that the Riga Regional Court convicted the applicant on 11 June 2002 and ordered his expulsion from Latvia, according to Article 24^{2} of the Criminal Code. The CMA noted that the applicant would be released on 19 August 2002 and decided, in accordance with Article 24^{2} of the Criminal Code, to expel him from the territory of Latvia to the Russian Federation. There was no date indicated in the decision as to when the expulsion should take place. When the applicant took cognisance of this decision, he wrote next to his signature that he objected to his expulsion as he had a family in Latvia.

48. On 19 August 2002 the applicant was released from prison, the time he had spent in detention on remand counting as part of the sentence. On the same date he was transferred to the Detention Center for Illegal Immigrants and thereafter detained at the Center pending his deportation to the Russian Federation.

49. On 29 August 2002 the applicant appealed against the decision of the CMA to the Central District Court of the City of Riga. The court received the appeal on the same day.

50. On the same day the applicant was deported to the Russian Federation.

51. On 3 September a judge of the Central District Court of the City of Riga examined the applicant's appeal of 29 August 2002 and, as it was written in Russian, allowed the applicant until 30 September 2002 to rectify this procedural deficiency.

52. On 3 October 2002 the proceedings were terminated as neither the applicant nor his lawyer pursued the complaint.

53. On 4 September 2003 the applicant and his partner married in Krasnoyarsk in the Russian Federation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *The Criminal Procedure Code* (Latvijas Kriminālprocesa Kodekss), *applicable at the material time (in force until 1 October 2005)*

54. The relevant part of Article 77 provides that the maximum term of detention on remand during the investigation of a criminal case may not exceed two months. If it is not possible to complete investigation of the case within that period and there are no grounds for altering a preventive measure, a judge may extend the period of detention for up to one year and six months. If necessary, the detained person and his defence counsel may be heard. Extension of detention beyond one year and six months is not allowed and the detained person is entitled to immediate release.

55. Paragraph 7 of Article 77 (adopted on 17 October 2002 and with entry into force on 1 November 2002) provides that in exceptional cases the Senate of the Supreme Court may extend detention beyond one year and six months.

56. Paragraph 5 of Article 77 provides that the time taken for all defendants to take cognisance of the documents in the investigation file shall not be taken into account in calculating the length of detention pending trial.

57. By virtue of Article 83, a preventive measure shall be terminated if it has been applied unlawfully or it ceases to be necessary, or may be changed to a more severe or lenient one if the circumstances of the case so require. The termination or alteration of detention on remand applied by a judge or a

court during the preliminary investigation shall be effected by a reasoned decision of a prosecutor, or it may be terminated by a court decision in the cases provided for in Article 222^1.

58. According to Article 222, a complaint regarding acts of a prosecutor shall be subject to appeal to a higher prosecutor. The complaint shall be examined within three days upon its receipt and it can be dismissed only by a reasoned decision.

59. Pursuant to Article 222^1, all decisions given by a judge at the pre-trial stage regarding the detention on remand and its extension can be appealed to a higher court by a suspected or accused person or his/her counsel or representative. The appellant and the prosecutor in charge of investigation shall be present at the adjudication of the appeal. The appeal shall be examined and a decision taken within seven days as of its receipt. The decision is final and not subject to further appeal.

60. After a judge has committed an accused person to trial, a court shall decide in a preliminary hearing on the question of preventive measures. A decision concerning committal of an accused person to trial shall be taken within 14 days upon receipt of a case file in the court (Article 223).

61. In deciding whether to commit an accused person for trial, a judge or a court shall determine whether the preventive measure applied was appropriate (Article 225).

62. When committing an accused person to trial, a judge holds a preliminary hearing to rule on the request to alter a preventive measure if the judge considers that the request is well-grounded. The decision refusing the request to alter a preventative measure cannot be appealed. (Article 226).

63. Articles 237 and 465 provide that the decisions of a court, ordering detention on remand or altering it, taken during the preliminary hearing or during the adjudication of the matter, may be appealed to a higher court.

64. Article 241 sets time-limits for examination of a case and provides that the examination of a case before a court must start not later than within twenty days or, under exceptional circumstances, no later than within one month, after the case is received by the court.

65. A judgment of the first instance court enters into force and becomes final after expiry of the time-limit provided for appeal of this judgment, if the judgment has not been appealed. A judgment of an appellate court enters into force and becomes final after expiry of the time-limit provided for cassation appeal of this judgment, if the judgment has not been appealed. If a cassation appeal has been submitted, the judgment becomes final after its examination by the cassation court, if the court does not quash the judgment (Article 357).

2. Criminal Code (Latvijas Kriminālkodekss), *applicable at the material time (in force until 1 April 1999)*

66. The relevant part of Article 24^2 provided that a court can decide to order expulsion from the Republic of Latvia of a person, who is not a national of Latvia. The expulsion is a supplementary punishment and is effected after serving the sentence.

3. Regulations governing the situation of persons detained in remand prisons

67. Until 14 May 2001 the situation of persons detained in remand prisons was governed by the "Instruction on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons" (*Instrukcija par aizdomās turamo, apsūdzēto, apcietināto un notiesāto turēšanas kārtību izmeklēšanas cietumos),* approved by the Minister of the Interior on 30 April 1994 (hereinafter referred to as "the Instruction").

68. Rule 26 of the Instruction provided that the sentenced persons and the arrested persons placed in the investigation prisons were allowed to send letters and to receive short-term visits upon approval by the authority conducting the criminal proceedings (i.e. either by investigating authorities or the court, depending on the stage reached in the proceedings).

69. Rule 32 of the Instruction stipulated that the arrested persons placed in the investigation prisons might be allowed to receive one short-term visit (up to one hour) per month from family members and other persons only on the basis of a written permission from the person or the body dealing with the particular criminal case.

70. Rule 35 of the Instruction provided that visits in the investigation prisons took place in the presence of a prison authority.

71. In 2001 the penitentiary institutions were transferred from the supervision of the Ministry of the Interior to the Ministry of Justice. On 9 May 2001 the Minister of Justice approved new *"*Transitional Provisions on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons*"* (*Pārejas noteikumi par aizdomās turamo, apsūdzēto, apcietināto un notiesāto turēšanas kārtību izmeklēšanas cietumos*) which entered into force on 14 May 2001 (hereinafter referred to as "the Transitional Provisions").

72. Rule 25 of the Transitional Provisions provides that the sentenced persons and the arrested persons may be allowed to receive one short-term visit per month on the basis of a written permission from the authority dealing with the particular criminal case.

4. Civil Procedure Code (Civilprocesa kodekss), *applicable at the material time (in force until 1 February 2004)*

73. Article 228 § 3 provides that decisions of the state authorities, which affect the rights and obligations of individuals, are subject to judicial review by the court which is fully authorised to quash the impugned decisions and terminate the administrative proceedings against the concerned individuals.

74. According to Article 239^5, the absence of an individual, who has submitted a complaint, at court proceedings is not an obstacle for the court to hear the merits of the case; however, the court may declare the individual's presence mandatory.

75. The court, having found the appealed act or decision unlawful and infringing the rights of an individual, declares the complaint lawful and obliges the responsible authority to remedy the violation complained about (Article 239^7).

5. Law on Entry and Residence in the Republic of Latvia of Foreign Citizens and Stateless Persons (Likums par ārvalstnieku un bezvalstnieku ieceļošanu un uzturēšanos Latvijas Republikā), applicable at the material time (in force until 1 May 2003)

76. The Head of the department or the Head of a territorial unit shall issue an expulsion order, demanding the departure of a person from the territory of the State if, *inter alia*, an alien resides in the State without a valid visa or residence permit or if the alien has otherwise violated the visa regime (Article 38).

77. A person is obliged to leave the territory of the state within seven days from the moment he/she has been notified of an expulsion order unless the order has been appealed. The person who has been notified of an expulsion order may appeal it within seven days to the Head of the department. The person may reside in the territory of the state during the examination of the appeal. The decision of the Head of the department may be appealed within seven days from its receipt, by submitting an appeal to a relevant court (Article 40).

78. The Head of the department of a territorial unit can decide on the forced expulsion of a person if this person within seven days of the notification about the expulsion order has not appealed it, as provided for by Article 40, or his/her appeal has been dismissed (Article 48^1).

6. Other relevant regulations

79. Article 1 § 1 of the Law on Public Prosecutor's Office (*Prokuratūras likums*) states that the Prosecutor's Office is an institution of judicial power,

which independently carries out supervision of the observance of law within the scope of its competence.

80. The relevant part of Article 92 of the Constitution (*Satversme*) states that every person has the right to defend his or her rights and lawful interests in a fair trial. In case of unlawful interference with his or her rights, everyone is entitled to adequate compensation.

7. The judgments of the Constitutional Court of the Republic of Latvia (Latvijas Republikas Satversmes tiesa)

81. The judgment of 5 December 2001 in case no. 2001-07-0103, in the relevant part, reads as follows:

> "...The Constitutional Court established:
>
> ...the court verdict of not guilty is determined as the legal basis for receiving the compensation. The criterion of the addressees of the Law on Compensation is non-existence of person's guilt. Thus, it refers only to those persons, whose liberty has been limited because of an arrest, but who are not guilty of a criminal case and the fact has been acknowledged by a court judgment... ."

82. The judgment of 19 December 2001 in case no. 2001-05-03, in the relevant part, reads as follows:

> "...The Constitutional Court established:
>
> 1. The Transitional Provisions [on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons; confirmed by the Minister of Justice on 9 May 2001] have been passed in compliance with Article 15 of the Law on the Structure of the Cabinet of Ministers, determining that individual ministers may issue instructions binding on the institutions subordinate to them if the respective issue has not been regulated by the Law on the Structure of the Cabinet of Ministers. Instruction No. 1-1/187 envisages that the personnel of the Department of Prisons and the institutions subordinated to it shall be acquainted with the Transitional Provisions. ... the Transitional Provisions ... have [not] been published for common knowledge.
>
> Thus the Transitional Prohibitions ... are internal normative acts... ."

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT TO PRE-RELEASE

83. The applicant complained, without invoking any Article of the Convention, that he could not obtain his early release, owing to the fact that

he spent the whole period of detention in the remand prison and therefore a pre-release scheme was not applicable to him.

84. This part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention as **"**the Convention does not create any particular right to a pre-release scheme**"** (see, e.g., *Bullivant v. the United Kingdom* (dec.), no. 45738/99, 28 March 2000).

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

85. The Court considers that it is appropriate to examine the applicant's complaints under Article 5 about the excessive length of his detention on remand and its unlawfulness between 20 April 1999 until 23 August 2000 under Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and 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. Admissibility

1. The parties' submissions

a) The Government

86. The Government submit that the applicant failed to exhaust domestic remedies. First of all, the applicant did not appeal, as provided for by Article 222^1 of the Criminal Procedure Code, the decisions of the Ziemeļu District Court to the Riga Regional Court. Thus he did not appeal the decision of 20 February 1998 on the application of detention on remand and subsequent decisions of 9 April, 11 June, 10 August, 13 October 1998 and 11 and 29 January, 20 February and 19 March 1999 extending his detention on remand.

87. Secondly, the Government state that the applicant did not raise, as provided for by Article 226 of the Criminal Procedure Code, the issue of his detention during the preliminary hearing on 7 September 2000.

88. Thirdly, the Government allege that the applicant did not appeal the decision of 7 September 2000 to a higher court, as provided for by Article 237 of the Criminal Procedure Code.

89. Finally, the Government refer to the judgment of 5 December 2001 of the Constitutional Court in the case no. 2001-07-0103 where the court has found that Article 92 of the Constitution provides for a right to claim compensation in cases of unlawful and lengthy detention.

90. The Government is of the opinion that these remedies were effective, accessible and offered reasonable prospects of success.

b) The applicant

91. The applicant maintains, without any substantiation, that he appealed the decisions of the Ziemeļu District Court of the City of Riga to the Riga Regional Court. However, he did not provide any information as to which decisions and when did he appeal. Nor did he submit any copies of his appeals or the decisions of the Riga Regional Court in this respect. The applicant did not provide any comments as regards the decision of 7 September 2000 and the judgment of the Constitutional Court of 5 December 2001.

2. The Court's assessment

a) The general principles established by the Court's case law

92. The Court recalls that under the terms of Article 35 § 1 of the Convention it can only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal systems (see *Remli v. France*, judgment of 23 April 1996, *Reports* 1996-II, p. 571, § 33, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

93. However, only available and adequate remedies must be tried under Article 35 § 1 of the Convention. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 66, and *Selmouni*, cited above, § 75). There is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others*, cited above, p. 1210, § 67, and *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports* 1997-VI, pp. 2094-95, § 159).

94. The Court reiterates that in the area of exhaustion of domestic remedies the burden of proof is on the Government to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others*, cited

above, p. 1211, § 68, and *Selmouni*, cited above, § 76). Furthermore, the Court notes that the application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to establish. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Menteş and Others v. Turkey*, judgment of 28 November 1997, *Reports* 1997-VIII, p. 2707, § 58).

b) Application of these principles in the present case

i. To the decisions extending the applicant's detention before his commitment to trial

95. The Court notes that between 20 February 1998 and 20 April 1999 the Ziemeļu District Court decided to detain the applicant on remand and extended his detention several times upon the request of a prosecutor and without the presence of the applicant. The applicant did not appeal any of these decisions to the Riga Regional Court, as provided for by Article 222^1 of the Criminal Procedure Code. However, the Court cannot agree with the Government that this remedy was effective and offered reasonable prospects of success in practice for the following reasons.

96. The Court has examined several cases against Latvia in which the applicants used the remedy envisaged in Article 222^1 of the Criminal Procedure Code (see, *mutatis mutandis*, *Lavents v. Latvia*, no. 58442/00, judgment of 28 November 2002, *Freimanis and Līdums v. Latvia*, no. 73443/01 and 74860/01, judgment of 9 February 2006, *Svipsta v. Latvia*, no. 66820/01, judgment of 9 March 2006, *Moisejevs v. Latvia*, no. 64846/01, judgment of 15 June 2006, and *Kornakovs v. Latvia*, no. 61005/00, judgment of 15 June 2006). In all these cases the Court found a violation of Article 5 § 3 of the Convention based on the fact that, *inter alia*, during the entire periods of detention the appeal court maintained the same formal reasons for detention without explaining their specific application in each case. In *Svipsta* case the Court observed that "the same arguments in substance were reiterated by the two jurisdictions during the entire period of detention on remand..." (see *Svipsta*, cited above, § 108). The existing case-law against Latvia concerns the same period of time complained about in the present case.

97. The Court notes that there is a distinction between the requirement of exhaustion of domestic remedies under Article 35 § 1 and the requirements of Article 5 § 3 of the Convention aimed at providing safeguards against arbitrary deprivation of liberty. However, where a consistent case-law shows that such safeguards fail or are deficient, it would be contrary to the very principle of the Convention and would lead to excessive formalism under Article 35 § 1 to demand of the applicant that he exhaust the inadequate safeguards.

98. Furthermore, the Court notes that the Government have not provided any examples of domestic practice showing the effectiveness in practice of the given remedy. The Government's submissions remain very general stating the relevant provision in the law. The Court reiterates that it is not for the Convention bodies to cure of their own motion any shortcomings or lack of precision in the respondent Government's arguments (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 77, § 35). In the light of the above, the Court considers that the Government's submissions as concerns non-exhaustion of domestic remedies for reasons of lack of appeal should be dismissed.

ii. To the decisions extending the applicant's detention after his commitment to trial

99. The Court notes that, according to the case materials, on 7 September 2000 a single judge of the Riga Regional Court, without participation of the applicant or his counsel, committed the applicant to trial and decided not to alter the preventive measure. Thus, the applicant could not raise the issue of his detention before the Riga Regional court since he was not present at the hearing.

100. The Court further observes that the decision of 7 September 2000 was not subject to appeal, as provided for in Article 226 of the Criminal Procedure Code. Nor could the applicant appeal it in accordance with Article 237 of the Criminal Procedure Code since this Article refers to decisions taken by a court during preliminary hearing. It does not refer to decisions taken by a single judge without summoning an accused person.

101. The same holds true as regards the reply of a judge of the Riga Regional Court of 11 April 2001 as this was not a decision but a simple letter, which could not be appealed according to the provisions of the Criminal Procedure Code. Consequently, this part of the application cannot be rejected for non-exhaustion of domestic remedies.

iii. To the judgment of the Constitutional Court

102. As regards the judgment of 5 December 2001 of the Constitutional Court in case no. 2001-07-0103, the Court would like to point out again that

where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be exhausted because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate issues (see *Kornakovs*, cited above, § 84).

103. In addition, the Court observes that, according to the wording of the above judgment, the Constitutional Court does not refer to persons found guilty of a crime and sentenced (see paragraph 81 above). Thus, this cannot be regarded as an effective remedy in the present case.

c) Conclusion

104. Taking into account the afore-mentioned, this part of the applicant's complaint concerning his detention on remand cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. The Court further notes that it is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The Government

105. The Government submit that there has been no violation of the applicant's rights guaranteed by Article 5 § 3 of the Convention. They submit that the crime, of which the applicant was accused, involved a complex criminal case, which could not be split in order to adjudicate the applicant's case separately.

106. The Government point out that, contrary to the *Lavents* case (see *Lavents*, cited above), the weight of the reasons adduced by the prosecutor in charge of investigation and the courts did not decrease in the course of time of the applicant's detention on remand. In particular, since the witness R., who was testifying in the court proceedings against the applicant, complained that he had been threatened in order to change his testimony.

107. The Government draw the Court's attention to the fact that the detention on remand was the only possible preventive measure to ensure that the applicant appear before the court as prior to his apprehension the applicant was residing in Latvia illegally without a registered place of domicile. Moreover, the applicant and his partner failed to apply for the applicant's release on bail, although such a possibility was proposed by the prosecutor in charge of investigation.

108. The Government note that the pre-trial investigation was carried out within two years and six months and that the responsible judge adopted

the decision to commit the applicant to trial on 7 September 2000, i.e. within the time period provided for by Article 223 of the Criminal Procedure Code.

109. The Government submit that the first instance court commenced the adjudication of the case within two years after it received the case. In this respect the Government explain that the hearing in the applicant's case was scheduled in the order of the registration of the cases. Further, the hearings on 16 and 20 May 2002 were adjourned as several witnesses did not appear before the court, which, in the Government's point of view, cannot be attributed to the Riga Regional Court.

110. The Government submit that the applicant's complaint under Article 5 § 3 of the Convention is manifestly ill-founded or alternatively that there has been no violation of this Article.

b) The applicant

111. The applicant states that the prosecutor in charge of the investigation refused to split the case in order to adjudicate his case separately and that the witness statements of R. were not connected with his case.

112. The applicant argues that the prosecutor in charge of investigation refused to alter the preventive measure imposed on him although he offered bail. He does not provide any additional information in order to support his statements.

2. The Court's assessment

a) The general principles established by the Court's case-law

113. The Court's case-law stresses the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It has reiterated in that connection that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention.

114. Three strands in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly (*e.g. Ciulla v. Italy*, judgment of 22 February 1989, Series A no. 148, § 41) and which do not allow for the broad range of justifications under other provisions (Articles 8-11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, procedurally and substantively, requiring scrupulous adherence to the rule

of law (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 39); and the importance of the promptness or speediness of the requisite judicial controls (under Article 5 §§ 3 and 4) (see *McKay v. the United Kingdom.*, judgment of 3 October 2006, § 30).

i. Judicial control of detention

115. One of the essential features embodied in Article 5 § 3 is judicial control, which is intended to minimise the risk of arbitrariness and to secure the rule of law, "one of the fundamental principles of a democratic society..., which is expressly referred to in the Preamble of the Convention" (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2623, § 44). It is for the authorities to develop forms of judicial control which are adapted to the circumstances but they have to be compatible with the Convention (see, *mutatis mutandis*, *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2653, § 41).

116. Judicial control has to be performed by, according to the wording of Article 5 § 3 of the Convention, "a judge" or "other officer authorised by law to exercise judicial power". The Contracting States are left a choice between two categories of authorities. It is implicit in such a choice that these categories are not identical. However, the Convention mentions them in the same phrase and presupposes that these authorities fulfil similar functions (see *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, § 27). The "officer" referred to in Article 5 § 3 must offer guarantees befitting the "judicial" power and must have some of the "judge's" attributes, that is to say he must satisfy certain conditions each of which constitutes a guarantee for the person arrested. One of the most important of such conditions is independence of the executive and of the parties (see *Schiesser*, cited above, § 31). The requisite guarantees of independence from the executive and the parties and the "officer" must have the power to order release, after hearing the individual and reviewing the lawfulness of, and justification for the arrest and detention (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 146).

117. An important aspect of judicial supervision is the periodical review where the judge decides that continued detention is justified. This necessarily follows the point that circumstances can change and, while grounds for detention may exist in the early stages of an investigation, these may no longer be compelling at a later stage. It is incumbent on the detaining authorities, therefore, to submit the case for detention to judicial supervision at regular short intervals (see, *mutatis mutandis*, *Assenov*, cited above, § 162). The continuous supervision should be as rigorous as the initial examination.

ii. Length of detention

118. The Court first of all reiterates that the presumption is in favour of release (see *McKay*, cited above, § 41). Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty (see *Lavents*, cited above, § 70).

119**.** The Court recalls that it falls in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person does not exceed a reasonable time (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 35). 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 (see *Letellier*, cited above, § 35). It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Letellier*, cited above, § 35, and *Lavents*, cited above, § 70).

120. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of liberty (see *Ječius v. Lithuania*, no. 34578/97, § 93, and *Lavents*, cited above, § 71).One of such grounds is the danger of absconding, which cannot be gauged solely on the basis of the severity of the sentence risked and must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Letellier*, cited above, § 43).

b) Application of these principles in the present case

121. The Court notes that period to be taken into consideration for the examination of this complaint began on 19 February 1998, when the applicant was arrested, and lasted until 11 June 2002, when the Riga Regional Court delivered its judgment, that is four years, three months and 20 days.

i. To the decisions extending the applicant's detention between 20 February 1998 and 20 April 1999

122. The Court notes that a preventive measure was imposed on the applicant on 20 February 1998 by a judge of the Ziemeļu District Court (see paragraph 10 above). Thereafter, the applicant's detention was periodically extended by a judge of the Ziemeļu District Court until 20 April 1999. The Court recalls that in principle it is the judicial orders that it is called to assess in the light of Article 5 § 3 (see *Svipsta*, cited above, § 110). It observes that the reasons given in all the orders extending the applicant's pre-trial detention were brief and abstract and lacking proper reasoning (see paragraphs 12 and 15 above). The orders had been drafted using a standard form. They repeated from one order to the next the same grounds for detention in the same words. The reasons which might have justified the applicant's initial detention became less relevant with time. The Court could accept that, as submitted by the Government, the fact that the applicant resided in Latvia illegally could have been one of the specific reasons for his continued detention. However, it was not mentioned in any court order made with respect to the applicant. The reasons given in the impugned orders remained identical throughout the time and were clearly insufficient to satisfy the requirements of Article 5 § 3 (see paragraphs 119 and 120 above).

ii. To the applicant's detention between 21 April 1999 and 23 August 2000

123. The Court further observes that between 21 April 1999, when the order authorising his detention had expired, and 23 August 2000, when the investigating prosecutor decided to refuse to release the applicant, he was kept in prison apparently on the basis of the fifth paragraph of Article 77 of the Criminal Procedure Code. The Court has found before (see *Svipsta*, cited above, §§ 86 and 87) that the wording of this provision was so vague that is raised doubts as to its precise implications and was open to more than one interpretation. It did not clearly state that there was a requirement to keep the defendant in detention, still less that it was possible to do so without a warrant. In this respect the Court considers that in reality the automatic extension of the applicant's pre-trial detention during this period of time was the result of a generalised practice on the part of the Latvian authorities which had no precise basis in legislation and had clearly been designed to compensate for the deficiencies in the Criminal Procedure Code (see *Svipsta*, cited above, § 87).

iii. To the applicant's detention between 23 August and 7 September 2000

124. The Court notes that the decision refusing the release of the applicant was taken by the investigating prosecutor on 23 August 2000. It is true that in accordance with Article 1 § 1 of the Law on Public Prosecutor's Office, a prosecutor can be regarded as an "officer authorised by law to exercise judicial power". However, in the instant case, the prosecutor in charge of investigation exercised concurrent investigating and prosecuting functions as he drew up the indictment and represented the prosecuting authorities before the first and second instance trial court (paragraphs 18 and 45 and 46, above). Thus his status could not offer guarantees against arbitrary or unjustified continuation of detention as he was not endowed with the attributes of "independence" and "impartiality" required by Article 5 § 3 (see *Jurjevs v. Latvia*, no. 70923/01, judgment of 15 June 2006, **§** 60, *Schiesser*, cited above, §§ 29 and 30, and *Salov v. Ukraine*, no. 65518/01, judgment of 6 September 2005 § 58).

iv. To the applicant's detention between 7 September 2000 and 11 June 2002

125. The Court observes that the judge of the Riga Regional court neither in the decision of 7 September 2000 nor in the reply of 11 April 2001 gave any reasons justifying the applicant's continued detention (see paragraphs 30 and 42 above). The Court considers that the suspicion that the applicant had committed a crime, which was part of a complex criminal case, and the fact that the applicant was residing in Latvia illegally might have justified the applicant's continued detention (see paragraph 122 above). However, the judge of the Riga Regional court said nothing about these reasons. Furthermore neither the applicant nor his defence counsel ever had a chance to comment in this respect.

126. Moreover, it took two years for the first instance court to commence adjudication of the case. This was contrary to the time-limits set by Article 241 of the Criminal Procedure Code and thus infringed the principle of legal certainty protected by the Convention. The Court draws the Government's attention to the fact that the States are obliged to organise their judicial system in such a way as to ensure compliance with the obligation set forth in Article 5 § 3 of the Convention to ensure a person who has been arrested or detained the right "to trial within a reasonable time". The remainder of the Government's submissions does not provide a basis to justify the applicant's continuous detention either.

c) Conclusion

127. In the light of the above, the Court concludes that there has been a violation of Article 5 § 3 of the Convention. It has already found violations of this Article in several cases brought against Latvia (paragraph 96, above) on the grounds that insufficient motivation and inadequate proceedings in deciding on continued detention. The Court considers that these cases as well as the fact that there are dozens of similar applications pending before the Court seems to disclose a systemic problem in relation to the apparently indiscriminate application of detention as a preventive measure in Latvia.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

128. The applicant complained that the proceedings were excessively long in breach of Article 6 § 1 of the Convention which reads, insofar as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by ... [a] tribunal ... "

A. Admissibility

1. The parties' submissions

a) The Government

129. The Government did not submit any observations as regards the admissibility of the applicant's complaint under Article 6 § 1 of the Convention.

b) The applicant

130. The applicant did not provide any comments as concerns the admissibility of his complaint under Article 6 § 1 of the Convention.

2. The Court's assessment

131. The Court considers that the applicant's complaint about the length of proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The Government

132. The Government reject the allegation. With regard to the time period between 19 February 1998 and 11 June 2002, the Government emphasise that the applicant was a suspect in a complex criminal case. Investigation and adjudication of the case was time consuming because there were seven co-accused persons, who gave contradictory and misleading testimonies. The case consisted of four different crimes and could not be split into several criminal cases in order to adjudicate the applicant's case separately.

133. The Government do not deny that the first instance court needed two years to commence the adjudication of the case, however, it considers that the delay could not be attributed to the national authorities solely. The Government ask the Court to take into consideration that a judge is allowed to hear only one criminal case at the time. Consequently, the hearings in the applicant's case did not commence immediately upon his committal to trial but were scheduled in the order of its registration. Moreover, on 16 and on 20 May 2002 the hearings were adjourned as several witnesses did not appear before the court.

134. As to the appellate proceedings, the Government believe that the time period between 11 June 2002 and 21 November 2002, when the appeal court delivered its judgment, cannot be considered as excessive.

b) The applicant

135. The applicant maintains that the Public Prosecutor refused his petition to separate his case from the joined four cases.

2. The Court's assessment

a) The general principles established by the Court's case-law

i. Period to be taken into consideration

136. The Court recalls that the time to be taken into consideration starts running when a person is charged with a criminal offence; this is not, however, necessarily the moment when formal charges are first made against a person suspected of having committed an offence (see *Lavents*, cited above, § 85). A "charge" for the purposes of Article 6 § 1 can be defined as "the official notification given to an individual by the competent

authority of an allegation that he has committed a criminal offence" (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 73).

ii. Reasonableness of the length of the proceedings

137. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see *Lavents*, cited above, § 87, and *Svipsta*, cited above, § 151).

138. The Court reiterates that failure to abide by the time-limit prescribed by domestic law does not in itself contravene Article 6 § 1 of the Convention (see *Wiesinger v. Austria*, judgment of 30 October 1991, Series A no. 213, p. 22, § 60), however Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (*Kyrtatos v. Greece*, no. 41666/98, § 42, ECHR 2003-VI).

b) Application of these principles in the present case

i. To the period to be taken into consideration

139. The Court considers that the period under consideration in the present case began on 19 February 1998, when the applicant was arrested on suspicion of robbery. As regards the end of the period, the final judgment was delivered by the Criminal Chamber of the Supreme Court on 21 November 2002. The period to be taken into consideration thus lasted four years, nine months and 3 days.

ii. To the reasonableness of the length of the proceedings

140. Turning to the facts of the present case, the Court considers that the proceedings may be deemed to have been complex, owing *inter alia* to their nature, i.e. the case involved four different crimes and seven co-accused persons. The Court notes that the applicant, however, was involved only in one of the crimes.

141. The Court observes that there was a long period of inactivity by the Riga Regional Court: the court received the case on 4 September 2000 but a hearing commenced only on 13 May 2002, i.e. within one year and eight months. It was also contrary to the requirements of Article 241 of the Criminal Procedure Code. Although this does not automatically lead to an infringement of Article 6 § 1, the fact remains that it is not in accordance

with the principle of legal certainty. Furthermore, taking into consideration that the applicant remained in pre-trial detention between 4 September 2000 and 13 May 2002, it was important that the authorities displayed special diligence in ensuring that he was brought to trial within a reasonable time (see, *mutatis mutandis*, *Assenov*, cited above, § 154 and 157, and *Vasilev v. Bulgaria*, no. 59913/00, judgment of 2 May 2006, §§ 73-75).

142. Having regard to its previous decision in similar cases against Latvia (see *Svipsta*, cited above, §§ 150 and 162 and *Lavents*, cited above, §103) and in the absence of any indication of the applicant's responsibility for the delays, the Court finds that the length of the proceedings was excessive and did not satisfy the "reasonable time" requirement in the present case.

c) Conclusion

143. Accordingly, there has been a violation of Article 6 § 1 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

144. The applicant further complained that during the pre-trial investigation he was not permitted to exchange correspondence with his relatives and to receive long-term visits from his partner through the whole period of his detention and that he was unlawfully deported from Latvia, in breach of Article 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. Admissibility

1. The parties submissions

a) The Government

i. Ban on correspondence

145. The Government are of the opinion that the applicant's complaint about the restriction on corresponding with his relatives should be declared

inadmissible as he submitted it on 3 September 2001 and thus did not observe the six months' time limit from the date on which the final decision was taken: on 16 August 2000 the applicant was allowed to correspond with his mother by permission of the responsible prosecutor and on 13 September 2000 the judge of the Riga Regional Court revoked the ban on correspondence with his partner. In addition, the Government point out that the applicant did not appeal the decision of 16 August 2000, as provided for by Article 222 of the Criminal Procedure Code, and thus failed to exhaust domestic remedy available to him.

ii. The applicant's right to long-term visits

146. The Government state that the applicant did not exhaust domestic remedies since he did not submit a complaint to the Constitutional Court as regards the non-conformity of the "Transitional Provisions on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in the Remand Prisons" with the fundamental rights guaranteed by the Constitution.

147. With regard to the effectiveness of the proceedings before the Constitutional Court, the Government refer to the judgment of the court no. 2001-05-03 of 19 December 2001 and state that there was no obstacle preventing the applicant's access to the court.

iii. The applicant's expulsion from Latvia

148. The Government first of all suggest distinguishing two separate procedures – the expulsion as a result of conviction and the expulsion as a result of the breach of the administrative provisions regarding the entrance and stay of foreigners in Latvia. The Government state that in the present case the applicant was expelled as a result of the breach of the afore-mentioned administrative provisions.

149. The Government submit that, according to Articles 228 § 3 and 239^7 of the Civil Procedure Code, in force at the time, decisions of the state authorities, which affect the rights and obligations of individuals, are subjected to judicial review by a court which is fully authorised to quash the impugned decision and terminate the administrative proceedings against the individual concerned.

150. The Government note that this remedy was both known and accessible to the applicant as on 29 August 2002 he appealed the decision of the CMA.

151. The Government further submit that the applicant's expulsion from Latvia did not limit his access to court as he could rectify the deficiency of his complaint and continue the proceedings before the Central District Court of the City of Riga through his lawyer. In case the applicant's presence was

considered mandatory by the court, it would have summoned him, according to Article 239^5 of the Civil Procedure Code. The court's summons would have been a valid basis for issuing a visa to the applicant.

152. In the Government's opinion, to claim an exhaustion of domestic remedy as required by Article 35 § 1 of the Convention, one would first have to follow all relevant procedural rules in order to bring a complaint before a national authority. This is obviously not the case in the present proceedings. Accordingly, the Government consider that the applicant has not exhausted all available and effective domestic remedies before lodging his application with the Court.

b) The applicant

153. As to the ban on correspondence, the applicant maintains that he was not allowed to correspond with his relatives for two and a half years. The applicant did not submit any comments as regards the alleged infringement of his right to long-term visits and his expulsion from Latvia.

2. The Court's assessment

a) Ban on correspondence

154. The Court recalls that, in accordance with Article 35 § 1 of the Convention, it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision or from the end of a continuing situation of which the applicant complains (see, *mutatis mutandis, Jėčius*, cited above, § 44).

155. Leaving aside the question of exhaustion of domestic remedies in the present case, the Court observes and therefore agrees with the Government's submissions that the last ban on correspondence was revoked on 13 September 2000, i.e. more than six months before the application was introduced (4 September 2001), with the result that this complaint was submitted out of time.

156. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

b) The applicant's right to long-term visits

157. The Court considers that it is not necessary to examine the issue whether the remedy suggested by the Government (paragraphs 146 and 147, above) would have been effective since the interference with the applicant's rights was not "in accordance with the law" for the reasons explained below (see paragraphs 165-167 and 170-174 below). Consequently, this part of the

application cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

c) The applicant's expulsion from Latvia

158. First of all, the Court observes that, according to the wording of the decision of CMA of 29 July 2002 (see paragraph 47 above), the applicant was expelled as a result of his conviction.

159. Secondly, the Court notes that the applicant appealed against both – the judgment ordering his deportation and the decision of the CMA. Thus, this part of the applicant's complaint, contrary to the Government's allegations, cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

a) The Government

i. The applicant's right to long-term visits

160. The Government is of the opinion that the restrictions placed on the applicant as to his right to visits by his partner were provided by law and followed a legitimate aim, namely, to protect the public order and security and were appropriate as they applied only during the pre-trial investigation while certain pressing investigative measures took place.

ii. The applicant's expulsion from Latvia

161. The Government is of the opinion that the order on the applicant's expulsion from Latvia has been issued “in accordance with law”. Moreover, the Government underline that whether the judgment of the Riga Regional Court had or had not come into force was of no legal relevance since the applicant was not expelled on the basis of the judgment.

162. The Government submit that the applicant was expelled in the course of the administrative proceedings, which were triggered by his prolonged illegal stay in Latvia.

163. The Government reiterate that the applicant came to Latvia on the basis of a visa, which was valid until 17 November 1997. After the expiry

of the visa, the applicant did not try to obtain a residence permit but stayed in Latvia illegally until he was apprehended on 19 February 1998. As a result, upon his release on 19 August 2002, the applicant resided in Latvia illegally and the CMA, according to the Government, issued the expulsion order, pursuant to Article 38 of the Law on Entry and Residence in the Republic of Latvia of Foreign Citizens and Stateless Persons. Thus, according to the Government, the criterion of 'prescribed by law' was satisfied. Further, the law was officially published, easily accessible and its provisions were formulated sufficiently clearly and precisely.

b) The applicant

161. The applicant did not submit any comments in this respect.

2. The Court's assessment

a) General principles established by the Court's case-law

165. The Court recalls that the protection of Article 8 applies to more than just the traditional family (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 21, § 31). Thus the notion of family under this provision may encompass other *de facto* "family" ties. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment and by the very fact of his birth (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, pp.18-19, § 44). The right to respect for family life is protected by Article 8 § 1 and can be justifiably restricted only if the conditions in the second paragraph of this provision are met.

166. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, *mutatis mutandis*, *Messina v. Italy (no.2)*, no. 25498/94, § 61, 28 September 2000). Such restrictions as limitations put on the number of family visits constitute an interference with his rights under Article 8 and must be applied first of all "in accordance with the law" (see *Klamecki v. Poland (no. 2)*, no. 31583/96, § 144, 3 April 2003).

167. To determine whether an interference was in accordance with the law, the Court applies the three-fold test of foreseeability (see *Huvig v. France*, judgment of 24 April 1990, Series A no. 176-B, § 26). First, it must be established that the interference with the right has some basis in national law. In this respect the Court recalls that in certain conditions instructions, which do not themselves have the force of law, may be taken into account in assessing whether the criterion of foreseeability was satisfied (see *Silver and*

Others v. the United Kingdom, judgment of 25 March 1983, Series A no. 61, p. 37, §§ 85-90). Secondly, the law must be accessible and, thirdly, the law must be formulated in such way that a person can foresee, to a degree that is reasonable in the circumstances, the consequences which a given action will entail (see *Silver*, cited above, §§ 87 and 88).

168. Finally, the Court reiterates that the Convention does not guarantee the right of an alien to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be "in accordance with law" (see *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X, and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, judgment of 18 October 2006).

b) Application of these principles in the present case

169. As to the applicant's family situation, the Court notes that when he was arrested in 1998, he had been living in a partnership for more than five years (see paragraphs 6 and 8 above). In this respect, the prohibition of the long-term family visits throughout the applicant's detention in the remand prison (see paragraph 28 above) and his expulsion from Latvia amounted to an interference with his right to respect for his family life within the meaning of Article 8 of the Convention. The Court will assess whether these restrictions were applied "in accordance with the law".

i. To the applicant's right to long-term visits

170. Applying the first criterion of the foreseeability test to the present case, the Court notes that the restriction on long-term visits by his partner and their child had some basis in national law applicable at the time (paragraphs 67-72, above). The Court reiterates that it had already expressed doubts as to the compatibility of national regulation with the requirements of paragraph 2 of Article 8. (see *Lavents*, cited above, § 140).

171. As to the second criterion, the Court takes into account the judgment of 19 December 2001 of the Constitutional Court, where it was stated that the Transitional Provisions on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons had not been published in such a way as to make them publicly known. Thus the Transitional Provisions and apparently the Instruction on the Procedure of Keeping Suspected, Accused, Detained and Sentenced Persons in Remand Prisons were internal normative acts, i.e. they were not accessible to the public.

172. Consequently, the Court concludes that the second criterion of the test cannot be regarded as complied with. Moreover, the internal character

of the Transitional Provisions and the Instruction imposing the restriction can be seen as an obstacle as regards the possibility for the applicant to challenge the lawfulness of the restriction in the Constitutional Court.

173. Turning to the third criterion of the test, it can be assumed that a person could not foresee the consequences since the Transitional Provisions were not accessible to the public.

174. It follows that the ban on the long-term visits in the present case was in breach of Article 8 of the Convention.

ii. To the applicant's expulsion from Latvia

175. According to the wording of the decision of the CMA of 29 July 2002, the applicant was expelled pursuant to Article 24^2 of the Criminal Code on the basis of the judgment ordering his deportation from Latvia. There was no reference to Article 38 of the Law on Entry and Residence in the Republic of Latvia in the decision, which should have been there if the applicant was to be expelled because of the administrative provisions regarding the entry and stay of foreigners in Latvia. The Court therefore concludes that the applicant was expelled on the basis of the judgment of 11 June 2002.

176. The applicant appealed this judgment. According to Article 357 of the Criminal Procedure Code, the judgment had not entered into force and become final as the appeal was still pending. Thus, there was no lawful basis for the applicant's deportation and it was contrary to the requirements of Article 48^1 of the Law on Entry and Residence in the Republic of Latvia of Foreign Citizens and Stateless Persons. It follows that the applicant's deportation was not "in accordance with law" and as such contrary to the requirements of Article 8.

177. Even considering that the applicant was expelled, as suggest the Government, in the course of the administrative proceedings, the Court notes that he appealed against the decision of the CMA to the Central District Court of the City of Riga. The court required rectification of the form of the appeal, setting a time limit for it. However, the applicant was expelled without being given a possibility to rectify the deficiency. The Court concludes, following its findings above (paragraph 176), that the applicant's expulsion while his appeal against the decision of the CMA was still pending was not "in accordance with law".

178. Against this background, it follows that the applicant's deportation from Latvia was not ordered and effected "in accordance with law".

c) Conclusion

179. Accordingly, the Court considers that in the present case there has been a violation of Article 8 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. Article 41 of the Convention provides:

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

A. Damage

181. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

182. The Government consider the claimed amount to be unjustified, excessive and exorbitant and maintain that there is no causal link between the alleged violations and the applicant's claim for non-pecuniary damage. In the Government's opinion, taking into consideration what the Court ruled in the *Lavents* case (see *Lavents*, cited above, §§ 150 and 151), should the Court find a violation of the Convention in the applicant's case, the finding in itself would constitute sufficient just satisfaction for the alleged non-pecuniary damage. If the Court decides otherwise in assessment of non-pecuniary damages, the Government submit that the socio-economic circumstances of the Republic of Latvia and the applicant's present residence – the Russian Federation – should be taken into account.

183. The Court considers that the finding of the violations of the Convention in itself does not constitute sufficient just satisfaction in the instant case and decides to award the applicant EUR 5,000 in respect of non-pecuniary damage (see, *mutatis mutandis*, *Kornakovs*, cited above, § 178).

B. Costs and expenses

184. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court will not award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the length and the lawfulness of detention of the applicant on remand, his right to long-term visits during the pre-trial detention, the length of the court proceedings against the applicant and his expulsion from Latvia admissible and the remainder of the application inadmissible;

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

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

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President