CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF SVIPSTA v. LATVIA

(Application no. 66820/01)

JUDGMENT

STRASBOURG

9 March 2006

FINAL

09/06/2006

In the case of Svipsta v. Latvia,

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

Boštjan M. Zupančič, *President*,
John Hedigan,
Margarita Tsatsa-Nikolovska,
Vladimiro Zagrebelsky,
Alvina Gyulumyan,
David Thór Björgvinsson,
Ineta Ziemele, *judges*,
and Vincent Berger, *Section Registrar*,

Having deliberated in private on 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 66820/01) 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 Latvian national, Mrs Astrīda Svipsta ("the applicant"), on 23 January 2001.

2. The applicant was represented by Mr J.-C. Pastille, a lawyer practising in Berlin (Germany). The Latvian Government ("the Government") were represented by their Agent, Ms I. Reine.

3. The applicant alleged that her detention on remand had failed to satisfy the requirements of Article 5 § 1 of the Convention and that it had exceeded a reasonable time, in breach of Article 5 § 3. She further complained that she had been denied an effective judicial review of her detention on remand, in breach of Article 5 § 4 of the Convention. Lastly, relying on Article 6 § 1 of the Convention, she complained of the length of the criminal proceedings against her.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 6 May 2004, the Chamber declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Opening of criminal proceedings against the applicant and her arrest

8. On 17 February 2000 I.S., a head of division at the National Privatisation Agency, was murdered in front of the entrance to the building where she lived in Riga. The same day the specialised public prosecutor's office for organised crime and other offences (*Organizētās noziedzības un citu nozaru specializētā prokuratūra*) opened a preliminary investigation into the murder.

9. On 27 March 2000 the police arrested two men, V.S. and V.B., on the ground that they were suspects (*aizdomās turētie*) in the murder and took them into police custody. Shortly afterwards, they were charged and placed in detention on remand.

On 18 April 2000 the Belarusian police, acting on a request from the Latvian authorities, arrested two other men, I.F. and I.Č., who had fled to Belarus in the meantime. On 28 April 2000 the men were extradited to Latvia. They too were charged with the murder of I.S. and were brought before the relevant judge, who remanded them in custody.

10. During the preliminary investigation, the four co-defendants gave statements to the public prosecutor to the effect that the applicant, who at the time had been the manager of a private company, had ordered and funded I.S.'s murder for reasons of personal revenge. According to I.F., the applicant had first given him 10,000 United States dollars (USD) as payment for carrying out the murder and later comparable sums to enable him to flee the country. On 20 April 2000 I.F.'s girlfriend, who was questioned as a witness, said that she had overheard a conversation between her boyfriend and I.Č. in which both men had referred to V.B. as having perpetrated the murder.

11. Accordingly, on 1 June 2000, the applicant was arrested on suspicion of being the principal organiser and instigator of the murder. On being taken into police custody and questioned, the applicant admitted having known the victim personally; however, she denied any financial links with her.

The same day the police conducted two searches, one at the applicant's home and the other at her office. They seized a large number of documents and files, which were placed in forty cardboard boxes and taken away.

12. On the following day, 2 June 2000, the public prosecutor's office placed the applicant under investigation for murder. At the same time, V.S., V.B., I.F. and I.Č. were charged with committing the murder.

13. Also on 2 June 2000, the public prosecutor's office applied to the Riga City Kurzeme District Court seeking to have the applicant and the four suspected perpetrators of the crime remanded in custody for an initial period of two months. In court, the prosecution referred to the statements by the four men, which it considered to be credible, and stressed the need to detain the applicant "so that it [could] conduct a thorough preliminary investigation and establish the facts of the case in an objective manner". According to the prosecution, "if A. Svipsta remain[ed] at liberty, there [was] a danger that she [would] hinder the determination of the truth [and] evade investigation and trial".

In an order issued on 2 June 2000 following *inter partes* proceedings attended by the applicant and her lawyer, the District Court granted the public prosecutor's request. The order stated that the applicant's detention was necessary in order to counter the risk of collusion and prevent her from obstructing the investigation. Further reasons given were the seriousness of the offence, the personality of the defendant and "other circumstances". The applicant did not appeal against the detention order.

14. After being questioned on 6, 7 and 9 June 2000, the applicant eventually admitted that she had had financial links with I.S. She stated in particular that, in December 1998, when she had begun receiving income as an administrator of public undertakings which were being liquidated, I.S. had started to extort money from her. She also said, in contradiction of her earlier statements, that she knew I.F. and had told him about a row she had had with the murder victim on the subject of their financial links.

15. On 29 June 2000 the public prosecutor presented the applicant with full details of the charges against her. According to the facts as established by the prosecutor, the applicant and I.S. had concluded a secret agreement in 1996, under the terms of which I.S. had promised to appoint the applicant as administrator of the public undertakings whose liquidation she was overseeing. In return, the applicant had promised to pay her USD 500,000. By the time of I.S.'s murder, the applicant had already paid her almost half the sum agreed.

16. On 12 July 2000 the public prosecutor's office received a statement from a Latvian bank to the effect that the applicant and I.S. had gone to Switzerland together; during the trip, the applicant had paid all the expenses using her credit card. On 19 July 2000 the State telecommunications company sent the prosecutor's office records of mobile telephone

conversations between the applicant and both I.S. and I.F. and between the four suspected perpetrators of the murder.

B. Extension of the applicant's detention on remand

17. On 24 July 2000 the prosecutor in charge of the case requested the Kurzeme District Court to extend the applicant's detention on remand until 29 September 2000 on the ground that a number of investigative measures, specified by the prosecutor, still needed to be carried out. The measures involved preparing expert reports on the physical evidence gathered at the applicant's home and office and on her state of health, organising at least six confrontations with the defendants, questioning at least ten further witnesses and requesting relevant information from Interpol's National Central Bureau. The prosecutor also expressed the view that the applicant's guilt was "demonstrated by the statements of her co-defendants and witnesses, the reports [on the scene and the physical evidence], the expert opinions and the remaining evidence in the case file".

18. In an order of 26 July 2000 issued in the presence of the applicant's lawyer, the relevant judge at the Kurzeme District Court granted the public prosecutor's request. The order read as follows:

> "**Order extending detention on remand**
>
> Riga, *26* July 2000
>
> [*L.B.*], judge at the Riga City Kurzeme District Court, has examined the evidence in the criminal file ... concerning the aggravated murder of [I.S.], committed in the courtyard of 20 Valguma Street, Riga on 17 February 2000. The file was submitted by prosecutor [S.N.] of the specialised public prosecutor's office for organised crime and other offences, with a request for extension of the detention on remand of Astrīda Svipsta, who has been charged under Articles 20 § 2 and 117 ... of the Criminal Code. Having heard the observations of [S.N.] and the opinion of the lawyer/lawyers [*A.D.*], the Court
>
> **having noted [the following]:**
>
> The time allowed for preferring the indictment in this case has been extended until 29 September 2000.
>
> The crime of which A. Svipsta stands accused is particularly serious. Accordingly, if she remains at liberty, there is a danger that she will evade investigation and trial, commit further criminal offences and hinder the determination of the truth in the criminal case. [Consequently], without examining whether the defendant is guilty or innocent of the charges against her, I consider it appropriate to extend the period of detention in question.
>
> Having regard to the above and on the basis of Article 77 of the KPK [*Latvijas Kriminālprocesa kodekss* – Code of Criminal Procedure],

I hereby decide:

To extend the detention on remand of Astrīda Svipsta ... until 29 September 2000.

This order is amenable to appeal before the Riga Regional Court, the appeal to be lodged with the Kurzeme District Court.

Execution of the order shall not be stayed pending such appeal.

Judge: [*signature*]"

19. The above order, which was one page long, had been typed on a computer and printed out. However, the fields for the date, the judge's name and the lawyer's name had been left blank, and the relevant information (given in italics above) had been added by hand.

20. The applicant appealed against the order before the Riga Regional Court. In her memorial she submitted that the first-instance judge had omitted to conduct a thorough examination of all the evidence in the file before issuing the order. The applicant further argued that the seriousness of the offence was not sufficient in itself to warrant extending her detention and that there was nothing in the case file to suggest that she intended to evade investigation or commit further offences. In that connection she stressed that she had left the country several times since the murder and had always returned to Latvia; this proved that she had no intention of absconding or obstructing the investigation.

21. By an order dated 15 August 2000, issued following a hearing attended by the applicant and her lawyer, the Riga Regional Court dismissed the appeal in the following terms:

"... Having taken cognisance of the evidence in the case file and heard evidence from the parties, the Court concludes that there are plausible reasons to believe that, if A. Svipsta remains at liberty, there is a danger that she will evade investigation and trial and hinder the determination of the truth in this case. The Court further takes into consideration the seriousness of the charges against A. Svipsta; [it] considers that the order issued by the Kurzeme District Court ... on 26 July 2000 is in accordance with the law and is justified. ..."

22. In the meantime, on 6 August 2000, the applicant provided the public prosecutor's office with detailed information concerning the sums of money she had paid to I.S. since January 1998. On 17 August 2000 she sent further information to the Prosecutor General's Office, stating that I.S. had harassed her and extorted large sums of money from her; accordingly, she requested that a separate criminal investigation be opened into the alleged extortion and that she be acquitted.

23. On 18 September 2000 the public prosecutor's office requested the Kurzeme District Court to extend the applicant's detention on remand until 28 November 2000. In support of its request, it referred to the need to organise at least two further confrontations, question five further witnesses,

study the new statements made by the applicant alleging that I.S had extorted funds from her, examine and analyse the evidence obtained from abroad as a result of international judicial cooperation, examine certain items of physical evidence and order a psychologist's expert report on the defendants I.F. and I.Č.

24. By an order dated 20 September 2000, the relevant judge granted the public prosecutor's request. The wording and layout (font, positioning of the text and line spacing) exactly matched those of the order of 26 July 2000. Only the date, the judge's name, his signature and the length of detention were different. The field for the lawyer's name, meanwhile, had been left blank.

25. The applicant appealed against this order before the Riga Regional Court which, in an order issued on 17 October 2000 following *inter partes* proceedings, dismissed the appeal on the grounds that the applicant "[was] accused of a particularly serious crime [and] ha[d] pleaded not guilty; that the crime in question [had been] committed by an organised group; that there [were] good grounds for suspecting that she might attempt to hinder the determination of the truth in the case".

26. On 30 October 2000 the applicant lodged a complaint with the Prosecutor General's Office alleging that the public prosecutor "ha[d], without any justification, disregarded the comments and oral suggestions from the defence concerning the procedural aspects of the case". According to the applicant, her lawyer had made oral requests for permission to consult the investigation file. The Prosecutor General's Office did not reply.

27. On 17 November 2000 the public prosecutor requested a further extension of the applicant's detention, this time until 30 January 2001. The reasons given were essentially the same as those cited in the request of 18 September 2000, the only differences were the number of witnesses to be questioned (twenty-seven), and a reference to the need to carry out biological tests, in particular DNA tests.

28. On 22 November 2000 the judge ordered the applicant's continued detention until 28 January 2001. This order was drawn up in the same manner as those of 26 July and 20 September, with the date and the lawyer's name having been added by hand. The judge's name had first been typed but had then been crossed out with a ballpoint pen, and the stamp of another judge had been added beside it; the order had been signed by the second judge.

29. The applicant then lodged a fresh appeal with the Riga Regional Court. In her memorial she submitted that the proceedings leading to adoption of the document in question had constituted a serious breach of the former Code of Criminal Procedure (*Latvijas Kriminālprocesa kodekss* – "the KPK"), which was in force at the time. In that connection the applicant observed that all the orders issued by the court of first instance, by three different judges, had been absolutely identical, even in the way they were

worded. She inferred from this that the judges had merely signed the draft orders prepared in advance by the prosecutor. In the applicant's view, this theory was borne out by the fact that the most recent decision had been taken in camera in the judge's office; the judge had allowed the applicant's lawyer into the room only after he had spent approximately twenty minutes alone with the prosecutor. Consequently, the lawyer had not even been able to hear the prosecutor's observations, the defence having been present only when the judge had signed the draft decision, which had been prepared in advance. The applicant also reiterated her previous arguments against her continued detention.

30. By an order made on 5 December 2000 after *inter partes* proceedings, similar to the order of 17 October 2000, the Riga Regional Court dismissed the applicant's appeal and upheld the impugned order, observing that the murder in question had been committed by a group of persons and that the applicant had pleaded not guilty. In court, the applicant's lawyer was invited to speak first. However, despite repeated requests on his part, the judge did not permit him to reply to the prosecutor's observations. The Regional Court also did not reply to the applicant's arguments based on Article 5 of the Convention as interpreted by certain judgments of the European Court of Human Rights, declining to take cognisance of the copies of the relevant judgments or to add them to the case file.

31. On 10 December 2000 the applicant lodged a second complaint with the Prosecutor General's Office, alleging a series of procedural irregularities, in particular the refusal of the relevant prosecutor to grant defence counsel access to the file. In a letter dated 8 January 2001, the Prosecutor General's Office rejected this complaint on the ground that the requests supposedly made by the defence did not feature in any official record; the letter added that a copy of the entire file would be sent to the applicant once the investigation had been completed.

32. On 2 January 2001 the public prosecutor's office attempted to obtain information concerning the transfers of funds between the applicant and the murder victim. To that end it made enquiries of fifteen Latvian banks; none had accounts under the names in question.

33. On 16 January 2001 the public prosecutor's office applied for a further extension of the applicant's detention on the ground that she had made further statements in the meantime to the effect that I.F., one of the suspected perpetrators of the murder, had raped her and then subjected her to pressure. The prosecution further cited the need to carry out the same investigative measures referred to in its previous requests, the only difference being the number of witnesses to be questioned (six).

34. In an order of 25 January 2001, the Kurzeme District Court extended the applicant's detention until 30 March 2001. Again, the order was virtually identical to the previous orders issued by the same court, apart from a few

details concerning the names of the judge, the prosecutors and the lawyer. This time the whole order had been typed and no additions or corrections had been made by hand.

35. On 31 January 2001 the applicant lodged an appeal with the Riga Regional Court, complaining in particular of the refusal of the public prosecutor's office and the court to allow her lawyer access to the documents in the investigation file on which her continued detention had been based. On 9 February 2001 the court dismissed her appeal in an order which was to all intents and purposes identical to those of 15 August and 17 October 2000. In addition to the seriousness of the crime, this order also cited as a reason the risk that the applicant might abscond or evade justice.

36. In the meantime, on 26 January 2001, V.S., one of the applicant's co-defendants, had been released and placed under police surveillance (*nodošana policijas uzraudzībā*). In addition, on 30 April 2001, the public prosecutor's office drew up a fresh charge against the applicant, charging her with commercial corruption within the meaning of Article 199 of the Criminal Code.

37. In two orders dated 29 March and 30 April 2001, the Kurzeme District Court extended the applicant's detention until 30 April and 18 May 2001 respectively. In both cases the court was ruling on requests from the public prosecutor's office based on the necessity of carrying out a number of additional investigative measures. As in its previous requests, the prosecutor's office cited the need to question further witnesses (four). However, it laid particular emphasis on the need to send the documents in the file to the applicant, her co-defendants and their lawyers, to prepare the final indictment and to prepare the case for trial.

The layout of the two orders was again identical to all the previous orders given by the same court in the instant case. Although the order of 29 March 2001, having been typed entirely on a computer, differed in appearance from the other orders, it was identical to them in content.

38. On 30 March and 2 May 2001 the applicant lodged appeals with the Riga Regional Court, complaining in particular of the refusal by the public prosecutor's office and the court to allow her lawyer access to the documents in the investigation file on which her continued detention had been based.

On 17 April and 11 May 2001 the Riga Regional Court dismissed the applicant's appeals and upheld the impugned orders. All the decisions of the Riga Regional Court were drafted in terms virtually identical to the orders of 15 August and 17 October 2000. Only the decision of 17 April 2001 specified that the applicant's continued detention was justified on account of her personality and that the first-instance court had had legitimate grounds to fear a risk of collusion, since the applicant had made the arrangements for her co-defendants to flee the country.

C. Referral of the applicant for trial and the subsequent proceedings

39. On 11 May 2001 the public prosecutor's office concluded the investigation and sent copies of the documents in the file to the applicant. On 14 May 2001 the applicant began studying the file, which comprised sixteen volumes.

On 5 July and 1 August 2001 the applicant complained to the Prosecutor General's Office about the attitude of the prosecutor handling her case, who had sent her only a few documents at a time and at long intervals. In letters of 30 July and 7 August 2001, the Prosecutor General's Office rejected her complaints without giving any reasons.

40. Meanwhile, on 18 May 2001, the latest order for the applicant's detention expired. However, as she had begun studying the documents in the investigation file, her release was "suspended" in accordance with the fifth paragraph of Article 77 of the KPK (see paragraph 60 below). She therefore remained in detention.

41. On 18 July 2001 the applicant finished studying the documents in the file. On the same day she requested the public prosecutor's office to question a number of persons who had allegedly seen her in a Riga hotel the day after I.S.'s murder. The request was rejected for failure to give reasons; the prosecutor's office took the view that the defence had not made sufficiently clear how the evidence of the persons concerned could establish the applicant's innocence or contribute any new evidence to her file.

42. The applicant's co-defendants, V.S., I.F., V.B. and I.Č., finished studying the file on 2 August, 3 August, 2 October and 5 October 2001 respectively. On 5 October 2001 the prosecutor dealing with the case informed the applicant that all the parties had now taken cognisance of the file.

43. On 8 October 2001 the public prosecutor signed the final indictment (*apsūdzības raksts*) against the applicant and her four co-defendants. The file was subsequently sent to the trial court, in this case the Riga Regional Court. On 11 October 2001 the relevant judge of the Regional Court found that there was sufficient evidence in the file and decided to commit the applicant for trial (*lēmums par apsūdzētās nodošanu tiesai*). As to the preventive measure applied to the applicant, the judge decided to extend it, without, however, giving any reasons.

44. On 12 October 2001 the applicant wrote to the same judge requesting that she be released. She asked him to convene, if necessary, a preparatory hearing (*rīcības sēde*) to examine whether her detention was justified. In a letter of 19 October 2001, the judge rejected the request, reminding the applicant that she stood accused of a crime punishable by life imprisonment, and that the preventive measure reflected the seriousness of the offence and her personality. The judge further stated that there were "no grounds" for convening a preparatory hearing. Lastly, he observed that the

applicant would have an opportunity to reiterate her request for release at the hearing on the merits of her case, and informed her that the hearing had been set down for 2003.

45. On 31 October 2001 the applicant requested the President of the Riga Regional Court to review the merits of her detention and to take steps to expedite the consideration of her case, arguing in particular that a prolonged term of detention was in breach of Article 5 §§ 1 and 3 of the Convention. In a letter of 9 November 2001, the President replied that the Regional Court did not have jurisdiction to review procedural decisions taken by the lower court in charge of a case. As to the timetable for consideration of the case, the President said that it was impossible to speed it up. He observed that "[c]riticism of, or requests made to, the court concerning its hearing of the case '*within a reasonable time*' [were] of no relevance whatsoever, as the court work[ed] with the resources allocated to it by the State".

46. Notwithstanding the date initially set for the first hearing, consideration of the merits of the case began on 26 June 2002. The applicant pleaded not guilty in court.

On 14 August 2002 the prosecution addressed the court. On the following day, it was the turn of the defence.

47. In a judgment delivered on 13 September 2002, the Riga Regional Court found the applicant guilty of organising the murder. However, it considered that no intention to kill on the part of the applicant and two of her co-defendants had been established; accordingly, they were found guilty of manslaughter.

V.B., meanwhile, was found guilty of murder and illegally possessing a knife. The court also found it established that, after V.B. and V.S. had been arrested, the applicant had paid the other two co-defendants substantial sums to enable them to flee the country. Finally, the court considered that the applicant's guilt on the charge of commercial corruption had been sufficiently established.

Consequently, the Regional Court sentenced the applicant to twelve years' imprisonment. Her co-defendants also received long prison sentences: seventeen years in the case of V.B., twelve years in the case of I.F. and ten years in the case of I.Č. V.S. received a suspended sentence of four years' imprisonment.

48. The applicant and her co-defendants lodged an appeal against this judgment with the Criminal Division of the Supreme Court. In a judgment of 11 September 2003, the Criminal Division upheld the applicant's conviction for manslaughter. However, it acquitted her on the charge of commercial corruption and reduced her overall sentence to ten years' imprisonment.

49. The applicant then lodged an appeal on points of law with the Senate of the Supreme Court. In a final judgment of 6 February 2004, the Senate dismissed the applicant's appeal and those of her co-defendants.

II. RELEVANT DOMESTIC LAW AND PRACTICE

...

B. Procedural law provisions

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

1. Preventive measures

(a) Detention on remand as part of the overall system of preventive measures

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

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

55. Under the terms of Article 76 of the KPK, a period of detention on remand could be ordered only by a judge and only in respect of a person accused of an offence punishable by imprisonment. The detention order was to be issued following adversarial examination of the evidence submitted by the prosecution service or the police; the presence of the accused was in principle compulsory.

(b) Length of detention on remand and possibility of appeal against the detention measure

56. At the material time, the principles governing the length of detention on remand and the system of appeal were fundamentally different for the preliminary investigation stage (*pirmstiesas izmeklēšana*) and the judicial stage (*iztiesāšana*) of the proceedings.

(i) The preliminary investigation

57. At the preliminary investigation stage (comprising the police investigation and preparation of the case file), the initial period of detention on remand could not exceed two months (Article 77 of the KPK). However, where it was not possible to complete the preliminary investigation and commit the accused for trial within that time, and where "there [were] no grounds for amending the preventive measure", the prosecutor could request the judge to extend the term of detention. In such cases, evidence was heard from the accused and his or her lawyer "if necessary".

58. The Law of 20 June 2001 (in force since 12 July 2001) amended the second paragraph of Article 77 by setting a two-month limit on each successive extension of the term of detention. The detained person could appeal against an order extending his or her detention by means of an appeal before a higher court, which had to consider the appeal within seven days of receiving it. After hearing evidence from the detained person and the public prosecutor's office, the higher court took a decision by means of a final order (Article 222-1 of the KPK).

59. At this stage in the proceedings, the total length of detention on remand could in no circumstances exceed eighteen months. If, after eighteen months had elapsed, the case had still not been sent for trial, the accused person had to be released.

60. The fifth paragraph of Article 77 of the KPK read as follows:

> "On completion of the investigation, and before the maximum statutory period has elapsed, the documents in the file must be sent immediately to the accused and his or her counsel so that they may familiarise themselves with it. The time spent by all the accused in familiarising themselves with the documents in the file shall not be taken into account in calculating the period of detention on remand ..."

In practice, the prosecuting authorities and the courts interpreted the second sentence of this provision as authorising the continued detention of the accused person throughout the time during which he or she and any co-accused were studying the file, even if the validity of the last detention order given by the judge had expired.

(ii) The trial stage

61. After drawing up and signing the final indictment, the public prosecutor's office had to forward the file to the trial court (Articles 209-11 of the KPK). Within fourteen days of receiving the file, the trial court,

without ruling on the accused's guilt, had to decide whether the file provided a sufficient basis for committing the accused for trial, or whether the case should be referred back for further information or no further action should be taken.

As a rule, the order committing the accused for trial (*lēmums par apsūdzētā nodošanu tiesai*) was given by a single judge (Articles 223 and 226), who also had to rule on whether the preventive measure in place should be extended, amended or lifted. Where the judge considered that the preventive measure was justified, he confirmed it by means of a final decision. If, on the other hand, he had doubts as to the lawfulness of the measure or its justification, he convened a preparatory hearing (*rīcības sēde*) to examine the issue. The order given following the preparatory hearing was amenable to appeal before a higher court.

62. Under the terms of Article 241 of the KPK, "consideration of the case at a hearing [had to] begin not more than twenty days or, in exceptional cases, one month from the date on which the court receive[d] the file". However, this provision, which was a legacy from the Soviet era and had never been amended, was very rarely complied with by the Latvian courts.

63. In principle, once the order for the accused person's continued detention had been given, the decision remained in force throughout the proceedings at first instance. In other words, before 1 November 2002, there was no limit on the length of detention on remand at this stage in the proceedings. The Law of 20 June 2002, which came into force on 1 November 2002 and amended Article 77 of the KPK, set a limit of one year and six months on the period of detention, which ran from the time the trial court received the investigation file until delivery of the judgment at first instance. Once this time-limit had been exceeded, the detained person had to be released immediately.

Originally, however, if the case concerned "particularly serious crimes involving violence or the threat of violence", the Senate of the Supreme Court could extend the term of detention beyond the maximum period. Following a Constitutional Court judgment of 27 June 2003 which found part of this provision to be in breach of the Constitution, Parliament amended it by means of a Law of 25 September 2003 which guaranteed the person concerned the right to submit his or her observations on an exceptional extension of this kind, and set out the individual's procedural rights.

64. In practice, although the legislation contained no express provision enabling accused persons to appeal against detention at this stage, the courts considered all applications for release made by detainees. The response generally took the form of a simple letter, against which no appeal was possible. However, in more complex cases the court gave its decision in the form of an order (see *Lavents v. Latvia*, no. 58442/00, § 45, 28 November 2002).

65. A Law amending Articles 237, 248 and 465 of the KPK, which came into force on 1 April 1999, introduced a right of appeal against orders imposing preventive measures at the judicial stage of the proceedings. However, the Law related only to the period after adversarial examination of the case had begun. Moreover, the right to appeal was subject to the condition that examination of the case had been adjourned for a minimum period of one month. The appeal had to be lodged within seven days of the order being served and the court was required to consider it within seven days of receiving it.

66. Finally, the third paragraph *in fine* of Article 226 stipulated that the accused could reiterate his or her request for release at the hearing on the merits.

2. *Access by the lawyer to the documents in the file at the preliminary investigation stage*

67. The third paragraph of Article 97 of the KPK read as follows:

> "Defence counsel shall have the right to take cognisance of all the documents in the file and to copy out extracts from it by hand or using technical means:
>
> (1) in cases where the accused are persons covered by Article 98, points 1 and 2, of the present Code [minors or the physically or mentally disabled] – from the time when the person concerned is placed under investigation;
>
> (2) in all other cases – from the time the person concerned is placed under investigation, with the consent of the investigating authority or the prosecutor;
>
> (3) in all cases – in the circumstances referred to in Article 204 of the Code [on completion of the preliminary investigation and before the file is forwarded to the trial court]."

68. The seventh paragraph of the same Article prohibited the lawyer from disclosing information obtained during the proceedings. Article 130 of the KPK reinforced this duty of confidence, stating that information obtained during the preliminary investigation could be disclosed only with the permission of the head of the investigating authority or the prosecutor and only where the aforementioned authorities considered it practicable. If necessary, the prosecutor was required to remind the witnesses, victims, lawyers and other participants in the proceedings of the fact that failure to comply with this requirement rendered them criminally liable.

THE LAW

...

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

A. The Government's preliminary objection

114. In their additional observations of 19 October 2005, the Government raised a preliminary objection in respect of the applicant's complaint under Article 5 § 4 of the Convention. The Government maintained that, in her observations following the decision on the admissibility of the application, the applicant had widened the scope of this complaint, applying it also to the period between 18 May and 11 October 2001. Had she wished to complain of the lack of effective judicial review of her detention during that period, however, she should have done so within six months of the date on which it ended, namely 11 October 2001. As the six-month period had ended in April 2002, the Government considered that the complaint in question had been lodged out of time and should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

115. The applicant did not submit any specific observations on this point.

116. The Court reiterates first of all that, for the purposes of Article 35 § 1 of the Convention, a period of detention should be regarded in principle not as an instantaneous act, but as a continuing situation. Consequently, the six-month period under that provision starts running only from the end of that situation – hence, in the majority of cases, when the person concerned is released. In addition, in applying Article 35 § 1, the Court endeavours to look behind mere appearances, without excessive formalism (see, in particular, *Jėčius* [*v. Lithuania*, no. 34578/97], § 44[, ECHR 2000-IX]). That being said, it has generally accepted that, in relation to Article 5 of the Convention, it is the overall period of detention which must be taken into account for the purpose of applying the six-month rule.

117. Admittedly, in its judgment in *Assanidze v. Georgia* ([GC], no. 71503/01, ECHR 2004-II), the Court adopted a different approach, dividing the applicant's detention into two separate periods, even though there was no gap between them, and examining compliance with the six-month rule in respect of each of these periods. However, the detention in question had been imposed on the applicant in two separate sets of proceedings which had completely different statutory bases (ibid., § 159). The instant case, on the other hand, concerns a single set of criminal proceedings. The Court notes that after the last order for the applicant's detention had expired on 18 May 2001, she continued to be held in prison under the fifth paragraph of Article 77 of the KPK (see paragraph 60 above). This change in statutory basis had no impact, either in fact or in law,

on the applicant's situation, as she remained in detention just as she had been before the above-mentioned date.

Accordingly, the Court considers that the overall period of the applicant's detention on remand must be taken into account for the purpose of applying the six-month rule in the present case. As the applicant's detention for the purposes of Article 5 § 1 (c) of the Convention ended on 13 September 2002, the date of her conviction at first instance (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI, and *Lavents*, cited above, § 66), the Court is unable to conclude that the complaint in question was submitted out of time.

118. Furthermore, and in so far as the Government claim that the applicant widened the scope of her application in an arbitrary manner, the Court reiterates that, under Rule 55 of the Rules of Court, if the respondent Government wish to raise a plea of inadmissibility, they must do so in their written or oral observations on the admissibility of the application. In the instant case, the former First Section of the Court gave notice of the application to the respondent Government on 28 February 2002, asking them two separate questions in relation to Article 5 § 4 of the Convention, concerning the periods before and after 11 October 2001. The period between 18 May and 11 October 2001 was therefore clearly and fully covered by the scope of the case as determined initially by the Court. That being the case, it was open to the Government to raise this objection at the admissibility stage, something they omitted to do. Since there are no particular reasons justifying this omission, the Court considers that the Government are now estopped from raising this objection (see, *mutatis mutandis*, *Hartman v. the Czech Republic*, no. 53341/99, §§ 53-54, 10 July 2003, and *Prodan v. Moldova*, no. 49806/99, § 36, ECHR 2004-III).

119. Having regard to the above, the Court dismisses the Government's preliminary objection.

B. The merits of the complaint

120. The applicant complained of the lack of any effective judicial review of the lawfulness of her detention on remand. In that connection she relied on four circumstances which, in her view, amounted to a violation of Article 5 § 4 of the Convention: the summary nature of the reasons given in the orders extending her detention, the refusal of the judge in question to allow her lawyer access to the investigation file, the unfairness of the proceedings before the Riga Regional Court and the absence of an adequate remedy with which to challenge her detention at the trial stage.

Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

1. The parties' submissions

(a) The Government

121. Firstly, with reference to the reasons given for the orders extending the applicant's detention, the Government took the view that, while the orders in question had not addressed specifically the arguments adduced by the defence, they had nonetheless complied with Article 5 § 4 of the Convention. Before issuing the orders, the judges had examined the evidence in the file carefully and had heard the observations of both parties, as required by Article 76 of the KPK. Similarly, the Government rejected the applicant's argument as to the uniform wording of the orders in question. In that connection, they stressed that the wording of several of the orders had been different; they could not therefore have been prepared in advance. In any event, the Government argued, only the final orders issued on appeal by the Riga Regional Court were to be taken into consideration on this point. The Government therefore contended that the applicant's complaint was "of a formal nature", and requested the Court to focus on "content rather than form".

122. Secondly, with regard to the applicant's complaint that her lawyer had been unable to obtain access to the investigation file, the Government argued that she had not exhausted the domestic remedies available to her. In that connection they pointed out that, under Article 97 of the KPK, the lawyer was entitled to take cognisance of the investigation file "from the time the person concerned [was] placed under investigation, with the consent of the investigating authority or the prosecutor".

123. As to the condition laid down in Article 97, the Government explained that it had been prompted by the need to preserve the confidentiality of the investigation file until the investigation had been completed. In the instant case the applicant's lawyer had omitted to apply to the relevant prosecutor in order to request access to the file, merely complaining instead to the judge that he had been unable to obtain access. None of the letters from the public prosecutor's office provided evidence of the lawyer having made oral requests for permission to consult the file.

It was true that one of the letters in question had informed the lawyer that "access to the whole file [would] be possible once the investigation [was] complete". However, this was simply a procedural reminder which was not sufficient to demonstrate that the lawyer had indeed requested access. Likewise, the Government stressed that the lawyer had lodged only two written complaints on the subject with the Riga Regional Court, on 31 January and 2 May 2001, whereas he could have submitted at least six complaints from the time his client was placed under investigation. Given that the applicant had omitted to make use of the effective procedural

remedies available to her under Latvian law, the Latvian State could not be held to have breached Article 5 § 4 of the Convention.

124. Thirdly, with regard to the supposed unfairness of the proceedings concerning the applicant's continued detention, the Government maintained that the proceedings had met the fundamental requirements of procedural fairness. In particular, the fact that defence counsel had been unable to reply to the prosecution's observations could not in itself be considered contrary to the principle of equality of arms.

125. Lastly, with reference to the lack of a regular judicial review after 11 October 2001, the Government did not consider this to be in breach of Article 5 § 4. Once an accused had been committed for trial, the need for his or her detention was assessed by the judge responsible for examining the merits of the case. If the judge had originally considered that the circumstances of the case and the personality of the accused constituted grounds for keeping him or her in prison, it was unlikely that the defence would be able to adduce any new arguments capable of countering the evidence in the case file and changing the judge's mind. The Government therefore concluded that any such review would be a mere formality.

(b) The applicant

126. The applicant argued that Article 5 § 4 of the Convention imposed a clear obligation on the domestic courts to set out in detail the reasons for detaining an accused person. Such reasoning was necessary in order to hold the courts accountable for their decisions, to ensure that the review by the courts of the lawfulness of detention was conducted in a transparent manner and to allow the accused to adopt a defence strategy; the obligation was therefore far from a formality. In the instant case the reasons given by the Latvian judges had been patently inadequate, as most of the orders had been virtually identical in form and content.

127. As to the question of access by defence counsel to the file, the applicant argued, referring to supporting documents, that she had exhausted the domestic remedies available to her. Even before completion of the preliminary investigation, she had made several requests for access. Likewise, her lawyer had made repeated oral requests for access when various steps in the investigation were taken by the public prosecutor's office. No response had been received to any of these requests. The applicant stressed in particular that, in a letter of 8 January 2001, the prosecuting authorities had rejected her complaints on the ground that these requests had not been recorded in any official report. However, the applicant could not be held responsible for the omissions or negligence of the public prosecutor's office in failing to prepare such a report. She argued that her requests for access to the file were a matter of established fact; the mere fact that there was no record of such requests in the case file was not in itself sufficient to prove that they had not been made.

128. Finally, the applicant challenged the Government's assertion that a regular judicial review of her detention after she had been committed for trial would have been "a mere formality". The issue whether an accused person's detention on remand continued to be lawful was quite separate from issues of substance. In any event, new facts were not the only possible reason for releasing an accused; the simple passage of time also called for a regular review of the arguments for and against detention. Latvian law did not make adequate provision for reviewing the lawfulness of detention on remand at the judicial stage of the proceedings. While, in practice, the relevant judge at the Riga Regional Court had considered the applicant's request for release made on 12 October 2001, he had simply rejected it by means of a letter, without holding a hearing or giving the applicant adequate opportunity to make representations.

2. The Court's assessment

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

129. The Court reiterates the principles established by its consistent case-law regarding the interpretation of Article 5 § 4 of the Convention:

(a) By virtue of Article 5 § 4, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", within the meaning of Article 5 § 1, of their deprivation of liberty (see, among many other authorities, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). That review must be capable of resulting in a speedy judicial decision ordering the termination of their detention if it proves unlawful (see *Baranowski* [*v. Poland*, no. 28358/95], § 68 [, ECHR 2000-III]).

(b) Like every other provision of the Convention and the Protocols thereto, Article 5 § 4 is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see, among other authorities, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Schöps v. Germany*, no. 25116/94, § 47, ECHR 2001-I).

(c) The existence of a remedy within the meaning of Article 5 § 4 of the Convention must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *E. v. Norway*, 29 August 1990, § 60, Series A no. 181-A, and *Sakık and Others v. Turkey*, 26 November 1997, § 53, *Reports of Judgments and Decisions* 1997-VII).

(d) Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224;

see also *Rutten v. the Netherlands*, no. 32605/96, § 53, 24 July 2001, and *Lanz v. Austria*, no. 24430/94, § 42, 31 January 2002).

(e) The proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation, as the two provisions pursue different aims (see *Reinprecht v. Austria*, no. 67175/01, § 39, ECHR 2005-XII). However, they must have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (see, among other authorities, *D.N. v. Switzerland* [GC], no. 27154/95, § 41, ECHR 2001-III). In order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceedings take place (see, for example, *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A). In any event, the proceedings must meet, to the largest extent possible, the basic requirements of a fair trial (see *Lietzow v. Germany*, no. 24479/94, § 44, ECHR 2001-I, and *Schöps*, cited above, § 44).

(f) The first fundamental guarantee which flows naturally from Article 5 § 4 of the Convention is the right to an effective hearing by the judge examining an appeal against detention. While Article 5 § 4 does not impose an obligation on the judge to address in detail every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts relied on by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness" of the deprivation of liberty within the meaning of Article 5 § 1 (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

(g) Next, in the case of a person whose detention falls within the ambit of Article 5 § 1 (c) of the Convention, Article 5 § 4 requires that a hearing be held (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B, and *Włoch v. Poland*, no. 27785/95, § 126, ECHR 2000-XI). The hearing must be adversarial; this normally involves legal representation and, where appropriate, the possibility of calling and questioning witnesses (see *Hussain* and *Singh v. the United Kingdom*, 21 February 1996, § 60 and § 68 respectively, *Reports* 1996-I).

(h) Proceedings concerning an appeal against detention must ensure equality of arms between the parties, that is, between the prosecutor and the detained person (see *Nikolova*, cited above, § 58, and *Włoch*, loc. cit.). One of the most important implications of equality of arms is the right of access to the investigation file; the opportunity of effectively challenging the statements or views which the prosecution bases on these documents presupposes in principle that the defence has access to them. The appraisal of the need for a remand in custody and the subsequent assessment of guilt are too closely linked for access to documents to be refused in the former case when the law requires it in the latter case (see *Lamy v. Belgium*,

30 March 1989, § 29, Series A no. 151). While the national authorities may satisfy this requirement in various ways, whatever method is chosen should ensure that the defence will be aware that observations have been filed and will have a real opportunity to comment thereon (see *Lietzow*, § 44, and *Schöps*, § 44, both cited above).

(b) Application of these principles to the present case

(i) Reasons given for the orders extending the applicant's detention

130. The Court observes that, during the preliminary investigation of the case, the applicant's detention on remand was extended on six occasions: on 26 July, 20 September and 22 November 2000 and on 25 January, 29 March and 30 April 2001. The file shows that on each occasion the Kurzeme District Court ruled on a written request from the public prosecutor's office after holding a hearing attended by the prosecutor and defence counsel. The Court does not know what oral arguments were adduced by the latter at the hearings. However, it observes that, in all its written requests, the public prosecutor's office referred to the specific facts it had uncovered and the investigative measures which, in its view, were necessary and warranted the applicant's continued detention. On the other hand, it appears that the judge in question responded in each case using a very brief and stereotypical formula, merely enumerating the statutory criteria and completely disregarding the arguments of the two parties.

The Court does not dispute the Government's assertion that, before giving the impugned orders, the judge had on each occasion read the documents in the file and heard the observations of the parties. However, it is the wording of a judicial decision which most clearly reveals the precise intentions and reasoning of the court. In the instant case, not one of the six orders in question contained any indication that the judge who issued it had taken into consideration the arguments and specific facts submitted to the court.

131. Moreover, the Court notes the virtually identical manner in which the six orders were drafted. The orders of 26 July, 20 September and 22 November 2000 and those of 25 January and 30 April 2001 were identical not just in terms of their content – apart from the dates, the names of the judges and participants and the length of detention – but also in terms of their layout, including such details as the font used, the positioning of the text and the line spacing (see paragraphs 24, 28, 34 and 37 above). The decision of 29 March 2001 was different in appearance, but its content was exactly the same. Moreover, several of the orders, which had been typed on a computer and printed out, contained blanks to be filled in by hand; in the order of 22 November 2000 the judge's name had also been corrected using a ballpoint pen (see paragraph 28 above).

Accordingly, the only reasonable conclusion, in the Court's view, is that the orders extending the applicant's detention were based on a pro forma model, prepared in advance, which underwent minor alterations each time before being printed out and signed in summary fashion at the end of each hearing. The Court acknowledges the fact that Article 5 § 4 contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness (see *Reinprecht*, cited above, § 40). It therefore accepts that a procedure of this kind may not always be contrary to Article 5 § 4 of the Convention; however, it will certainly be in breach of that provision if it reflects the absence of an effective examination of the parties' observations. In the Court's view, the practice of the court of first instance amounts to a classic case of denial of the fundamental guarantees contained in Article 5 § 4.

132. The Court points out that all the orders extending the applicant's detention on remand were the subject of an appeal before the Riga Regional Court, which upheld them by final orders dated 15 August, 17 October and 5 December 2000 and 9 February, 17 April and 11 May 2001. It acknowledges the fact that these decisions were more detailed than those of the first-instance court. However, here again, the appeal court merely made vague references to the seriousness of the offence, the fact that it had been perpetrated by an organised group, the applicant's personality and the risk of collusion, without substantiating these allegations. Only the order of 17 April 2001 referred to the specific acts committed by the applicant; however, this is merely one exception which is insufficient to render the proceedings as a whole compatible with Article 5 § 4 of the Convention.

133. As regards the proceedings after the case had been sent for trial, the Court notes that no reasons were given for the decision of the Regional Court judge of 11 October 2001 ordering the applicant's continued detention for an indefinite period. Accordingly, this order too must be considered to be incompatible with the requirements of an "effective judicial review" of the lawfulness of the detention in question.

134. In sum, the Latvian courts, by extending the applicant's detention on remand by means of orders which did not give sufficient reasons, acted in breach of Article 5 § 4 of the Convention.

(ii) Access by defence counsel to the investigation file

135. As regards the applicant's complaint that the public prosecutor's office had refused her lawyer access to the documents in the investigation file, the Court notes at the outset that the parties disagreed as to the facts. The applicant maintained that her lawyer had made an oral request to consult the file even before 30 October 2000, the date on which he allegedly complained to the Prosecutor General's Office of the refusal of his request by the prosecutor dealing with the case (see paragraph 26 above). In any event, on 10 December 2000 the applicant had lodged a second complaint to

this effect with the Prosecutor General's Office, which was rejected (see paragraph 31 above). The Government challenged this assertion, claiming that the existence of any such application could not be proved in the absence of a specific written reference to it in the file. However, they acknowledged that in the appeals lodged with the Riga Regional Court on 31 January and 2 May 2001 the defence had raised the question of access to the file.

136. The Court reiterates that, while an accused complaining of a denial of access to the investigation file must in principle have duly applied for such access in compliance with the national law, the mere absence of any record of such a request in the case file is, in itself, not sufficient proof that it has not been made (see *Schöps*, cited above, § 46). In the instant case the Government acknowledged that the applicant's lawyer had complained to the judge of his inability to consult the investigation file; however, they argued that he should have made a request to that effect to the prosecutor. In that connection the Court reiterates that, in cases similar to the present one, both the national authorities and the Court must, as a rule, avoid excessive formalism (ibid., § 52). The third paragraph of Article 97 of the KPK guaranteed defence counsel "the right to take cognisance of all the documents in the file ... with the consent of ... the prosecutor". However, it did not lay down any formal requirement to apply to the prosecutor before making a request to the judge. That being the case, the applicant's lawyer cannot be criticised for having raised the question directly before the court, which could always have directed him to the prosecutor in order to seek the necessary permission.

137. The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent the accused from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a person's detention should always be made available in an appropriate manner to his or her lawyer (see *Lietzow*, cited above, § 47, and *Garcia Alva v. Germany*, no. 23541/94, § 42, 13 February 2001).

138. In any event, it is not disputed that in 2001 the applicant did not have access to the case file, despite having complained twice of her lawyer's inability to consult the documents relating to the investigation. It seems that at this time the case file, which was already voluminous, contained a series of items which appear to have played a crucial role in the decision to keep the applicant in detention. These included not just the statements from the applicant's four co-defendants, V.S., V.B., I.F. and I.Č., naming the applicant as the organiser of the murder (see paragraph 10 above), but also various witness statements, physical evidence, expert reports and information obtained in the context of international judicial cooperation, all

of which were extensively cited by the public prosecutor's office in its requests for extension of the applicant's detention. It was therefore vital for the defence to be able to consult the file in order to be able to challenge effectively the lawfulness of the applicant's detention on remand which, by January 2001, had already lasted for over six months. Without that possibility, the proceedings concerning the applicant's detention did not satisfy the fundamental requirement of equality of arms, which is an inherent part of fair judicial proceedings.

139. There has therefore been a violation of Article 5 § 4 of the Convention on this point also.

(iii) Alleged unfairness of the proceedings before the Riga Regional Court

140. As regards the alleged unfairness of the appeal proceedings before the Riga Regional Court, the Court has held that the principle of procedural fairness, and in particular of equality of arms, which constitutes its core element, was violated on account of the fact that defence counsel did not have access to the investigation file. It considers that this conclusion makes it unnecessary to examine whether or not the proceedings taken overall were fair.

(iv) Alleged absence of an adequate remedy at the trial stage

141. Finally, with regard to the trial stage, the Court observes that, by an order of 11 October 2001, the relevant judge at the Riga Regional Court decided to commit the applicant for trial while keeping her in detention. The Court has held that this order failed to meet the fundamental requirements of Article 5 § 4 of the Convention (see paragraph 133 above). However, even assuming that this were not the case, it should be pointed out that under the KPK there was no time-limit on this extension which, in principle, remained in force until judgment had been given on the merits. It appears that no remedy was available under Latvian law whereby the lawfulness of detention could be periodically reviewed at the trial stage. In that connection the Court reiterates that Article 5 § 4 cannot be construed as making detention immune from subsequent review of its lawfulness merely because the initial decision issued from a court; on the contrary, the very nature of this provision requires a review of lawfulness to be available at reasonable intervals (see, *mutatis mutandis*, *Iribarne Pérez v. France*, 24 October 1995, § 30, Series A no. 325-C). The Court considers that this principle applies also at the trial stage as defined in Latvian law.

142. It is true that the judge examining the case considered the application for release lodged by the applicant on 12 October 2001. However, the Court observes that this was simply a practice followed by the Latvian courts that had no clear statutory basis and that could be changed at any time (see paragraph 64 above). This remedy did not therefore meet the requirements of accessibility and effectiveness laid down by Article 5 § 4.

Similarly, the Court notes that the above-mentioned request was rejected simply by means of a letter which, by definition, does not amount to a judicial decision.

Admittedly, the Latvian legislature had amended the KPK on 1 April 1999 to provide a remedy by which to challenge detention on remand ordered at the trial stage. However, this remedy was available only after examination of the merits of the case had begun and on condition that the examination had been adjourned for at least one month (see paragraph 65 above). Clearly, these conditions were not met in the instant case.

143. The Court therefore considers that, after 11 October 2001, the applicant did not have an adequate remedy by which to obtain a review of the lawfulness of her detention on remand, in breach of Article 5 § 4 of the Convention.

(c) Conclusion

144. In view of the above, the Court concludes that, at the different stages of the proceedings, the applicant did not have available to her a judicial remedy which satisfied the requirements of Article 5 § 4 of the Convention. There has therefore been a violation of that provision in the present case.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

...

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

...

Done in French, and notified in writing on 9 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger
Registrar

Boštjan M. Zupančič
President