



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

THIRD SECTION

CASE OF KOVROV AND OTHERS v. RUSSIA

(Applications nos. 42296/09 and 4 others – see list appended)

JUDGMENT

Art 5 § 3 • Unjustified length of the applicants' pre-trial detention and house arrest

Art 5 § 5 • Lack of an enforceable right to compensation for detention in breach of Article 5 § 3

Art 46 • Respondent State required to continue to adopt measures to address the structural problem

STRASBOURG

16 November 2021

FINAL

16/02/2022

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

In the cases of Kovrov and Others v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the applications (nos. 42296/09, 71805/11, 75089/13, 1327/16 and 14206/16) 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 five Russian nationals (“the applicants”), whose details are listed in Appendix I;

the decision to give notice to the Russian Government (“the Government”) of the complaint concerning unjustified pre-trial detention and house arrest, the right to compensation for the violation of the right to trial within a reasonable time or to release pending trial and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 12 October 2021,

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

INTRODUCTION

1. The present case concerns complaints about pre-trial detention and house arrest and the right to compensation for the violation of the right to trial within a reasonable time or to release pending trial.

THE FACTS

2. The applicants’ names and the dates on which they lodged their applications are set out in Appendix I.

3. The Government were represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. SUMMARY OF FACTS

5. The applicants were arrested on suspicion of various crimes and were placed under house arrest. Some of them were remanded in custody and then the preventive measure was changed to house arrest.

6. The domestic courts extended the applicants' pre-trial detention and house arrest by using formulaic reasoning and listing the grounds provided for by the Code of Criminal Procedure, such as the gravity of the offence, the possibility of the applicant absconding, putting pressure on witnesses, interfering with the investigation or reoffending, without linking them to the circumstances of the applicants' cases. They ordered the applicants' pre-trial detention and house arrest on the same grounds throughout the pre-trial detention or house arrest. The appellate courts reproduced the wording of the first-instance courts' decisions and dismissed the applicants' appeals against the detention and house arrest orders. The particular circumstances of the cases are indicated in the table below.

Application no.	Applicant's name	Period of detention and house arrest	Grounds for detention and house arrest
42296/09	Mr Kovrov	26.01.2012 – 23.09.2013 (detention) 23.09.2013 – 12.12.2013 (house arrest) (1 year, 10 months, 17 days)	Gravity of the charges; collective house arrest order; difficult character; vagrancy; addiction to alcohol, registration with a body responsible for the supervision of minors; previous administrative offences; no control by his mother; pressure on witnesses; possibility of interfering with the investigation, absconding or reoffending; no registered address; inability to finalise the investigation; the need to conduct forensic examinations.
71805/11	Mr Ulyanitskiy	13.04.2011 – 08.06.2012 (house arrest) (1 year, 1 month, 26 days)	Gravity of the charges; pressure on witnesses and victim; possibility of interfering with the investigation, destroying evidence, absconding; the need to study the case materials.
75089/13	Mr Botnaryuk	28.12.2012 – 10.02.2014 (house arrest) (1 year, 1 month, 13 days)	Gravity of the charges; collective house arrest order; pressure on witnesses and co-accused; possibility of interfering with the investigation; the need to carry out investigative acts.
1327/16	Mr Isaichev	03.04.2015 – 10.03.2017 (house arrest) (1 year, 11 months, 7 days)	Gravity of the charges; collective house arrest order; possible threats against witnesses (the applicant's subordinates); possibility of absconding, destroying

			evidence or in any other way interfering with the investigation; the need to conduct investigative acts and study the case materials.
14206/16	Mr Nikolenko	08.08.2013 – 04.10.2013 (detention) 04.10.2013 – 14.08.2017 (house arrest) (4 years and 7 days)	Gravity of the charges, threats against witnesses, possibility of absconding, destroying evidence, committing crimes or in any other way interfering with the investigation; the need to conduct investigative acts.

II. FACTS OF INDIVIDUAL CASES

A. Mr Kovrov, application no. 42296/09

7. On 26 January 2012 the applicant, 16 years old at the time, was arrested on suspicion of inflicting bodily harm resulting in the death of the victim.

8. On 27 January 2012 the Yegoryevsk Town Court of the Moscow Region remanded the applicant in custody on the grounds that he was suspected of a serious crime, had a difficult character, was prone to lies and vagrancy, which was confirmed by a certificate from his school, was addicted to alcohol, was registered with the Juveniles Commission, had committed several administrative offences, in particular, drinking alcohol in a public place, and might put pressure on witnesses and interfere with the investigation. Mr Kovrov lived with his mother who had been convicted of administrative offences too and did not pay enough attention to him. In 2006 to 2008 he had been taken away from his family and placed into care. The court dismissed arguments by the applicant and his mother against the pre-trial detention and concluded that there was no reason to choose another preventive measure.

9. On 26 March, 10 April, 8 June, 10 August, 10 September, 11 October and 10 December 2012 the Yegoryevsk Town Court extended the applicant's pre-trial detention, referring to the same grounds. The court noted that the applicant had not been registered at any place of residence. Therefore, it was impossible to choose any other restrictive measure such as house arrest. The court also held that the applicant could abscond or reoffend without referring to any details. Furthermore, the investigation had not been completed and there were forensic examinations to be conducted. The court dismissed his mother's arguments that she would be able to look after him during the investigation, stating that she was unable to control her son.

10. On 24 June 2013 the Yegoryevsk Town Court extended the pre-trial detention of the applicant (and his co-defendant), stating that he was charged with a serious crime, that taking into account his character and the circumstances of the case the preventive measure could not be changed, and that a psychiatric examination of him was necessary.

11. The applicant lodged appeals against the detention orders, but the Moscow Regional Court dismissed them.

12. On 23 September 2013 the Yegoryevsk Town Court placed him under house arrest, holding that he was charged with a serious crime and that his liberty should therefore be restricted. However, he had already been detained for a long time; he had committed the crime when he had been a minor, and he could live with his mother, who was able to take care of him. By the same order, the court placed the applicant's co-defendant under house arrest. The court prohibited them from leaving their place of residence, communicating with witnesses, sending and receiving correspondence and using communication devices and the Internet.

13. On 20 November 2013 the Yegoryevsk Town Court extended the applicant's house arrest, stating that there was no reason or new circumstances which required the preventive measure to be changed.

14. On 12 December 2013 the Yegoryevsk Town Court convicted the applicant as charged and sentenced him to four years' imprisonment.

15. On 24 December 2013 the Moscow Regional Court dismissed an appeal by the applicant against the decision of 20 November 2013.

B. Mr Ulyanitskiy, application no. 71805/11

16. On 29 October 2008 the applicant was arrested on suspicion of fraud and questioned as a suspect.

17. On 30 October 2008 he was released on an undertaking not to leave town.

18. On 11 November 2008 the undertaking not to leave town was cancelled.

19. On 13 April 2011 the applicant was charged with fraud and the Ostankinskiy District Court of Moscow ordered him to be placed under house arrest, stating that he was suspected of a serious crime, but that as he had not been prosecuted before, there was no reason to choose a more restrictive preventive measure. The measure in question would prevent him from interfering with the investigation by putting pressure on witnesses and the victim or destroying documents. The court dismissed the applicant's argument that he had not fled the investigation and had appeared for questioning when summoned by the investigator. The court considered that he did not have the status of an accused at that time and that there was no reason to fear criminal prosecution. The court imposed on the applicant the following prohibitions:

“- leaving his permanent place of residence at the address ... without the investigator’s written consent;

- sending and receiving correspondence, including letters, telegrams, parcels and emails;

- giving talks and speeches, making statements and comments on this criminal case through the mass media;

- communicating with others without the investigator’s written consent using any communication tools, including radio, telephone, television or the Internet.”

20. On 1 July 2011 the applicant was charged with embezzlement, fraud and failure to comply with a court order.

21. On 20 and 30 December 2011 the Ostankinskiy District Court extended his house arrest on the same grounds. It also found that he might have hidden a debt document important for the criminal case.

22. On 6 March 2012 the applicant was charged with additional counts of embezzlement, fraud and failure to comply with a court order.

23. On 4 and 10 April 2012 the District Court extended the house arrest, stating that the circumstances of the case had not changed and that there was no reason to change the preventive measure, that the investigation was not finished, that the applicant was accused of several crimes, that he had been put on the wanted list at the beginning of the investigation, that he had not appeared at the police station several times and could hence abscond, that he had not studied all the case materials, that it was necessary to conduct several forensic examinations and that he could interfere with the investigation. The court also held, referring to witness statements in the case file, that some witnesses were afraid that the applicant could put pressure on them.

24. The Moscow City Court dismissed appeals by the applicant against his house arrest.

25. On 8 June 2012 the investigator changed the preventive measure from house arrest to an undertaking not to leave town, stating that the applicant had appeared for questioning and that there was no indication that he would destroy evidence, put pressure on witnesses or in any other way interfere with the investigation.

26. On 7 October 2013 the District Court convicted the applicant of fraud and sentenced him to five years’ imprisonment.

C. Mr Botnaryuk, application no. 75089/13

27. On 24 December 2012 the applicant was charged with falsifying evidence and perjury.

28. On 28 December 2012 the Vorkuta Town Court of the Komi Republic placed him under house arrest, stating that there was enough evidence of his involvement in the crime and that house arrest was justified by the gravity of the charges. The court also established, based on witness

statements, that the applicant had tried to find out what the witnesses were going to say during questioning. The court concluded that the applicant's contact with the witnesses must be prohibited. At the same time, as he was not prone to disorderly conduct, had a permanent place of residence, had children, had a lawful source of income, had never been prosecuted under the Code of Administrative Offences or on any other grounds, there was no reason to place him in custody. The court imposed the following prohibitions on the applicant:

“- leaving his permanent place of residence at the address ... unless there is an emergency, a need to see a doctor or to appear on summons;

- communicating using any communication tools or the Internet;

- communicating with witnesses, suspects and co-accused involved in the criminal proceedings against [the applicant], except for [the mother of his child] living with him.”

29. On 19 February 2013 the Vorkuta Town Court extended the house arrest, stating that the applicant was accused of a serious crime and could interfere with the investigation and influence witnesses. The court added that the case was complex and that it was necessary to obtain an expert opinion, question witnesses and the accused, and bring final charges. The police had found bullets for a hunting gun at his home. The court concluded that the applicant could reoffend and refused to replace the house arrest with an undertaking not to leave town, stating that there was no reason to change the existing preventive measure.

30. On 30 April 2013 the Vorkuta Town Court extended the house arrest on the grounds that the applicant was charged with several crimes, could put pressure on witnesses and his co-accused, could interfere with the investigation, that the circumstances of the case had not changed and that there was no reason to change the preventive measure.

31. On 24 June 2013 the Vorkuta Town Court extended the house arrest by a collective decision, stating that the applicant was accused of serious crimes and that the circumstances of the case had not changed. It also held that the applicant's co-defendant, Ms M., should remain on an undertaking not to leave town. The court dismissed, without any explanation, a request by the applicant for release on an undertaking not to leave town, and his argument that he could not work and earn money for his family while under house arrest.

32. On 17 July and 20 August 2013 the Vorkuta Town Court extended the house arrest without giving any reasons.

33. Appeals by the applicant against the house arrest orders were dismissed.

34. In December 2013 the applicant applied to have some of the conditions of his house arrest altered to allow him to attend church every

Sunday, go for a three-hour walk every day and talk to his lawyers on the telephone.

35. On 25 December 2013 the Vorkuta Town Court dismissed his application on the grounds that the circumstances of the case had not changed.

36. Following an appeal by the applicant, on 31 January 2014 the Supreme Court of the Komi Republic upheld this decision.

37. On 10 February 2014 the Vorkuta Town Court convicted the applicant of falsifying evidence, misrepresentation and illegal possession of firearms. He was sentenced to four years and three months' imprisonment.

D. Mr Isaichev, application no. 1327/16

38. On 2 April 2015 the applicant was charged with giving bribes.

39. On 3 April 2015 the Presnenskiy District Court of Moscow placed him under house arrest on the grounds that he was charged with a serious crime, could threaten witnesses (his subordinates), and could abscond, destroy evidence or in any other way interfere with the investigation. The court also referred to his character, without specifying any details, and imposed the following prohibitions on him:

“- leaving his permanent place of residence at the address ... without the investigator's consent;

- communicating using communication tools except for emergency calls in the event of medical necessity or an accident;

- communicating with the parties to this criminal case;

- sending and receiving correspondence without the investigator's consent.”

40. On 20 May 2015 the Presnenskiy District Court extended house arrest in respect of the applicant and his accomplices, referring to the seriousness of the offence, the flight risk and stating that they could interfere with the investigation.

41. On 23 September and 25 November 2015 the Cheremushkinskiy District Court of Moscow extended the applicant's house arrest on the same grounds. The court also noted that the investigation was still ongoing, that there was a need to collect evidence, that the case was complex and some further investigative acts were required, and that the applicant would study the case file.

42. On 25 January, 18 March, 21 April, 24 and 26 May, and 19 August 2016 the Cheremushkinskiy and Gagarinskiy District Courts of Moscow extended the house arrest, stating that the case was complex and it was necessary to conduct investigative acts, that the applicant was accused of a serious crime, could abscond, destroy evidence, put pressure on other parties to the proceedings or in any other way interfere with investigation, and that he had to study the case materials. The court held that any other

less strict preventive measure would not ensure the applicant's proper behaviour.

43. The Moscow City Court dismissed appeals by the applicant against his house arrest.

44. On 22 August 2016 the Cheremushkinskiy District Court remitted the case to the prosecutor and extended the applicant's house arrest without indicating any reasons.

45. On 10 March 2017 the Timiryazevskiy District Court of Moscow placed the applicant under an undertaking to appear.

46. On 8 August 2017 the Timiryazevskiy District Court convicted the applicant of bribery and gave him a five-year suspended sentence and a fine.

E. Mr Nikolenko, application no. 14206/16

47. On 8 August 2013 the applicant was arrested on suspicion of corruption.

48. On 9 August 2013 the Leninskiy District Court of Vladivostok remanded him in custody, stating that he had refused to plead guilty and that considering the gravity of charges, he could abscond and put pressure on unspecified witnesses. It also held that it was impossible to place him under house arrest because he could not be controlled by the authorities and might hinder the collection of evidence.

49. On 4 October 2013 the court changed the preventive measure in respect of the applicant to house arrest, stating that he was charged with a serious crime, that there was evidence of his involvement in the crime, and that the investigation was not finished. The court dismissed as unsubstantiated the investigator's arguments that the applicant had relatives in Ukraine and could therefore abscond, and that he could interfere with investigative acts. It further established that as the applicant had a job, a family, a permanent place of residence and was characterised as a good person, house arrest was an adequate preventive measure in the circumstances of the case. The applicant was prohibited from:

“1. ...leaving [his] permanent place of residence ... without the investigator's consent, except in the event of the need to undergo urgent medical treatment after notifying the investigator or to be hospitalised;

2. Communicating with anybody except his lawyers, next-of-kin living with him and doctors without the investigator's consent.

3. Sending and receiving correspondence, except for correspondence necessary for exercising the rights of the suspect or accused in criminal proceedings.

4. Communicating using any tools, except for communication with his lawyers and the investigator.”

50. Between December 2013 and July 2017 the Leninskiy District Court and Mikhaylovskiy District Court of the Primorye Region extended the

house arrest, stating that the applicant was charged with a serious crime, and that he could abscond, threaten witnesses using his friends working in the police, commit crimes and interfere with the investigation. The applicant suffered from brain ischemia and was being treated in hospital as an outpatient. However, there was no reason to replace house arrest with another less restrictive preventive measure.

51. On 9 February 2016 the Mikhaylovskiy District Court dismissed a request by the applicant for release on the same grounds.

52. The Primorye Regional Court dismissed appeals by the applicant against his pre-trial detention and house arrest.

53. On 14 August 2017 the Mikhaylovskiy District Court convicted the applicant of corruption and sentenced him to four years and four months' imprisonment and a fine.

RELEVANT LEGAL FRAMEWORK, PRACTICE AND INTERNATIONAL DOCUMENTS

I. LEGAL FRAMEWORK FOR PRE-TRIAL DETENTION AND HOUSE ARREST

54. For the relevant provisions on pre-trial detention, see *Zherebin v. Russia* (no. 51445/09, §§ 16-25, 24 March 2016).

55. Pursuant to Articles 97 and 99 of the Code of Criminal Procedure ("CCrP"), which contain general provisions on preventive measures, when deciding on a preventive measure the competent authority is required to consider whether there are "sufficient grounds to believe" that a suspect or an accused would abscond, reoffend, threaten witnesses or other parties to the proceedings, destroy evidence or otherwise interfere with the administration of justice (Article 97). It must also take into account the seriousness of the charges, information on his or her character, profession, age, state of health, family status and other circumstances (Article 99).

56. Article 107 § 1 of the CCrP provides that house arrest can be ordered by a court if it is impossible to impose a less restrictive preventive measure and implies detention of a suspect or an accused at his or her place of residence, subject to some restrictions and prohibitions and supervision by a competent body.

57. House arrest can last for up to two months. If it is impossible to complete the investigation within two months and there are no grounds for changing or cancelling the preventive measure, the court may extend the house arrest (Article 107 § 2).

58. Under Article 107 §§ 7 and 8, when ordering house arrest, the court may impose on a suspect or an accused various prohibitions as regards, in particular, (1) leaving his or her place of residence, (2) communicating with certain persons, (3) receiving and sending correspondence, and (4) using

communication devices or the Internet. Depending on the seriousness of the charges and circumstances of the case, the court may impose all these prohibitions and restrictions or only some of them. The court may change the restrictions imposed at the request of a suspect or an accused, his or her counsel, legal representative or the investigator. The right of a suspect or an accused to call an ambulance, the police or the rescue service in the event of an accident, as well as the supervising body or the investigator, cannot be restricted. He or she must inform the supervising body of every such call.

59. Article 107 § 9 provides that an order for house arrest must stipulate how to apply the preventive measure (place of residence, term, when a suspect or an accused may leave his or her place of residence, restrictions and prohibitions, places he or she may go).

60. A suspect or an accused placed under house arrest is under the responsibility of a supervising authority. If he or she violates the restrictions or prohibitions imposed by the court, the house arrest may be changed to a more restrictive preventive measure such as pre-trial detention (Article 107 §§ 10 and 14).

II. DOMESTIC CASE-LAW AND PRACTICE

A. Domestic case-law

61. In Ruling no. 41 of 19 December 2013 on the practice of the application by the courts of preventive measures in the form of remand in custody, bail and house arrest, the Plenary of the Supreme Court of the Russian Federation held that the procedure for ordering house arrest was analogous to the procedure for ordering remand in custody.

62. When determining restrictions and prohibitions applied to a suspect or an accused, the court will take into account his or her character. The court cannot impose restrictions and prohibitions which are not prescribed by the CCrP.

63. In its decision ordering house arrest, the court must indicate the period of house arrest and its end date (paragraphs 36, 39 and 41 of the Ruling).

64. On 11 June 2020 the above Ruling was amended by the Ruling No. 7 on amendments to various rulings of the Plenary of the Supreme Court of Russia. The Supreme Court held that when choosing the preventive measure in the form of house arrest or detention on remand, the court should consider the possibility to apply the bail. If the court arrives to the conclusion that the bail on its own is not enough, it may in addition impose on a suspect or an accused the obligation to comply with one or several prohibitions and indicate in its decision the reasons for imposing these prohibitions. The court must also indicate in its decision on preventive measure why the application of the bail is impossible. The court must

discuss with the parties to the proceedings the possibility to apply prohibitions instead of other more restrictive measures such as detention on remand or house arrest and indicate why it is impossible to impose such prohibitions as alternative preventive measure.

65. In Ruling no. 27-P of 6 December 2011, the Constitutional Court of the Russian Federation reiterated the Court's case-law to the effect that the difference between deprivation of and restriction upon liberty is one of degree or intensity, and not one of nature or substance (paragraph 2 of the Ruling). Having analysed the relevant provisions of the CCrP governing house arrest and detention, taken together, as well as the nature of the restrictions applied to an individual in the event of house arrest, the Constitutional Court found, in particular, that house arrest, like pre-trial detention, implied the compulsory isolation of an accused or a suspect from society, in a limited space, and preventing the person from working, moving freely and communicating with other persons. Thus, in view of the restrictions suffered, house arrest involved a direct restriction of a person's right to physical liberty and security. It held, therefore, that the procedural guarantees in the event of house arrest should be the same as those applicable to pre-trial detention (paragraph 3 of the Ruling).

66. According to the Ruling of the Supreme Court of Russia of 1 February 2011 No. 1 "On the case-law relating to criminal liability and punishment of minors", a minor can be remanded in custody only in exceptional circumstances and for the shortest possible period of time. When considering an investigator's request to place a minor in custody, a court should check whether there are grounds for detention and whether it is possible to apply other less restrictive preventive measure. A minor can be remanded in custody only if he or she is suspected of a grave or very grave crime and only if the detention order refers to the pertinent facts and law. By virtue of Article 423 of the CCrP, when remanding a minor in custody the courts must consider the possibility to place him or her under supervision of parents or other persons of trust.

B. Statistics concerning pre-trial detention and house arrest

67. The information submitted by the Government and the statistical data available on the website of the Courts Administration Office at the Supreme Court of the Russian Federation (www.cdep.ru) as regards the application of preventive measures, including pre-trial detention, house arrest and bail can be summarised as follows.

KOVROV AND OTHERS v. RUSSIA JUDGMENT

Request for a preventive measure	2009	2010	2011	2012	2013	2014	2015
Applications for remand in custody	208,416	165,323	152,028	147,784	146,993	146,354	153,159
Of those, granted	187,793	148,689	135,850	132,923	133,311	133,657	140,457
Applications for extension of pre-trial detention	212,819	185,891	180,315	198,775	206,968	210,286	229,787
Of those, granted	208,760	182,060	176,840	185,234	198,450	207,363	226,875
Applications for house arrest	164	754	1,539	3,030	3,455	3,783	5,294
Of those, granted	146	668	1,346	2,714	3,086	3,333	4,676
House arrest in lieu of another preventive measure	n/a	n/a	n/a	1,731	2,683	2,632	3,133
Applications for bail	n/a	764	491	336	238	256	220
Of those, granted	674	629	438	275	198	225	189
Bail in lieu of another preventive measure	598	n/a	n/a	398	367	327	199

Request for a preventive measure	2016	2017	2018	2019
Applications for remand in custody	133,882	125,129	113,184	104,866
Of those, granted	121,796	113,269	102,205	94,633
Applications for extension of pre-trial detention	227,136	213,582	215,304	216,009
Of those, granted	223,306	209,826	211,285	211,248
Applications for house arrest	6,857	7,339	7,170	6,966
Of those, granted	6,056	6,442	6,329	6,037
House arrest in lieu of another preventive measure	3,611	4,176	3,918	3,504
Applications for bail	269	169	122	90
Of those, granted	229	133	108	77
Bail in lieu of another preventive measure	189	163	138	86

III. COMPENSATION FOR UNLAWFUL DETENTION

68. Article 133 of the CCrP governs the exercise of the “right to rehabilitation”, which is, in essence, the restoration of the person to the *status quo ante* following a person’s acquittal or the discontinuation of criminal proceedings. This right includes the right to compensation in respect of pecuniary and non-pecuniary damage and reinstatement of employment, pension, housing and other rights.

69. A court may hold the tortfeasor liable for non-pecuniary damage suffered by an individual as a result of actions infringing his or her personal non-property rights, such as the right to personal integrity and the right to freedom of movement (Articles 150 and 151 of the Civil Code). Non-pecuniary damage must be compensated, irrespective of whether the tortfeasor is at fault in the event of, in particular, an unlawful conviction, prosecution or unlawful application of a preventive measure in the form of placement in custody (Article 1100 of the Civil Code).

70. Article 1070 § 1 of the Civil Code provides that the damage caused to an individual as a result of an unlawful conviction, unlawful institution of criminal proceedings, unlawful application of a preventive measure in the form of remand in custody or an undertaking not to leave the town, or an unlawful administrative sanction in the form of detention or community service must be compensated in full, irrespective of whether the officials or agencies are at fault. Article 1070 § 2 clarifies that the damage suffered by an individual in the framework of the administration of justice must be compensated, provided that the judge’s guilt has been established in a final criminal conviction.

IV. RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

71. For relevant documents of the Council of Europe regarding pre-trial detention and alternative preventive measures, see *Zherebin* (cited above, §§ 27-31).

72. On 3-5 December 2019 at the 1362nd meeting the Ministers’ Deputies welcomed the new measures adopted by the Russian authorities in respect of the execution of the Court’s judgments included in the *Klyakhin* group (application no. 46082/99). As regards general measures, the Deputies:

“9. noted with interest the general measures adopted by the authorities so far to address the problem of the failure of the domestic courts to adduce relevant and sufficient reasons to justify continuing detention on remand, including the Supreme Court’s research and overviews of the European Court’s practice, and thematic Ministerial and Inter-Ministerial meetings by the Investigative Committee, the Ministry of the Interior and the General Prosecutor’s Office; noted as well different awareness-raising activities, including with the participation of the Council of Europe;

and encouraged the authorities to continue with the adoption of other measures of this type;

10. welcomed the fact that the number of remand prisoners decreased by some 14% in 2016-2018, principally because investigators submit fewer requests for initial detention on remand and extensions, yet invited the authorities to explain why the level of approval of investigators' requests by judges remains so high (for example, an approval rate of about 97% in respect of requests for extension of detention on remand);

11. welcomed the most recent legislative reforms amending Article 109 of the Code of Criminal Procedure, which resolved the problem of unclarity of the law regulating extensions of detention for the purposes of studying the case-file, as well as obliged the investigators to better substantiate their requests for detention on remand, and encouraged the authorities to continue with the incorporation of Article 5 principles...;

12. noted with interest the introduction of the restraining order as another alternative measure to detention and expressed the hope that it will be widely used in practice;

13. as to the lengthy appeal proceedings and the absence of an enforceable right to receive compensation for violations of Article 5, invited the authorities to provide information about the measures planned or taken to address them..."

THE LAW

I. JOINDER OF THE APPLICATIONS

73. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

74. The applicants complained that they had been detained during the investigation and trial and under house arrest notwithstanding the absence of relevant and sufficient reasons. The Court will examine this complaint under Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

75. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

76. The applicants considered that their pre-trial detention and house arrest had not been necessary or justified by their behaviour or social status. The domestic courts had automatically extended the preventive measures in respect of them using stereotyped reasoning, while the prosecution had failed to submit any information that would prevent the courts from releasing them during the investigation and trial. Furthermore, they had not properly considered applying an alternative preventive measure to ensure the proper administration of justice.

77. The Government contended that the decisions to place the applicants in pre-trial detention and under house arrest and to extend these preventive measures had been based on relevant and sufficient reasons, such as the gravity of the offence, the possibility of absconding or reoffending, the complexity of the case and the risk of the applicants' interfering with the criminal investigation.

1. General principles

(a) Pre-trial detention

78. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. 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 *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 90, 5 July 2016).

79. It primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and set them out in their decisions. The presumption is always in favour of release (*ibid.*, §§ 89 and 91).

80. The persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the continued detention. The Court must also establish (i) whether other grounds cited by the judicial authorities continue to justify the deprivation of liberty and (ii), where such grounds were “relevant” and “sufficient”, and whether the national authorities displayed “special diligence” in the conduct of the proceedings. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

81. The requirement on the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand (see *Buzadji*, cited above, § 102).

(b) House arrest

82. According to the Court’s case-law, house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention (see, among many other authorities, *Buzadji*, cited above, § 104; *Mancini v. Italy*, no. 44955/98, §17, ECHR 2001-IX; *Lavents v. Latvia*, no. 58442/00, §§ 64-66, 28 November 2002; *Nikolova v. Bulgaria* (no. 2), no. 40896/98, § 60, 30 September 2004; *Ninescu v. the Republic of Moldova*, no. 47306/07, § 53, 15 July 2014; and *Delijorgji v. Albania*, no. 6858/11, § 75, 28 April 2015).

83. The Court has held that this type of deprivation of liberty requires relevant and sufficient reasons, just as with pre-trial detention. It has specified that the notions of “degree” and “intensity” in its case-law, as criteria for the applicability of Article 5, refer only to the degree of restrictions on liberty of movement, not to differences in comfort or in the internal regime in different places of detention (see *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 212-13, 19 November 2019). The Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Gulub Atanasov v. Bulgaria*, no. 73281/01, § 49, 6 November 2008).

(c) Conclusion

84. Therefore, when examining the applicants’ complaints about their pre-trial detention and house arrest, the Court would apply the same criteria for the evaluation of deprivation of liberty, irrespective of the place where the applicants were detained (see paragraphs 78-81 above).

2. Application to the present case

(a) The periods to be taken into consideration

85. Having regard to the conditions of the applicants’ house arrest as described in paragraphs 12, 19, 28, 39 and 49 above, the Court considers that subjecting them to this measure constituted deprivation of liberty in the sense of Article 5 of the Convention. In the instant case, house arrest is also considered a preventive measure analogous to and requiring the same guarantees as pre-trial detention under the relevant national law (see paragraph 65 above) and the Government themselves did not dispute that the applicants’ house arrest constituted deprivation of liberty (see *Buzadji*, cited above, § 105).

86. When determining the length of pre-trial detention under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see *Idalov*, cited above, § 112, and *Kovyazin and Others v. Russia*, nos. 13008/13 and 2 others, § 75, 17 September 2015). The Court finds no reason to adopt a different approach as regards house arrest (see *Razvozhayev and Udaltsov*, cited above, § 213). The Court will consider consecutive periods of the applicants' pre-trial detention and house arrest as a whole.

87. In the present case, the periods of pre-trial detention and house arrest to be taken into consideration are indicated in the table above (see paragraph 6 above).

88. The Court has already found a violation of Article 5 § 3 of the Convention in comparable periods of pre-trial detention and house arrest (see *Idalov*, cited above, § 142, where the period of the applicant's detention lasted approximately one year and one month; *Yevgeniy Kuzmin v. Russia*, no. 6479/05, § 27, 3 May 2012, where the applicant was detained for one year, two months and fourteen days; *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 500, 25 July 2013, where one of the applicants spent one year, ten months and eighteen days in pre-trial detention; *Razvozhayev and Udaltsov*, cited above, § 213, where the applicant was under house arrest for over one year and five months; *Korkin v. Russia*, no. 48416/09, § 84, 12 November 2015, where the pre-trial detention amounted to approximately four years).

89. In this connection, the Court reiterates that Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention or house arrest unconditionally provided that it lasts no longer than a certain minimum period. Justification for any period of pre-trial detention or house arrest, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)). It is incumbent on the domestic authorities to establish the existence of concrete facts constituting grounds for continued pre-trial detention and house arrest (see *Ilykov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001; *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005; and *Kislitsa v. Russia*, no. 29985/05, § 33, 19 June 2012).

90. Having regard to the length of pre-trial detention and house arrest in the light of the presumption in favour of release, the Russian authorities were required to put forward "relevant" and "sufficient" reasons for maintaining these measures against the applicants. The Court will therefore now examine the grounds for the applicants' pre-trial detention and house arrest.

(b) “Relevant” and “sufficient” reasons

91. In the present case, the reasonable suspicion that the applicants had committed the offences as charged persisted throughout the criminal proceedings leading to their conviction. It must now be determined whether the judicial authorities gave “relevant” and “sufficient” reasons to justify their pre-trial detention and house arrest.

(i) Mr Kovrov, application no. 42296/09

92. In the present case, the applicant was 16 years old at the date of his arrest (see paragraph 7 above). In this respect, the Court reiterates that a very important factor to be taken into consideration is a defendant’s age: thus, pre-trial detention of minors should be used only as a measure of last resort and for the shortest possible period (see *Selçuk v. Turkey*, no. 21768/02, §§ 35-36, 10 January 2006, and *Nart v. Turkey*, no. 20817/04, §§ 31 and 33, 6 May 2008).

93. The domestic court in its first detention order advanced several reasons to remand the applicant in custody (see paragraph 8 above). These reasons included the fact that he was suspected of a grave crime and could put pressure on witnesses and interfere with investigation. Additional factors included an assessment of the applicant’s personality, life-style and living conditions and, in particular, the risk that his mother would not be able to ensure the applicant’s appearance before the investigative authorities. This reasoning is quite developed as compared to the subsequent detention and house arrest orders.

94. On the other hand, the applicant in the present case was only 16 years old. His detention was an exceptional measure within the meaning of the CCrP and the domestic case-law, according to which a minor may be remanded in custody only in exceptional circumstances. The court did not elaborate as to why the circumstances of the applicant’s case qualified as exceptional. Moreover, it omitted any reference whatsoever to the relevant provisions of the CCrP or case-law in its reasoning (see, the Supreme Court’s directions in paragraph 66 above; and compare with *Korneykova v. Ukraine*, no. 39884/05, § 46, 19 January 2012).

95. As regards the possibility to put pressure on witnesses, the court did not cite any particular instance when the applicant had tried to contact, outside the established legal venues, a witness in the course of criminal proceedings. The court did not point to any persons who had witnessed the crime, except the applicant’s co-defendant. The Court has already explained that arguments for and against release must not be general and abstract (see *Melnikova v. Russia*, no. 24552/02, § 76, 21 June 2007). The above risk was mentioned without any further assessment at subsequent stages of the proceedings.

96. In the same decision the court relied on information regarding the applicant's previous behaviour. In particular, it considered that a previous administrative offence indicated that he could be particularly prone to interfere with the investigation. Indeed, previous convictions may be relevant in assessing the danger of reoffending (see *Shenoyev v. Russia*, no. 2563/06, § 50, 10 June 2010). However, in the present case, the applicant had previously committed an administrative offence of drinking alcohol in a public place, rather than a crime. It was a non-violent offence, with little connection to the charges against him. The domestic court did not attempt to assess whether the previous facts and charges were comparable, either in nature or in the degree of seriousness, to the charges in the pending proceedings. It did not explain why the fact of previously committing an administrative offence resulted in the conclusion that the applicant was dangerous to the extent warranting the deprivation of liberty (see *Aleksey Makarov v. Russia*, no. 3223/07, § 51, 12 June 2008).

97. When extending the applicant's pre-trial detention and, subsequently, house arrest, the courts reiterated the above reasoning. In addition, they also referred to the risk of the applicant's absconding without linking this risk to any facts (see paragraph 9 above). This 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). In the present case the decisions of the domestic authorities gave no reasons why, notwithstanding the arguments put forward by the applicant, they considered the risk of his absconding to be decisive. They referred to the fact that the applicant did not have any place of residence, however, the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007). The Court finds that the existence of such a risk was not established in the case at hand.

98. In extending the pre-trial detention and house arrest of Mr Kovrov, the domestic courts issued collective decisions without making any distinction between the co-defendants' individual situations (see paragraphs 10 and 12 above). The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee is incompatible, in itself, with Article 5 § 3 of the Convention (see *Kolunov v. Russia*, no. 26436/05, § 53, 9 October 2012). There is no reason to reach a different conclusion in the present case.

99. In addition, the last period of house arrest was not justified by any grounds. In particular, the court maintained the applicant's house arrest holding that there were no grounds to change the applicant's preventive measure without providing any reasons for continued house arrest (see

paragraph 13 above). Even assuming that the domestic court viewed the circumstances of the case and the applicant's personality as self-evident for the purpose of justifying the applicant's continued deprivation of liberty, this in itself does not absolve the domestic court from the obligation to set out reasons for coming to this conclusion (see *Krikunov v. Russia*, no. 13991/05, § 41, 4 December 2014).

100. Finally, as regards the choice of alternative measures, the authorities at one point adjusted the preventive measure applied to the applicant, but only more than a year and a half after his apprehension (see paragraph 12 above). The courts consistently held that his mother, who accompanied him throughout the proceedings, was unable to control him (see paragraphs 8 and 9 above). However, some time later, for unclear reasons, they arrived at an opposite conclusion, stating that she could take care of him and supervise him while he was under house arrest (see paragraph 12 above). While the courts endeavoured to analyse the possibility of placing the applicant in the care of his mother in some of the decisions ordering pre-trial detention, they still did not properly consider the possibility of applying an alternative preventive measure when extending the house arrest (see paragraphs 13 above).

(ii) *Mr Ulyanitskiy, application no. 71805/11*

101. The main grounds for placing the applicant under house arrest were the gravity of offence, risk of putting pressure on witnesses and destroying documents (see paragraph 19 above). The above reasons justifying his house arrest are relevant in the circumstances of the case. However, the court did not provide any details showing that the above risks were plausible, for example by specifying the dangers related to witnesses. It limited its finding by a general reference to the possibility that the applicant could influence them, without even briefly analysing how and why the applicant could put pressure on the witnesses or establishing whether the applicant had attempted to contact them.

102. In subsequent house arrest orders, the courts did not develop the reasoning in this respect in any significant way nor mention any concrete facts warranting the applicant's deprivation of liberty on that ground (see *Vladimir Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007). The criminal proceedings were initiated in 2008 and the authorities had sufficient time to interrogate the witnesses during investigation and trial. The domestic court referred to the witnesses' fears of the applicant's interference (see paragraph 23 above), however in the absence of any facts showing what acts or behaviour on the part of the applicant had triggered those fears or maintained them, the domestic courts' reliance on them remains insufficient. The fact alone that the applicant was accused of having committed serious crime was not enough for keeping him under house arrest, especially so in the absence of any proof of his improper behaviour

before he had been deprived of his liberty (see *Mikhail Grishin v. Russia*, no. 14807/08, § 149, 24 July 2012).

103. As regards the risk of destroying documents, in the first house arrest order the court did not refer to any concrete evidence that could be allegedly hidden or destroyed by the applicant. In the subsequent house arrest order the court mentioned a debt document (see paragraph 21 above). At the same time, the court did not establish in subsequent decisions whether this risk remained real during the entire period of deprivation of liberty. It is unclear whether the authorities took any effort to find and secure the document in question.

104. In addition, after the applicant's placement under house arrest, at the subsequent stages of the proceedings, the investigative authorities and the courts stated that the applicant's house arrest must be extended owing to the need to pursue the investigation, conduct forensic examinations and to ensure the applicant's familiarisation with the case file (see paragraph 23 above). The Court has previously found that studying the case file was not a valid reason for detention (see *Shukhardin v. Russia*, no. 65734/01, § 112, 28 June 2007, and *Razvozzhayev and Udaltsov*, cited above, § 204). Moreover, the courts did not provide any details as to the nature of the expert examinations or investigative actions to be performed. If released, the applicant could have equally accessed the file and participated in investigative actions.

105. Another ground for the applicant's continued house arrest was the domestic authorities' finding that he was liable to abscond, in particular, they stated that he had been put on the wanted list (see paragraph 23 above). The wanted person status was attributed by the authorities in circumstances which remain unknown and were not analysed in the court decisions. Consequently, that status as such could not play a decisive role in determining whether or not the applicant really tried to evade prosecution (see *Miminoshvili v. Russia*, no. 20197/03, § 87, 28 June 2011). Moreover, before the period of house arrest in question the applicant had been at liberty for more than two years. There is no indication in the materials before the Court of any facts which could have given grounds to believe that a risk of absconding existed (see *Mikhail Grishin*, cited above, § 145).

(iii) *Mr Botnaryuk*, application no. 75089/13

106. The applicant was first placed under house arrest on the grounds that he had committed a serious crime and could have influenced the witnesses (see paragraph 28 above). Article 5 § 3 of the Convention puts the requirement on the judicial officer to give relevant and sufficient reasons for the deprivation of liberty already at the time of the first detention order (see *Buzadji*, cited above, § 102). In the present case, about two months of the applicant's house arrest were justified only by two stereotypical grounds; such reasoning by itself cannot be considered sufficient.

107. Although the severity of the sentence faced is a relevant element in the assessment of the risk of influencing witnesses or other risks, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003, and *Ilijkov*, cited above, § 81).

108. At the same time, in its first house arrest order the court took stock of the applicant's personal circumstances, such as his permanent place of residence and family ties, employment and the absence of a criminal record, which mitigated, if not removed, the risk of his absconding or interfering with the administration of justice. The Court notes this positive development in providing detailed reasoning for deprivation of liberty as compared to some other similar cases against Russia. However, this decision appears to be the only one during the applicant's house arrest when the domestic court addressed the arguments concerning his personal situation, which he repeatedly and unsuccessfully raised in his appeals against the prolonged house arrest (see *Panchenko*, cited above, § 107).

109. In subsequent orders the courts added some new grounds for the applicant's house arrest. They stated that he could interfere with investigation and reoffend, that the case was complex and it was necessary to obtain an expert opinion, without going into details or linking them to the particular circumstances of the case. As regards the expert opinion, it is unclear at all how it could justify continued deprivation of liberty (see paragraphs 29-31 above).

110. To sum up, from 19 February 2013 on the Vorkuta Town Court extended the applicant's house arrest without a fresh assessment of the continued relevance and sufficiency of the grounds for the applicant's house arrest. Though in the beginning of the applicant's deprivation of liberty the domestic authorities took due account of the applicant's personal circumstances, the subsequent decisions lacked an analysis of the pertinent facts. They took no notice of the arguments in favour of the applicant's release and dismissed them without explanation (see paragraph 31 above). Using the same formula, they simultaneously extended the preventive measure in respect of the applicant and his co-defendant (see *Shukhardin*, cited above, § 113, and paragraph 31 above). The applicant's house arrest was extended merely because the courts did not discern any reasons for changing the measure or the circumstances of the case had not changed. Moreover, in some decisions the courts did not rely on any grounds for house arrest at all (see paragraphs 32 and 35 above).

(iv) *Isaichev*, application no. 1327/16

111. In its first house arrest order the court listed several reasons for the applicant's deprivation of liberty: gravity of the offence, threatening the

witnesses, absconding, destroying evidence or interfering with investigation (see paragraph 39 above). Although these reasons seem relevant, they are described by the court in a summary and stereotyped manner without any link to the particular facts of the case. Beyond a brief reference to the applicant's character in this decision, the court did not mention any concrete facts corroborating the need for house arrest (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 70, ECHR 2003-IX (extracts), and *Logvinenko v. Russia*, no. 44511/04, § 45, 17 June 2010).

112. In particular, as regards the risk of absconding, when assessing that risk, the courts did not have regard to various relevant factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties, international connections or any other elements which could be relevant in the circumstances (see *Aleksandr Novikov v. Russia*, no. 7087/04, § 46, 11 July 2013). The authorities furnished no factual basis for their conclusion relating to the risk of flight. Nor did the court explain in its first and subsequent house arrest orders in what way the applicant, had he been released, would have obstructed the course of the criminal proceedings (see paragraphs 40-42 above).

113. The domestic court used a collective detention order without devoting proper attention to a discussion of the applicant's personal situation, the factors pointing in favour of his release or without thoroughly examining the possibility of applying another, less rigid, measure of restraint, such as bail (see paragraph 40 above).

114. The domestic courts also extended the house arrest of Mr Isaichev to allow him sufficient time for access to the investigation case file and to ensure his participation in unspecified investigative acts (see paragraphs 41-42 above). The Court has already found above that those reasons alone could not justify deprivation of liberty (see paragraph 104 above).

115. Moreover, between 22 August 2016 and 10 March 2017 the applicant's house arrest was not justified by any reasons. Thus, for about six months the applicant was detained without any justification (see *Vadim Kovalev v. Russia*, no. 20326/04, § 61, 10 May 2011, and paragraphs 44 and 45 above).

116. To sum up, in their arrest orders the courts mostly listed the grounds for the applicant's deprivation of liberty in a summary fashion, citing the provisions of the CCRP without a fresh assessment of their continued relevance and sufficiency.

(v) *Mr Nikolenko, application no. 14206/16*

117. In the present case, the applicant was remanded in custody and subsequently placed under house arrest. The initial detention order stated that the applicant refused to plead guilty, he was suspected of a serious crime of corruption, was likely to abscond and to obstruct the course of justice by hindering collection of evidence and influencing unspecified

witnesses (see paragraph 48 above). These grounds, while relevant in principle, were not supplemented by any details or an explanation why the risk of absconding or tampering with the witnesses was plausible.

118. It seems that the court mainly drew its conclusion that the applicant could abscond and threaten witnesses from the severity of charges. In this respect, the Court reiterates that the severity of charges or punishment faced does not automatically create a risk of flight or obstructing the course of justice (see *Barabanov v. Russia*, nos. 4966/13 and 5550/15, § 50, 30 January 2018).

119. As to the applicant's refusal to plead guilty, the Court cannot but disagree that it warranted his detention. The applicant was not obliged to co-operate with the authorities and could not be blamed for having taken full advantage of his right to remain silent (see *Vladimir Solovyev*, cited above, § 116).

120. The applicant's initial house arrest was based on two main reasons: gravity of the charges and ongoing investigation. As already explained, these reasons alone are not sufficient to justify the deprivation of liberty (see, *mutatis mutandis*, *Vadim Kovalev*, cited above, § 64, and paragraphs 104 and 107 above).

121. Between December 2013 and July 2017, the courts' reasoning did not evolve much. In December 2013 the courts additionally referred to the risk of reoffending, putting pressure on witnesses and interfering with the investigation (see paragraph 50 above); they subsequently repeated this reasoning. The reasons for house arrest during that period did not reflect the developing situation and the courts did not verify whether at the advanced stage of the proceedings the relevant and sufficient grounds for holding the applicant under house arrest still persisted. The domestic courts, in their decisions on the applicant's house arrest, used a standard template and limited themselves to repeating a number of grounds for deprivation of liberty in an abstract and stereotyped way, without giving any reasons why they considered those grounds relevant to the applicant's case. They also failed to mention any case-specific facts relevant to those grounds.

122. Mr Nikolenko remained in pre-trial detention and under house arrest for more than four years. During all that time, there was no indication that he tried to abscond or interfere with the investigation. Furthermore, his state of health had deteriorated since the day of his arrest and he had been treated in hospital (see paragraph 50 above). In these circumstances, the reference to the possibility of the applicant's absconding could not justify his continued deprivation of liberty for such a long period of time.

123. Although the authorities changed his pre-trial detention to house arrest shortly after he had been arrested and he spent most of the period under consideration at home rather than in custody, the authorities extended the house arrest during four years without properly considering the possibility of applying other less restrictive preventive measures (see

paragraph 50 above). The question of whether or not the maximum time-limits permitted by the domestic law were exceeded is not a decisive element for the Court's assessment. The calculation of the domestic time-limits depended solely on the gravity of the charges which was decided upon by the prosecution and was not subject to a judicial review (see *Govorushko v. Russia*, no. 42940/06, § 45, 25 October 2007).

(c) Conclusion

124. The domestic courts authorised the applicants' detention and house arrest and the extension of these measures on several occasions, based on the gravity of the charges and the possibility of reoffending, influencing witnesses, destroying evidence, or otherwise obstructing the proper course of the proceedings. Except for the decision rendered on 28 December 2012 by the Vorkuta Town Court in respect of Mr Botnaruyk, the other relevant judicial decisions did not go any further than listing these grounds, omitting to substantiate them with reference to any specific facts. With the passage of time the courts' reasoning did not much evolve to reflect the developing situation and to verify whether these grounds remained valid at the advanced stage of the proceedings. By failing to address specific facts underpinning the existence of such risks or properly consider alternative preventive measures, and by relying essentially on the gravity of the charges, the courts extended the applicants' detention and house arrest on grounds which cannot be regarded as sufficient to justify the length. In these circumstances, it is not necessary to examine whether the proceedings were conducted with "special diligence".

125. There has accordingly been a violation of Article 5 § 3 of the Convention as regards each applicant in respect of the periods of deprivation of liberty indicated in Appendix II.

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

126. Mr Kovrov further complained that he had had no enforceable right to compensation for unjustified pre-trial detention and house arrest. He relied on Article 5 § 5 of the Convention, which provides as follows:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

127. The Government submitted that the applicant had never applied for compensation.

128. The applicant stated that he did not have any remedy to receive compensation for unjustified detention and house arrest.

129. The Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 5 of the Convention. Thus, the Court finds it necessary to join the Government's objection to the merits of that complaint. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

130. The applicant submitted that it had been impossible for him to obtain compensation for his unjustified pre-trial detention and house arrest under the law in force.

131. The Government submitted that the applicant's deprivation of liberty had not been lengthy and unjustified. The domestic courts had upheld all the extension orders issued in respect of him as lawful and justified.

132. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of Article 5. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012; *Abashev v. Russia*, no. 9096/09, § 34, 27 June 2013; and *Chuprikov v. Russia*, no. 17504/07, §§ 94-95, 12 June 2014).

133. In the present case, the Court has found a violation of Article 5 § 3 of the Convention on account of the duration of the applicant's pre-trial detention and house arrest not being based on sufficient reasons. It must therefore establish whether or not he had an enforceable right to compensation for the breach of Article 5.

134. The Court has already found violation of Article 5 § 5 on account of the lack of an enforceable right to compensation for the violation of a right to trial within a reasonable time or to release pending trial in many Russian cases (see, for example, *Korshunov v. Russia*, no. 38971/06, §§ 55-63, 25 October 2007; *Govorushko*, cited above, § 61; *Chuprikov*, cited above, §§ 88-101; *Lastochkin and Others v. Russia* [Committee], nos. 7121/15 etc., § 11, 29 March 2018; *Maksutov and Others v. Russia* [Committee], nos. 33982/17 etc., § 11, 30 July 2020; and *Rzhanov and Others v. Russia* [Committee], nos. 29295/18 etc., § 11, 29 April 2021). The Court cannot but reiterate its findings contained in the above well-established case-law.

135. In particular, under the relevant provisions of the Russian Civil Code (see paragraphs 68-70 above), an award in respect of damage may be

made against the State only if the detention is found to have been unlawful in the domestic proceedings. In the present case, however, the appellate courts upheld the lawfulness of the detention, house arrest and extension orders and the applicant therefore had no grounds to claim compensation (see, for similar reasoning, the case where the applicant did not claim any compensation at domestic level because his detention was not declared unlawful by courts, *Alekhin v. Russia*, no. 10638/08, §§ 146-155, 30 July 2009).

136. Furthermore, the above provisions do not provide for State liability for pre-trial detention or house arrest which was not based on “relevant and sufficient” reasons. The state of Russian law thus precluded the applicant from receiving compensation for pre-trial detention or house arrest effected in breach of Article 5 § 3 of the Convention (see *Alekhin*, cited above, § 153).

137. Having regard to the foregoing, the Court rejects the Government’s plea of non-exhaustion and finds that the applicant did not have an enforceable right to compensation for his detention, which has been found to have been in violation of Article 5 § 3 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. 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

140. The applicants claimed various amounts in respect of pecuniary and non-pecuniary damage, which are indicated in Appendix II.

141. The Government contested the claims as unsubstantiated and excessive.

142. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by Mr Nikolenko; it therefore rejects his claim. The Court notes that he did not submit a claim in respect of non-pecuniary damage, and therefore considers it unnecessary to make him an award. On the other hand, it awards the other applicants the amounts indicated in Appendix II in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

143. Mr Kovrov, Mr Ulyanitskiy and Mr Botnaryuk also claimed reimbursement of their costs and expenses in the amounts indicated in Appendix II.

144. The Government stated that these expenses had not been actually and necessarily incurred and were not reasonable as to quantum.

145. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the amounts indicated in Appendix II, plus any tax that may be chargeable on them.

C. Default interest

146. 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.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

147. The Court finds it appropriate to consider the present case under Article 46 of the Convention, which provides, in so far as relevant, as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

148. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, general measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible its effects. It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention. However, with a view to helping the respondent State to fulfil that obligation, the Court may seek to indicate the type of general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V; *Stanev*, cited above,

§§ 254-55; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 158-59, ECHR 2014).

149. The Convention issue in the present case is unjustified pre-trial detention and house arrest. The issue of unjustified pre-trial detention is not new and has been the subject of well-established case-law. Since one of the first judgments concerning Article 5 § 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, §§ 104-21, ECHR 2002-VI), the Court has highlighted the widespread nature of the problem. In the previous similar cases, the Court has criticised the domestic courts' reliance on the seriousness of the charges as the primary source to justify the risk of the applicants' absconding, re-offending or interfering with the administration of justice and their failure to envisage the possibility of imposing other preventive measures expressly provided for by Russian law to secure the proper conduct of the criminal proceedings (see *Idalov*, cited above, §§ 109-49, and *Zherebin*, cited above, §§ 45-63).

150. Russia's highest courts – the Constitutional Court and the Supreme Court – have directed their attention to the issue, providing specific explanations on how to secure the rights of detained persons within the framework of the existing legislation and how to comply with the requirements of Article 5 § 3 of the Convention (see paragraphs 61-65).

151. In line with the above indications relating to alternative preventive measures (see paragraph 149 above), in the recent years the domestic courts have increasingly applied house arrest instead of pre-trial detention. According to statistical data published by the Supreme Court of Russia, from 2009 to 2015 the number of court decisions ordering house arrest increased and from 2016 to 2019 it was more or less stable, with most of the requests submitted being approved. Although this number is still much lower than the number of remands in custody, the table above shows that the domestic courts have become more favourable to house arrest (see paragraph 67 above).

152. Therefore, the Court acknowledges that the respondent State has already taken important steps to remedy the problems related to unjustified deprivation of liberty. The Court welcomes the efforts made by the Russian authorities aimed at bringing Russian legislation and practice in compliance with the Convention requirements and the statistics demonstrating a reduction in the excessive use of detention as a preventive measure. At the same time, the Court considers that consistent and long-term efforts must continue in order to achieve compliance with Articles 5 §§ 3 and 5 of the Convention, in particular, as regards reasoning of detention and house arrest orders and in strengthening the judicial control over the extension of such deprivation of liberty, where the rate of judicial approval remains very high, as well as establishing framework relating to compensation for unjustified deprivation of liberty (see the recent Committee of Ministers' evaluation of the general measures in paragraph 72 above).

153. In the *Zherebin* judgment the Court has held that the existing situation relating to detention calls for the adoption of general measures by the respondent State, which remains, subject to monitoring by the Committee of Ministers, free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. The above findings are relevant in the present case as well. In particular, the Court reiterates the standards established in Resolution no. 2077 (2015) of the Parliamentary Assembly referred to in the above judgment (see *Zherebin*, cited above, § 82) and the importance of ensuring that decisions on deprivation of liberty contain relevant and sufficient reasons with due consideration of the detainee's particular situation and link grounds for deprivation of liberty with concrete circumstances of the case; encouraging further application of more lenient preventive measures such as bail; establishing a clearer framework for compensations for unjustified preventive measures, including house arrest; and taking other measures to remedy the issues raised in the present case. It is for the Committee of Ministers then to assess the effectiveness of the measures proposed by the Russian Government and to follow up on their subsequent implementation in line with the Convention requirements (see *Savridin Dzburayev v. Russia*, no. 71386/10, § 264, ECHR 2013 (extracts)).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of each of the applicants on account of unjustified pre-trial detention and house arrest;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention in respect of the applicant in application no. 42296/09 on account of his inability to obtain compensation for the violation of his right to trial within a reasonable time or to release pending trial;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts indicated in Appendix II to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants;

(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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 16 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Georges Ravarani
President

Appendix I

List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	42296/09	Kovrov v. Russia	04/07/2009	Yuriy Vladimirovich KOVROV 1995 Yegoryevsk, Moscow Region Russian	Sergey Aleksandrovich KNYAZKIN
2.	71805/11	Ulyanitskiy v. Russia	07/11/2011	Dmitriy Aleksandrovich ULYANITSKIY 1970 Moscow Russian	Marina Lazarevna MIKHAYLOVA
3.	75089/13	Botnaryuk v. Russia	05/11/2013	Mikhail Dmitriyevich BOTNARYUK 1971 Vorkuta, Komi Republic Russian	Self-Representation
4.	1327/16	Isaichev v. Russia	24/12/2015	Yuriy Aleksandrovich ISAICHEV 1961 Moscow Russian	Nikolay Fedorovich FILATOV
5.	14206/16	Nikolenko v. Russia	25/02/2016	Oleg Ivanovich NIKOLENKO 1959 Mikhaylovka, Primorye Region Russian	Artem Vasilyevich SEMAL

Appendix II

Just satisfaction claims

Application no., name	Period of deprivation of liberty in breach of Article 5 § 3	Non-pecuniary damage (EUR)		Pecuniary damage		Costs and expenses	
		Claimed	Awarded	Claimed	Awarded	Claimed	Awarded (EUR)
42296/09, Mr Kovrov	26.01.2012 – 12.12.2013	50,000	2,700	0	0	RUB 620,000	850
71805/11, Mr Ulyanitskiy	13.04.2011 – 08.06.2012	10,000	1,200	0	0	EUR 31,299	900
75089/13, Mr Botnaryuk	19.02.2013 – 10.02.2014	40,000	1,000	0	0	0	0
1327/16, Mr Isaichev	03.04.2015 – 10.03.2017	35,000	2,000	0	0	EUR 14,357	850
14206/16, Mr Nikolenko	08.08.2013 – 14.08.2017	0	0	RUB 1,057,574	0	0	0