



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

FIRST SECTION

CASE OF KORKIN v. RUSSIA

(Application no. 48416/09)

JUDGMENT

STRASBOURG

12 November 2015

FINAL

02/05/2016

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

In the case of Korkin v. Russia,

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

András Sajó, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
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. 48416/09) 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 Russian national, Mr Sergey Eduardovich Korkin (“the applicant”), on 27 August 2009.

2. 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 he had been transported to the court-house and back in cramped conditions; that his pre-trial detention from 20 March to 10 April 2009 had not been authorised by a court order; and that his pre-trial detention and criminal proceedings against him had been unreasonably long.

4. On 3 November 2011 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1973 and lives in Moscow.

A. Criminal proceedings against the applicant

1. Investigation

6. In 2003 the prosecutor's office opened a criminal investigation into a series of fraudulent property transactions carried out by an organised group. On 14 April 2005 the applicant was arrested on suspicion of involvement in these activities.

7. On 15 April 2005 the Ostankinskiy District Court of Moscow considered the investigator's request to remand the applicant in custody during the investigation. The investigator argued that the applicant was suspected of having committed serious offences and was unemployed. He further alleged that the applicant might abscond or reoffend. Lastly, he referred to the applicant's attempt to prevent witness Sh. from meeting with the investigator. The court granted the investigator's request, noting as follows:

"... the court takes into consideration that [the applicant] is suspected of having committed a lucrative crime which entails a custodial sentence exceeding ten years' imprisonment, that he is not employed, and, as a result, he has no means of subsistence. The investigator's knowledge of the reliable information that [the applicant] has put pressure on witnesses ..., convinces the court that, if [released], he might abscond, continue his criminal activities or otherwise interfere with the administration of the criminal proceedings ..."

8. On 22 April 2005 the applicant was charged with fraud. On 10 June 2005 the District Court extended the applicant's detention until 14 August 2005. The court stated as follows:

"[The applicant] is charged with a serious offence committed by an organised criminal group. The reasons underlying the court's decision to detain the applicant pending investigation still pertain. The court has accordingly grounds to believe that, if released, given that [the applicant] is a member of an organised criminal group, certain members of which are still at liberty and continue their criminal activities and interfere in any possible way with the investigation, [the applicant] will continue his criminal activities too or interfere with the criminal investigation ..."

9. On 2 August 2005 the District Court extended the applicant's detention until 14 November 2005 reiterating verbatim the reasoning in the previous court order.

10. On 7 November 2005 the District Court extended the applicant's detention until 14 February 2006. The court reasoned as follows:

"There are no grounds to [release the applicant] because the circumstances justifying [his] detention still pertain. As prescribed by law, the court cannot discuss the [applicant's] guilt and, when deciding on [the investigator's request], the court is unable to discuss whether the extension of the investigation is justified and ... the court, when considering the request to extend the pre-trial detention, cannot decide to apply another preventive measure."

11. On 14 December 2005 the Moscow City Court upheld the decision of 7 November 2005 on appeal.

12. On 8 February 2006 the District Court extended the applicant's detention until 14 April 2006. With reference to the seriousness of the charges, the court stated that "if released, [the applicant] might abscond or otherwise interfere with the administration of justice".

13. On 13 April 2006 the Moscow City Court extended the pre-trial detention in respect of the applicant and S. until 14 July 2006. Referring to the seriousness of the charges, the court discerned no grounds to release the defendants. On 19 July 2006 the Supreme Court of the Russian Federation upheld the decision of 13 April 2006 on appeal.

14. On 12 July 2006 the City Court extended the pre-trial detention in respect of the applicant, Kar. and S. until 14 October 2006. The court noted as follows:

"It appears from the evidence submitted that S., [the applicant] and Kar. were detained pending investigation in view of the seriousness of the charges, the particular complexity of the case under investigation because of the numerous counts of [fraud], the significant number of defendants, and the possibility for them to put pressure on witnesses or to otherwise interfere with the administration of justice.

These circumstances still pertain today. The detention is still necessary and there are no grounds to release S., [the applicant] and Kar."

15. On 5 October 2006 the City Court extended the applicant's detention until 14 January 2007. The court stated:

"In deciding to extend [the applicant's] pre-trial detention, the court takes into account his medical condition, that he resides permanently in Moscow, that he has no prior convictions and that he has no family ties.

Furthermore, [the court] notes that when detaining [the applicant] pending trial, the court considered that, if released, he might abscond, continue his criminal activities or otherwise interfere with the administration of justice, regard being had to the facts that he was unemployed [and] had no means of subsistence. [Furthermore] according to the reliable information available to the investigating authorities, [the applicant] has put pressure on witnesses. Accordingly, the investigator has correctly specified that [the applicant], if released, might abscond or continue his criminal activities, especially given the number of people under investigation. Some of them are detained and some of them have not yet been identified. [The applicant], if released, would have an opportunity to interfere with the administration of justice."

16. On 9 October and 14 December 2006 the Supreme Court upheld on appeal the decisions of 12 July and 5 October 2006 respectively.

17. On 24 August 2006 the applicant was charged with multiple counts of fraud, money laundering and criminal threatening including death threats.

18. On 27 December 2006 the City Court extended the pre-trial detention in respect of the applicant, Kar. and S. until 14 April 2007 with the following reasons:

"The court takes into account that all the defendants reside in Moscow and have family ties ... and the [applicant's] medical condition Nevertheless, the court

considers that the information concerning the character of all three defendants was taken into account at the time of their detention pending trial. To date the circumstances justifying their detention have not changed or ceased to exist. Furthermore, all three defendants are charged with particularly serious and numerous offences. Apart from the three defendants, there are a great number of people prosecuted on the same charges, and they are not in detention. The present case concerns several counts [of fraud] and the court therefore accepts the investigator's argument that, if released, S., [the applicant] and Kar. would have a real opportunity to interfere with the administration of justice ... [and/or] they might continue their criminal activities or abscond. There is no medical proof submitted that the defendants are unfit for detention in remand prisons."

19. On 13 March 2007 the Supreme Court upheld the decision of 27 December 2006 on appeal.

20. On 30 March 2007 the City Court extended the applicant's detention until 14 June 2007. The court reiterated the reasoning of its previous detention orders. The applicant appealed alleging that the maximum period of pre-trial detention had expired and that he should be released. On 21 May 2007 the Supreme Court upheld the order of 30 March 2007 on appeal. The court noted that the applicant should be detained given that the other defendants had not finished reading the case file.

21. On 4 June 2007 the City Court noted that the applicant had not finished reading the case file and extended his detention until 14 July 2007. The court noted as follows:

"Even though [the applicant] had no previous convictions prior to his arrest, has a permanent place of residence, and is supporting his elderly mother who suffers from a number of serious diseases, he is charged with a number of serious ... offences which entail a custodial sentence ...

In the court's view, the above information concerning the [applicant's] character and the seriousness of the charges are sufficient to justify the [applicant's] detention. If released, he might abscond to prevent the transfer of the case file to the trial court, given that he has not finished reading the case file. He might also continue his criminal activities and influence the course of the trial ..."

2. Trial

22. On 20 June 2007 the Simonovskiy District Court of Moscow received the case file. It comprised 190 volumes and concerned seven defendants, including the applicant, and over 400 witnesses. The case was assigned to Judge P.

23. On 27 June 2007 the District Court scheduled the preliminary hearing of the case for 11 July 2007. The court also noted that the defendants should remain in custody pending trial.

24. On 11 July 2007 the District Court held a preliminary hearing in the case and scheduled the trial for 23 July 2007. The court further reasoned that the applicant and four other defendants should remain in custody pending trial given that they were charged with serious offences and might abscond, continue their criminal activities and/or threaten the witnesses and

other parties to the proceedings or otherwise interfere with the administration of justice. On 26 November 2007 the City Court upheld the decision of 11 July 2007 on appeal.

25. On 25 July 2007 the Supreme Court upheld the decision of 4 June 2007 on appeal.

26. On 10 December 2007 the case was re-assigned to Judge N. The applicant did not receive any written notification thereof.

27. On 11 December 2007 the District Court extended the pre-trial detention in respect of the applicant and four other defendants until 20 March 2008. The court stated as follows:

“When deciding to extend [the defendants’] pre-trial detention, the court considers that, if released, [they might] put pressure on the parties involved in the criminal proceedings [or] interfere with the establishment of the truth.”

28. On 18 March 2008 the District Court extended the applicant’s detention with reference to the seriousness of the charges until 20 June 2008. It issued one court order in respect of five defendants, including the applicant. On 12 May 2008 the City Court upheld the decision of 18 March 2008 on appeal.

29. On 20 June 2008 the District Court extended the applicant’s detention until 20 September 2008. The court noted as follows:

“When deciding to extend the [defendants’] detention, ... the court, in addition to the information concerning the [defendants’] character, takes into account the fact that [they], if released, might put pressure on ... witnesses or otherwise interfere with the establishment of the truth.”

30. On 6 August 2008 the City Court quashed the decision of 20 June 2008 on appeal. The court stated that, in contravention of the applicable rules of criminal procedure, the decision in question was taken in the absence of the defendants’ counsel.

31. On 12 August, 16 September and 16 December 2008 the District Court extended the defendants’ detention until 20 September, 20 December 2008 and 20 March 2009 respectively. The court reiterated verbatim the reasoning contained in the court order of 20 June 2008.

32. On an unspecified date the trial ended and the judge retired into the deliberations room for deliberations and drafting of the judgment. On 20 March 2009 the judge left the deliberations room and started the public pronouncement of the judgment in the case. The introductory part of the judgment (page 1) indicated that the date of its delivery was 20 March 2009. Its text comprised 260 pages. On 10 April 2009 the judge completed the delivery of the judgment. The operative part of the judgment (pages 258-60) specified the sentence imposed on each of the defendants and indicated the preventive measures applicable to them before the judgment came into force. As regards the applicant, the judgment indicated that “the preventive measure (custody) imposed earlier should remain unchanged”. According to

the applicant, the operative part of the judgment was pronounced by the judge on 10 April 2009. The applicant was acquitted of one count of fraud and found guilty of four counts of fraud and two counts of money laundering and sentenced to nine years' imprisonment.

33. On 13 April 2009 the City Court upheld the decision of 16 December 2008 on appeal.

34. On an unspecified date the applicant lodged an appeal against the judgment of 20 March 2009. He did not challenge the lawfulness of his detention from 20 March to 10 April 2009 before the appeal court. On 21 October 2009 the City Court upheld the applicant's conviction on appeal.

B. Conditions of detention

1. Detention in a temporary detention ward and remand prisons

35. From 14 to 19 July 2005 the applicant was detained temporarily in a detention cell at the police station. According to the applicant, metal sheets on the windows prevented access to daylight, and an electric light was constantly on. He further submitted that the bathroom offered no privacy and that it was not possible to take a shower.

36. From 19 July 2005 to 18 October 2008 the applicant was detained in remand prison no. IZ-77/5 in Moscow. He was allegedly held throughout in severely overcrowded cells: the number of beds was insufficient and he had to take turns with other inmates to sleep; the toilet offered no privacy; the inmates had to burn paper to cover the bad smell emanating from the toilet; and the quality of the food was very low.

37. From 18 October 2008 to an unspecified date in 2009 the applicant was detained in remand prison no. IZ-77/6 in Moscow. Whereas the applicant submitted that thirty persons who were detained together had to take turns to eat; that there was a queue to use the toilet and that hot water was only available once a week, he considered the conditions of detention during the said period to be satisfactory.

2. Confinement at the court-house

38. On the days of the court hearing during the period between 20 June 2007 and June 2008 the applicant was detained at the Simonovskiy District Court. According to the applicant, the holding cell was poorly lit and ventilated; all the cells were severely overcrowded and there was no free access to a toilet.

39. In June 2008 the District Court moved to a new building. The applicant did not describe the conditions of his detention there, noting only that they had improved.

3. *Conditions of transport*

(a) **Description submitted by the Government**

40. According to the Government, the prison vans used to transport the inmates to and from the court-house fully complied with sanitary and hygiene standards. They were all equipped with ventilation, heating and lighting systems. The seating capacity of the prison vans was as follows:

Type of the prison van	Seating capacity
UAZ-3741	4-5 inmates
KAvZ-3976	12 inmates
GAZelle	12 inmates
GAZ-3307	24 inmates
ZIL-4334	34 inmates

(b) **Description submitted by the applicant**

41. According to the applicant, on the days of the court hearings in 2007-09 he was transported from the remand prison to the court-house and back in a prison van with two compartments, each measuring 1.5 x 2 m, which held twelve people each.

42. The natural ventilation of the van through the hatches was insufficient and it was difficult to breathe. In the summer it was stiflingly hot inside the van. The vans had no windows or internal lighting.

43. The van collected inmates from different prisons and made several stops at different court-houses and remand prisons. As a result, the applicant spent more than six hours in the van for each day in court.

C. Medical assistance

44. The applicant submitted that he suffered from hypertension, hepatitis, cholecystitis, pancreatitis, gastrobulbitis, diathesis, psoriasis and psychopathy. On 13 September 2006 the applicant sustained a hypertensive crisis. On an unspecified date he was diagnosed with cerebro-asthenic syndrome.

45. According to the applicant, while in detention, he received no proper medical assistance.

46. In July to August 2006 and November to December 2008 the applicant underwent treatment in a prison hospital. The treatment was, in the applicant's view, not effective.

D. Alleged ill-treatment

47. According to the applicant, on numerous occasions he was subjected to psychological pressure during questioning. Following the applicant's arrest, his mother was not allowed to see him until 2008.

48. The applicant submitted that on 31 March 2005 he was brought to the investigator's office for questioning. The police officers who were present there allegedly beat the applicant up causing him concussion and numerous bruises.

49. On 13 July 2006 the prosecutor's office refused to institute criminal proceedings against the alleged perpetrators. The applicant did not take any further action in this respect.

E. Compensation proceedings

50. On 1 November 2010 the applicant brought a civil claim seeking compensation due to, in his view, the unreasonable length of the criminal proceedings against him.

51. On 8 April 2011 the Moscow City Court considered and dismissed the applicant's claims. The court stated, in particular, that the provisions of the new law on compensation were not applicable to the applicant given that he had been convicted prior to the enactment of said law. The applicant appealed.

52. On 31 August 2011 the appellate division of the City Court considered the applicant's appeal. The court noted that on 8 April 2011 it had considered the applicant's case in his absence and quashed the judgment. It further considered it possible to examine the applicant's claims for compensation on the merits and render a new judgment. The City Court dismissed the applicant's claims in full, reasoning as follows:

"It follows from the circumstances of the case that [the criminal proceedings against the applicant] lasted four years six months and eight days.

The [applicant's] criminal case was legally and factually complex. Six defendants were charged with serious and particularly serious offences: S. and Sh. were charged with six counts [of fraud]; K. was charged with seven counts [of fraud]; [the applicant] was charged with four counts [of fraud]; F., Kh. and D. were charged with three counts [of fraud] ... The case ... was particularly complex given that the crimes were committed by an organised group. The defendants, whose guilt had been established in the judgment of 20 March 2009, had had knowledge of the law. In order to achieve their criminal goal, they had worked out a scheme comprising several stages which made it difficult to detect and record the evidence, and to establish the circumstances of the case that affected the overall length of the investigation and trial stages of the proceedings.

The [applicant's] behaviour had also had an impact on the length of the proceedings. He repeatedly lodged requests with the authorities asking, *inter alia*, for additional interviews and changes of the time of interviews.

Furthermore, it was incumbent on the authorities, during the investigation stage, to establish the whereabouts of and arrest suspects S., A. and N., and to ask for legal assistance from a foreign state [Ukraine] ...

There were no substantial or unreasonable periods of inactivity in the conduct of the investigation proceedings ... The authorities' failure to comply with the statutory time-limits does not amount, as such, to the violation of the [applicant's] right to a trial within a reasonable time.

It follows that there has been no violation of the [applicant's] right to investigation within a reasonable time (the investigation stage lasted two years, two months and five days).

The judicial proceedings lasted two years, four months and one day ...

The length of the judicial proceedings was justified in view of the factual and legal complexity of the case, the great number of defendants and witnesses to be questioned, and the behaviour of the parties to the proceedings. The hearing of the case was adjourned for a short period (less than two weeks). The trial court took the necessary steps to summon and question witnesses ... the case was promptly forwarded to the appeal court ...

In view the above, the court considers that the length of the judicial proceedings against [the applicant] was reasonable.

It follows that the criminal proceedings [against the applicant] have complied with the reasonable time criterion and that the length of the criminal proceedings has not been excessive ...

Regard being had to the fact that the length of [the criminal proceedings against the applicant] has been reasonable and that there was no violation of the [applicant's] right to a trial within a reasonable time, the court does not discern any grounds to grant the [applicant's] claim for compensation for the violation of his right to a trial within a reasonable time."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures

53. "Preventive measures" include an undertaking not to leave town, a statement of guarantee, bail, house arrest and remand in custody (Russian Code of Criminal Procedure (CCrP), Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (CCrP Article 112).

54. When deciding on a preventive measure, 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 (CCrP Article 97). 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 (CCrP Article 99).

55. Detention may be ordered by a court in respect of a person suspected of or charged with a criminal offence punishable by more than three years' imprisonment, provided that a less restrictive preventive measure cannot be applied (CCrP Article 108 § 1).

B. Adoption and delivery of the judgment

56. Once the court completes the deliberations and prepares the text of the judgment, its members leave the deliberations room and the president pronounces the judgment. The court signs the judgment and indicates the date of its delivery (CCrP Article 310). The date indicated in the judgment is the date when the court leaves the deliberations room and starts pronouncing the judgment. The date when the court finishes pronouncing the judgment shall be taken into consideration for the purposes of calculation of the time-limit for lodging an appeal against the judgment (Appeal judgment of the Supreme Court of the Russian Federation no. 9-O05-12 of 29 April 2005).

C. Detention pending appeal proceedings

57. Arrest, remand in custody and detention shall be authorised by a court order (Constitution of the Russian Federation, Article 22 § 2).

58. If the trial court finds a defendant guilty, when delivering the judgment in the case, it should decide on the issue of the defendant's detention for the period before the judgment becomes final. The decision should be set out in the operative part of the judgment (CCrP Article 308 § 1 (10)).

III. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE ON THE CONDITIONS OF PRISONERS' TRANSPORT

59. The relevant provisions of international documents concerning the conditions of prisoners' transport are set out in the judgment of *M.S. v. Russia*, no. 8589/08, §§ 64-65, 10 July 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicant complained about the alleged ill-treatment in custody and the conditions of his detention on remand pending the investigation and trial. He also complained about the conditions of his transport to and from

the courthouse. He referred to Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

61. In respect of the latter complaint, the Government submitted that the conditions in which the applicant had been transported were in compliance with Article 3 of the Convention. The prison vans were never filled beyond the capacity for which they had been designed. The ventilation, heating and lighting were in good working order and in compliance with applicable technical standards. The vans were cleaned daily and disinfected on a weekly basis. Referring to the failure on the applicant’s part to indicate the specific dates of transportation, they claimed that it was not possible to provide detailed information as regards each journey to and from the court-house.

62. The applicant maintained his complaint.

A. Admissibility

63. In so far as the applicant alleged that he had been subjected to ill-treatment in police custody, the Court notes that his allegations had been considered by the prosecutor who did not find a *prima facie* case of ill-treatment and, by decision of 13 July 2006, decided not to institute criminal proceedings (see paragraph 49 above). The applicant chose not to appeal against the said decision to a court. Nor did he provide any explanation for that omission on his part. In such circumstances, the Court finds that the applicant’s complaint concerning the alleged ill-treatment by the police must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention (compare, *Belevitskiy v. Russia*, no. 72967/01, §§ 54-67, 1 March 2007).

64. As regards the applicant’s complaint about the conditions of his detention from 14 July 2005 to 18 October 2008 at the police station and in remand prison no IZ-77/5 (see paragraphs 35-36 above), the Court observes that the applicant introduced the complaint on 27 August 2009. In this connection, it reiterates that the applicant had no remedy to exhaust (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 100-19, 10 January 2012). Thus, the complaint should have been submitted no later than 18 April 2009. However, as it was introduced on 27 August 2009, it has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

65. In so far as the applicant may be understood to complain about the condition of his detention in remand prison no. IZ-77/6 from 18 October to an unspecified date in 2009, the Court does not find that, in the particular circumstances of the present case, the treatment complained of went beyond

the threshold of severity under Article 3 of the Convention. In particular, the Court notes that the applicant considered the conditions of his detention to be satisfactory (see paragraph 37 above). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

66. However, the Court considers that the complaint about the conditions of the applicant's transport during the criminal proceedings against him 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

67. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

68. Ill-treatment that attains such a minimum level of severity usually involves actual bodily harm or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).

69. In the context of deprivation of liberty, the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured

(see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

2. Application of these principles to the present case

70. The Court reiterates, from the outset, that Convention proceedings such as the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent government alone have access to information capable of corroborating or refuting allegations. A failure on a government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, *mutatis mutandis*, *Creangă v. Romania* [GC], no. 29226/03, § 89, 23 February 2012; and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

71. The Court observes that the Government were unable to provide, apart from the indication of the brand name of the prison vans and their seating capacity (see paragraph 40 above), any specific information on the conditions in which the applicant was transported to and from the court-house. The Court, however, cannot accept the Government's argument that the sole reason for such omissions on their part was the applicant's failure to indicate the dates of those journeys, as the applicant's complaint expressly referred to the dates of the court hearings in his case which were well-known to the Government.

72. Having examined the parties' arguments, the Court considers that the Government have not provided a satisfactory explanation for their failure to submit the information on the conditions of the applicant's transport to and from the court-house and accepts as credible the applicant's allegations on the issue.

73. The Court observes that the applicant was transported together with eleven other inmates in a prison van measuring 3 sq. m (see paragraph 41 above). Accordingly, the personal space afforded to the applicant was no more than 0.25 sq. m. The applicant had to endure those cramped conditions twice a day, on the way to and from the court-house, and he was transported in such conditions ninety-eight times during the period between 20 July 2007 and 10 April 2009 (see paragraph 100 below). The journeys lasted as long as six hours (see paragraph 43 above).

74. In view of these facts, the Court concludes that the applicant was transported in overcrowded prison vans, the negative effects of which were exacerbated by the duration of the journeys (compare, *Idalov v. Russia* [GC], no. 5826/03, § 106, with further references, 22 May 2012).

75. The above considerations are sufficient for the Court to find that the applicant was subjected to inhuman and degrading treatment in breach of

Article 3 of the Convention during his transfers to and from the court-house. There has therefore been a violation of that provision in this regard.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

76. The applicant complained that from 20 March to 10 April 2009 he had been detained in the absence of a court order and that his pre-trial detention had been unreasonably long. He relied on Article 5 of the Convention, which, in so far as relevant, 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:

(a) the lawful detention of a person after conviction by a competent court ...

(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 ...

3. 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.”

77. The Government contested that argument. They submitted that the applicant's detention had been in compliance with the requirements set forth in Article 5 of the Convention. In particular, the applicant's detention from 20 March to 10 April 2009 had been lawful and justified. Up until 20 March 2009 the applicant had been detained on the basis of a court order of 16 December 2008. After that date the basis for the applicant's detention had been the judgment of 20 March 2009. As to the length of the pre-trial detention, the domestic courts had taken into account all the relevant circumstances when deciding to detain the applicant pending investigation and trial. The case against him had been complex. They further considered that by relying on the seriousness of the charges against the applicant and other relevant circumstances the domestic courts had rightfully justified their decisions to detain the applicant during the criminal proceedings against him. Lastly, they pointed out that the domestic judicial authorities had dealt with the case without undue delays.

78. The applicant maintained his complaint. He submitted that the last detention order issued by the trial court had authorised his detention until 20 March 2009. From 20 March to 10 April 2009 the presiding judge had read out the judgment in the case. The period of the applicant's detention between 20 March and 10 April 2009 had not been covered by any court order and his detention had been unlawful. The indication in the judgment of 20 March 2009 to the effect that the applicant should be detained until the judgment came into force, could not be accepted as a valid authorisation of the applicant's detention from 20 March to 10 April 2009 given that the

judge had communicated that decision to him only after the said period had expired.

A. Admissibility

79. The Court notes that these complaints are 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. They must therefore be declared admissible.

B. Merits

1. Article 5 § 1

(a) General principles

80. 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).”

(b) Application of the general principles in the present case

81. Turning to the circumstances of the present case, the Court observes that the applicant did not challenge the fact that the judgment in his case had been prepared by 20 March 2009, namely during the period of his detention authorised by the court order of 16 December 2008 (see paragraph 31

above). Nor did he challenge the validity of the date of the judgment which was 20 March 2009 (see paragraph 32 above). Before the Court he claimed that the court's decision to detain him during the period from 20 March 2009 until the judgment in his case became final had been communicated to him only on 10 April 2009 and, accordingly, such belated communication was not compatible with the standards set out in Article 5 § 1 of the Convention and rendered his detention from 20 March to 10 April 2009 unlawful.

82. In this connection, the Court takes into account the Government's argument that the applicant's detention from 20 March to 10 April 2009 was authorised by the judgment in the case. It accepts that the text of the judgment was prepared by the domestic court by 20 March 2009 and contained the court's authorisation of the applicant's detention until the judgment in his case became final. The Court does not lose sight, however, that the judge chose to disclose to the applicant the decision concerning his detention only on 10 April 2009, that is with more than a twenty days' delay. Given such a lapse of time, the Court cannot accept that the omission on the judge's part had no bearing on the applicant's situation. For more than twenty days, the applicant remained in a state of uncertainty as regards the legal basis for his detention. In the Court's view, such belated communication to the applicant of the information concerning his detention amounts to its *ex post facto* authorisation which the Court has consistently held to be incompatible with "the right to security of person" as it is necessarily tainted with arbitrariness. Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (compare, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X (extracts); and *Vasiliy Vasilyev v. Russia*, no. 16264/05, § 73, 19 February 2013). Lastly, the Court notes that the Government have not relied on any specific domestic legal provision that would allow the judge to delay the communication of his or her decision on detention to the person concerned.

83. The Court therefore considers that there was a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 20 March to 10 April 2009.

2. Article 5 § 3

(a) The period to be taken into consideration

84. In the present case the period to be taken into consideration lasted from 14 April 2005, when the applicant was arrested, to 20 March 2009,

when the applicant was convicted by the trial court (see paragraphs 6 and 32 above). It amounted to approximately four years.

(b) General principles

85. The Court reiterates that the question of whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the basis of the facts and specific features of the case. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudla*, cited above, §§ 110 et seq.).

86. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita*, cited above, §§ 152 and 153). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

87. The responsibility falls in the first place on the national judicial authorities to ensure that in a given case the pre-trial detention of an accused person does not exceed a reasonable length. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the arguments for or against the existence of a public interest which justifies a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

3. Application of these principles to the present case

88. The Court accepts that the reasonable suspicion that the applicant committed the offences he was charged with, being based on cogent evidence, persisted throughout the trial leading to his conviction. However,

with the passage of time those grounds inevitably became less and less relevant. Accordingly, the Court must establish whether the other grounds given by the judicial authorities justified the continued deprivation of liberty (see paragraph 86 above).

89. The length of the applicant's pre-trial detention – almost four years – is a matter of concern for the Court. It observes that at no point in the proceedings did the domestic authorities consider whether the length of the detention had exceeded a "reasonable time". The Court furthermore considers that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in pre-trial detention for such a long time.

90. When deciding on the issue of the applicant's pre-trial detention, the domestic authorities referred to the seriousness of the charges against him. In this respect they noted that he might put pressure on witnesses or otherwise interfere with the administration of justice, abscond, and/or continue criminal activities.

91. The Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view taking into consideration only the seriousness of the offence. Nor can the continuation of detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilykov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

92. The Court accepts that in cases concerning organised crime involving numerous accused, the risk that a detainee, if released, might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. These factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with acting in a criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behavior must always be taken into account.

93. As regards the argument advanced by the domestic judicial authorities that the applicants might put pressure on witnesses or otherwise interfere with the administration of justice, the Court has regard to the fact that the applicant was initially detained pending trial in April 2005 in order to prevent him from putting pressure on witness Sh. (see paragraph 7 above). However, subsequently the domestic courts did not take this into account when extending his detention. In such circumstances the Court has difficulty accepting the argument that there was a risk of interference with the administration of justice. Furthermore, such a risk was bound to decrease gradually as the trial proceeded and the witnesses were interviewed

(compare *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006) The Court is not therefore persuaded that throughout the entire period of the applicant's detention compelling reasons existed to fear that he would interfere with witnesses or otherwise hamper the investigation of the case; and certainly not enough to outweigh the applicant's right to trial within a reasonable time or release pending trial.

94. As regards the existence of a risk of absconding or reoffending, the Court reiterates that such a danger cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005; and *Letellier*, cited above, § 43). In the present case the decisions of the domestic authorities gave no reasons why they considered the risk of his absconding to be decisive. The Court finds that the existence of a risk that the applicant might abscond was not established.

95. The Court also notes that in ordering the extensions of the applicant's detention the courts used identical or similar wording repeatedly. Such an approach may suggest that there was no genuine judicial review of the need for detention at each extension of detention (see *Yağcı and Sargin v. Turkey*, 8 June 1995, § 50 et seq., Series A no. 319-A).

96. The Court further reiterates that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case, the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" which are expressly provided for in Russian law to ensure the proper conduct of criminal proceedings. At no point in the proceedings did the domestic courts explain in their decisions why alternatives to depriving the applicant of liberty would not have ensured that the trial would follow its proper course.

97. Having regard to the above, the Court considers that by relying essentially on the seriousness of the charges and by failing to substantiate their findings by pertinent specific facts or to consider alternative "preventive measures", the authorities extended their detention on grounds which, although "relevant", cannot be regarded as sufficient to justify its duration of almost four years. In these circumstances it would not be necessary for the Court to examine whether the domestic authorities acted with "special diligence".

98. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

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

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

100. The Government contested that argument. They argued that the length of the criminal proceedings against the applicant had been reasonable. The case had been complex. It had concerned seven defendants. The case file materials comprised 191 volumes. The trial court held ninety-eight hearings, which were scheduled and held regularly. There had been no unjustified adjournments or delays. The court had to examine voluminous evidence, including statements by over 400 witnesses. Lastly, the Government argued that the applicant had failed to exhaust effective domestic remedies in respect of his complaint about the length of the criminal proceedings against him. In particular, as of 4 May 2010 the applicant could have applied for compensation had he considered that his right to a trial within a reasonable time had been infringed.

101. The applicant maintained his complaint. He further challenged the veracity of the Government’s allegations that he had failed to exhaust the effective domestic remedies in respect of the complaint. In particular, on 1 November 2010 he brought a civil claim seeking compensation for the unreasonably long criminal proceedings in his case. On 8 April 2011 the Moscow City Court considered the case in the applicant’s absence dismissing his claims. On 31 August 2011 the appellate division of the City Court quashed the judgment of 8 April 2011 and considered the applicant’s claims on the merits. The court found that the length of the criminal proceedings against the applicant had been reasonable and dismissed the applicant’s claims for compensation.

A. Admissibility

102. As regards the Government’s objection as to the non-exhaustion of domestic remedies by the applicant, the Court notes that the applicant did apply for compensation for the alleged violation of his right to a trial within a reasonable time (see paragraphs 50-52 above). The Court finds the Government’s objection, therefore, without merit.

103. 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

104. The Court reiterates that the reasonableness of the length of the 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). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

105. The Court observes that the applicant was arrested on 14 April 2005 (see paragraph 6 above). It takes this date as the starting point of the criminal proceedings. The final judgment in the case was rendered on 21 October 2009 (see paragraph 34 above). Accordingly, the proceedings against the applicant lasted over four and a half years, which spanned the investigation stage and consideration of the applicant’s case by the courts at two levels of jurisdiction.

106. The Court further observes that the issue of the length of the criminal proceedings against the applicant was examined by national courts at two levels of jurisdiction. The national judicial authorities established that the applicant’s case had been particularly complex, that the applicant had partially contributed to the length of the proceedings and that there had been no substantial or unreasonable periods of inactivity on the part of the authorities (see paragraph 52 above). The Court discerns nothing in the applicant’s submissions for it to hold otherwise.

107. The Court accepts that the proceedings against the applicant were complex. The applicant was charged with several counts of fraud and money laundering as part of an organised group. Charges were brought against seven individuals.

108. It further appears that the applicant’s conduct has not substantially contributed to the length of the proceedings. In any event, the Court reiterates that the applicant cannot be blamed for taking full advantage of the resources afforded by national law in his or her defence (see, among other numerous authorities, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 66, Series A no. 319-A).

109. As to the conduct of the authorities, the Court is satisfied, as indicated above, that they demonstrated sufficient diligence in handling the proceedings. The investigation stage was completed in two years and two months. The trial hearings were held regularly and without excessive delays. Admittedly, it took the court of the first level of jurisdiction almost one year and ten months to conduct the trial, but the court held ninety-eight hearings and examined voluminous evidence. The appeal proceedings lasted seven

months (compare *Idalov*, cited above, §§ 186-92, and *Shcherbakov v. Russia* (no. 2), no. 34959/07, §§ 107-13, 24 October 2013).

110. Making an overall assessment of the complexity of the case, the conduct of the parties and the total length of the proceedings, the Court considers that the latter did not go beyond what may be considered reasonable in this particular case.

111. There has accordingly been no violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. Lastly, the applicant complained about alleged lack of adequate medical treatment in police custody, unfairness of the criminal proceedings against him and insufficient review of his pre-trial detention. He referred to Articles 3, 5, 6, 7 and Article 4 of Protocol No. 7.

113. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

116. The Government considered the applicant's claims excessive. In their opinion, a finding of a violation of the applicant's rights set out in the Convention, would constitute sufficient just satisfaction.

117. The Court observes that it has found a violation of Article 3 of the Convention on account of the applicant's transport to and from the court-house, a violation of Article 5 § 1 of the Convention due to an unlawful period of detention, and a violation of Article 5 §§ 3 on account of unlawfulness and excessive length of the applicant's detention. As a result of the violation of his rights, the applicant must have suffered anguish and

distress which cannot be compensated for by a mere finding of a violation. Having regard to those considerations, the Court awards the applicant, on an equitable basis, EUR 8,250 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

118. The applicant did not claim any costs and expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the conditions of the applicant's transport to and from the court-house, the lawfulness of his detention from 20 March to 10 April 2009 and the length of the applicant's pre-trial detention and criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 20 March to 10 April 2009;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,250 (eight thousand two hundred fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
7. *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