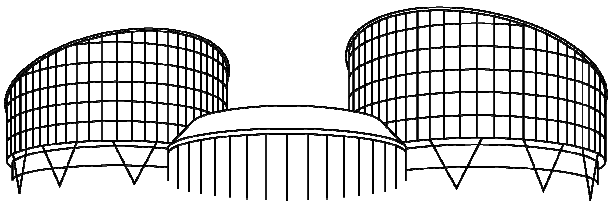

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF MALKOV v. ESTONIA

*(Application no. 31407/07)*

JUDGMENT

STRASBOURG

4 February 2010

**FINAL**

*04/05/2010*

*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 Malkov v. Estonia,**

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

# PROCEDURE

1. The case originated in an application (no. 31407/07) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a stateless person, Mr Deniss Malkov ("the applicant"), on 11 July 2007.

2. The applicant was represented by Ms A. Jakobson, a lawyer practising in Tallinn. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. On 8 September 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1979. He is currently serving a prison sentence.

## A. Pre-trial proceedings

5. On 6 August 1998 a criminal investigation was started in respect of the murder of a taxi driver whose body had been found a week earlier in a forest. His car had been set on fire.

6. On 28 January 1999 the criminal investigation was suspended as the identity of the perpetrator could not be established.

7. On 10 August 1999 the investigation was resumed, K. being a suspect. On the following day the applicant was interviewed as a witness. He said that he had not used a taxi to get from Tallinn to Sillamäe in May 1998, had not sold a mobile phone to F. and had heard nothing about the murder of a taxi driver from Tallinn. The interview lasted for ten minutes.

8. On 16 August 1999 the investigation was again suspended.

9. On 19 April 2001 a resumption of the investigation was ordered.

10. Also on 19 April 2001 the chairperson of the Tallinn Administrative Court (*halduskohus*) authorised the installation of covert listening devices in T.'s home and covert audio recording of conversations. The authorisation was for a ten-day period and remained valid until 18 May 2001. According to a report concerning the surveillance activity, on 11 May 2001 the applicant and T. talked about the murder of the taxi driver.

11. On 30 July 2001 a police investigator drew up a decision by which the offence, initially qualified as manslaughter, was requalified as murder. K. and the applicant were identified as suspects. The investigator ordered that they should be taken to the police station the following day.

12. On 1 August 2001 the investigator requested that the applicant and K. be detained in case they attempted to leave the country.

13. On 17 August 2001 the police attempted to arrest the applicant, who was not at home. His neighbour had not seen him for a week.

14. On the same date the investigator drew up charges against the applicant. He was charged, together with K., with murder, aggravated robbery and destruction of property. According to the charges the offences had been committed on the night of 17 May 1998. As the applicant was evading the criminal investigation, he was declared a fugitive and the investigation was suspended.

15. Also on 17 August 2001 the Ida-Viru County Court (*maakohus*) authorised, at the investigator's request, the applicant's detention for ten days after his arrest.

16. On 5 October 2001 a criminal investigation was started in respect of T., who was charged with failure to report the murder of the taxi driver.

17. On 1 December 2003 the applicant was arrested.

18. On 2 December 2003 he was presented with the charges drawn up on 17 August 2001.

19. On 4 December 2003 the Narva City Court (*linnakohus*) authorised his detention for one month. Subsequently, the court regularly extended his

detention (on 31 December 2003 and on 29 January, 26 March, 27 May, 23 July and 26 August 2004).

20. In the meantime, on 23 July 2004, the criminal case concerning the failure by T. to report a crime was joined to the case in which the applicant and K. were defendants.

### B. Court proceedings

21. On 21 September 2004 the bill of indictment was drawn up and the criminal case file was sent to the Narva City Court.

22. By a decision of 1 February 2005 the City Court committed the applicant for trial together with K. and T. The applicant and K. were charged with murder and destruction of property; T. was charged with failure to report a crime. The City Court endorsed the preventive measures previously applied in respect of the defendants: it extended the applicant's detention and K.'s prohibition on leaving his place of residence. No preventive measure was applied in respect of T. as he was serving a ten-year prison sentence at the time.

23. Hearings at the Narva City Court and the Viru County Court, which was dealing with the case after a reorganisation of the court system, were scheduled for five days both in 2005 and 2006. Of these ten hearing days, scheduled hearings were adjourned on five occasions, mainly because of the illness of a judge or a lay judge and because of the failure of witnesses to appear in court. In the spring of 2006 the judge hearing the case died. The court proceedings were recommenced with another judge. On 18 October 2006 the presiding judge withdrew from hearing the case as he had ordered the applicant's detention at an earlier stage of the proceedings. On the same date another judge withdrew for the same reason. The case was then assigned to the fourth judge, who conducted the proceedings until the end.

24. In 2007 and 2008 court hearings were scheduled for eleven days. In fact, hearings took place on five days and were adjourned on six occasions for reasons such as the illness of the judge, the prosecutor and a lawyer and, on three occasions, the failure of witnesses to appear.

25. On 29 April 2005, 31 May 2006, 16 August 2007, 27 November 2007 and 6 February 2008 the City Court and County Court rejected the applicant's request to release him and to apply a signed undertaking not to leave his place of residence as the preventive measure instead of detention. The courts noted that the applicant was charged with a serious offence; he had been in hiding for a long time (from 17 August 2001 to 1 December 2003), during which time he had been well aware that the police were looking for him. However, he had gone to Russia and had returned, crossing the border illegally, only six months later, because his Russian visa had expired. The courts also found that the applicant had no close ties in Estonia as he was a stateless person, was not married and had no family. It was

considered that in view of the severe punishment the applicant was facing according to the charges, there were grounds to believe that he could again abscond. The courts also considered that it was not excluded that if at liberty the applicant could exert pressure on the victim and witnesses.

26. On 4 September 2008 the Viru County Court delivered its judgment. The applicant, together with K., was convicted of murder and destruction of property. He was sentenced to thirteen years' and three years' imprisonment respectively; the composite sentence for the two offences was set at thirteen years. The time spent in detention was counted towards the sentence already served. The preventive measure applied in respect of the applicant was not amended – he was to remain in custody until the judgment became final.

27. On the same date the County Court decided to terminate the criminal proceedings against T. due to inappropriateness of the penalty, as he had been convicted in another criminal case and a composite sentence of ten years' imprisonment had been imposed on him.

28. The applicant appealed against the County Court's judgment, referring, *inter alia*, to a violation of the reasonable time requirement enshrined in Article 6 § 1 of the Convention. He also pointed out that he had been in detention for almost four years and ten months.

29. By a judgment of 27 January 2009 the Tartu Court of Appeal (*ringkonnakohus*) quashed the County Court's judgment in so far as the punishment was concerned. The Court of Appeal referred to Article 6 § 1 of the Convention and noted that what was reasonable for the length of criminal proceedings depended on the specific circumstances of the case. It considered that failure to conduct criminal proceedings within a reasonable time did not necessarily require the person's acquittal; depending on the circumstances it could also be proportionate to terminate criminal proceedings for reasons of inappropriateness or to take unreasonable length of proceedings into account in the imposition of a punishment. The Court of Appeal found that the criminal proceedings in the present case had lasted for ten years and six months. It considered it “not unimportant” that the applicant had been kept in detention for almost five years and two months. It held that the proceedings had not been conducted within a reasonable time. Considering the above, the Court of Appeal found it appropriate to reduce the applicant's sentence. He was sentenced to eight years' imprisonment for murder and one year's imprisonment for destruction of property and the composite sentence was set at eight years.

30. On 22 April 2009 the Supreme Court (*Riigikohus*) declined to hear the applicant's appeal.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

31. Article 385 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) provides that a ruling whereby a court reviews the well-

foundedness of pre-trial detention is not subject to a separate procedural appeal. According to Article 383 § 2 of the Code, such a ruling can be challenged in an appeal against the judgment in the main proceedings.

32. In a decision of 30 December 2008 (case no. 3-4-1-12-08), the Constitutional Review Chamber of the Supreme Court dealt with a complaint concerning length of criminal proceedings. It rejected the complaint, considering that the complainant could have had recourse to another effective remedy. The Supreme Court held:

> "21. The Chamber is of the opinion that [the complainant's] right to proceedings within a reasonable time has been violated and that [the complainant] is entitled to submit a relevant complaint as part of the proceedings pending before the Tartu County Court. The court is under the obligation to adjudicate such a complaint at any stage of proceedings, not only when rendering a judgment. If necessary, the court must proceed from the Convention and the practice of application thereof, which – pursuant to Article 2 § 2 of the Code of Criminal Procedure – constitute a source of criminal procedural law. The Convention is an international agreement ratified by the Riigikogu, which – proceeding from Article 123 § 2 of the Constitution – has priority over Estonian laws or other legislation (see the Supreme Court *en banc* judgment of 6 January 2004 in case no. 3-1-3-13-03 – RT III 2004, 4, 36, § 31).
>
> 22. According to the case-law of the European Court of Human Rights the reasonableness of the length of proceedings is to be assessed by a court in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, for example, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). The Supreme Court, too, has pointed out that upon assessing whether a reasonable time has been exceeded a court must take into account the gravity of the criminal offence, the complexity and volume of the criminal case, and other concrete circumstances, including the course of proceedings (see the Criminal Chamber of the Supreme Court judgment of 27 February 2004 in case no. 3-1-1-3-04 – RT III 2004, 8, 86, § 19).
>
> 23. If the court comes to the conclusion that [the complainant's] right to proceedings within a reasonable time has been violated, the court can, in the light of all the circumstances and on the basis of Article 6 § 1 of the Convention, terminate criminal proceedings due to inappropriateness, render a judgment of acquittal or take the fact that reasonable time was exceeded into account upon imposition of punishment.
>
> As regards the referred possibilities the Criminal Chamber of the Supreme Court has pointed out that the expiry of reasonable length of criminal proceedings need not necessarily and always bring about the acquittal of a person. Depending on the circumstances a proportional result of the expiry of reasonable time of criminal proceedings may be, for example, the termination of criminal proceedings for reasons of inappropriateness or taking the referred fact into account upon imposition of punishment (see the Criminal Chamber of the Supreme Court judgment of 27 February 2004 in case no. 3-1-1-3-04 – RT III 2004, 8, 86, § 22). With regard to taking into account the unreasonable length of proceedings upon imposition of punishments the Criminal Chamber has pointed out that on the basis of Article 6 § 1 of the Convention and pursuant to Article 61 of the Penal Code the courts have the

right to impose a less onerous punishment than the minimum term or rate provided by law (see the Criminal Chamber of the Supreme Court judgment of 7 November 2008 in case no. 3-1-1-28-08 – not yet published in RT III, § 17).

...

25. In the examination of [the complainant's] request for compensation for the damage caused by the violation of fundamental rights, the Chamber agrees with the opinion expressed in the written opinions of the participants in the proceeding that [the complainant] can demand compensation for damage in an administrative court on the bases and pursuant to the procedure established in the State Liability Act."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

33. The applicant complained that the length of his pre-trial detention had been excessive, and there had been a breach of Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

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

34. The Government contested that argument.

### A. Admissibility

#### *1. The parties' submissions*

35. The Government argued that the applicant had not exhausted domestic remedies as he had not appealed against the Narva City Court's decision of 4 December 2003 whereby his detention had been authorised, or against the subsequent decisions by which the court had extended his detention. The Government also pointed out that the last ruling whereby the applicant's detention had been extended (26 August 2004) had been made more than six months before the applicant lodged his application with the Court (11 July 2007). They were of the opinion that Article 5 § 3 did not apply to the period of detention during the court proceedings; moreover, the applicant had not raised the issue of the length of his detention in his appeal against the County Court's judgment of 4 September 2008 and in any event the court proceedings were still pending at the time when the Government submitted their observations.

36. Alternatively, the Government maintained that the applicant had lost victim status within the meaning of Article 34 of the Convention after the Tartu Court of Appeal's judgment of 27 January 2009 by which the applicant's sentence had been reduced owing to the length of his detention and of the court proceedings.

37. The applicant objected arguing that his complaint did not concern the initial detention order or detention during pre-trial investigation but his protracted detention during the lengthy court proceedings. As concerned his appeal against the County Court's judgment, the applicant had raised the issue of the length of the pre-trial detention and of the criminal proceedings.

*2. The Court's assessment*

38. The Court reiterates that the purpose of Article 35 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 Convention institutions (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). It observes that the applicant was arrested on 1 December 2003 and subsequent to the City Court's authorisation to take him into custody his detention was regularly extended until the criminal case was transferred to the City Court for judicial proceedings in September 2004. By that time the applicant had been in pre-trial detention for less than ten months. During the judicial proceedings in the Narva City Court and Viru County Court the applicant repeatedly requested to be released but these requests were rejected (see paragraph 25 above). No procedural appeal could be lodged against these rulings. The Court considers that the domestic authorities have had an opportunity to put right the alleged violation of the applicant's rights under Article 5 § 3 of the Convention. In the context of the present case it is not of decisive importance whether or not the applicant appealed against the initial decision whereby his detention was authorised or against the decisions to extend his detention during the pre-trial investigation, as at that time the issue of the compatibility of the length of his detention with Article 5 § 3 had not necessarily arisen. As to the question whether the applicant should have raised this issue in his appeal to the Court of Appeal in the main proceedings, the Court notes that at the time when the applicant lodged his application with the Court his case was still pending before the first-instance court and therefore such an appeal was not a remedy available to the applicant at the material time. Therefore, this objection is dismissed.

39. As regards the argument that the application had been lodged too late, the Court notes that the applicant was in pre-trial detention on 11 July 2007 when he lodged his application with the Court. Therefore, the six-month rule has been complied with and this objection is also dismissed.

40. In relation to the question whether the applicant has lost his victim status, as argued by the Government, the Court reiterates that the reduction

of a sentence on the ground of the excessive length of the proceedings does not in principle deprive the individual concerned of victim status within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, a breach of the Convention (see, *inter alia*, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Jansen v. Germany* (dec.), no. 44186/98, 12 October 2000; and *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). In cases concerning the failure to observe the reasonable time requirement guaranteed by Article 6 § 1 of the Convention, the national authorities can afford adequate redress, in particular by reducing the applicant's sentence in an express and measurable manner (see, among others, *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006-V; *Sorvisto v. Finland*, no. 19348/04, § 66, 13 January 2009; *Beck*, cited above; and *Kaletsch v. Germany*, (dec.), no. 31890/06, 23 June 2009).

41. As regards the present case, the Court observes that the Court of Appeal in its judgment of 27 January 2009 addressed the issue of the length of the criminal proceedings in a detailed manner, also making reference to the case-law of the Supreme Court and of the European Court of Human Rights. Although the Court of Appeal mentioned the applicant's detention as having lasted almost five years and two months, it continued to conclude that the length of the criminal proceedings had not been reasonable. It appears that the length of the applicant's detention was referred to in order to strengthen the court's argument that the length of the criminal proceedings had been unreasonable. The Court considers that the Court of Appeal did not thereby expressly acknowledge that Article 5 § 3 had been violated and it did not reduce the applicant's sentence on this account in a measurable manner.

42. Consequently, the Court finds that the applicant has not ceased to be a victim within the meaning of Article 34 of the Convention.

## B. Merits

### *1. Period to be taken into consideration*

43. The period to be considered under Article 5 § 3 started on 1 December 2003, when the applicant was arrested. The Court, having regard to its case-law (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 104-105, ECHR 2000-XI), finds that for the purposes of Article 5 § 3 the period in question came to an end on 4 September 2008, when the Viru County Court delivered its judgment convicting the applicant. The applicant was accordingly held in pre-trial detention for slightly more than four years and nine months.

*2. Reasonableness of the length of detention*

**(a) The parties' arguments**

44. The applicant considered that the criminal case had not been complicated and noted that the pre-trial investigation in its major part had been completed before the applicant had been taken into custody.

45. The Government maintained that the applicant's detention was justified in view of the fact that he had been a fugitive for more than two years. Therefore, there had been reason to believe that if at liberty he might abscond. Furthermore, the applicant had been charged with a very serious offence carrying life imprisonment as a maximum sentence. They also pointed out that the applicant was a stateless person, he was not married and had no family, job or permanent income; these factors had not tied him to Estonia, the country which he had left for Russia when he had been in hiding. Moreover, the criminal case had been a complicated one.

**(b) The Court's assessment**

46. The Court reiterates that the general principles regarding the right "to trial within a reasonable time or to release pending trial", as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among other authorities, *Kudła*, cited above, § 110 et seq.; *McKay v. the United Kingdom* [GC], no. 543/03, § 41 et seq., ECHR 2006-X; and *Sulaoja v. Estonia*, no. 55939/00, §§ 61-64, 15 February 2005, with further references).

47. The Court observes that in the present case the authorities mainly relied on a reasonable suspicion that the applicant had committed a serious offence and a risk that he might abscond as he had evaded the proceedings for a long period of time prior to his arrest. The courts also referred to the possibility that when at liberty the applicant might exert pressure on the victim and witnesses.

48. The Court accepts that the suspicion against the applicant of having committed the offence and the need to secure the proper conduct of the proceedings initially justified his detention. His detention was further justified by his leaving the country and his long-lasting evasion of the proceedings. Thus, in the Court's view the grounds for the applicant's detention, at least initially, were "relevant" and "sufficient".

49. However, according to the Court's case-law, the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, 18 December 1996, § 74, *Reports of Judgments and Decisions* 1996-VI, and *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII).

50. In the present case, the Court cannot agree with the Government's argument that the criminal case was complicated. It observes that the case concerned murder and destruction of property by two defendants, the applicant and K. In addition, T. was charged with failure to report a crime. According to the County Court's judgment of 4 September 2008 the court heard eight witnesses and a victim and further relied on statements of three witnesses and a victim given during the preliminary investigation. The other, mainly documentary, evidence examined by the court, as reflected in the County Court's judgment, was in the Court's opinion not particularly voluminous.

51. The Court considers that the length of the court proceedings and the applicant's detention in the present case were mainly caused by numerous adjournments of the court hearings owing to the difficulties of the authorities in obtaining the presence of witnesses and to the illness of the participants to the proceedings. Furthermore, the court proceedings had to be resumed from the beginning because of the presiding judge's death during the proceedings and subsequent withdrawal of two judges. What is more, there were considerable delays between the scheduled hearings. On the basis of the information available to the Court, it appears that from 2005 to 2008 there were five scheduled hearing days per year on an average, about half of which were adjourned. Thus, leaving aside the question of whether the grounds for the applicant's detention continued to be “relevant” and “sufficient” throughout its duration, the Court finds that the authorities, in any event, cannot be said to have displayed “special diligence” in the conduct of the proceedings.

52. Article 5 § 3 of the Convention has therefore been violated.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

54. The Government contested that argument.

55. The Court observes that the parties' views differed as to the date on which the period to be taken into consideration began. The Government considered that 1 December 2003, the date when the applicant was arrested, should be considered the start date of the criminal proceedings against him. In the applicant's view 17 August 2001, the date on which charges against him were drawn up, was of decisive importance.

56. The Court reiterates that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”;

this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see *Eckle*, cited above, § 73, and *Reinhardt and Slimane-Kaïd v. France*, 31 March 1998, § 93, *Reports* 1998-II).

57. In the present case the criminal proceedings, initially in respect of manslaughter, were started on 16 August 1998. However, at that time the applicant was not affected by the proceedings. He was first interviewed on 11 August 1999. Considering the applicant's status as a witness and the shortness and superficiality of the interview, the Court does not consider that the applicant became affected on this date either. The Court finds that it is appropriate to consider 17 August 2001 as the starting date of the criminal proceedings in respect of the applicant. At that date a police investigator drew up charges against the applicant, he was declared a fugitive the authorities having failed to spot him, and a court authorised his detention if found. The Court considers that the applicant must have become aware on one of these days of the fact that he had been looked for by the authorities. It takes note of the Government's argument that the applicant went into hiding at that time, that he was arrested only about two years and four months later and that therefore the period up to his arrest could not be taken into consideration. The Court does not agree with this approach in the context of the determination of the starting date of the criminal proceedings. However, the applicant's conduct is a factor to be taken into account in the assessment of the reasonableness of the length of the proceedings.

The criminal proceedings came to an end on 22 April 2009 when the Supreme Court declined to hear the applicant's appeal. The proceedings thus lasted some seven years and eight months at three levels of jurisdiction.

58. The Government maintained that the applicant had lost victim status within the meaning of Article 34 of the Convention after the Tartu Court of Appeal's judgment of 27 January 2009, by which the applicant's sentence had been reduced owing to the length of his detention and of the court proceedings.

59. The Court, referring to its settled case-law on this issue cited above (see paragraph 40 above), observes that the Court of Appeal in its judgment found that the length of the proceedings in the present criminal case had not been reasonable (see paragraph 29 above). The Court considers that thereby the domestic judicial authorities expressly acknowledged the breach of Article 6 § 1 of the Convention.

60. In respect of the redress afforded by the domestic authorities for the breach of the Convention, the Court notes that the applicant had been sentenced to thirteen and three years' imprisonment respectively for the two separate offences of which he had been convicted by the County Court. The County Court had set the composite sentence at thirteen years. The Court of Appeal, for its part, reduced the respective sentences to eight years and one year and set the composite sentence at eight years. The unreasonable length of the proceedings served as the ground for the Court of Appeal to reduce the length of the sentence. Furthermore, the Court notes that the proceedings came to an end on 22 April 2009, when the Supreme Court declined to hear the applicant's appeal. This was less than three months after the delivery of the Court of Appeal's judgment; thus, in the Court's view, the subsequent proceedings did not prolong the proceedings significantly.

61. The Court is satisfied that the domestic judicial authorities in the present case took adequately into account the length of proceedings in reducing the applicant's sentence in an express and measurable manner. Therefore, the Court considers that the applicant was afforded appropriate redress for the alleged breach of Article 6 § 1.

62. The Court concludes that the applicant has ceased to be a victim of an alleged violation of Article 6 § 1 of the Convention within the meaning of Article 34. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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."

64. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings inadmissible and the remainder of the application admissible;

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

Done in English, and notified in writing on 4 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stephen Phillips<br>Deputy Registrar | Peer Lorenzen<br>President |