



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

FIRST SECTION

CASE OF YURIY YAKOVLEV v. RUSSIA

(Application no. 5453/08)

JUDGMENT

STRASBOURG

29 April 2010

FINAL

29/07/2010

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

In the case of Yakovlev 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,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 5453/08) 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 Yuriy Yevgenyevich Yakovlev (“the applicant”), on 11 December 2007.

2. The applicant was represented by Mr S. Antonov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that the length of his detention was excessive.

4. On 5 June 2009 the President of the First Section decided to give notice of 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). Further to the applicant’s request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lived in Moscow until his arrest.

A. Applicant's arrest and authorisation of his detention

6. On 10 November 2006 the Prosecutor General's office instituted criminal proceedings on charges of aggravated bribery and abuse of position against a number of officials of the Federal Mandatory Health Insurance Fund ("the Fund"), including the applicant. The latter was employed as the first deputy director of the Fund until August 2006, when he resigned.

7. The applicant was not arrested, as on 24 November 2006 he gave a written undertaking to comply with investigators' orders and summons. During the subsequent eight months he fully complied with the written undertaking and actively participated in the criminal investigation, attending investigative actions whenever summoned by the Prosecutor General's office (at least fifteen times in eight months).

8. On 2 July 2007 the deputy head of the Trade Security Service of the Federal Security Service ("the FSB"), lieutenant-general V., sent a letter to a senior investigator of the Prosecutor General's Office responsible for the applicant's criminal case. The relevant part of the letter read as follows:

"[We] have received information that the former first deputy director of the Fund, [the applicant], if informed that documents [for his arrest] are being prepared, will take steps similar to those [taken] in November 2006 when he, having used his extensive connections in medical institutions, admitted himself to a hospital for inpatient treatment.

Furthermore, according to the received information [the applicant], being a very cautious person and responding to all summons by the investigator, at the same time takes measures to pervert the investigation by inciting individuals who have information about his criminal activities to distort that information.

This is just to inform you."

9. On the following day, at approximately 2.30 p.m., the applicant was arrested. A record of the arrest, in so far as relevant, read as follows:

"It is suspected that [the applicant] in 2005 [and] 2006, having acted as the first deputy director of [the Fund] in Moscow together with an organised group and using his official position, had received bribes in large amounts from heads of regional mandatory medical insurance funds and representatives of pharmaceutical companies in exchange for provision of resources from the fixed insurance reserve of the Federal Fund and insurance funds set aside to supply citizens with medicines..., that is [the applicant is suspected] of a criminal offence proscribed by Article 290 § 4 (a) [and] (d) of the Russian Criminal Code.

...

In respect of his arrest [the applicant] stated: there are no grounds for the arrest; [I] did not attempt to abscond from the investigation; [I] did not try to prevent the establishment of the truth in the case; [I] did not make attempts to influence the participants in the proceedings or to destroy evidence; [I] did not commit any crime while at liberty. [I] have a permanent place of residence in Moscow.

The lawyer adds that [the applicant] is in a poor state of health.”

The applicant’s lawyer present during the arrest made a handwritten note in the arrest record, insisting on an immediate medical examination of the applicant, arguing that the latter was suffering from a number of serious illnesses, felt ill during the arrest and could not adequately respond to the investigator’s actions.

10. On 3 July 2007 the applicant was brought before a judge of the Basmani District Court of Moscow. The applicant’s lawyer applied for an adjournment, arguing that he had had no time to study materials presented by the investigative authorities in support of their request for the applicant’s arrest. The District Court dismissed the lawyer’s request, noting that the criminal procedural law did not allow an adjournment on the grounds cited by the applicant’s lawyer, and authorised the applicant’s detention until 6 p.m. on 4 July 2007. The District Court stressed that the applicant’s lawyers should use that time to prepare their arguments in defence. The decision was amenable to appeal, however, no appeal followed.

11. On 4 July 2007 the Basmani District Court remanded the applicant in custody, holding as follows:

“As it follows from the case file materials, in 2005, in Moscow, [the applicant] acting as a public official – the first deputy director of the Federal Fund... entrusted with organisational [and] regulatory functions within the financial credit entity, on mercenary grounds for personal benefit and by way of receiving large sums in bribes for actions in the interests of regional funds of mandatory medical insurance, pharmaceutical and other entities which participate in medical insurance programmes and supplies of medicines and equipment for medical prophylactic entities of the Russian Federation, organised, with the director of the Federal Fund, Mr T., and a deputy director of the Federal Fund, Ms K. a stable organised criminal group which [a number of other officials of the Fund] joined.

According to the division of roles [the applicant], Ms K. and Mr T. were in charge of criminal activities [and] arranged agreements with heads and representatives of the regional funds, pharmaceutical and other entities according to which requests from those funds were to be approved in return for large sums of money, representing a certain percent of a subvention sum given to them or their intermediaries.

When the Federal Fund received requests from regional funds with which indicated agreements had been reached, [the applicant], Mr T. and Ms K., abusing their official position, personally indicated, in drafts of documents prepared for provision of subventions upon the received requests, the amount of a subvention which had to be paid to the regional funds.

Following subsequent examination of the requests in the Federal Fund, [the applicant], being a member of the “Commission of the Federal Fund...”, ensured, by agreement with other participants of the crimes, the successful examination of [the requests].

When money was received as bribes, [the applicant], Ms K. and Mr T. divided it between members of the organised [criminal] group.

...

In 2005-06, having [organised the criminal group] to commit crimes together and having divided roles between them, the above-mentioned persons, abusing their official positions, received bribes of more than twelve million roubles from officials of regional funds, representatives of pharmaceutical and other legal entities, which were interested in regularly receiving subventions from the centralised resources of the Federal Fund, [the bribes] were divided between the members of the organised group.

...

In 2005-06 Ms K., in her office in Moscow..., on a number of occasions received in total 1,500,000 roubles from a Mr K. as a bribe. That sum was divided between Mr T., Ms K., [the applicant]...

On 24 November 2006 a senior investigator of the Prosecutor General's office... received the criminal case file and on the same day a measure of restraint in the form of a written undertaking to attend [investigative arrangements] was chosen in respect of [the applicant].

On 3 July 2007, at 2.27 p.m., [the applicant] was arrested in compliance with the requirements of Articles 91 and 92 of the Russian Code of Criminal Procedure as a person suspected of an offence under Article 290 § 4 (a), (d) of the Russian Criminal Code and on 4 July 2007, at 11.20 a.m., he was questioned in that capacity.

...

The investigating authorities ask for an authorisation of [the applicant's] detention, asserting that other measures of restraint... would not correspond to the interests of the investigation.

...

[The applicant's] lawyer stated that [the applicant's] poor state of health does not permit him to be detained.

[The applicant] has no intention of absconding from the investigation or trial, [he] is a Russian citizen, he is registered in Moscow, [he] is at the pre-retirement stage, [he] is a law-abiding citizen and he presented himself to the Prosecutor General's office whenever summoned, [he] is only characterised positively, that is why he asks the court to dismiss the investigator's request for his arrest and to apply another measure of restraint, in the form of bail.

...

Having examined and analysed the presented materials, the court considers that the application for the arrest should be accepted for the following reasons.

The criminal case was opened by the competent official on the basis of sufficient reasons. [The applicant] was arrested in accordance with the requirements of Articles 91 and 92 of the Russian Code of Criminal Procedure.

The [arrest] application is drawn up in accordance with criminal procedural norms and is presented to the court on an order from the competent prosecutor within the time-limit established by law. The materials presented to the court attest to the fact that [the applicant] was arrested lawfully on suspicion of a criminal offence.

While examining the issue of the application of the measure of restraint in the form of detention the court takes into account that [the applicant] is suspected of a crime which the law defines as a particularly serious [criminal offence]. If released, [the applicant] may continue with criminal activities, may abscond from the investigation and trial, may negatively influence prosecution witnesses and other participants in the criminal proceedings, may try to contact his accomplices who are on the run and may destroy or falsify evidence in the case.

Moreover, having connections in the law enforcement and other State bodies, [the applicant] may obstruct the identification and retrieval of [other] accomplices, thus influencing the lawfulness, objectivity and thoroughness of the criminal investigation.

According to the information provided by the head of the FSB Department on 2 July 2007, [the applicant] is now taking steps to obstruct the investigation by persuading persons who possess information pertaining to his criminal activities to distort the facts, and he is also liable to [take] other steps to avoid criminal responsibility.

The court has no reason not to trust that information.

As follows from the materials presented by the investigator, [the applicant] has not yet been served with the final bill of indictment, for objective reasons.

At the same time, the criminal investigation authorities suspect [the applicant] of a criminal offence established by Article 290 § 4 (a), (d) of the Russian Criminal Code, which the law places in the category of particularly serious [criminal offences], punishable by seven to twelve years' imprisonment, and [the applicant] acquired the status of a suspect as a result of evidence collected by the investigation in the case:

- video and audio recordings, which were made during operational technical arrangements in 2005-2006, where statements about bribe-taking by the above-mentioned persons, made by representatives of the regional funds and pharmaceutical companies, were recorded, and statements about the distribution of money received as bribes [were also recorded].;

- documents discovered in the above-mentioned persons' offices;

- search records in the places of residence of the accused, including the applicant, as a result of which large sums of money were found;

- statements by a witness, Mr K., who confirmed his statements during a confrontation interview with Ms K.; documents given by [Mr K.] to the investigation authorities;

- initial statements by an accused, Mr T., who confirmed that he, [the applicant] and other employees of the Fund, had received money from Mr K. as bribes;

- statements by Mr Ku., who claimed that, while working in the Federal Fund as the head of the administrative service division, in 2006, on a number of occasions he had received various sums of money from Ms K. Mr Ku. confirmed his statements during a confrontation interview with Ms K. During the investigation Mr Ku. voluntarily handed over unlawfully obtained sums;

- statements by two of the accused, Ms M. and Ms F., who described the circumstances in which in 2005-06 they had received bribes from representatives of the regional funds and pharmaceutical companies, and who knew that part of the money received had been given to [the applicant]. In the course of the investigation Ms M. and Ms F. voluntarily handed over to the investigators unlawfully obtained money;

- statements by a number of representatives of the regional funds and pharmaceutical companies who described circumstances in which they had had to bribe officials of the Federal Fund.

Having regard to the particular circumstances of the case, the character and gravity of the criminal offence, and the information pertaining to [the applicant's] personality, the court considers that the application for an authorisation of the arrest is lawful and well-founded and should be accepted.

While determining the issue of the need or otherwise to apply a measure of restraint such as arrest to [the applicant], the court also takes into account his family and welfare situation; [he] is married but does not have a minor child or any other close relatives who are in need of material assistance or additional care, he has never been registered in a drug abuse clinic or a psychiatric hospital, and his state of health allows him to take part in judicial and investigative actions and to be detained in a temporary detention facility (there is a medical certificate in the case file)."

12. The applicant and his lawyers appealed, arguing that there were no grounds to conclude that the applicant was liable to abscond or pervert the course of justice. They indicated that for more than eight months the applicant had fully complied with the conditions of the written undertaking. According to the lawyers, the applicant's family and personal situation, including his age and poor state of health, were calling for his release. They also pointed out that the information provided to the District Court by the deputy head of the FSB Trade Security Service was no more than a collection of assumptions, not supported by any evidence. The lawyers cited a decision of the Supreme Court of the Russian Federation, according to which the gravity of the charges could not serve as the sole ground for an authorisation or extension of the accused's detention. They stated that in the absence of any other valid reasons the District Court had thus unlawfully based its decision on the gravity of the charges against the applicant.

13. On 6 August 2007 the Moscow City Court upheld the decision of 4 July 2007, endorsing the reasons given by the District Court.

B. Detention order of 3 September 2007 (extension of the applicant's detention until 10 November 2007)

14. On 3 September 2007 the Basmanniy District Court extended the applicant's detention until 10 November 2007, reasoning as follows:

"The court considers the arguments laid down in the application for an extension of the accused's detention well-founded, because it is impossible to finish the pre-trial investigation in the criminal case within the established time-limits as it is necessary to perform a number of investigative procedural actions, indicated in the decision.

[The applicant] is charged with a particularly serious criminal offence which is punishable by more than two years' imprisonment.

It follows from the investigator's decision and the materials presented that [the applicant] is charged with a crime as part of an organised group, certain participants of which are now being identified by the investigation authorities.

The presented materials indicate that [the applicant] has a passport for travel. In the course of the operational search arrangements information was received that [the applicant] had taken steps to pervert the course of the investigation by trying to persuade certain individuals to make statements beneficial to [the applicant].

The circumstances of the crime and the above-mentioned data serve as sufficient grounds to conclude that if released [the applicant] may abscond from the investigation and trial, may contact other persons in respect of whom investigative and operational search measures are being taken, and may influence witnesses, thus [he] will pervert the course of the investigation in the criminal case.

Having regard to the above said, the court finds that at the present moment the grounds and circumstances to be taken into account while applying a measure of restraint in the form of the arrest under Articles 97, 99 of the Russian Code of Criminal Procedure had not changed, and it is still necessary to preserve the above-mentioned measure of restraint.

While examining the issue of extension of [the applicant's] detention, the court takes into account his age, family situation and state of health.

Having assessed the amount of investigative actions which the investigative authorities have to perform, the court considers that the period for which the investigator asks [for the detention to be extended] is reasonable."

15. On 7 November 2007 the Moscow City Court upheld the extension order, finding that the District Court's conclusions were lawful and well-founded.

C. Detention order of 30 October 2007 (extension of detention until 10 February 2008)

16. On 30 October 2007 the Basmanniy District Court, by a decision worded similarly to the one issued on 3 September 2007, authorised a

further extension of the applicant's detention, this time until 10 February 2008.

17. On 10 December 2007 the Moscow City Court upheld the detention order, confirming that the gravity of the charges against the applicant, his liability to abscond, pervert the course of the investigation and trial had been rightfully listed by the District Court as grounds authorising a further extension of the applicant's detention.

18. On 25 December 2007 the pre-trial investigation ended and two days later the applicant and his lawyers began studying the case file.

D. Detention order of 7 February 2008 (extension until 10 May 2008)

19. At the end of January 2008 an investigator of the Prosecutor General's office lodged an application with the Basmanniy District Court seeking an extension of the applicant's detention for an additional three months. The investigator reasoned that the criminal case was particularly complex, the case file comprised eighty-nine volumes and additional time was necessary for eleven co-defendants and their twenty lawyers to study the file. He further submitted that the applicant was liable to abscond and pervert the course of the investigation by destroying evidence.

20. The applicant's lawyers lodged a counter-claim, asking for the applicant's release. They claimed that it was no longer necessary to hold the applicant in custody, as the criminal investigation had ended, the evidence had been collected and the necessity to study the case file did not require the applicant's further detention. The lawyers also invoked the applicant's personal circumstances calling for his release: his age, very poor state of health, his permanent place of residence in Moscow and his law-abiding behaviour for more than a year since the criminal proceedings against him had been initiated.

21. On 7 February 2008 the Basmanniy District Court, having examined the investigator's application and the arguments of the defence in reply, extended the applicant's detention for an additional three months, until 10 May 2008. The District Court invoked the necessity for the applicant and his lawyers to study the voluminous case file as the main ground for the extension. It further relied on the gravity of the charges, "the circumstances of the crime, the information on [the applicant's] personality, including his official position" as the evidence of the applicant's liability to abscond and influence witnesses and other participants of the criminal proceedings. In conclusion, the District Court noted that it had taken into account the applicant's age, family situation, his state of health and the fact that he permanently resided in Moscow. However, the reasons for the extension outweighed those considerations.

22. On 19 March 2008 the Moscow City Court dismissed the applicant's and his lawyers' appeal against the decision of 7 February 2008, finding that

the District Court had thoroughly examined the circumstances of the case and had drawn the correct conclusions.

E. Detention order of 5 May 2008 (extension until 3 July 2008)

23. On 5 May 2008 the Basmanniy District Court again granted an investigator's application for an extension of the applicant's detention and authorised further detention until 3 July 2008. The District Court accepted the investigator's arguments that additional time was necessary for the applicant and his lawyers to complete studying the case file. It further noted as follows:

"The court also takes into account [the applicant's] age, family situation, the state of his health and his place of residence.

The court considers that by virtue of Article 110 of the Russian Code of Criminal Procedure in the present time there are no grounds to annul or change to a more lenient one the measure of restraint in the form of the detention applied to [the applicant], as the circumstances which had been taken into account when the measure of restraint had been chosen on 4 July 2007, had not changed... Thus, it follows from a certificate presented by a deputy head of the Service – the head of the Department, lieutenant-general Mr V., that information was received in the course of the operative search arrangements that [the applicant] may prevent the objective examination of the criminal case by the trial court, as being in the detention facility [he] tries to influence other members of the group and witnesses. The court was not provided with evidence which could contradict the investigator's arguments."

24. The applicant's lawyers appealed, complaining, *inter alia*, that the District Court had grounded the extension order on assumptions and had imposed on the applicant the burden of disproving the investigators' assumptions. In particular, the lawyers noted that the District Court had refused to call witnesses, including the FSB official who had provided the District Court with the information pertaining to the applicant's alleged attempts to influence witnesses. Thus, the applicant had had no means of disproving the investigators' arguments.

25. On 2 June 2008 the Moscow City Court upheld the detention order of 5 May 2008, noting that the District Court had advanced valid reasons for the extension of the applicant's detention and that the District Court's finding corresponded to the "factual circumstances of the case".

F. Detention order of 19 June 2008 (extension until 10 September 2008)

26. On 19 June 2008 the Moscow City Court extended the applicant's detention until 10 September 2008, recognising the necessity to provide the applicant and his lawyers with additional time to study the case file. As to

the further grounds for the extension of the detention, the City Court held as follows:

“[The court] dismisses the arguments by the accused, [the applicant], and his lawyer Mr S. that the investigator’s application is unsubstantiated, that [the applicant] is unlawfully detained in a detention facility, that he has no intention of absconding from the investigation and trial, and [that he] cannot influence the course of the investigation as the investigation is complete. In his application the investigator rightfully notes that circumstances which had served as the grounds for [the applicant’s] remand in custody did not change and did not cease to exist; he is charged with a particularly serious criminal offence, the examination of [the applicant’s] personality and his behaviour during the pre-trial investigation allow the conclusion that, if released, he can continue criminal activities, abscond the investigation and trial, contact the individuals who took part in the above-mentioned criminal offences and are not at present detained, [he may] influence other participants in the criminal proceedings, may take steps in order to destroy or falsify evidence, thus [he may] pervert the course of the investigation in the criminal case.

The case file materials contain information from the FSB that even while detained in the detention facility [the applicant] tries to influence other members of the group and witnesses to his criminal activities, looks for opportunities to conceal the results of his crimes in other regions of the Russian Federation by warning, through his relatives, individuals who participate in unlawful activities.

[The applicant] is not registered with a drug abuse unit or psychiatric hospital; [he] does not have illnesses which preclude his detention.

[The applicant’s] family situation and his age also do not prevent his further detention.

In these circumstances, there are no grounds authorising a change of the measure of restraint applied to the applicant to another measure of restraint.”

27. On 29 July 2008 the Supreme Court of the Russian Federation upheld the City Court’s decision, merely noting that it was well-founded and that the City Court had made a correct finding that, if released, the applicant may obstruct the examination of the case.

G. Detention order of 29 August 2008 (extension until 10 December 2008)

28. On 29 August 2008 the Moscow City Court, in a decision which concerned both the applicant and his co-defendants, extended their detention until 10 December 2008 for the purpose of providing them with additional time to study the case file. The City Court also referred to the gravity of the charges against the defendants as a ground warranting the further extension of their detention.

29. The applicant and his lawyers appealed against the detention order, requesting the applicant’s release on bail.

30. On 14 October 2008 the Supreme Court of the Russian Federation upheld the detention order, holding, in so far as relevant, as follows:

“As follows from the materials presented, [the co-defendants and the applicant] are charged with particularly serious criminal offences; a large amount of evidence was collected in the case; the case file, which the defendants have to study, comprises eighty-nine volumes, to which a substantial number of audio and video recordings and material evidence is attached.

The case file materials were presented to [the applicant’s co-defendants] and their lawyers long before the expiration of the maximum period of detention.

Taking into account those circumstances and the investigator’s reference that, if released, [the applicant and his co-defendants] may contact persons who had taken part in the criminal offences with which [the defendants] are charged and who are still not detained, and that they may influence witnesses, the court rightfully considered that the extension of the detention was exceptional and rightfully decided to extend [the detention] for an additional three months, at the same time [the applicant’s] period of detention does not exceed eighteen months.

...

[The court considers] manifestly ill-founded [the defendants’] appeal arguments that [their] detention exceeded the reasonable time-limits and is excessive and unlimited.

As follows from the materials the pre-trial investigation was closed long ago; since 27 December 2007 the defendants have been studying the case file materials and recently [the applicant and another defendant] have asked to study the case file materials once again, and [another co-defendant] has not yet studied a number of audio and video recordings.

It follows that the lengthy periods of the [applicant’s and his co-defendants’] detention are caused by [the fact that it takes the defendants] a long time to study the case file.

At the same time the case file does not contain any information proving that the delay in the examination of [the case file] was caused by the investigating authorities and the lawyers do not refer to that fact in their statements of appeal.”

31. According to the applicant, he finished examining the case file on 10 October 2008. Two weeks later the remaining defendants completed their examination of the file. The Government, relying on the Supreme Court decision of 14 October 2008, disputed the applicant’s submissions, arguing that in October the applicant had asked for additional time to review the case file and his co-defendants had not yet finished reading the file.

H. Detention order of 3 December 2008 (extension of the applicant’s detention until 10 February 2009)

32. On 3 December 2008 the Moscow City Court issued a decision collectively extending the detention of the applicant and his co-defendants

until 10 February 2009. The City Court reasoned that the grounds which had called for the defendants' arrest (the gravity of the charges, the defendants' personality, their broad connections to officials in various State bodies, including law-enforcement agencies, and their liability to abscond and pervert the course of the investigation through tampering with witnesses, destruction of evidence or other means) were still in place. At the same time the court dismissed as irrelevant the applicant's lawyers' arguments that he had completed the reading of the criminal case file, that he had been ill and that he had no intention of perverting the course of the criminal proceedings or absconding.

33. According to the Government, on 10 December 2008 the last co-defendant completed reading the case file and the defendants were committed to stand trial before the Moscow City Court.

34. On 26 January 2009 the Supreme Court of the Russian Federation upheld the decision of 3 December 2008, finding as follows:

“[The applicant and his co-defendants] are charged with a particularly serious criminal offence committed within an organised group; [they] were top-ranking officials; thus the court correctly concluded that those persons, if released, could pervert the proceedings in the case and influence witnesses.

...

As follows from the presented materials, [the applicant's and his co-defendants'] state of health does not preclude them from being detained and from participating in investigative actions.

...

The court does not see grounds to accept the statements of appeal.”

I. Further extensions of the applicant's detention. Trial on 12 August 2009

35. In the meantime, on 11 January 2009 the Moscow City Court scheduled a preliminary hearing and held that the grounds warranting the detention of the applicant and two of his ten co-defendants had not changed and thus they should remain in custody.

36. On 23 January 2009 the Moscow City Court held a preliminary hearing, as a result of which it found the case ready for trial and listed the first trial hearing. At the same hearing the City Court examined the applicant's lawyer's request for the applicant's release and dismissed it, finding that the measure of restraint in respect of the applicant and his two co-defendants had been chosen correctly on the basis of a thorough consideration of their personal characteristics. The court concluded that it

was still necessary to keep them detained to ensure the smooth course of the criminal proceedings.

37. The applicant's lawyers appealed, arguing that five of the ten co-defendants had been released in 2007 and another co-defendant in 2008. Their release did not affect the case and there were no reasons to conclude that the applicant's release would in any way interfere with the course of the proceedings. In support of their arguments the lawyers relied on the judgments of the European Court of Human Rights in the cases of *Panchenko v. Russia* (no. 45100/98, 8 February 2005), and *Mamedova v. Russia* (no. 7064/05, 1 June 2006), insisting that the evidence had been collected and there was no need to proceed with the applicant's detention.

38. On 12 March 2009 the Supreme Court of the Russian Federation, having examined the lawyers' statements of appeal, upheld the decision of 23 January 2009, having supported the correctness of the City Court's findings that the applicant was liable to abscond and interfere with the course of justice if released.

39. On 22 June 2009 the Moscow City Court collectively extended the detention of the applicant and his two co-defendants until 25 September 2009. The relevant part of the decision read as follows:

"The Moscow City Court received the present criminal case on 25 December 2008 and since 19 February 2009 the merits of the case have been examined in court hearings with the participation of a jury; the evidence presented by the defence is being examined now.

[The applicant and two other defendants] are charged with a criminal offence which, by virtue of Article 15 of the Russian Criminal Code, is considered particularly serious...

As follows from the case file materials, the measure of restraint in the form of the arrest was taken in respect of [the applicant and two defendants] in compliance with the requirements of Articles 97-99 and 108 of the Russian Code of Criminal Procedure, with the information about their character and state of health,... and the nature of the crime having been taken into consideration. Despite the arguments of the defence, the necessity to apply the measure of restraint chosen earlier in respect of [the applicant and two defendants] did not cease to exist, irrespective of the stage of the trial proceedings; therefore, there are no grounds to annul or apply a more lenient measure of restraint, as was requested by the lawyers and defendants. The time-limit for [the defendants'] detention will expire on 25 June 2009... The case is at the stage of trial examination. Although the prosecution has finished presenting their evidence, the Russian Code of Criminal Procedure envisage an opportunity to supplement the judicial inquiry after the defence finishes presenting their evidence; therefore, the grounds for keeping the defendants in custody did not cease to exist. The length of the judicial proceedings is caused by objective reasons, that is the facts that the case against eleven defendants is examined by the jury; that a large number of prosecution witnesses were examined and now the defence witnesses and experts are being heard; that numerous written materials, laid down in 139 volumes of the case file, were examined; that the large number of audio and video recordings... were studied. There is no information about any circumstances which preclude [the defendants'] detention. There are no grounds to apply bail or other [more lenient] measures of restraint.

Taking into account the described circumstances, the fact that the European Court of Human Rights has granted priority treatment to application no. 5453/08 lodged by [the applicant] against Russia cannot serve as a ground for releasing him.”

40. On 12 August 2009 the Moscow City Court found the applicant guilty as charged, sentenced him to nine years’ imprisonment and imposed a fine of 1,000,000 Russian roubles (RUB).

II. RELEVANT DOMESTIC LAW

A. Placement in custody and detention

41. From 1 July 2002 matters of criminal law are governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the new CCrP”).

1. Preventive measures

42. “Preventive measures” or “measures of restraint” include an undertaking not to leave a town or region, a personal guarantee, bail and remand in custody (Article 98 of the new CCrP).

2. Authorities ordering detention

43. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

The new CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor, supported by appropriate evidence (Article 108 §§ 1, 3-6).

3. Grounds for remand in custody

44. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 97 § 1 of the new CCrP). 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 of the new CCrP). A defendant should not be remanded in custody if a less severe preventive measure is available.

4. Time-limits for detention

(a) Two types of remand in custody

45. The Code makes a distinction between two types of remand in custody: the first being “during investigation”, that is, while a competent agency – the police or a prosecutor’s office – is investigating the case, and the second being “before the court” (or “during trial proceedings”), at the judicial stage. Although there is no difference in practice between them (the detainee is held in the same detention facility), the calculation of the time-limits is different.

(b) Time-limits for detention “during investigation”

46. After arrest the suspect is placed in custody “during investigation”. The maximum permitted period of detention “during investigation” is two months but this can be extended for up to eighteen months in “exceptional circumstances”. Extensions are to be authorised by judicial decisions, taken by courts of ascending levels. No extension of detention “during investigation” beyond eighteen months is possible (Article 109 § 4 of the new CCrP).

47. The period of detention “during investigation” is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9 of the new CCrP).

48. Access to the materials in the file is to be granted no later than one month before the expiry of the authorised detention period (Article 109 § 5 of the new CCrP). If the defendant needs more time to study the case file, a judge may, at the request of a prosecutor, grant an extension of the detention until such time as the file has been read in full and the case sent for trial (Article 109 § 8 (1) of the new CCrP).

(c) Time-limits for detention “before the court”/“during judicial proceedings”

49. From the date the prosecutor refers the case to the trial court, the defendant’s detention is classified as “before the court” (or “during judicial proceedings”).

50. The new CCrP provides that the term of detention “during judicial proceedings” is calculated from the date the court received the file up to the date on which the judgment is given. The period of detention “during judicial proceedings” 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).

5. Time-limits for trial proceedings

51. The new CCrP empowers the judge, within fourteen days of receipt of the case file, (1) to refer the case to a competent court; (2) to fix a date for a preliminary hearing; or (3) to fix a trial date (Article 227). In the latter case, the trial proceedings must begin no later than fourteen days after the judge has fixed the trial date (Article 233 § 1 of the new CCrP). There are no restrictions on fixing the date of a preliminary hearing.

52. The duration of the entire trial proceedings is not limited in time.

53. The new CCrP provides that the appeal court must start the examination of the appeal no later than one month after it is lodged (Article 374).

B. Passports for travel

54. A Russian national has to produce a passport for travel to cross the Russian border (section 7 of the Law on the Procedure for Entering and Leaving the Russian Federation, no. 114-FZ of 15 August 1996). The passport for travel belonging to an accused can be retained by a court, a prosecutor or a policeman until the termination of the criminal proceedings (sections 6.1 § 3 and 6.7 of the Instruction on issuance of passports for travel, approved by the Order of the Ministry of Internal Affairs, no. 310 of 26 May 1997).

THE LAW

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

55. The applicant complained that his detention was excessively long. The Court considers that this complaint falls to be examined under 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...”

A. Submissions by the parties

56. The Government commenced their line of arguments with the description of the criminal case in which the applicant had been involved. In particular, they argued that the latter had been implicated in a large-scale corruption when a group of high-ranking officials of the Fund had organised

a criminal enterprise, having received millions of roubles in bribes from representatives of pharmaceutical companies and officials of subordinated funds in the mandatory medical insurance field. Activities of that criminal enterprise, in which the applicant played an active role, caused substantial damage to the system of provision of medicines to citizens of the Russian Federation. In the Government's view, the institution of the criminal proceedings against the applicant and his co-defendants was performed in the interests of society and, in particular, its most vulnerable groups. The length of the applicant's detention was therefore justified by the requirements of the public interest.

57. The Government further confirmed that at the first stages of the criminal investigation the applicant had not been taken into custody, having given a written undertaking not to interfere with the investigation. However, in June and July 2007 it was established that the applicant was taking steps to obstruct the course of justice by "inciting individuals who possessed information about his criminal activities to distort the facts". It was also found that the applicant was liable to take other measures to avoid criminal responsibility. In response to that information the applicant's arrest was authorised. The Government cited information by the FSB official, Mr V., laid down in his letter of 2 July 2007.

58. In a further line of arguments, the Government explained that the domestic courts had thoroughly examined the grounds put forward by the defence in support of their requests for the applicant's release. However, they considered that neither the applicant's state of health, nor his family and personal situation, nor the positive reference which he had been given, nor his readiness to post bail for himself or provide personal assurances outweighed the investigator's arguments that the applicant should be kept in custody. The Government submitted that the applicant's arrest had been based on a reasonable suspicion that he had committed criminal offences. As to subsequent extensions of the detention, each time there was a request the domestic courts cited "relevant and sufficient" reasons warranting the detention. The Government stressed that the domestic courts' conclusions of the gravity of the charges against the applicant and his liability to abscond and pervert the course of justice through witness tempering and destruction of evidence had derived from the particular factual circumstances and had not been the mere assumptions.

59. In conclusion, the Government asserted that the domestic courts had exhibited particular diligence, having dealt with the very complex case comprising eighty-nine volumes and involving eleven defendants within the time-limits established by the Russian procedural law.

60. The applicant responded by drawing the Court's attention to his law-abiding behaviour during the almost eight months between the institution of the criminal proceedings in November 2006 and his arrest in July 2007. He insisted that neither the domestic courts nor the Government could cite any

occasion when he had not complied with the investigators' order or had not responded to their summons. The letter of 2 July 2007 in which a FSB general, Mr V., had noted that the applicant had responded to every summons sent by the investigator was the "living proof" of the applicant's cooperation with the investigating authorities. He further stressed that any conclusion that he was liable to pervert the course of justice, reoffend or abscond had been no more than an assumption, with no basis in fact. The domestic courts had not verified whether there was a real risk of his absconding or interfering with the course of the criminal proceedings. Nor had they provided the applicant with an opportunity to contest the statement that he was capable of tampering with witnesses or destruction of evidence. He had not been allowed to call Mr V. to a court hearing to question him about the nature and sources of the information referred to in his letter of 2 July 2007. Furthermore, the authorities had never indicated a single witness who had allegedly been approached by the applicant or his acquaintances with a proposal to falsify evidence. In addition, the applicant considered it particularly striking that the courts had extended his detention after all evidence had been collected and had been presented before the jury.

61. The applicant further pointed out that at no point in the proceedings had the domestic courts explained why it was impossible to apply bail or personal sureties as a measure of restraint. He also noted that the domestic courts had never relied on the public interest or any damage which his activities had allegedly caused to society as grounds warranting his arrest and subsequent detention.

B. The Court's assessment

1. Admissibility

62. 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.

2. Merits

(a) General principles

63. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs

the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, 26 January 1993, Series A no. 254-A, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

64. 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 him to be released provisionally once his continuing detention ceases to be reasonable (see *Vlasov v. Russia*, no. 78146/01, § 104, 12 June 2008, with further references).

65. The Court further observes that it falls in the first place to the national judicial authorities to ensure that in a given case the pre-trial detention of an accused person does not exceed a reasonable length of time. To this end they 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 set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the evidence given 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 *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV).

66. The arguments for and against release must not be “general and abstract” (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific factors outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilykov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

67. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but 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 continue to justify the deprivation of liberty. Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita*, cited above, § 153).

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

68. The Court notes that the applicant was held in custody from 3 July 2007 until his conviction on 12 August 2009. A pre-trial detention of this length – over two years – is a matter of concern for the Court. It observes

that during that period the domestic courts extended the applicant's detention a number of times. In their decisions they consistently relied on the gravity of the charges as the main factor and on the applicant's potential to abscond, pervert the course of justice and reoffend.

69. As regards the courts' reliance on the gravity of the charges as the decisive element, the Court has repeatedly held that the gravity of the charges cannot of itself serve to justify long periods of detention (see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of whether the evidence obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X).

70. The other grounds for the applicant's continued detention were the domestic courts' findings that the applicant could abscond, pervert the course of justice and reoffend. The Court reiterates that it is incumbent on the domestic authorities to establish the existence of concrete 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). It remains to be ascertained whether the domestic authorities established and convincingly demonstrated the existence of specific facts in support of their conclusions.

(i) *The danger of absconding*

71. The Court notes that the domestic authorities gauged the applicant's potential to abscond by reference to the fact that he had been charged with serious criminal offences, thus facing a severe sentence. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and reoffending or make it appear so slight that it cannot justify detention pending trial (see *Letellier v. France*, 26 June 1991, § 43, Series A no. 207, and *Panchenko*, cited above, § 106).

72. It appears that, apart from the reference to the gravity of the charges, the only other factor on which the domestic courts based their conviction of the applicant's liability to abscond was his ownership of a passport for travel. In this respect, the Court accepts that the possession of the passport

for travel could be a relevant factor in assessing the risk of flight. However, the danger of an accused absconding does not result just because it is possible or easy for him to cross the frontier: there must be a whole set of circumstances, such as, particularly, the lack of well-established ties in the country, which give reason to suppose that the consequences and hazards of flight will seem to him to be a lesser evil than continued imprisonment (see *Stögmüller v. Austria*, 10 November 1969, § 15). The domestic courts did not mention any such circumstance in their decisions or point to any specific aspects of the applicant's character or behaviour that would justify their conclusion that the applicant presented a persistent flight risk. The applicant, on the other hand, constantly invoked the facts showing his close ties with Russia, such as his permanent place of residence, work and family in Russia, and cited other factors, for instance his age and poor health, to confirm that there was no danger of his absconding (see, by contrast, *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A). The Court also does not overlook the fact, which was not disputed by the Government, that the applicant was not in custody for the first eight months after the criminal proceedings had been instituted on the bribery charge, having complied with the prosecution's orders and participated in the investigation process, whenever summoned. In any event, the domestic authorities did not explain why the withdrawal of the applicant's Russian passport for travel, a measure explicitly envisaged in domestic law for removing flight risks, would not have been sufficient to prevent him from absconding abroad (see *Lind v. Russia*, no. 25664/05, § 81, 6 December 2007).

73. The Court further observes that the authorities did not indicate any other circumstance to suggest that, if released, the applicant would abscond. Even though, as the Government submitted, other facts that could have warranted the authorities' conclusion about his potential to abscond may have existed, they were not mentioned in the detention orders and it is not the Court's task to establish such facts and take the place of the national authorities who ruled on the issue of detention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006). The Court therefore finds that the existence of such a risk was not established.

(ii) *The danger of perverting the course of justice*

74. As to the domestic courts' findings that the applicant was liable to pervert the course of justice, the Court notes that at the initial stages of the investigation the risk that an accused person will pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes irrelevant (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006).

75. In its decision of 4 July 2007 the Basmanniy District Court for the first time relied on the information provided by the FSB lieutenant-general, Mr V., and concluded that the applicant was planning to interfere with the

course of justice, allegedly urging witnesses to distort information about his criminal activities (see paragraphs 8 and 11 above). In every subsequent detention order the judicial authorities relied heavily on the applicant's potential to tamper with witnesses, given the information provided by the FSB. The Court understands the authorities' concerns the first time they received the relevant information. It acknowledges that in view of the gravity of the accusations against the applicant and the seriousness of the information submitted by the FSB officials, the judicial authorities could justifiably have considered that an initial risk of the applicant's perverting the course of the investigation had been established (see, for similar reasoning, *Aleksandr Makarov v. Russia*, no. 15217/07, § 125, 12 March 2009).

76. The Court cannot however overlook the fact that the information from the FSB officials was not supported by any evidence (statements by witnesses allegedly approached by the applicant or his acquaintances, records of official inquiries, and so on). The Court accepts that the extension of the applicant's detention may initially have been warranted for a short period to provide the prosecution authorities with time to verify the information presented by the FSB official and to adduce evidence in support. However, with the passage of time the mere availability of the statement, without any evidence to support its veracity, inevitably became less and less relevant, particularly so when the applicant persistently disputed his intention to interfere with the course of the criminal proceedings and had been cooperating impeccably with the investigating authorities for months prior to his arrest.

77. In this connection the Court considers that the domestic authorities were under an obligation to analyse the applicant's situation in greater detail and to give specific reasons, supported by evidentiary findings, for holding him in custody (see *Musuc v. Moldova*, no. 42440/06, § 45, 6 November 2007). The Court does not find that the domestic courts executed that obligation in the present case. It is a matter of serious concern for the Court that the domestic authorities applied a selective and inconsistent approach to the assessment of the parties' arguments pertaining to the grounds for the applicant's detention. While deeming the applicant's arguments to be subjective and giving no heed to relevant facts which reduced the risk of his interfering with the establishment of the truth, the courts accepted the statement from the FSB official uncritically, without questioning its credibility. The Court further reiterates that for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant's detention, it did not suffice merely to refer to the FSB information. They should have analysed other pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant's personality, his behaviour before and after the arrest, and any other specific indications justifying the fear that he might

abuse his regained liberty by carrying out acts aimed at falsification or destruction of evidence or manipulation of witnesses (see *W. v. Switzerland*, cited above, § 36).

78. In this respect, the Court observes that at no point in the proceedings did the domestic courts provide a basis for their conclusion of the risk of collusion, for instance by indicating a particular occasion on which the applicant had attempted to influence witnesses. Apart from a bald reference to the applicant's and his relatives' attempts to persuade co-defendants and certain unidentified witnesses to make "beneficial statements", the domestic courts did not mention any specific matters warranting the applicant's detention on that ground.

79. However, more fundamentally, the Court finds it striking that relying on certain information, the domestic court did not provide the applicant with an opportunity to challenge it, for example, by having the sources of that information examined (see, for comparison, *Becciev v. Moldova*, no. 9190/03, §§ 73-76, 4 October 2005), or at least by serving him with copies of the co-defendants' or witnesses' complaints or statements alleging witness tampering, if such statements and complaints had been lodged with the prosecution authorities. It appears, and the Government did not argue otherwise, that the applicant was not even notified of the origin and nature of the submissions lodged by the investigating authorities to corroborate their assertion of witness manipulation. Moreover, the Court finds it peculiar that being informed of the instances of the witness manipulation, the prosecution authorities did not institute criminal proceedings or at least open a preliminary inquiry into those allegations. The Court observes, and the parties did not dispute that fact, that the domestic authorities did not take any actions against either the applicant, his relatives or confidants, that they were never subject to any form of investigation and were not even questioned about the alleged attempts to manipulate witnesses. The Court is therefore not convinced that the domestic authorities' findings of the applicant's liability to pervert the course of justice had sufficient basis in fact (see, for similar reasoning, *Aleksandr Makarov*, cited above, § 132).

80. Furthermore, the Court notes that the pre-trial investigation in respect of the applicant was completed at the end of December 2007 (see paragraph 18 above). He remained in custody for an additional twenty months, during which the proceedings were pending before the trial court. It thus appears that the domestic authorities had sufficient time to take statements from witnesses in a manner which could have excluded any doubt as to their veracity and would have eliminated the necessity to continue the applicant's deprivation of liberty on that ground (see, for similar reasoning, *Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007). The Court therefore finds that, having failed to act diligently, the national authorities were not entitled to regard the circumstances of the case as justification for using the risk of collusion as a further ground for the

applicant's detention. In addition, the Court considers it particularly preposterous that after all the prosecution witnesses had been heard in open court, the domestic courts still continued citing the risk of collusion as the ground for the applicant's detention, having envisaged an abstract possibility of the judicial inquiry being supplemented (see paragraph 39 above).

(iii) The risk of reoffending and the preservation of public order

81. In a number of the detention orders the domestic courts cited the likelihood that the applicant would reoffend as an additional ground justifying his continued detention. In this connection, the Court observes that the judicial authorities did not mention any specific matters supporting their finding that there existed a risk of the applicant's reoffending. Furthermore, the Court does not share the national authorities' opinion that in a situation when all charges against the applicant were brought against him in respect of his actions as the first deputy director of the Fund from which he had resigned in August 2006, there was a real danger of the applicant committing new offences.

82. In their submissions to the Court, the Government relied on another ground which, in their opinion, necessitated the applicant's detention. In particular, they emphasised the need to protect the interests of society. Although that ground was never relied on by the domestic courts, the Court nevertheless considers it necessary to address the Government's argument.

83. The Court has already held on a number of occasions that, by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention, at least for a time. In exceptional circumstances this factor may therefore be taken into account for the purposes of the Convention, in any event in so far as domestic law recognises the notion of disturbance to public order caused by an offence. However, this ground can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the release of the accused would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened; its continuation cannot be used to anticipate a custodial sentence (see *Letellier*, cited above, § 51).

84. In the present case these conditions were not satisfied. Apart from the fact that Russian law does not list the notion of disturbance to public order among permissible grounds for detention of accused persons, the Court notes that the Government relied on the alleged danger to public interests from a purely abstract point of view, relying solely on the gravity of the offences allegedly committed by the applicant and insisting on the particular vulnerability of the social group which had suffered damage from the applicant's criminal activities. They did not provide any evidence or

indicate any instance which could show that the applicant's release could have posed an actual danger to public order.

(iv) Alternative measures of restraint and collective detention orders

85. The Court further emphasises that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). During the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as a written undertaking or bail – which are expressly provided for in Russian law to secure the proper conduct of criminal proceedings. In this connection, the Court does not lose sight of the fact that the applicant offered to post bail and also listed sureties to secure his release. However, that guarantee was rejected without due consideration. Furthermore, the Court finds it particularly striking that the applicant was kept in custody for almost a year, from December 2007 to December 2008, for the sole purpose of studying the case file. However, at no point did either the Basmanniy District Court, the Moscow City Court or the Supreme Court, which examined the issue of the lawfulness of the applicant's detention during that period, consider having recourse to such alternative measures or, at the very minimum, seek to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

86. It is also of particular concern for the Court that on a number of occasions the domestic courts, using the same formula, simultaneously extended the detention of the applicant and his co-defendants. In the Court's view, this approach in itself is incompatible with the guarantees enshrined in Article 5 § 3 of the Convention in so far as it permits the continued detention of a group of persons without a case-by-case assessment of the grounds for detention or of compliance with the "reasonable time" requirement in respect of each individual member of the group (see *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006).

(c) Conclusion

87. In sum, the Court finds that the domestic authorities' decisions were not based on an analysis of all the pertinent facts. They took no notice of the arguments in favour of the applicant's release pending trial.

88. Having regard to the above, the Court considers that by failing to refer to concrete relevant facts or consider alternative "preventive measures", the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty for a period of over two years. It

is hence not necessary to examine whether the proceedings against the applicant were conducted with due diligence during that period as such a lengthy period cannot in the circumstances be regarded as “reasonable” within the meaning of Article 5 § 3 (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

89. There has therefore been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. The applicant further complained under Articles 5, 6 and 18 of the Convention that his detention had been unlawful, that the domestic courts had been biased and had pursued unlawful purposes having decided to arrest him.

91. Having regard to all the material in its possession, the Court finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 411,924 euros (EUR) in respect of pecuniary damage, representing income lost during his detention. He further claimed EUR 20,000 in respect of non-pecuniary damage.

94. The Government commented that the claims were baseless and could not be the direct cause of the violation alleged.

95. As to the claim in respect of the pecuniary damage, the Court finds no causal link between the violations found and the alleged loss of earnings. The Court therefore finds no reason to award the applicant any sum under this head (see, for similar reasons, *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). At the same time the Court considers that the applicant’s suffering and frustration, caused by the fact that he has spent a long period in custody without relevant and sufficient grounds, cannot be compensated for by a mere finding of a violation. Making its assessment on

an equitable basis it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

96. The applicant did not seek reimbursement of costs and expenses and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

97. 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 complaint concerning an alleged violation of the applicant's right to trial within a reasonable time or release pending trial 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*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of the settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President