



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

FIRST SECTION

**CASE OF NAIMDZHON YAKUBOV v. RUSSIA**

*(Application no. 40288/06)*

JUDGMENT

STRASBOURG

12 November 2015

**FINAL**

**12/02/2016**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Naimdzhon Yakubov v. Russia,**

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

András Sajó, *President*,  
Elisabeth Steiner,  
Khanlar Hajiyeu,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque,  
Erik Møse,  
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 October 2015,

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

## PROCEDURE

1. The case originated in an application (no. 40288/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Tajikistani national, Mr Naimdzhon Mirzovaliyevich Yakubov (“the applicant”), on dates set out below (see paragraphs 33-37 below).

2. The applicant, who had been granted legal aid, was represented by Mr V. Shukhardin, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and unreasonably lengthy, that the review of his pre-trial detention had not been compatible with Convention standards, and that the criminal proceedings against him had been unreasonably lengthy.

4. On 31 January 2013 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and prior to his arrest lived in Moscow.

**A. The applicant's arrest and the first set of criminal proceedings**

6. On 30 June 2004 the applicant was arrested on suspicion of drug dealing as a result of an undercover police operation. On an unspecified date the Podolskiy Town Court of the Moscow Region ("the Town Court") remanded him in custody. He remained in detention pending the investigation and trial.

7. On 11 March 2005 the Town Court found the applicant and his co-defendant B., also a Tajikistani national, guilty as charged. The applicant was sentenced to fourteen and a half years' imprisonment.

8. On 25 April 2005 the Moscow Regional Court ("the Regional Court") quashed his conviction on appeal and remitted the matter to the Town Court for fresh consideration. The Regional Court noted that, in contravention of the rules of criminal procedure, the indictment had been prepared by a prosecutor who had been the spouse of one of the police officers taking part in the undercover operation leading to the applicant's arrest and had testified as a prosecution witness. As regards the applicant's detention, the court ruled as follows:

"Regard being had to the gravity of the charges against the defendants, their foreign nationality and illegal residence in the Russian Federation, [the court] does not consider it possible to lift the preventive measure pending trial applied and ... extends their detention."

**B. Second set of criminal proceedings**

9. On 14 June 2005 the Town Court extended the applicant's pre-trial detention until 8 November 2005. On 29 August 2005 the Regional Court upheld the relevant court order on appeal, noting as follows:

"When deciding on the preventive measure, the [trial] court legitimately referred to the gravity of the charges and the [defendants'] characters ... It further legitimately indicated that there were no grounds for the defendants' release. If at large [the defendants], in view of the gravity of the charges, might abscond, continue criminal activities, put pressure on witnesses, or otherwise interfere with the administration of justice."

10. It appears that the applicant remained in custody pending consideration of the criminal charges against him.

11. On 9 December 2005 the Town Court found him guilty of drug dealing and sentenced him to eleven years' imprisonment.

12. On 17 April 2006 the Regional Court upheld the conviction on appeal.

### **C. Quashing of the applicant's conviction and the third set of criminal proceedings**

13. On 26 September 2006 the Regional Court granted the prosecutor's request for a supervisory review of the applicant's conviction, noting that the charges against him had not been classified in accordance with the law.

14. On 14 February 2007 the Presidium of the Regional Court quashed the appeal judgment of 17 April 2006 by way of supervisory review and remitted the matter to the appellate court for fresh consideration.

15. On 16 April 2007 the Regional Court quashed the applicant's conviction of 9 December 2005 and remitted the matter for a retrial. It further noted that the preventive measure applied in respect of him and his co-defendant should remain unchanged.

16. On an unspecified date the Town Court extended the applicant's detention until 27 July 2007.

17. On 25 July 2007 it authorised his detention for a further period until 27 October 2007, noting as follows:

“When deciding the issue of extending the [defendants'] pre-trial detention and accepting the prosecutor's argument, [the court] considers that there are no grounds for changing the preventive measure. Regard being had to the gravity of the charges against [the defendants], their foreign nationality and illegal residence in the Russian Federation, the court considers it impossible to lift the [detention] earlier applied and extends it ... ”

18. On 25 September 2007 the Town Court returned the case file to the prosecutor to arrange for a translation of the indictment into the defendants' mother tongue. As regards the defendants' detention, the court reiterated verbatim its earlier reasoning of 25 July 2007, ordering that they be detained pending the return of the case file to the court. On 4 December 2007 the Regional Court upheld this decision on appeal.

19. On 25 December 2007 the applicant received the translation of the indictment.

20. On an unspecified date the Town Court received the case file, and on 10 January 2008 fixed the date for the hearing of the case for 23 January 2008. It authorised the applicant's detention for the period from 27 October 2007 to 27 January 2008, reiterating the reasoning contained in the court orders of 25 July and 25 September 2007. On 18 March 2008 the Regional Court upheld the relevant decision on appeal. It considered that the applicant's pre-trial detention had been extended in accordance with the applicable rules of criminal procedure and discerned no reasons that would, in the circumstances of the case, justify his release pending trial. He and his lawyers had to attend the trial and were not present at the appeal hearing. The court appointed lawyer B. to represent him. The prosecutor was present and made submissions to the court.

21. On 23 January 2008 the Town Court admitted lawyer Sh. as the applicant's defender and adjourned the hearing to provide him with the time necessary to study the case file. The court further extended the applicant's detention until 27 April 2008. Its reasoning in that regard remained unchanged. It appears that the applicant did not appeal against the said court order.

22. On 4 February 2008 the Town Court returned the case file to the prosecutor for the reasons indicated by the Regional Court in the appeal judgment of 25 April 2005 (see paragraph 8 above). The prosecutor was given five days to bring the indictment in compliance with the applicable rules of criminal procedure. Lastly, the court noted, reiterating its earlier reasoning, that the applicant should remain in custody.

23. On 24 April 2008 the Regional Court adjourned the hearing of the applicant's appeal against the detention order of 4 February 2008 as his lawyers failed to appear. As regards the pre-trial detention, the court noted as follows:

“[The appellate court] considers it necessary to rule on the issue of the [defendants'] detention pending the appeal hearing, given that the detention authorised by the court order of 23 January 2008 expires on 27 April 2008. Regard being had to the circumstances of the case, the fact that the appellate court will examine the issue of the defendants' detention, and to ensure prompt consideration of the matter, [the court] considers it necessary to extend the [defendants'] detention for ten days, until 7 May 2008.”

24. On 6 May 2008 the Regional Court examined the applicant's appeal against the detention order of 4 February 2008. It upheld the findings of the lower court as regards the lawfulness and reasons underlying his detention. At the same time the Regional Court, regard being had to the fact that the defendants had been detained for a long time, the gravity of the charges and their characters, considered it possible to release them on bail. The bail set for each of them was RUB 5,000,000. Lastly, the court ruled that, should they be unable to pay the bail, they would remain in custody until 7 June 2008.

25. According to the applicant, he was unable to pay the bail as he had insufficient funds.

26. On 6 and 7 June 2008 the Town Court held a preliminary hearing in camera. After giving the applicant four warnings for improper conduct, the judge had him removed from the courtroom. The hearing was then held in his absence. His lawyers were present and made submissions to the court. The court fixed the trial date for 17 June 2008. It further extended the applicant's pre-trial detention until 7 September 2008, noting as follows:

“When deciding the issue of extending the [defendants'] pre-trial detention and accepting the prosecutor's argument, [the court] considers that there are no grounds for changing the preventive measure. Regard being had to the gravity of the charges against [the defendants], their foreign nationality, illegal residence in the Russian

Federation and lack of permanent employment, the court considers it impossible to lift the [detention] applied and extends it ... .”

27. On 24 July 2008 the Regional Court upheld the decision of 7 June 2008 on appeal. The prosecutor was present and made submissions to the court. The applicant did not attend. He had to be present at the trial court examining the criminal case against him. The court considered the request filed by his lay defender Sh. to adjourn the hearing in view of his involvement in another set of proceedings but dismissed it. It appointed lawyer S. to represent the applicant, noting as follows:

“Regard being had to the [applicant’s] failure to pay the bail in accordance with the appeal decision of 6 May 2008, the gravity of the charges infringing public health and morals that amounts to a serious violation of public policy in a society which ensures human rights guarantees and in which public health is of great value, the [applicant’s] foreign nationality, illegal residence in the Russian Federation, the court at first instance has lawfully found that, pursuant to the applicable legislation, the preventive measure applied [in respect of the applicant] is not excessive. It is justified by society’s response and the social consequences [of the crime]. Given that it is necessary to ensure the effective protection of society, the court considers a deprivation of liberty to be permitted.”

28. On 1 August 2008 the Town Court found the applicant guilty as charged and sentenced him to ten and a half years’ imprisonment. On 19 February 2009 the Regional Court upheld his conviction on appeal.

29. According to the Government, on 25 April 2013 the prosecutor lodged an appeal against the court order of 10 January 2008 and the appeal decision of 18 March 2008 arguing that the applicant’s detention from 27 October 2007 to 10 January 2008 had been unlawful. The Government did not inform the Court about the outcome of the hearing of the matter.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. Constitution and the Code of Criminal Procedure of the Russian Federation (CCrP)**

30. A suspect or a defendant can be remanded in custody or his (her) detention can be extended only on the basis of a judicial decision (Russian Constitution, Article 22). The court should make the relevant decision upon a reasoned request by the prosecutor or the investigator supported by appropriate evidence (Article 108 § 3 of the CCrP) or of its own motion (Article 108 § 10 of the CCrP).

31. When deciding, in particular, on remand in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that the accused would abscond, reoffend, threaten the witnesses or other parties to the proceedings, destroy evidence or otherwise interfere with the administration of justice (Article 97 of the CCrP). It must also take

into account the seriousness of the charges, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99 of the CCrP).

**B. Ruling No. 41 by the Plenary of the Supreme Court of the Russian Federation of 19 December 2013 “On the Practice of Application by the Courts of Preventive Measures in the Form of Remand in Custody, Bail and House Arrest”**

32. The Plenary instructed the lower courts as follows in respect of the issue of extension of pre-trial detention:

“21. When extending the period of detention, the court should verify that the circumstances set out in Article 97 of the CCrP exist and are confirmed by reliable information and evidence. Furthermore, the court should take into consideration the circumstances set out in Article 99 of the CCrP and other circumstances that could justify such extension. It should also be noted that the circumstances underlying the defendant's remand in custody may not always be sufficient for the extension of his or her detention.”

## THE LAW

### I. DATE OF LODGING THE APPLICATION

33. On 3 June 2006 the applicant lodged an application form informing the Court of the two sets of criminal proceedings against him which had ended on 17 April 2006 (see paragraphs 6-12 above). He alleged that his rights set out in Articles 3, 5, 6, 13 and 17 of the Convention had been infringed. In particular, he stated as follows:

“Now I cannot provide an explanation substantiating the [alleged] violations. My state of health and conditions [of detention] do not allow me to do so. The cells are overcrowded and I am waiting to be transported to the facility where I will be serving the sentence imposed.”

34. On 15 September 2008 he submitted a second application form, alleging a violation of Article 5 §§ 1, 3 and 4 of the Convention in respect of his pre-trial detention.

35. On 17 August 2009 he submitted a third application form complaining, *inter alia*, that the criminal proceedings against him had been unfair and excessively lengthy. He relied on Article 6 of the Convention.

36. In their observations on the admissibility and merits of the application, the Government argued that the dates of lodging the complaints should be 15 September 2008 and 17 August 2009 respectively.

37. The applicant did not comment.

38. Regard being had to the above, the Court reiterates that, in accordance with the practice of the Court at the relevant time, the date of lodging an application would be the date of the first letter indicating an intention to do so and giving some indication of the nature of the application. However, where a substantial interval followed before an applicant submitted further information about his proposed application or before he returned the application form, the Court would examine the particular circumstances of the case to determine what should be regarded as the relevant date with a view to calculating the running of the six-month period imposed by Article 35 of the Convention (see, among many other authorities, *Chalkley v. the United Kingdom* (dec.), no. 63831/00, 26 September 2002).

39. The Court observes that in the first application form lodged on 3 June 2006, the applicant failed to indicate, even in summary form, the nature of the alleged violations. The applicant did not resume his correspondence with the Court until 15 September 2008 when he complained under Article 5 of the Convention about his pre-trial detention. Furthermore, he lodged his complaints under Article 6 of the Convention on 17 August 2009. In the circumstances, the Court considers that the date of introduction of the applicant's complaints to be 15 September 2008 and 17 August 2009 respectively.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

40. The applicant complained that his pre-trial detention from 27 October 2007 to 10 January 2008 and from 28 April to 6 May 2008 had been contrary to Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]”

41. The Government conceded that on 10 January 2008 the District Court had retrospectively authorised the applicant's pre-trial detention from 27 October 2007 onwards, but that the authorisation had not been in accordance with the procedure prescribed by Russian law, a fact which had been brought to the attention of the domestic courts by the Deputy Regional Prosecutor in a supervisory review application in 2013 (see paragraph 29 above). The Government did not inform the Court of the outcome of the proceedings in question. As regards the applicant's pre-trial detention from

28 April to 6 May 2008, they considered it to be lawful. The appellate court had been competent to rule on his detention. The fact that the prosecutor had not been present had no bearing on respecting the principle of equality of arms. According to the rules of criminal procedure, the court could decide a defendant's pre-trial detention of its own motion. Given that the appellate court had adjourned the hearing, it could not have delved into the reasons underlying the applicant's pre-trial detention. To do otherwise would have amounted to impartiality on its part.

42. The applicant maintained his complaint. He considered the *ex post facto* authorisation of his pre-trial detention from 27 October 2007 to 10 January 2008 tainted with arbitrariness and contrary to the safeguards provided by Article 5 of the Convention. Lastly, he argued that the reasons underlying the extension of his pre-trial detention from 28 April to 6 May 2008, namely "prompt consideration" of his appeal, had not been prescribed by domestic law.

### **A. Admissibility**

43. The Court observes that the final decision in respect of the applicant's detention from 27 October 2007 to 10 January 2008 was taken by the Regional Court on 18 March 2008 and that no appeal lay against the court decision of 24 April 2008 (see paragraphs 20 and 23, respectively). Accordingly, the Court finds that the applicant has complied with the six-month time-limit for lodging the complaints under Article 5 of the Convention (see also paragraph 39 above). Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. General principles*

44. The general principles concerning the lawfulness of pre-trial detention are well established in the Court's case-law and have been summarised as follows (see *Khudoyorov v. Russia*, no. 6847/02, ECHR 2005-X (extracts)):

"124. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

125. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).’

## 2. *Detention from 27 October 2007 to 10 January 2008*

45. The Court observes that the applicant’s detention authorised by the court order of 25 July 2007 expired on 27 October 2007 (see paragraph 17 above). After that date the Town Court only considered the issue of his pre-trial detention on 10 January 2008, retrospectively authorising the applicant’s detention from 27 October 2007 up until that date. The relevant order was upheld on appeal on 18 March 2008 (see paragraph 20 above).

46. The Court takes into account the Government’s acknowledgement that the authorisation of the applicant’s pre-trial detention from 27 October 2007 to 10 January 2008 had not been in accordance with the applicable Russian legislation (see paragraph 41 above).

47. The Court sees no reason to hold otherwise. It reiterates that any *ex post facto* authorisation of pre-trial detention is incompatible with the “right to security of person”, as it is necessarily tainted with arbitrariness (see, for example, *Shukhardin v. Russia*, no. 65734/01, § 69, 28 June 2007).

48. It follows that the applicant’s detention during the period in question was not “lawful” or “in accordance with a procedure prescribed by law”. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of his detention from 27 October 2007 to 10 January 2008.

## 3. *Detention from 28 April to 6 May 2008*

49. The Court observes that on 23 January 2008 the Town Court extended the applicant’s pre-trial detention until 27 April 2008 (see paragraph 21 above). He appealed against the relevant order. On 24 April 2008 the Regional Court, when adjourning the appeal hearing, further extended his pre-trial detention until 7 May 2008. The court noted that the extension was necessary “to ensure prompt consideration of the matter” (see paragraph 23 above).

50. In this connection, the Court reiterates that a court decision to maintain a custodial measure would not be in breach of Article 5 § 1 provided that the trial court “had acted within its jurisdiction ... [and] had the power to make an appropriate order”. However, “the absence of any

grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1.” (see *Khudoyorov*, cited above, § 135 in fine).

51. The Court is prepared to accept, albeit in the absence of any reference by the Government to the relevant domestic legal provisions, that on 24 April 2008 the Regional Court acted within its powers in deciding to maintain the applicant’s detention pending the appeal hearing. The Court further notes that the domestic rules of criminal procedure required that the Regional Court should verify that the circumstances underlying the applicant’s remand in custody still existed and the extension of his detention were justified (see paragraphs 30-32 above). However, the Regional Court failed to do so. As a result, from 28 April to 6 May 2008 the applicant was deprived of liberty in the absence of any legal ground provided for under domestic law.

52. It follows that the applicant’s detention during the period in question was not “lawful” or “in accordance with a procedure prescribed by law”. There has accordingly been a violation of Article 5 § 1 of the Convention on account of the applicant’s detention from 28 April to 6 May 2008.

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

53. The applicant complained that his pre-trial detention had been in contravention of the “reasonable time” requirement set out in Article 5 § 3 of the Convention, which reads, in so far as relevant, 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.”

54. The Government submitted that the applicant’s complaint should be dismissed for his failure to exhaust effective domestic remedies. In their view, it had been open to him to bring a claim for damages resulting from the excessive length of the criminal proceedings against him. Alternatively, he could have sued the authorities for damages resulting from their unlawful actions. Lastly, they noted that his pre-trial detention had been reasonable and justified. The domestic courts had taken into account that the applicant had been charged with a serious crime, that he had been a foreign national and that he had been convicted previously of drug dealing abroad. Furthermore, they had considered it possible to replace pre-trial detention with bail. However, following the applicant’s failure to pay, he had remained in detention pending trial. As regards the amount of bail, the Government noted that at no time had the applicant asked the Russian courts to reduce it.

55. The applicant maintained his complaint. He considered that his pre-trial detention had not been based on relevant and sufficient reasons. The domestic courts had ignored the fact that he had a permanent residence, a job and family ties in Moscow. Furthermore, the Russian authorities had not justified the amount of bail they had set. As a result, the amount had been excessive and impossible to pay. Nor had he had an opportunity to make the authorities change the amount of bail to take account of his and his family's financial situation. On 7 May 2008 the Town Court had ignored his representative's request to reduce the amount of bail and had extended his pre-trial detention.

### **A. Admissibility**

#### *1. Whether the applicant exhausted domestic remedies*

56. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

57. Turning to the circumstances of the present case, the Court observes that the applicant lodged complaints challenging the lawfulness and length of his pre-trial detention in the course of the criminal proceedings against him. These were considered and dismissed by the domestic courts at two levels of jurisdiction. In the circumstances, the Court considers that the applicant made use of the remedies available to him at domestic level. It was not incumbent on him to bring an action for damages on account of any allegedly unlawful action taken by the courts which had authorised his pre-trial detention. Nor can an action for damages resulting from allegedly excessive length of the criminal proceedings be a remedy to use in respect of the complaint that the length of pre-trial detention was not reasonable.

58. In the light of the foregoing, the Court concludes that the Government's objection of non-exhaustion must be dismissed.

#### *2. Whether the applicant has complied with the six months' rule*

59. The Court observes that in the present case the applicant's pre-trial detention comprised three distinct periods: (i) from 30 June 2004, when he was arrested and remanded in custody pending the criminal investigation against him, to 11 March 2005, when he was convicted by the Town Court at the first level of jurisdiction; (ii) from 25 April 2005 when the Regional

Court quashed his conviction on appeal and remitted the matter to the trial court for fresh consideration, to 9 December 2005 when the trial court found him guilty, and (iii) from 16 April 2007, when the Regional Court quashed his conviction on appeal and remitted the matter to the trial court for fresh consideration, to 1 August 2008, when the Town Court found him guilty. After the second period, the applicant's conviction became final, when upheld by the appellate court on 17 April 2006, and he served a prison sentence for almost a year.

60. The Court considers that the issue in the present case is whether the three periods of the applicant's pre-trial detention can be assessed cumulatively. The Court answers this question in the negative. While the first two periods of pre-trial detention constitute a situation where the applicant continued to be deprived of liberty pending an appeal hearing, the conviction subsequently being quashed on appeal (see, for example, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007), after the second conviction became final he had been serving a prison sentence before the third period of pre-trial detention had started. In the Court's view, these circumstances had the effect of triggering the application of the six-month rule referred to in Article 35 § 1 in respect of the first two periods of pre-trial detention (see *Nasakin v. Russia*, no. 22735/05, § 83, 18 July 2013, and, *mutatis mutandis*, *Idalov v. Russia* [GC], no. 5826/03, §§ 127-33, 22 May 2012).

61. Having regard to the above, the Court finds that the six-month rule should be applied separately to the first two periods constituting a continuing situation and the third period of pre-trial detention. Accordingly, the Court cannot consider whether or not the first two periods were compatible with the Convention, since, as established above, this part of the application was lodged on 15 September 2008. The applicant's complaint in that part should be declared inadmissible for being out of time within the meaning of Article 35 § 1 of the Convention. However, as is apparent from the *Idalov* judgment (cited above, § 130), the fact that an applicant has already spent time in custody pending the same set of criminal proceedings, should, in a given case, be taken into account by the Court in its assessment of the sufficiency and relevance of the grounds justifying the subsequent period of pre-trial detention, which the Court is competent to examine.

62. In this respect, the Court notes that it is competent to examine whether the third period of the applicant's detention between 16 April 2007 and 1 August 2008 complied with the requirements set forth in the Convention, since the complaint, as indicated above, was lodged on 15 September 2008.

### 3. Conclusion

63. Having regard to the above, and since the Court considers that the applicant's complaint under Article 5 § 3 of the Convention in respect of his

detention from 16 April 2007 to 1 August 2008 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, it should be declared admissible.

## **B. Merits**

64. The Court has, on a number of occasions, already examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation (see, among many other authorities, *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012; *Romanova v. Russia*, no. 23215/02, 11 October 2011; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Gulyayeva v. Russia*, no. 67413/01, 1 April 2010; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Belov v. Russia*, no. 22053/02, 3 July 2008; and *Shukhardin*, cited above). Similar considerations apply in the circumstances of the present case, in which the Government did not submit any arguments that could have allowed the Court to reach a different conclusion.

65. The Court further observes that the present case can be distinguished from the majority of cases concerning the length of pre-trial detention in Russia. The domestic courts in this case actually acknowledged that the applicant had spent a long time in pre-trial custody and considered it possible to ensure his participation in the trial by means of bail (see paragraph 24 above). However, when fixing the bail, the domestic authorities failed to provide any justification as to the amount set. The Regional Court did not make an assessment of the applicant's wealth or assets at the time, nor did it seek any information or evidence as to whether he could pay the bail. In the circumstances, the Court cannot accept that the authorities took the necessary care in fixing the appropriate amount of bail when deciding whether or not his continued detention was indispensable (compare *Neumeister v. Austria*, 27 June 1968, p. 40, § 14, Series A no. 8; and *M.B. v. Poland*, no. 11887/07, § 41, 26 July 2011).

66. Against the above background, the Court considers that there has been a violation of Article 5 § 3 of the Convention.

## **IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION**

67. The applicant further complained that the review of his pre-trial detention conducted by the Regional Court on 18 March, 24 April and

24 July 2008 had not been compatible with the requirements set out in Article 5 § 4 of the Convention, which reads as follows:

“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.”

68. The Government contested that argument. They submitted that on 18 March and 24 July 2008 the applicant had been unable to take part in the hearings, given that he had had to be present at the trial court. His interests before the appellate court had been adequately represented by State-appointed lawyers. Counsel retained by the applicant had not appeared before the appellate court and the latter had had to appoint a public defender B. The fact that the prosecutor had been absent from the appeal hearing of 24 April 2008 was not evidence of any impartiality on the part of the court. It had extended the applicant’s pre-trial detention of its own initiative to ensure proper consideration of the applicant’s appeal.

69. The applicant maintained his complaints. In his view, his presence at the appeal hearings of 18 March and 24 July 2008 had been indispensable. He considered that the State-appointed lawyers could not effectively represent his interests before the appellate court. There was nothing in the material in the case file to confirm that the lawyers had studied his case. The appellate court had not obtained his consent for this appointment. The lawyers in question had not met with the applicant to discuss the matter. Accordingly, the defence they had provided had been illusory and formalistic. On 24 April 2008 the Regional Court had extended his pre-trial detention in the absence of the relevant request to be submitted by the prosecutor. The prosecutor had not been present at the hearing either. In the circumstances, the appellate court had undertaken the function of the prosecution. It had not been impartial or independent, in contravention of the requirements of the Convention.

### **A. Admissibility**

70. The Court notes that the complaint in this part is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. Appeal hearing of 18 March 2008*

71. The Court observes that it has already found that the extension of the applicant’s pre-trial detention from 27 October 2007 to 10 January 2008, as authorised by the court order of 10 January 2008 and upheld on appeal on

18 March 2008, was unlawful (see paragraphs 45-48 above). In the circumstances, it does not consider it necessary to examine separately the applicant's complaints under Article 5 § 4 of the Convention.

## *2. Appeal hearing of 24 April 2008*

72. The Court observes that it has already found that the extension of the applicant's pre-trial detention authorised by the court order of 24 April 2008 was unlawful (see paragraphs 49-52 above). In the circumstances, it does not consider it necessary to examine separately the applicant's complaints under Article 5 § 4 of the Convention.

## *3. Appeal hearing of 24 July 2008*

73. The Court reiterates that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B). Although it is not always necessary for the procedure under Article 5 § 4 to be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). The opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B).

74. The Court observes that on 24 July 2008 the Regional Court heard the applicant's appeal against the detention order of 7 June 2008. Due to the conflict of schedule, neither the applicant nor his counsel could attend the hearing as they were making appearance before the trial court on that day. Nor could his lay defender Sh. take part in the proceedings. The Regional Court appointed a public defender to represent the applicant.

75. The Court notes that, on the one hand, the purpose of the hearing was the review of the extension of the applicant's pre-trial detention and it might be that the issues which had been previously discussed in the applicant's presence remained the same and that the applicant had had an opportunity to describe his personal situation to the court and advance arguments in favour of his release. However, the Court cannot overlook that the hearing of 24 July 2008 was the first time for the appeal court to review the issue of the applicant's failure to pay bail. In the Court's opinion, the

applicant's personal submissions were essential for dealing with this aspect of the case. Lastly the Court takes into account the applicant's argument that the state appointed counsel did not meet with the applicant prior to the hearing to discuss the case or obtain the applicant's consent for such representation.

76. In view of the above, the Court is not satisfied that, in the circumstances, the public defender's presence was sufficient to ensure that the principle of equality of arms was respected. The fact that the applicant was unable to participate in the appeal proceedings on 24 July 2008 amounted to a violation of Article 5 § 4 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

77. The applicant further complained that the criminal proceedings against him had been unreasonably lengthy. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, 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 ..."

78. The Government contested that argument and considered the length of the criminal proceedings against the applicant compatible with the "reasonable time requirement" set out in Article 6 of the Convention. They acknowledged that the applicant's conviction had been quashed twice on appeal, and that the trial court had returned the case file to the prosecutor, which had contributed to the length of the proceedings. The Government further submitted that the applicant's lawyers and the interpreter had failed to appear in court on several occasions, which had also protracted the proceedings. Lastly, they pointed out that the hearing of the case had been adjourned on one occasion in view of the applicant's counsel's request to study the material in the case file.

79. The applicant maintained his complaint. He considered that it was the authorities' conduct that had protracted the proceedings. The trial court had had to return the case file to the prosecutor on three occasions because of the latter's failure to complete the investigation. The higher courts had quashed his conviction twice and had returned the matter for fresh examination. His lawyers' absence from the trial, which had not been typical, had been justified and had had no significant impact on the length of the criminal proceedings in his case.

### A. Admissibility

80. The Court notes that the complaint in this part is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

81. The Court observes that the applicant was arrested on 30 June 2004. It takes this date as the starting point of the criminal proceedings, observing that they ended on 19 February 2009 when his conviction was upheld on appeal in the third set of the criminal proceedings and became final. The Court notes that the period from 17 April 2006, when the applicant's conviction became final and no proceedings were pending, to 14 February 2007, when the appeal judgment was quashed by way of supervisory review and the case was remitted to the appellate court for fresh consideration, should not be taken into account (see, for example, *Brovchenko v. Russia*, no. 1603/02, § 97, 18 December 2008). Accordingly, the criminal proceedings against the applicant lasted approximately three years and ten months. This period spanned the investigation stage and consideration of the applicant's case by the courts at three levels of jurisdiction, the second appeal judgment having been quashed by way of supervisory review and the case having been remitted to the appellate court for fresh examination.

82. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

83. It accepts that the proceedings against the applicant involved a certain degree of complexity. He had been charged with drug dealing. The prosecution had been brought against two defendants.

84. Further, the Court notes that the applicant did not contribute to the length of the proceedings, and that in any event the stay, if any, attributable to the applicant's lawyers' failure to appear and the need to study the case file, was negligible.

85. As regards the conduct of the authorities, the Court observes that, owing to the omissions on the part of the prosecutor's office, the applicant's case was considered by the courts three times at three levels of jurisdiction. Although the Court is not in a position to analyse the legal quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see, *mutatis mutandis*, among other authorities, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The fact that the domestic courts heard the case several times did not absolve them from having to comply with the reasonable-time requirement of

Article 6 § 1 (see, *mutatis mutandis*, *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

86. Lastly, the Court notes that the fact that the applicant was held in custody during the first and second trials required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, among other authorities, *Korshunov v. Russia*, no. 38971/06, § 71, 25 October 2007).

87. Having regard to the foregoing, the Court considers that the length of the criminal proceedings against the applicant did not satisfy the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

## VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Lastly, the applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair, that the judicial authorities had not been impartial, that the defence provided by State-appointed lawyers had been ineffective, and that the trial court had refused to admit members of his family as lay defenders.

89. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

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

### A. Damage

91. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

92. The Government considered this claim excessive. They further submitted that the finding of a violation would constitute sufficient just satisfaction.

93. In the present case, the Court has found a violation of Article 5 §§ 1 (c), 3 and 4, as well as Article 6 of the Convention and considers that the applicant has suffered non-pecuniary damage, for which he cannot be compensated solely by the finding of a violation. It therefore

awards him EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### **B. Costs and expenses**

94. The applicant also claimed EUR 2,680 for the costs and expenses incurred before the domestic courts and the Court. He asked the Court that the latter amount be paid directly to the bank account of Mr V. Shukhardin, the lawyer representing him in the proceedings before the Court.

95. The Government submitted that the applicant's claims could not be considered appropriate and reasonable as to quantum, given that his case before the Court had not been particularly complex. They also noted that the applicant had failed to substantiate his costs and expenses by reliable documents. Lastly, they observed that the applicant's costs and expenses incurred before the domestic courts were unrelated to the proceedings before the Court and should not be reimbursed.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, to the above criteria and to the fact that legal aid has been granted to the applicant, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads, to be paid directly into the bank account of Mr V. Shukhardin, the applicant's representative, in addition to the sum paid by way of legal aid.

### **C. Default interest**

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

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the complaints regarding the lawfulness of the applicant's pre-trial detention from 27 October 2007 to 10 January 2008 and from 28 April to 6 May 2008, length of pre-trial detention from 16 April 2007 to 1 August 2008, review of pre-trial detention conducted on 18 March, 24 April and 24 July 2008, and the length of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's pre-trial detention from 27 October 2007 to 10 January 2008 and from 28 April to 6 May 2008;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of the applicant's pre-trial detention from 16 April 2007 to 1 August 2008;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the appeal hearing of 24 July 2008;
5. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention as regards the appeal hearings of 18 March and 24 April 2008;
6. *Holds* that there has been a violation of Article 6 of the Convention as regards the length of the criminal proceedings against the applicant;
7. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, into the bank account of Mr V. Shukhardin, the applicant's representative;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

András Sajó  
President