



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

1959 · 50 · 2009

FIRST SECTION

CASE OF ALEKHIN v. RUSSIA

(Application no. 10638/08)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision

In the case of Alekhin v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 10638/08) 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 Aleksandr Aleksandrovich Alekhin (“the applicant”), on 24 January 2008.

2. The applicant was represented by Mr S. Vasilyev, a lawyer practising in St Petersburg. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged that he had not received adequate medical care in the remand centre, that he had been transported in inhuman conditions, that his detention pending trial had been excessively long and had not been attended by appropriate procedural guarantees, that he had no enforceable right to compensation for his detention in contravention of Article 5 §§ 3 and 4, that the criminal proceedings against him had been excessively long, that family visits had been restricted, and that he had not had adequate remedies at his disposal for the above complaints.

4. On 26 March 2008 the President of the First Section decided to communicate the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in St Petersburg.

6. The applicant suffers from chronic hypertension and ischaemic heart disease and had ischaemic strokes on 29 December 2006 and 6 March 2007.

A. Criminal proceedings against the applicant

1. The investigation and trial

7. On 22 November 2005 six persons, including the applicant, were charged with unlawful business activities and money laundering, offences under Articles 172 § 2 and 174.1 § 4 of the Criminal Code. The applicant was accused of unlawful business practices carried out through several companies over a long period of time.

8. The applicant retained two lawyers who represented him during the investigation and trial.

9. On 27 September 2007 the investigation was completed and the case was referred for trial before the Moskovskiy District Court of St Petersburg.

10. On 9 October 2007 the Moskovskiy District Court fixed a preliminary hearing for 19 October 2007. It ordered that the applicant be brought to the courtroom for the preliminary hearing and that he be accompanied by a doctor.

11. On 19 October 2007 the Moskovskiy District Court held a preliminary hearing and fixed the opening date of the trial for 20 November 2007. The court reiterated that the applicant should be accompanied by a doctor when brought to the courtroom for a hearing.

12. The hearings of 20 November and 20 December 2007 were adjourned because the applicant was in hospital.

13. The hearings of 14, 21 and 28 January 2008 were adjourned because the applicant was not brought to the courtroom. The applicant had difficulty walking and the police escort refused to carry him on a stretcher, claiming that it did not form part of their duties. The stretcher did not fit standard prison vans, making it impossible to transport the applicant. Moreover, the remand centre authorities refused to assign a doctor to accompany the applicant to the courtroom.

14. The court decided that further hearings should be held in the remand centre.

15. Hearings were held on 11 and 18 February, 3, 17, 24 and 31 March, 14, 21 and 28 April, 12, 19 and 26 May and 2, 9, 23 and 30 June 2008.

16. No hearings were held in July or August 2008 as the defendants' lawyers were on leave.

17. The trial resumed on 29 August 2008, with further hearings held on 18 and 19 September 2008.

18. On 19 September 2008 the Moskovskiy District Court convicted the applicant of unlawful business activities, an offence under Article 172 § 2 of the Criminal Code, and acquitted him of money laundering, an offence under Article 174.1 § 4 of the Criminal Code. It sentenced him to six years' imprisonment.

19. On 26 January 2009 the St Petersburg City Court upheld the judgment on appeal.

2. Decisions concerning the application of a custodial measure

20. On 22 November 2005 the applicant gave an undertaking not to leave the city or reoffend.

21. On 13 February 2006 the Dzerzhinskiy District Court of St Petersburg ordered his placement in custody. The court found on the basis of evidence submitted by the investigator that the applicant had continued his unlawful business activities despite his undertaking not to reoffend and had put pressure on his employees urging them to repudiate their testimony against him. It considered the applicant's arguments that he had a permanent place of residence and employment, that he was the only breadwinner for his family consisting of his elderly mother, unemployed spouse and two minor children, and that he suffered from ischaemic heart disease. It found, however, that there was no medical evidence showing that his state of health was incompatible with custody. Given the gravity of the charges, there was a risk that he might abscond, reoffend or intimidate witnesses.

22. On 28 February 2006 the St Petersburg City Court upheld the custody order on appeal, finding that it had been lawful, well-reasoned and justified.

23. On 11 April 2006 the Dzerzhinskiy District Court extended the applicant's detention until 10 June 2006.

24. On 8 June 2006 the Dzerzhinskiy District Court extended the applicant's detention until 13 August 2006, referring to the gravity of the charges and the need for further investigation. The court found that the applicant had breached his undertaking not to reoffend and that several witnesses had requested anonymity because they feared threats from the applicant. In reply to the applicant's argument about his poor health, it held that there was no medical evidence that his condition was incompatible with detention. His complaints about insufficient medical assistance were unsubstantiated. The court considered that the applicant had received adequate medical assistance in the remand centre. The court also noted that the applicant's arguments concerning the incorrect legal characterisation of

his actions and the lack of evidence of his involvement in the commission of the offences imputed to him were without substance because, in extending the applicant's detention, the court could not make any findings as to his guilt or innocence.

25. On 11 August 2006 the Dzerzhinskiy District Court extended the applicant's detention until 10 October 2006 for the same reasons as before. It also noted that the length of the investigation was justified by the complexity of the case.

26. On 10 October 2006 the Dzerzhinskiy District Court extended the applicant's detention until 10 December 2006 for the same reasons as before.

27. On 6 December 2006 the Dzerzhinskiy District Court extended the applicant's detention until 10 February 2007 for the same reasons as before. It also referred to the applicant's leading position and his active role in the commission of the offences. He was the director of several companies and was suspected of planning and directing, through his connections in business circles, the unlawful business activities carried out by those companies. His position gave him an opportunity to destroy evidence and to intimidate witnesses who were his employees. The court referred to the written submissions by one of the witnesses, who had stated that the applicant had threatened him. The court further noted that the applicant's children had not become abandoned after the applicant's placement in custody. They were in the care of their mother, who was able to support them financially as she had permanent employment.

28. On an unspecified date the investigator applied for a further extension of the applicant's detention. He argued that the case involved several defendants and was extremely complex. The investigation team had already questioned 194 witnesses, conducted 45 searches and 209 inspections and seized 57 bank accounts. They had also carried out one operative experiment, seven identification parades and three confrontations and obtained numerous expert opinions. However, further investigation was necessary. In particular, it was necessary to question more witnesses, obtain more expert opinions and carry out other investigative measures. He further submitted that there was no reason to amend the preventive measure. The applicant was charged with serious criminal offences and there were reasons to believe that he might abscond, reoffend or interfere with the investigation.

29. The applicant asked to be released on bail or under an undertaking not to leave the city. He referred to his frail health, which had deteriorated in detention. He also submitted that his minor child suffered from open tuberculosis.

30. On 5 February 2007 the St Petersburg City Court extended the applicant's detention until 10 June 2007, finding that the applicant had not submitted new arguments warranting his release. It transpired from the

medical certificates that he had had an ischaemic stroke and that his right side was paralysed. However, in the court's opinion, this was insufficient to warrant his release. There was no medical evidence showing that the applicant's state of health was incompatible with custody. The applicant's arguments about the absence of *corpus delicti* in his actions were irrelevant because the court deciding on a preventive measure did not have competence to make any findings as to his guilt or innocence.

31. On an unspecified day the investigator applied for a further extension of the applicant's detention. He argued that the six defendants and their counsel were studying the voluminous case file (68 binders and 145 boxes of material evidence) and that there was no reason to vary the preventive measure.

32. The applicant asked to be released on bail. He submitted that his health had deteriorated, he could not stand or speak and needed constant medical supervision. He submitted a medical certificate of 22 March 2007 indicating that detention was incompatible with his state of health, and a medical certificate of 7 June 2007 indicating that he suffered from complications after an ischaemic stroke and required complex rehabilitation treatment. He was diagnosed with chronic cerebrovascular disease, right hemiplegia (paralysis of the right part of the body), motor aphasia (a deficit in speech production or language output, often accompanied by a deficit in communicating by writing, signs, etc.), ischaemic heart disease, hypertension and stenocardia. He complained that he was receiving insufficient treatment in the prison hospital and argued that it was necessary for him to undergo examinations and follow treatment in a civil hospital with a higher standard of care. He further submitted that his illness made him unable to abscond or intimidate witnesses.

33. On 7 June 2007 the St Petersburg City Court held a hearing. The applicant was brought to the courtroom on a stretcher accompanied by a doctor and assisted by a sign-language interpreter. The court extended the applicant's detention until 13 August 2007, finding that he might abscond, reoffend or intimidate the witnesses. It found that the information in the medical certificate of 22 March 2007 was outdated, while the certificate of 7 June 2007 did not mention that the applicant's state of health was incompatible with detention. He was being held in the prison hospital where he received adequate medical care and was under constant medical supervision.

34. On 9 August 2007 the St Petersburg City Court extended the applicant's detention until 10 October 2007 for the same reasons as before. It noted that it had already examined and rejected the applicant's arguments about his poor health in the decision of 7 June 2007. The applicant had not submitted evidence that his health had deteriorated since.

35. The applicant appealed. The St Petersburg City Court received the appeal submissions on 14 August 2007 and sent them to the investigator,

inviting him to submit comments. The investigator submitted his comments on 24 August 2007. On 29 August 2007 the appeal submissions and the comments received were forwarded to the Supreme Court of the Russian Federation. The Supreme Court received them on 5 September 2007.

36. On 4 October 2007 the Supreme Court examined the applicant's appeal submissions and upheld the extension order, finding that it had been lawful and justified.

37. On 9 October 2007 the Moskovskiy District Court of St Petersburg accepted the case for trial and ordered that the applicant should remain in custody. It noted that on 3 July 2007 the applicant had been discharged from hospital and that his health was satisfactory. He had however remained in hospital pending his transfer to the remand centre. The court ordered that the applicant be immediately transported from the prison hospital to remand centre SIZO-3 in St Petersburg.

38. On 7 November 2007 the Moskovskiy District Court ordered that the applicant remain in custody pending trial. The court rejected the applicant's request for release, referring to the gravity of the charges and to the fact that he was receiving the requisite medical care in the remand centre. It also rejected the prosecutor's request for the applicant's transfer to another remand centre. It took note of the prosecutor's arguments that such transfer was necessary to ensure better medical assistance. It found, however, that it had no competence to decide in which remand centre the applicant should be held. It further mentioned that on 4 October 2007 it had, at the request of remand centre SIZO-3, applied to the competent authority, namely the regional office of the Federal Department for the Execution of Sentences, with a request to transfer the applicant to another remand centre. That request had not yet been examined.

39. On 20 December 2007 counsel for the applicant lodged an application for release before the Moskovskiy District Court. He submitted that the applicant's health had deteriorated after his transfer to the remand centre, that he had again been taken to the prison hospital and that he had been granted disability status.

40. On the same day the Moskovskiy District Court rejected the request. It noted that on 18 December 2007 the applicant had been discharged from hospital and that, given the gravity and nature of the charges, he might reoffend or interfere with the proceedings.

41. On 17 March 2008 the Moskovskiy District Court extended the applicant's detention until 9 July 2008, referring to the gravity of the charges and the risk of his reoffending or interfering with the proceedings.

42. On 19 May 2008 the applicant lodged an application for release before the Moskovskiy District Court. He submitted that his flat had been burgled several times while he had been in custody and that his wife and children had received threats from unidentified persons. He asked to be

released to be able to protect his family and his property. He also referred to his poor health and disability status.

43. On the same date the Moskovskiy District Court rejected his request. The applicant had not submitted any evidence in support of his allegation about threats to his family. In any event, the protection of his family and property was a matter for the police. Nor could his disability status warrant release, as he was receiving sufficient medical assistance in the remand centre.

B. Medical assistance

44. On 14 February 2006 the applicant was placed in remand centre SIZO-3 in St Petersburg. On the same day he was examined by the remand centre doctor. He complained of chest pains and numbness of the left arm. The doctor diagnosed him with hypertension and ischaemic heart disease and found that his general state was satisfactory. The doctor further noted that the applicant had refused the proposed treatment.

45. According to a certificate of 14 April 2008 from the authorities at the facility, produced by the Government, during the entire period of his detention in SIZO-3 the applicant received adequate medical assistance. There was a medical unit in the remand centre which was open for eight hours each day, excluding weekends and public holidays. An ambulance was immediately called whenever the applicant was unwell. He received treatment appropriate to his condition. However, he occasionally refused the medicines offered, claiming that he did not recognise them. He demanded that the doctor provide him with specific medicines rather than the generics available in the medical unit.

46. On an unspecified date in mid-August 2006 the applicant went on hunger strike.

47. On 16 August 2006 the applicant complained of heart pains and was taken to Haass prison hospital (*УС 20/12 ФГЛПУ Областная больница им. доктора Ф.П. Гааза ГУ ФСИН России по СПб и ЛО*). There he underwent numerous examinations (blood and urine tests, coronary angiography, ultrasound examination, etc.), was diagnosed with hypertension and ischaemic heart disease and prescribed treatment. He was discharged on 24 August 2006.

48. On the same day he complained to the remand centre doctor of a tumour beneath his right ear. The doctor applied an alcohol compress. The tumour receded. On 29 August 2006 it reappeared.

49. On 31 August 2006 the applicant was diagnosed with lymphadenitis (inflammation of a lymph node). On the same day he was taken into Haass prison hospital for surgery.

50. In hospital he was subjected to several medical tests and on 1 September 2006 underwent surgery. He received post-surgery treatment

and treatment for high blood pressure. He continued his hunger strike and refused to eat.

51. On 11 September 2006 the applicant was discharged. On the next day the area beneath his right ear swelled again.

52. On 13 September 2006 he was taken to Haass prison hospital and diagnosed with mumps (an acute contagious viral disease of the salivary glands). The doctors noted that the disease was due to the deterioration of the applicant's immune system caused by a one-month hunger strike. Judging by the state of his health, however, it was unlikely that the applicant had completely refused food for a month. He had been seen by doctors eating pureed baby food. The applicant underwent more medical tests and received treatment for mumps. On several occasions during his stay in hospital the doctors tried to persuade him to stop the hunger strike.

53. On 25 September 2006 the applicant was discharged and on 28 September 2006 he was transported back to remand centre SIZO-3. On an unspecified date he discontinued the hunger strike.

54. On 29 December 2006 the applicant had an ischaemic stroke and was taken into Haass prison hospital. He was examined by a neurosurgeon and an intensive-care specialist. The doctors noted that his right limbs were paralysed and his tongue was crooked. They prescribed treatment.

55. On the next day the doctors noted no improvement. As his condition was unstable, he was transferred to the intensive-care unit.

56. The applicant remained in the intensive-care unit until 9 January 2007. By that time he had become stable and had regained the ability to speak and walk, albeit with difficulty. His right arm remained paralysed. On 9 January 2007 he was transferred to a neurosurgery unit.

57. The applicant was examined daily and received treatment. Additional medication was sent to him by his relatives.

58. On 30 January 2007 the applicant was examined by Dr S., chief neurologist of St Petersburg and a member of the Russian Academy of Medical Science. Dr S. confirmed the diagnosis of the Haass prison hospital doctors, noted that long-term rehabilitation treatment was necessary and prescribed nootropics, vasoactive substances, muscle relaxants, vitamins, massage and exercise. It transpires from the applicant's medical record that he received the prescribed medication both from the hospital doctors and from relatives. However, the doctors noted that there was a risk of a further ischaemic stroke.

59. On 28 February 2007 the applicant was discharged with a recommendation to continue the treatment and to avoid poorly ventilated spaces. Constant medical supervision was necessary. On 1 March 2007 the applicant was transported to remand centre SIZO-3.

60. On 6 March 2007 the applicant had another ischaemic stroke. He was immediately taken to Haass prison hospital, where he remained until 26 April 2007. He was diagnosed with chronic impairment of his cerebral

blood circulation. He received the same treatment as before. His right arm remained paralysed, the motor functions of his right leg remained partly impaired and he had difficulty walking and speaking. A doctor noted on 3 April 2007 that the applicant's participation in investigative measures was inadvisable.

61. On 26 April 2007 the applicant was transported back to remand centre SIZO-3. The hospital doctors recommended that the treatment be continued.

62. On 1 June 2007 the applicant fainted and was again taken to Haass prison hospital. He was diagnosed as having a hypertensive attack. He was unable to speak or move his legs and right arm. However, the doctors noted that "there was no clinical evidence of motor aphasia (a deficit in speech production) or triplegia (paralysis of three limbs)." His symptoms were likely to be caused by neurasthenia.

63. During his stay in Haass prison hospital the applicant was regularly examined by a neurologist, who diagnosed him with functional hemiplegia (paralysis of psychogenic origin, in the absence of other signs of motor system dysfunction).

64. The applicant received treatment for hypertension. His blood pressure, however, remained high. By 9 June 2007 he had started to speak. It also transpires from the medical certificates that he was physically capable of walking but did not want to walk. When his attention was distracted he could move both legs.

65. According to the applicant he was regularly questioned by the investigator. He was brought to the interview room of the hospital on a stretcher which was put directly on the floor. The interviews lasted several hours, during which he remained on the cold floor. According to the Government, the applicant was never carried to the interview room. All interviews took place on the applicant's ward. The length of each interview was determined by a doctor.

66. On 3 July 2007 the applicant was discharged. However, due to the unavailability of transport he stayed in hospital until 11 October 2007. He was regularly examined by doctors and received treatment for hypertension. He remained confined to his bed. On 11 October 2007 he was transported to remand centre SIZO-3.

67. On 7 November 2007 the applicant had a hypertensive cerebral attack and was again taken to Haass prison hospital. He received the same treatment as before. By 28 November 2007 his condition was stable and he started to walk using support. However, the medical record noted that he walked with great difficulty. His right arm remained paralysed.

68. On 4 December 2007 the applicant was again examined by Dr S. The latter noted that as a result of repeated ischaemic strokes and hypertensive attacks the applicant was suffering from persistent right hemiplegia (paralysis of the right part of the body), cognitive disorder,

hemianopsia (loss of half the vision in both eyes), right hemianaesthesia (loss of tactile sensibility on the right side of the body) and ataxia (neurological symptom consisting of gross lack of coordination of muscle movements). He recommended that the treatment should be continued and that additional examinations be performed, in particular a brain positron emission tomography (PET scan) and transcranial sonography.

69. On 14 December 2007 the applicant was granted disability status.

70. According to the applicant, by a letter of 19 December 2007 the head of Haass prison hospital stated that the hospital did not have the medical equipment to perform the examinations and that his continued detention might be detrimental to his health.

71. On 18 December 2007 the applicant was discharged and on 21 December 2007 he was transported to remand centre SIZO-4 in St Petersburg.

72. The applicant stated that he had been transported in an unequipped prison van and had not been accompanied by a medical specialist. The journey had lasted for four hours in the freezing cold. The heating system and the lights had not functioned. The escorts had ordered him to get into the van by himself, although the van door was about a metre above the ground.

73. It follows from a certificate of 12 May 2008 issued by a deputy head of the prison escort service of the Federal Department for the Execution of Sentences of St Petersburg and Leningradskiy Region, submitted by the Government, that the applicant was transported in a standard prison van together with fourteen other persons. The applicant's medical record indicated that his condition was satisfactory and that he could be transported unaccompanied by a doctor. The prison van was designed to carry twenty-one prisoners and had two communal compartments and one individual compartment. It was equipped with wooden benches, had a functioning heating system and lights. It was naturally ventilated through hatches in the roof. The van had been checked that morning by a maintenance technician and was technically in good order. The applicant had been put in the van between 10.20 and 11.25 a.m. and arrived at SIZO-4 at 1.50 p.m. The route was 38 kilometres long and took two hours and fifty minutes. The weather on that day was between + 3 and 5° C. The applicant had not complained about the conditions of transport. The Government submitted documents in support of their allegations, in particular reports dated 21 December 2007 by the maintenance technician and the convoys, waybills and a weather report for that day.

74. In SIZO-4 the applicant was placed in the medical wing, where he remained until 1 February 2008. He received treatment for hypertension. According to the applicant, the medical wing did not have the requisite cardiological equipment and there was only one doctor for 2,000 detainees.

75. On 1 February 2008 the applicant was transferred to an ordinary cell, where he remained until 2 February 2009. He continued to receive treatment for hypertension and was regularly examined by the remand centre doctor. In February 2008 the doctor examined him once a week, and starting from March 2008 once or twice a month. After each visit the doctor noted that the applicant's condition was satisfactory and prescribed further treatment. He noted that the applicant could walk using support. However, he refused to leave his cell. His right arm remained paralysed and the motor functions of his right leg remained impaired.

76. It appears that on 2 February 2009 the applicant was transferred to a correctional colony where he is now serving his sentence.

C. Family visits

77. The applicant stated that family visits had been restricted. His wife had been allowed to visit him only three times in 2006. No visits had been permitted in 2007.

78. According to the Government, the applicant was visited by his wife and mother on 30 March, 6 and 20 July, 3 August and 21 and 28 December 2006 and on 30 January 2008. None of his requests for permission to see his family had been refused. He did not request any visits in 2007.

II. RELEVANT DOMESTIC LAW

A. Detention pending trial and judicial review of detention

79. Since 1 July 2002 criminal-law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001 – “the CCrP”).

80. “Preventive measures” (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

81. 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 during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

82. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

83. After arrest the suspect is placed in custody “during the investigation”. The maximum permitted period of detention “during the investigation” is two months but it can be extended for up to eighteen months in “exceptional circumstances” (Article 109 §§ 1-3). The period of detention “during the investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

84. From the date the prosecutor forwards the case to the trial court, the defendant’s detention is “before the court” (or “during the judicial proceedings”). Within fourteen days of receipt of the case file (if the defendant is in custody), the judge is required to either: (1) refer the case to a competent court; (2) fix a date for a preliminary hearing (*предварительное слушание*); or (3) fix a date for trial (Article 227). On receipt of the case file the judge must determine, in particular, whether the preventive measure applied should be lifted or changed (Articles 228 (3) and 231 § 2 (6)).

85. The period of detention “during the judicial proceedings” is calculated up to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

86. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide on the appeal within three days of its receipt (Article 108 § 10).

87. Defendants may petition officials or a court to take procedural decisions that would secure their rights and legitimate interests (Article 119 §§ 1 and 2). Such petition may be lodged at any time during the investigation or the judicial proceedings (Article 120). It must be examined by the official or the court within three days (Article 121).

88. At any time during the judicial proceedings the court may order, vary or discontinue any preventive measure, including detention (Article 255 § 1). Any such decision must be given in the deliberations room and signed by all the judges in the formation (Article 256). An appeal against such a decision lies to the higher court (Article 255 § 4).

89. The appeal court must examine the criminal case within a month of the receipt of the case file (Article 374).

B. State liability for unlawful detention

90. The State or regional treasury is liable – irrespective of any fault by State officials – for damage sustained by an individual on account of, in particular, unlawful criminal prosecution or unlawful application of a preventive measure in the form of placement in custody (Article 1070 § 1 of the Civil Code).

91. A court may hold the tortfeasor liable for non-pecuniary damage incurred by an individual through actions impairing 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 for irrespective of the tortfeasor's fault in the event of, in particular, unlawful conviction or prosecution or unlawful application of a preventive measure in the form of placement in custody (Article 1100 § 2).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

92. The relevant extracts from the 3rd General Report [CPT/Inf (93) 12] of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

"a. Access to a doctor

... 35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). ... Further, prison doctors should be able to call upon the services of specialists. ...

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital. ...

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health."

b. Equivalence of care

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

93. The applicant complained of the allegedly inadequate medical assistance he had received in detention, the authorities’ refusal to release him on health grounds or transfer him to a civil hospital with a higher standard of care and the allegedly inhuman conditions of his transport on 21 December 2007. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

A. Medical assistance

94. The Government submitted that the applicant had not exhausted the domestic remedies available to him. He had never complained of inadequate medical assistance to a prosecutor, such complaint being, in the Government’s opinion, an effective remedy. They referred to improvements in the conditions of detention which had been made in response to complaints lodged with the prosecutor’s office by Mr N., Mr D. and Mr Sh. (a medical unit had been set up, medicines purchased and maintenance work carried out). They stated that 13% of complaints about allegedly inadequate conditions of detention had been considered well-founded in 2007, while in the first half of 2006 the prosecutors had recognised 18% of such complaints as well-founded. It was also open to the applicant to seek compensation for non-pecuniary damage before a court. To prove the effectiveness of that remedy, the Government referred to two judgments by the domestic courts awarding Mr S. and Mr D. compensation for their detention in appalling conditions.

95. In the alternative, the Government argued that the complaint was manifestly ill-founded. The applicant had received medical assistance appropriate to his condition. He had been under constant medical supervision by the remand centre doctor. Whenever an emergency occurred an ambulance had been immediately called for him and he had been taken to hospital for examination and treatment. He had been regularly examined by medical specialists, had been subjected to a number of medical tests and had received adequate and timely treatment.

96. The applicant maintained his claims.

97. The Court considers that it is not necessary to examine the Government's objection as to non-exhaustion of domestic remedies, as the applicant's complaint concerning the allegedly inadequate medical assistance must in any event be declared inadmissible for the reasons stated below.

98. According to the Court's established case-law Article 3 of the Convention enshrines one of the most fundamental values of 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, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100–101, ECHR 2001-VIII). Whether the severity of the ill-treatment or neglect reaches the threshold prohibited by Article 3 will depend on the particular circumstances of the case, including the age and state of health of the person concerned as well as the duration and nature of the treatment and its physical or mental effects (see *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, 29 May 2001).

99. The Court has consistently stressed that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see *Gelfmann v. France*, no. 25875/03, § 50, 14 December 2004, and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, this provision does require the State to ensure that prisoners are 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 them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92–94, ECHR 2000-XI).

100. The Court has already had occasion to note that, under certain circumstances, the detention of an elderly or severely disabled person over a lengthy period and in conditions inappropriate to his or her state of health

might raise an issue under Article 3 (see *Papon c. France* (dec.), no. 64666/01, 7 June 2001; *Price v. the United Kingdom*, no. 33394/96, §§ 21 to 30, ECHR 2001-VII; and *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004). Nonetheless, regard is to be had to the particular circumstances of each specific case, such as (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, cited above, §§ 40-42, and *Sakkopoulos v. Greece*, no. 61828/00, § 39, 15 January 2004).

101. The Court will apply this test to the particular circumstances of the present case.

102. As regards the applicant's condition, the Court notes that it was not contested that both before his arrest and during his detention in remand centres SIZO-3 and SIZO-4 the applicant had suffered from hypertension and ischaemic heart disease. His state of health was precarious, he required constant medical supervision and treatment and ran a high risk of stroke. While in detention he had two ischaemic strokes and several hypertensive attacks. As a result of the hypertensive attack of June 2007 he became hemiplegic, with his right arm paralysed and the motor functions of his right leg impaired.

103. The Court will next examine whether the applicant was provided with medical assistance appropriate to his condition. It transpires from the documents produced by the Government that the applicant was examined by a doctor immediately after his arrest and was offered treatment, which he however refused (see paragraph 44 above). It appears that as a consequence of that refusal he did not receive any treatment during the first months of his detention. However, as soon as his condition became alarming he was taken to Haass prison hospital without delay (see paragraph 47 above).

104. During the entire subsequent period of his detention the applicant regularly sought, and obtained, medical attention. His medical record shows that each time he was unwell an ambulance was called and he was taken to Haass prison hospital for examination and treatment. In total, he spent about a year in hospital. There is no reason to believe that the treatment administered to him was inadequate. He was regularly examined by specialists, including twice by Dr S., a prominent neurologist and a member of the Russian Academy of Medical Science. He received timely and regular treatment which apparently improved his condition. Admittedly, the treatment did not prevent the applicant's having two ischaemic strokes and several hypertensive attacks. However, the Court does not consider on the basis of the material before it that the authorities can be held responsible for those incidents. It appears that they were the intrinsic consequence of the applicant's chronic cardiac diseases rather than the result of any discernible

shortcoming in the treatment (see, for similar reasoning, *Kudla*, cited above, §§ 96 and 97, and *Sakkopoulos*, cited above, § 40).

105. The Court notes with concern that the brain scans recommended by Dr S. in December 2007 were never performed, apparently because the Haass prison hospital did not possess the requisite equipment (see paragraphs 68 and 70 above). However, there is nothing to suggest that the failure to perform those examinations prevented the establishment of a correct diagnosis or the prescription of adequate treatment. Indeed, the applicant's condition since December 2007 has been stable. He has not had any recurrences of his illness and his blood pressure appears to have returned to normal. His condition has been monitored by a doctor and he has received regular treatment. Therefore, the Court considers that during the entire period of his detention the applicant was provided with the requisite medical assistance.

106. It remains to be ascertained whether it was advisable to maintain the detention measure in view of the applicant's state of health. The Court has already found that detention of a hemiplegic person was compatible with Article 3, provided that he enjoyed sufficient autonomy to take care of his basic daily needs (see *Matencio v. France*, no. 58749/00, §§ 82, 83 and 89, 15 January 2004). In another case it considered that detention of a person who suffered from cardiac insufficiency and was recovering from a heart attack and who received medical assistance appropriate to his condition did not constitute inhuman or degrading treatment (see *Sakkopoulos*, cited above, §§ 40-45). The applicant in the present case did not allege that his state of health prevented him from taking care of his personal needs. Nor did he describe the physical conditions of his detention in remand centres SIZO-3 and SIZO-4 in any detail. Therefore, his complaint about the alleged incompatibility of his state of health with detention is generic and unsubstantiated. Moreover, it transpires from the materials in the case file that the domestic authorities were mindful of the applicant's situation and tried to improve the conditions of his detention. Hence, they transferred him from SIZO-3 to SIZO-4 precisely in order to ensure better conditions of detention and higher quality of medical supervision and care (see paragraphs 38 and 74 above).

107. The Court accepts that the applicant's condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. However, assessing the relevant facts as a whole and taking into account the fact that the applicant was at all times provided with medical assistance appropriate to his condition, the Court does not find it established that he was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

108. It follows from the above that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Conditions of transport

109. The Government submitted that the conditions of the applicant's transport had been compatible with Article 3 of the Convention. The prison van had been technically in good order, had been heated and ventilated. It had not been overcrowded. The applicant's medical record showed that he had been fit to be transported and that he could be transported unaccompanied by a doctor.

110. The applicant maintained his claims.

111. The Court observes that it has found a violation of Article 3 in a case where a post-operative patient was transported in a standard prison van in unfit conditions (see *Tarariyeva v. Russia*, no. 4353/03, §§ 112 to 117, ECHR 2006-... (extracts)). A violation of that Article was also found in cases where an applicant was transported many times to the courthouse and back in extremely cramped conditions (see *Moiseyev v. Russia*, no. 62936/00, §§ 131 to 136, 9 October 2008, where the applicant was transported on more than one hundred and fifty days; *Starokadomskiy v. Russia*, no. 42239/02, §§ 53 to 60, 31 July 2008, where the applicant was transported on one hundred and ninety-five days; *Vlasov v. Russia*, no. 78146/01, § 92 to 99, 12 June 2008, where the applicant was transported on more than one hundred days; and *Khudoyorov v. Russia*, no. 6847/02, §§ 118 to 120, ECHR 2005-X (extracts), where the applicant was transported on about two hundred days).

112. The present case is different. In contrast to the case of *Tarariyeva* (cited above), the applicant's condition was stable, he could sit, was able to walk using support and was considered by doctors to be fit to be transported (see paragraphs 67 and 73 above). Unlike the applicants in the cases of *Moiseyev*, *Starokadomskiy*, *Vlasov* and *Khudoyorov* (all cited above), the applicant in the present case was transported in a prison van which was occupied below its design capacity and was not overcrowded. The applicant's allegation that the heating and lights had not functioned was convincingly refuted by the Government, who submitted a report by the maintenance technician showing that on 21 December 2007 the van had been technically in good order (see paragraph 73 above).

113. The Court considers that it would have been preferable for the applicant, who was hemiplegic, to have been transported in a hospital van rather than a standard prison van. However, there is no evidence that the treatment complained of, which was of a short duration and did not have any negative consequences for the applicant's state of health, attained the

minimum level of severity necessary to come within the scope of Article 3 of the Convention.

114. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

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

115. The applicant complained of a violation of his right to trial within a reasonable time and alleged that the orders for his detention had not been founded on sufficient reasons. He relied on Article 5 § 3 of the Convention, which provides:

“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

116. The Government invited the Court to reject the applicant’s complaint relating to the period after commencement of the judicial proceedings. The applicant had failed to exhaust domestic remedies in respect of that period as he had not appealed against the detention orders issued during the proceedings.

117. The Court first notes that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains of a continuing situation which should be considered as a whole and not divided into separate periods in the manner suggested by the Government (see, *mutatis mutandis*, *Solmaz v. Turkey*, no. 27561/02, §§ 29 and 37, ECHR 2007-... (extracts)). Following his placement in custody on 13 February 2006 the applicant remained continuously in detention until his conviction on 19 September 2008. Therefore, the Court will make a global assessment of the entire period of the applicant’s detention in order to determine whether he exhausted domestic remedies.

118. Under the terms of Article 35 § 1 of the Convention the Court can only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The application of that rule must, however, make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to establish. Accordingly, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed it is essential to have regard to the particular circumstances of each

case. This means, amongst other things, that the Court must take realistic account of the general legal and political context in which the remedies operate, as well as the personal circumstances of the applicant (see *Estrikh v. Latvia*, no. 73819/01, §§ 92 and 94, 18 January 2007, with further references).

119. The Court has consistently held that mere doubts as to the prospects of success of national remedies do not absolve an applicant from the obligation to exhaust those remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, § 71, *Reports of Judgments and Decisions* 1996-IV). However, applicants cannot reasonably be expected continually to make applications before the same body where previous such applications have failed (see *NA. v. the United Kingdom*, no. 25904/07, § 91, 17 July 2008).

120. The Court observes that the applicant appealed against the decision of 13 February 2006 to remand him in custody. He also appealed to the Supreme Court against the extension order of 9 August 2007. He thereby gave an opportunity to the Supreme Court to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial.

121. After the case was sent for trial in October 2007, the applicant's detention was on several occasions extended by the Moskovskiy District Court. Appeal against the extension orders made by that court lay to the St Petersburg City Court, the same court that had previously extended the applicant's detention on 5 February, 7 June and 9 August 2007. Accordingly, the City Court had repeated opportunities to consider the applicant's circumstances, including his state of health, and to examine the arguments for release advanced by him. Indeed, on 7 June 2007 the City Court had an occasion to observe the applicant's condition when he was brought to the courtroom on a stretcher accompanied by a doctor and a sign-language interpreter. However, it rejected the applicant's arguments and extended his detention, finding that he might abscond or intimidate witnesses (see paragraph 33 above).

122. As the Court has observed, Article 35 must be applied to reflect the practical realities of the applicant's position. Although an appeal against a detention order is in principle an effective remedy in such cases, the Court considers that the applicant could not reasonably have been expected to appeal to the St Petersburg City Court, which had already repeatedly examined the issue as a first-instance court and rejected his arguments. Nothing in the case file indicates that the applicant's circumstances materially changed after the City Court had made the extension orders or that any new factors emerged subsequently that could have altered the position of the City Court. The Court finds that, having regard to the practical realities of the applicant's position, it could not be said that an appeal to the City Court had any reasonable prospects of success. The Court therefore considers that there existed special circumstances dispensing the

applicant from the obligation to appeal to the St Petersburg City Court against the detention orders issued during the judicial proceedings.

123. The Court concludes, in light of the above, that the application cannot be rejected for failure to exhaust domestic remedies. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

124. The Government argued that the decisions to remand the applicant in custody had been lawful and well-reasoned. The applicant had been charged with several financial offences, each of which was serious enough to justify his detention. He had been suspected of being a member of an organised criminal group. Referring to the case of *Contrada v. Italy* (24 August 1998, § 67, *Reports* 1998-V), the Government submitted that his membership of a mafia-type organisation with a rigid hierarchical structure and substantial power of intimidation had complicated and lengthened the criminal proceedings. The applicant had moreover breached his undertaking not to reoffend and had continued his unlawful business activities. Therefore, there had been reasons to believe that he would reoffend if released. He had also attempted to interfere with the proceedings by intimidating witnesses, several of whom had even requested anonymity and police protection. The Government considered that the applicant's detention had been founded on "relevant and sufficient" reasons.

125. The applicant maintained his claims. He argued that there had been no evidence that he had interfered with witnesses. Moreover, the analogy between his case and the mafia cases was misplaced as he had been charged with financial offences.

2. The Court's assessment

(a) General principles

126. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of his or her 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 found to have been "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special

diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

127. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify his or her continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. 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).

128. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, 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 (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court’s task to establish such facts and take the place of the national authorities which ruled on the applicant’s detention. It is essentially on the basis of the reasons given in the domestic courts’ decisions and of the true facts mentioned 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 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

129. The applicant was arrested on 13 February 2006. He was convicted by the trial court on 19 September 2008. The period to be taken into

consideration therefore lasted for slightly more than two years and seven months.

130. It is not disputed by the parties that the applicant's detention was initially warranted by a reasonable suspicion of his involvement in unlawful business activities and money laundering. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify his continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

131. The gravity of the charges was one of the factors for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. However, the Court has repeatedly held 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 gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilykov*, cited above, § 81). The Court will therefore examine whether the other grounds referred to by the domestic courts were sufficient to justify the applicant's detention.

132. The judicial authorities relied, in addition to the gravity of the charges against the applicant, on specific facts relating to his behaviour. In particular, they found that he had continued his unlawful activities in breach of his undertaking not to reoffend and had attempted to intimidate his employees into not giving incriminating testimony. Indeed, several witnesses had requested, and were granted, anonymity because they had feared threats from the applicant, and one of them made written submissions to the remand court accusing the applicant of intimidation (see paragraphs 24 and 27 above). Moreover, the judicial authorities took into account the applicant's position as the director of the companies whose business activities were under investigation, a position which gave him an opportunity to destroy evidence. The Court is prepared to accept that the judicial authorities convincingly demonstrated the existence of a risk that, if released, the applicant might reoffend or interfere with the proceedings.

133. It remains to be ascertained whether that risk persisted throughout the entire period of detention. The Court notes in this respect that after a hypertensive attack in June 2007 the applicant became hemiplegic and bedridden. His restricted ability to move and, for some time, to speak, as well as the necessity for him to remain under constant medical supervision considerably reduced the danger of his absconding, reoffending, interfering with witnesses or destroying evidence. However, the domestic courts failed to take the changed circumstances into account and continued to extend the applicant's detention without any assessment of whether, considering the

applicant's medical condition, that danger remained real. It is even more striking that after the applicant was brought to the courtroom on a stretcher accompanied by a doctor and a sign-language interpreter, since he could neither walk nor speak, the City Court found, without giving any reasons for that finding, that the risk of his fleeing from justice, reoffending or obstructing the proceedings still persisted (see paragraph 33 above). The Court is not persuaded by that finding. In its opinion, after June 2007 that risk was mitigated by the applicant's medical condition so that it was no longer sufficient to outweigh his right to trial within a reasonable time or release pending trial.

134. Having regard to the above, the Court considers that the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" for the entire period of detention. In these circumstances it will not be necessary to examine whether the proceedings were conducted with "special diligence".

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

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

136. The applicant complained under Article 5 § 4 that his appeal against the detention order of 9 August 2007 had not been examined speedily. He further complained that, given that no hearings had been held between 7 November 2007 and 11 February 2008, he had not had an effective opportunity to lodge an application for release and have it examined by the court. Article 5 § 4 reads as follows:

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

A. Admissibility

1. Alleged impossibility of lodging an application for release

137. The Government submitted that the hearings scheduled between 7 November 2007 and 11 February 2008 had been adjourned due to the applicant's illness. However, that fact had not barred him from lodging an application for release. It had been open to him to send such an application by mail or to apply to a court through his counsel.

138. The applicant maintained his claims.

139. The Court observes that the applicant did not allege that it had been legally impossible for him to lodge an application for release during the

trial. Indeed, domestic law provided for a possibility to apply for release, required the trial court to examine the application and gave it power to discontinue the detention if it was no longer necessary (see paragraphs 87 and 88 above). The thrust of the applicant's complaint was directed against the alleged practical impossibility of lodging an application for release in the particular circumstances of his case, due to the fact that no hearing was held between 7 November 2007 and 11 February 2008. The Court is, however, not convinced by the applicant's allegation. It transpires from the documents in the case file that counsel for the applicant lodged an application for release on 20 December 2007 and that it was examined by the trial court on the same day (see paragraph 39 above). There is no evidence that the applicant or his counsel lodged or attempted to lodge other applications which remained unexamined.

140. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Speediness of review

141. The Court notes that the complaint about the delay in the examination of the appeal against the detention order of 9 August 2007 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

142. The Government submitted that the applicant's appeal had been examined within the time-limit established by Article 374 of the Code of Criminal Procedure (see paragraph 89 above).

143. The applicant maintained his claims.

144. The Court notes that the appeal proceedings against the detention order of 9 August 2007 lasted fifty days. The applicant's appeal submissions were received by the City Court on 14 August 2007. The City Court obtained comments from the investigator and forwarded the appeal submissions and the comments to the Supreme Court, which received them on 5 September 2007. However, it was not until a month later, on 4 October 2007, that the Supreme Court examined the appeal (see paragraphs 35 and 36 above). The Government did not provide any explanation for the delay. The Court considers that that delay, which was attributable to the authorities, cannot be considered compatible with the "speediness" requirement of Article 5 § 4 (compare, for example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where the review proceedings, which lasted twenty-three days, were found not to be "speedy"; and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; where the appeal proceedings lasted thirty-six, twenty-six, thirty-six, and twenty-nine days).

145. There has therefore been a violation of Article 5 § 4 of the Convention.

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

146. The applicant further complained that he did not have an enforceable right to compensation for the violation of his right to trial within a reasonable time or to release pending trial and his right to have the lawfulness of his detention examined speedily. 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

147. The Court 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

148. The Government submitted that Articles 1070 and 1100 of the Civil Code provided for the right to compensation for unlawful detention. The applicant had never applied for such compensation. Moreover, the appeal courts had upheld all the extension orders issued in respect of him as lawful.

149. The applicant maintained his complaint.

150. 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. 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 *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005, and *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X).

151. In the present case the Court has found a violation of paragraph 3 of Article 5 in that the duration of the applicant’s detention was not based on “relevant and sufficient” reasons. It has also found a violation of Article 5 § 4 in that the applicant’s appeal against the detention order of 9 August 2007 was not examined speedily. It must therefore establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5.

152. The Court observes that, pursuant to the relevant provisions of the Russian Civil Code (see paragraphs 90 and 91 above), an award in respect of pecuniary and/or non-pecuniary 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 appeal courts upheld the lawfulness of the detention and extension orders and the applicant therefore had no grounds to claim compensation.

153. Furthermore, the Court notes that the provisions invoked by the Government do not provide for State liability for detention which was not based on “relevant and sufficient” reasons or for a delay in examination of an appeal against an extension order. This state of Russian law precludes any legal possibility for an applicant to receive compensation for detention effected in breach of Article 5 §§ 3 or 4 of the Convention (see *Korshunov v. Russia*, no. 38971/06, § 62, 25 October 2007, and *Govorushko v. Russia*, no. 42940/06, § 60, 25 October 2007).

154. Thus, the Court finds that the applicant did not have an enforceable right to compensation for his detention found to be in violation of Article 5 §§ 3 and 4 of the Convention.

155. There has therefore been a violation of Article 5 § 5 of the Convention.

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

156. The applicant complained that the criminal proceedings against him had been excessively long. He relied on Article 6 § 1 of the Convention, which provides:

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

157. The Government submitted that the applicant had not complained about the excessive length of the proceedings to the president of the court, to the judicial qualifications board or to the prosecutor’s office. Nor had he applied to a court for compensation. He had not therefore exhausted domestic remedies. The complaint was moreover premature, as the proceedings were still pending.

158. The Government further argued that the length of the proceedings had been accounted for by the complexity of the case, the number of defendants (six) and witnesses (more than 200), and the number of case documents (68 binders). Forty-five searches, ninety-nine seizures, 209 inspections and twenty-three expert examinations had been carried out by the investigation team. The trial hearings had been scheduled at regular intervals; however some of them had been adjourned due to the applicant’s illness.

159. The applicant maintained his claims.

160. As regards the Government's preliminary objection relating to the fact that the proceedings were pending, the Court observes that after this objection had been raised the proceedings ended with a final judgment. Accordingly, the Court does not find it necessary to examine it. Nor is it necessary to examine the Government's objection as to non-exhaustion of domestic remedies, as the applicant's complaint about the allegedly excessive length of the criminal proceedings must in any event be declared inadmissible for the reasons stated below.

161. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is "charged" within the autonomous and substantive meaning to be given to that term. It ends with the day on which a charge is finally determined or the proceedings are discontinued (see *Rokhlina*, cited above, § 81). In the present case the period to be taken into consideration began on 22 November 2005, when the charges were laid against the applicant. It ended on 26 January 2009, when the St Petersburg City Court gave the final judgment in the case. The proceedings thus lasted for approximately three years and two months.

162. The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

163. The Court acknowledges that the case was very complex. It concerned unlawful business activities carried out by several companies over a long period of time. During the investigation, which lasted for one year and ten months, the investigation team questioned more than 200 witnesses and performed a considerable number of searches, inspections and expert examinations. There is no evidence of any significant periods of inactivity on the part of the prosecution authorities. Having regard to the complexity of the case, the length of the investigation was not excessive.

164. Turning to the trial stage, the Court observes that the trial proceeded with no substantial delays, with the hearings being scheduled and held at regular intervals. It takes note of the fact there was a delay in January 2008 which was attributable to the authorities. Indeed, the hearings of 14, 21 and 28 January 2008 were postponed because the applicant could not be transported to the courtroom due to the unavailability of transport fit for his condition (see paragraph 13 above). However, the delay incurred as a result was negligible. On the other hand, there were circumstances that slowed the proceedings down through no fault of the authorities, such as the applicant's hospitalisation which prevented him from attending the hearings in November and December 2007, and counsel's leave in July and August

2008 (see paragraphs 12 and 16 above). Given that the trial was completed within a year, its length cannot be said to have been unreasonable.

165. Finally, the Court notes that the appeal proceedings lasted for approximately four months, which does not appear excessive.

166. Making an overall assessment of the complexity of the case, the conduct of all concerned as well as 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.

167. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

168. The applicant further complained under Article 8 about restrictions on family visits. Article 8 provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

169. The applicant submitted that the detention facility authorities had unlawfully postponed or cancelled visits although his wife had been in possession of a valid visiting permission issued by the investigator. As a result, the applicant had only had three family visits in 2006 and no visits at all in 2007.

170. The Government submitted that every time the applicant's relatives had applied for permission to visit, they had received such permission. None of their applications had been refused. In total, the applicant had had seven family visits.

171. The Court reiterates that restrictions on family visits may constitute interference with the exercise of an applicant's right to respect for his family life, guaranteed by Article 8 § 1 of the Convention (see *Messina v. Italy* (no. 2), no. 25498/94, § 62, ECHR 2000-X). In the present case, however, the Government denied that any restrictions had been imposed and contended that the infrequency of family visits in the applicant's case was accounted for by the fact that his relatives had rarely sought a meeting with him. The applicant failed to present the Court with any evidence to the contrary. He did not produce any applications for permission to visit which had been refused or any complaints to the domestic authorities concerning any visits which had been denied despite presentation of a valid visiting

permission. Accordingly, the Court is unable to establish that there was interference with the applicant's right to respect for his family life.

172. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

173. Lastly, the applicant complained that he did not have an effective remedy against violations of his rights under Articles 3, 6 § 1 and 8 of the Convention. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

174. The Court notes that it has found the applicant's complaints under Articles 3, 6 § 1 and 8 manifestly ill-founded. For similar reasons, the applicant did not have an “arguable claim” of a breach of those Articles. Consequently, Article 13 is not engaged (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

175. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

176. 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

177. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

178. The Government considered that the claim was excessive. The finding of a violation would in itself constitute sufficient just satisfaction.

179. The Court observes that it has found violations of Article 5 §§ 3, 4 and 5 of the Convention on the ground that the length of the applicant's detention was not sufficiently justified, he was denied the right to have the lawfulness of his detention examined speedily and he had no enforceable right to compensation for his detention in violation of the requirements of Article 5. It finds that the applicant suffered non-pecuniary damage which

would not be adequately compensated by the finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the excessive length of the applicant's detention, the alleged violation of his right to a speedy judicial decision concerning the lawfulness of his detention and the absence of an enforceable right to compensation for detention in violation of the requirements of Article 5 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles 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 amount 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President