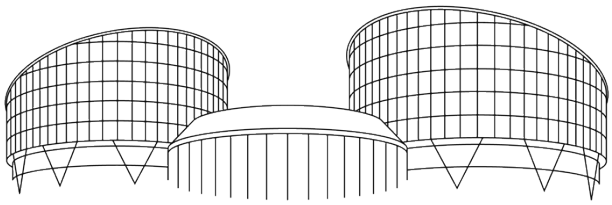

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SUSLOV v. RUSSIA

(Application no. 2366/07)

JUDGMENT

STRASBOURG

29 May 2012

FINAL

29/08/2012

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

In the case of Suslov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 2366/07) 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 Eduard Anatolyevich Suslov ("the applicant"), on 26 December 2006.

2. The applicant was represented by Mr A. Yudin, a lawyer practising in Ryazan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his detention pending investigation beyond the maximum of eighteen months allowed by the domestic law had been unlawful and that his detention as a whole had not been based on relevant and sufficient grounds.

4. On 24 November 2009 the President of the First Section decided to give notice of the above complaints to the Government. It was also decided (pursuant to former Article 29 § 3 of the Convention) to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and prior to his conviction lived in Ryazan.

A. The applicant's arrest and initial detention

6. On 28 December 2004 the investigator of the Ryazan Regional Prosecutor's Office, with approval by a prosecutor, requested the Sovetskiy District Court, Ryazan, to remand the applicant in custody on suspicion of banditry and involvement in an organised criminal group.

7. On the same day the applicant was arrested.

8. In the meantime, on 29 December 2004 the Ryazan Sovetskiy District Court remanded the applicant in custody. The court held as follows:

> "The crimes of which [the applicant] is suspected fall into a category of especially grave crimes punishable by over two years' imprisonment.
>
> Opting for a more lenient preventive measure for [the applicant] is impossible, taking into account the particular gravity of the crimes of which [the applicant] is suspected, as well as the fact that disclosure of the identity of members of a criminal gang, including [the applicant], can create a real threat to the safety of witnesses, victims and their relatives, which follows from [statements] by [witness D.] ..."

9. On 21 January 2005 charges of banditry, involvement in a criminal group, extortion and fraud under Articles 209 § 2, 210 § 2, 163 § 3 and 159 § 3 of the Criminal Code were brought against the applicant. He was questioned as the defendant.

10. On 25 January 2005 the Ryazan Regional Court upheld the decision of 29 December 2004 on appeal.

11. On an unspecified date the applicant challenged the lawfulness of his arrest. Stating that he was an advocate, the applicant claimed that his arrest required the prior consent of a court. On 20 March 2007 the Ryazan Regional Court, acting as the most senior level of jurisdiction, found the applicant's arrest not to have breached the requirements of the domestic law.

B. Further detention during the investigation phase

12. On 24 February 2005 the Ryazan Sovetskiy District Court extended the applicant's detention until 24 June 2005. The court held as follows:

> "The crimes [charged against the applicant] belong, pursuant to Article 15 of the Criminal Code, to the category of particularly grave crimes, which according to Article 108 of the Code of Criminal Procedure gives ground for the application of a [custodial measure]. ...
>
> At the present time it is necessary to carry out several operational and investigative actions, to establish the whereabouts of the known members of the criminal gang, to bring charges against them, to carry out interrogations and confrontations, as well as to familiarise the defendants, the victims and their counsel with the case-file material. ...

The argument by defence counsel about the change of circumstances which laid the basis for application of a custodial measure cannot be taken into consideration.

The reference of defence counsel to the fact that the charges against [the applicant] do not involve an episode involving [witness D.], whose statement that he had received death threats from [the applicant] had been the ground for application of a custodial measure, is unsubstantiated.

A statement by [witness D.], his handwritten explanation, as well as the record of the viewing of a video recording of 6 May 2002, from which it follows that D. is a witness to a crime, [that he] fears for his life and [that] the threat comes, *inter alia*, from [the applicant], have been examined by the judge [...] as matters characterising [the applicant's] personality and giving grounds to believe that his being at large could constitute a real danger to safety for [witness D.] as for other witnesses, victims and their families.

Therefore, taking into account the foregoing and the nature of the crimes with which [the applicant] is charged, the court concludes that there are sufficient grounds to believe that [if not detained, the applicant] may interfere with the proceedings in the criminal case by influencing witnesses.

In such circumstances there are no grounds for altering the custodial measure to a more lenient one. ..."

13. On 31 March 2005 the Ryazan Regional Court upheld the above decision on appeal.

14. On 23 June and 15 September 2005 the Sovetskiy District Court extended the applicant's detention until 24 September and 28 December 2005 respectively. The court relied on the gravity and the nature of the charges, the particular complexity of the case and the necessity to carry out subsequent investigative actions. It further invoked the risks of the applicant's absconding and hampering the criminal proceedings by exerting pressure on witnesses and victims, and the absence of any grounds for altering the custodial measure.

15. On 18 October 2005 the Ryazan Regional Court upheld the decision of 15 September 2005 on appeal.

16. On 28 December 2005 the Ryazan Regional Court extended the applicant's detention until 24 March 2006. The court held as follows:

"It appears from the case-file material that the armed gang of which [the applicant] was a member had and has well-tested systems of secrecy and defence from law-enforcement bodies *(отработанные системы конспирации и защиты от правоохранительных органов)*; if at liberty [the applicant] might take action against the ongoing investigation, including by way of exerting unlawful pressure on witnesses and victims.

It follows from the case-file material that in the course of operational search activities officers of the Organised Crime Unit at the Ryazan Regional Department of the Interior obtained information to the effect that the members of the Osokinskaya criminal group, knowing that criminal proceedings in connection with its criminal activity had begun, were making inquiries about those who had been questioned in the

case as witnesses and victims, with the view of subjecting them to unlawful influence. ...”

17. On 14 February 2006 the Supreme Court of Russia upheld the above decision on appeal.

18. On 21 March 2006 the Ryazan Regional Court further extended the applicant’s detention until 28 June 2006, that is for a total duration of eighteen months. In taking the relevant decision the Regional Court had regard to the particular gravity of the charges against the applicant and the risk that he would exert pressure on witnesses (the court applied the wording of the previous extension order of 28 December 2005). The court also examined the possibility of applying a more lenient preventive measure and dismissed it.

19. On 26 April 2006 the charges against the applicant were rectified. They involved banditry, involvement in a criminal group, extortion, fraud, pressurising those involved to complete deals, organising robbery, murder, attempted murder and infliction of grave bodily harm, and trafficking in firearms and ammunitions under Articles 209 § 2, 210 § 2, 163 § 3, 159 § 3, 179 § 2, 162 § 3 (in conjunction with Article 33 § 3), 105 § 2 (in conjunction with Articles 30 § 3 and 33 § 3), 111 § 3 (in conjunction with Article 33 § 3) and 222 § 3 (alone and in conjunction with Article 33 § 3) of the Criminal Code.

20. On 4 May 2006 the applicant and his lawyer were informed that the pre-trial investigation had been terminated. From the documents submitted by the Government it can be seen that they both signed the document on termination of the pre-trial investigation and expressed the wish to read the case file, both together and separately.

21. On 18 May 2006 the applicant started reading the case file.

22. On the same day the applicant’s lawyer was invited to study the case file. This is supported by a letter inviting the applicant’s lawyer to appear at the IZ-62/1 facility in Ryazan at 10 a.m. to study the case-file material. The letter bears a handwritten note made by the head of the bar association, of which the applicant’s lawyer was a member: “Received for transfer to A. Yudin. 18 May 2006. Signature”.

23. On 23 June 2006 the Ryazan Regional Court extended the applicant’s pre-trial detention until he and his lawyer had finished studying the case file (consisting of seventy-five volumes), but not beyond 24 September 2006. The court held as follows:

“[...] Pursuant to Article 109 § 7 of the Code of Criminal Procedure, if upon completion of a pre-trial investigation the time-limits set out in Article 109 § 5 for giving the accused and his counsel access to the case file have been complied with, but the thirty-day period proves insufficient for them to read the entire file, an investigator [...] may submit to the court, no later than seven days before the expiry of the maximum detention period, a request for extension of the period of detention. In [the applicant’s] case the above-mentioned requirements of law have been complied with.

In his request for extension of [the applicant's] detention pending the investigation until [the applicant] and his counsel had finished reading the file [...] the investigator indicated that at the present moment there were no grounds for altering or discontinuing the application of a [custodial measure]. As before, there are sufficient reasons to believe that, if released, [the applicant], taking into account the gravity of the charges against him, may abscond or otherwise obstruct the proceedings in the case. Therefore, the circumstances which led the court to apply the custodial measure to [the applicant] have remained unchanged.

At the same time, extending [the applicant's] detention until he and his counsel have finished reading the case file... without indicating a specific end-date contradicts the requirements of Article 109 of the Code of Criminal Procedure. The above Article implies that the extension is granted for the time requested by the investigation authorities. [However], extending [the applicant's] detention without indication of a specific end-date... would have worsened [his] situation and removed the preventive measure from judicial control.

On 7 February 2006 the Deputy Prosecutor General extended the time-limit for pre-trial investigation... until 24 September 2006 inclusive.

Therefore, the court extends [the applicant's] detention until he and his counsel have finished reading the case file..., until 24 September 2006 inclusive, that is until the expiry of the time-limit for the pre-trial investigation. ...

The argument put forward by the defence, to the effect that the investigation authorities have breached the requirements of Article 109 § 5, is unsubstantiated.

It follows from the record on termination of the investigative actions of 4 May 2006 that [the applicant] and [his lawyer] expressed their wish to read the case file both together and separately.

On 18 May 2006 the head of the Central Bar Association [of Ryazan], K., received a notification in the name of [the applicant's lawyer Yud.] informing [the latter] that [the applicant] had started reading the case file and that he was also invited to appear on 19 May 2006 at the Ryazan IZ-62/1 remand prison to [study the case file].

According to the record of the studying of the case file and statements made by [the applicant] and [his lawyer], they met in the remand prison on several occasions after 18 May 2006, yet did not discuss when they would jointly study the case file.

It appears from the foregoing that until 31 May 2006 [applicant's lawyer Yud.] deliberately did not appear to study the case file, to give himself an opportunity to use this situation before the court.

The requirements of Article 109 § 5 of the Code of Criminal Procedure were therefore complied with..."

24. On 16 August 2006 the Supreme Court of Russia upheld the above decision on appeal.

25. On 18 September 2006, and 18 January, 21 May and 11 September 2007, the Ryazan Regional Court further extended the applicant's detention until he and his lawyer had completed their reading of the case file, but not

beyond 24 January, 24 May and 24 September 2007, and 24 January 2008 respectively. All the decisions were worded similarly to the decision of 23 June 2006.

26. On 31 October 2006 and 14 March, 17 July and 24 October 2007 respectively, the Supreme Court of Russia upheld the above decisions on appeal.

27. Following the request by the investigator, on 31 October 2007 the Ryazan Sovetskiy District Court limited until 21 December 2007 the time for the applicant and his lawyer to study the case file.

28. On 27 December 2007 the investigator took a decision that the reading of the case file by the applicant and his lawyer should be terminated.

29. On 17 January 2008 the applicant and his lawyer signed the record to the effect that they had completed their reading of the case file.

30. On 18 January 2008, however, the Ryazan Regional Court further extended the applicant's detention until 24 April 2008, with reference to Article 109 § 7 of the Code of Criminal Procedure. The court had regard to the fact that the applicant's lawyer had submitted a request (the nature of the request was not specified in the relevant court decision) which had not yet been processed, that other co-defendants had not finished reading the case file, and also to the gravity and the nature of the charges against the applicant and the risk of his absconding or otherwise interfering with the course of the proceedings.

31. On 8 April 2008 the criminal case against the applicant and fifteen others was transferred to the Ryazan Regional Court for trial.

C. Detention during the trial phase

32. At the preliminary hearing on 23 April 2008 the Ryazan Regional Court extended the applicant's and nine other co-defendants' detention during judicial proceedings until 8 October 2008. In so far as it concerned the applicant, the decision read as follows:

> "... [The applicant] was arrested on 28 December 2004. His detention has been repeatedly extended in accordance with the criminal procedural law, the last time until 24 April 2008, for a total of three years, three months and twenty-eight days.
>
> ...
>
> Pursuant to Article 110 of the Code of Criminal Procedure a preventive measure can be lifted or changed if it is no longer necessary or if the grounds for its application have changed.
>
> It follows from the material examined by the court that the factual circumstances which had served as the ground for the court decisions to apply a custodial measure to the defendants and its subsequent extension have not changed and remain... sufficient, from the point of view of the principle of reasonableness, to maintain the [above]

preventive measure. No convincing arguments were put forward by the defence as to the existence of any new factual or legal grounds for altering the preventive measure.

The circumstances pointed out by the defendants and their counsel such as [the defendants'] positive references, their family situation, [the existence of] permanent residence, [their] state of health and the necessity to support their families, do not preclude a risk of them absconding from justice or otherwise obstructing the proceedings in the case, since the defendants are charged with particularly grave crimes, including banditry. ...

The [above] circumstances are not favourable for replacing the [custodial] measure with [a more lenient one].

Notwithstanding the overall length of the defendants' detention, the existing risk of their absconding is a sufficient ground for limiting their [right to] liberty of person. Furthermore, the extension of detention in respect of defendants charged with banditry is justified by the necessity to protect the rights and interests of victims and witnesses, as well as the public interest, which, in spite of the presumption of innocence, outweighs the respect for individual liberty. ..."

33. On 17 June 2008 the Supreme Court of Russia upheld the above decision on appeal.

34. In the meantime, on 7 June 2008 the Ryazan Regional Court had scheduled the opening date of the trial and maintained the preventive measures applied to the applicant and his co-defendants.

35. On 24 September 2008 the Ryazan Regional Court extended the applicant's and nine other co-defendants' detention for three months, until 8 January 2009. It found as follows:

"... [The defendants] have been charged with banditry and involvement in criminal community, - criminal offences directed against public safety and public order. [The applicant and four other co-defendants] have also been charged with aggravated murders. The crimes charged against the defendants belong to a category of grave and particularly grave crimes the punishment for which not only exceeds two years' imprisonment, but also exceeds the time the defendants had spent in custody so far.

According to the information contained in the case file regarding the [defendants'] personalities:

- [the applicant and seven others], who have families and children, were not working for a long time before their arrests; ...

It also follows from the submissions by the prosecution that:

[Prosecution witness Yezh.] submitted to the court that pressure had been exerted on him by the defendants in respect of whom the custodial measure had been applied with the purpose of forcing him to make false statements about them.

[Defendant S.] who admitted his guilt [...] but who had not yet been questioned by the court on the merits of the charges, asked the court to take safety measures in his respect until he had been questioned, fearing [intimidation] by [the defendants in detention]. ...

Safety measures had been taken in respect of a number of witnesses who [also] feared for their safety. Some of them... were questioned by the court anonymously and in conditions in which they could not be seen by others present during the proceedings.

[Separate proceedings were instituted against several other suspects who are being searched for.] ...

The breaches of court orders committed by the defendants during the questioning of prosecution witnesses show that they were attempting to influence witnesses even in court.

Of 500 [prosecution witnesses] the court has questioned only thirty-two.

Therefore, it has been established that the court had not questioned the majority of the witnesses and victims; [that] there are grounds to be concerned about [the risk of] unlawful influence over them by the defendants; [that] there are witnesses and one of the defendants who fear such influence; [that] the defendants have actual opportunity to exert such influence even while they are in custody; [and that] there are witnesses who have already been intimidated [by the defendants].

Analysis of the above information gives grounds to believe that, if released, the defendants not only may abscond and maintain their criminal activity, but also influence victims and witnesses who have not yet been questioned by the court, thereby obstructing the administration of justice.

The defence has not put forward any circumstances preventing the defendants from being detained in custody; nor can any such circumstances be seen from the case file. The defence has also not put forward a valid argument regarding the existence of new factual or legal grounds for altering the custodial measure.

The circumstances mentioned by the defence... such as [the defendants'] positive references, their [family situation] and [existence of permanent residence]... cannot be viewed by the court as preferential and sufficient grounds for altering the custodial measure. Besides, the existence of these circumstances as such does not exclude the possibility that the defendants will abscond or otherwise obstruct the proceedings in the case, since they are charged with particularly serious crimes, including banditry, punishable with imprisonment.

When examining parties' requests concerning custodial measures the court takes into consideration: the gravity and the nature of the charges against the defendants; the reasonableness of the suspicion justifying the placement of each defendant in custody; the time each of the defendants had already spent in custody; personal data in respect of each of the defendants; [and] the possibility of applying a more lenient preventive measure.

The [defendants'] detention had been ordered and repeatedly extended in accordance with the rules of criminal procedure.

Article 255 of the Code of Criminal Procedure provides for the possibility of extending detention during criminal proceedings beyond six months in cases concerning serious or particularly serious criminal offences, each time for no longer than three months.

> It follows from the case-file material that the factual circumstances which [were taken into consideration by the courts] when [applying and extending] the custodial measure had not only remained unchanged, but had been expanded by new and substantial circumstances, which, taken together, are evaluated by the court as sufficient... grounds for maintaining the custodial measure.
>
> The risk existing at the current stage of the proceedings of the defendants' absconding is a sufficient ground for [further] deprivation of [their] liberty, notwithstanding the lengthy term of their pre-trial detention. Besides, the extension of detention in respect of those charged with banditry is justified by the necessity to protect the rights and interests of victims and witnesses, as well as [the necessity to protect] the public interest, which, in spite of [the defendants'] presumption of innocence, outweighs respect for individual liberty. ..."

36. On 21 November 2008 the Supreme Court of Russia upheld the above decision on appeal.

37. On 22 December 2008 the Ryazan Regional Court extended the applicant's and nine other co-defendants' detention for three months, until 8 April 2009 inclusive. The court applied the same reasoning as in its extension order of 24 September 2008. In addition, the court took into account that the members of the criminal group of which the applicant was allegedly a member helped each other whenever criminal proceedings were instituted against either of them, so that the member would escape punishment or receive a less severe one. The court specifically referred to two examples of such behaviour by members of the criminal group in question.

38. On 24 February 2009 the Supreme Court of Russia upheld the above decision on appeal.

39. On 23 March, 15 June and 24 September 2009 the Ryazan Regional Court extended the applicant's and nine other co-defendants' detention each time for three months, until 8 July and 8 October 2009 and 8 January 2010 respectively. The court adopted the same reasoning as in its previous extension orders and addressed new arguments raised by some of the defendants (not the applicant).

40. On 27 April, 30 July and 3 November 2009 respectively the Supreme Court of Russia upheld the above extension orders on appeal.

41. On 21 December 2009 the Ryazan Regional Court extended the applicant's and his nine co-defendants' detention during judicial proceedings for an additional three months, until 8 April 2010. The court added to its previous reasoning the fact that during the trial some of the witnesses and the victims had changed their statements in so far as they concerned the applicant and two other co-defendants. The court further referred to the large volume of case material and evidence, involving multiple episodes and numerous participants.

42. On 24 March, 30 June, 23 September and 20 December 2010 the Ryazan Regional Court further extended the applicant's and his nine co-defendants' detention during judicial proceedings, each time for three

months, until 8 July and 8 October 2010 and 8 January and 8 April 2011 respectively. The court applied the same line of reasoning as in its previous extension orders. The extension order of 30 June 2010 further addressed the defendants' argument that the length of their detention during judicial proceedings was excessive:

> "The defendant's argument, that their detention during judicial proceedings has been excessively long, is disproved by the trial itself. The multi-episode criminal case with a large number of participants has been being examined [by the court] on the merits since 30 July 2008; hearings are only adjourned at the request of the defence or when defence counsel are unable to attend; there are no unjustified interruptions in the proceedings. The court has repeatedly applied ... measures to all the defendants detained during judicial proceedings... for breaches of court orders and [manifest actions aimed at] delaying the proceedings. The legal and factual complexity of the case, the conduct of the defendants... and the organisational measures being taken by the court show [that the trial is being carried out in compliance with the reasonable time requirement]."

D. The applicant's conviction

43. On 28 March 2011 the Ryazan Regional Court convicted the applicant of banditry, aggravated murder, robbery, extortion, fraud and pressurising others to complete deals, and sentenced him to sixteen years' imprisonment. The judgment ran to 335 pages.

44. On 19 October 2011 the Supreme Court of Russia upheld the above judgment on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of the Russian Federation

45. Article 22 of the Constitution provides that everyone shall have the right to freedom and inviolability of person. It further provides that arrest, detention and remand in custody shall be allowed only by a court decision.

B. The Code of Criminal Procedure of the Russian Federation ("CCrP")

1. Arrest and preventive measures in criminal proceedings

46. The police may arrest a person suspected of committing an offence punishable by imprisonment if the person is caught in the act of committing an offence or immediately after committing it. No judicial authority is required for the arrest (Article 91).

47. Within forty-eight hours of the time of the arrest a suspect must be released if a preventive measure in the form of remand in custody has not been imposed on the person or a final decision has not been deferred by a court. When remand in custody is deemed necessary, an application must be lodged to that effect with a district court by a prosecutor or by an investigator with the consent of a prosecutor (Article 94).

48. "Preventive measures" or "measures of restraint" (*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).

49. 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).

50. 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).

2. Time-limits for detention "pending the investigation"

(a) Initial detention and its extensions

51. After arrest the suspect is placed in custody "pending investigation". The maximum permitted period of detention "pending investigation" must not exceed two months. It may subsequently be extended up to six months (Article 109 § 1).

52. Further extensions to up to twelve months are possible only in relation to persons accused of serious or particularly serious criminal offences, in view of the complexity of the case and if there are grounds justifying detention. An investigator's request for extension must be approved by the Regional Prosecutor (Article 109 § 2).

53. An extension of detention beyond twelve months and up to eighteen months may be authorised only in exceptional circumstances in respect of persons accused of particularly serious offences, upon an investigator's request approved by the Prosecutor General or his Deputy (Article 109 § 3).

54. Extension of detention beyond eighteen months is prohibited and the detainee must be released immediately, unless the prosecution's request for an extension for the purpose of studying the case has been granted by a court in accordance with Article 109 § 8 of the CCrP (Article 109 § 4).

(b) Supplementary extension for studying the case file

55. Upon completion of the investigation, the detainee must be given access to the case file no later than thirty days before the expiry of the maximum period of detention indicated in paragraphs 2 and 3 (Article 109 § 5).

56. If access is granted on a later date the detainee must be released after the expiry of the maximum period of detention (Article 109 § 6).

57. If access is granted thirty days before the expiry of the maximum period of detention but the thirty-day period proves insufficient to read the entire case file, the investigator may request the court to extend the period of detention. The request must be submitted no later than seven days before the expiry of the detention period. If several defendants are involved in the proceedings and the thirty-day period is insufficient for at least one of them to read the entire case file, the investigator may request the court to extend the period of detention in respect of those defendants who have finished reading the case file, provided that the need for a custodial measure for them persists and that there are no grounds for choosing another preventive measure (Article 109 § 7).

58. Within five days of receipt of a request for an extension, the judge must decide whether to grant it or reject it and release the detainee. If the extension is granted the period of detention is extended until such time as will be sufficient for the detainee and counsel to finish reading the case file and for the prosecution to submit the case to the trial court (Article 109 § 8).

3. Time-limits for detention "before the court"/"during judicial proceedings"

59. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during judicial proceedings"). 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).

4. Special features of proceedings in criminal cases with respect to advocates

60. A decision to open a criminal case against an advocate is taken by a prosecutor with prior approval by a district judge (Article 448 § 1).

61. Advocates are not immune from arrest (Article 449).

62. Prior to institution of criminal proceedings against an advocate investigative actions are carried out following approval by a district judge (Article 450 § 5).

C. Case-law of the Constitutional Court of the Russian Federation

63. Examining the compatibility of Article 97 of the RSFSR CCrP (now replaced by Article 109 of the CCrP, the sole difference between the two Articles being that Article 97, in contrast to the new Article 109, imposed a six-month limitation on the maximum period of detention for the purpose of studying the case file with the Constitution, on 13 June 1996 the Constitutional Court ruled as follows:

> "...affording the defendant sufficient time for studying the file must not result in... his being detained indefinitely. Indefinite detention would amount to punishment of the defendant for exercising his procedural rights and thereby inducing him to waive those rights..."

64. On 25 December 1998 the Constitutional Court issued a further clarification of its position (decision no. 167-O), finding as follows:

> "3. ...the studying of the file [by the defendant and his counsel] is a necessary condition for extending the term of detention [beyond eighteen months] but it may not be, taken on its own as a sufficient ground for granting such an extension... For that reason, in each case the prosecutor's application for extending the period of detention beyond eighteen months (Article 97 §§ 4, 6 of the RSFSR CCrP) must refer not to the fact that the defendant and his counsel continue to study the file... but rather to factual information demonstrating that this preventive measure cannot be revoked and the legal grounds for its continued application remain...
>
> 6. ...Article 97 § 5 of the RSFSR CCrP expressly provides that, on an application by a prosecutor, a judge may extend a defendant's detention until such time as the defendant and his counsel have finished studying the file and the prosecutor has submitted it to the [trial] court, but by no longer than six months. Accordingly, the law does not provide for the lodging of repeated applications for extension of the defendant's detention, even after an additional investigation [has been carried out]... In the absence of an express legal provision for repeated extensions of detention on that ground, any other interpretation of [Article 97] would breach the prohibition on arbitrary detention within the meaning of the Constitutional Court's decision of 13 June 1996."

65. By its decision no. 184-O of 6 June 2003 the Constitutional Court declined to examine a complaint by a Mr Yest., in which he challenged the compatibility with the Constitution of Article 109 § 8 of the Code of Criminal Procedure, in so far as it allowed the extension of detention pending investigation beyond the maximum time-limit and indefinitely while the defendant finished reading the material in the case file. The Constitutional Court held that such an extension was only possible if there still existed "sufficient grounds to believe" that the accused might abscond during the investigation or trial, reoffend or otherwise obstruct the establishment of the truth, as provided by Article 97 of the Code of Criminal Procedure. In so far as the challenged provision did not set a specific time-limit for holding the defendant in custody while he studied the case file, the Constitutional Court considered that it allowed for the

possibility of determining such a time-limit for each particular case, depending on its specific features, on condition that the grounds for detention established in Article 97 had been sufficiently confirmed. The court concluded that the challenged provision could not be interpreted as providing for superfluous or unlimited detention. Neither did it deprive the defendant and his counsel of the right to challenge before a higher court the lawfulness and validity of the extension order, as well as to make an application for lifting or altering the custodial measure.

66. By decision no. 352-O of 11 July 2006, the Constitutional Court confirmed its position, by reference to above-cited decision no. 167-O, that in the absence of an express provision to that effect, time-limits during a pre-trial investigation may not be repeatedly extended, particularly on the same grounds, in excess of the maximum time-limit set out in the CCrP.

67. By its decision no. 271-O-O of 19 March 2009, the Constitutional Court declined to examine a similar complaint by a Mr R. With reference to its previous decisions of 13 June 1996, 25 December 1998 and 6 June 2003, the Constitutional Court held that even though Article 109 § 8 did not define the maximum period within which an extension could be granted for the purpose of studying the case file, it did not imply the possibility of excessive or unlimited detention because, in granting an extension, the court should not rely solely on a well-founded suspicion that the defendant had committed the offence, but should mainly base its decision on specific circumstances justifying the continued detention, such as his potential to exert pressure on witnesses or an established risk of his absconding or reoffending, as well as the importance of the subject matter of the proceedings, the complexity of the case, the conduct of the defendant and other relevant factors.

D. Case-law of the Supreme Court of the Russian Federation

68. In its decision no. 22 of 29 October 2009 "On the Application by the Courts of Preventive Measures in the Form of Remand in Custody, Bail and House Arrest" the Plenum of the Supreme Court held as follows:

> "18. [...] Pursuant to Article 109 § 7 of the Code of Criminal Procedure, following a request by an investigator the court may extend an accused's detention until such time as he and his defence counsel have finished studying the case file and the prosecutor has submitted it to the [trial] court, if upon completion of the pre-trial investigation the accused has been given access to the case file no later than thirty days before the expiry of the maximum period of detention indicated in Article 109 §§ 2 and 3 [six, twelve, eighteen months]. In that case the relevant extension order should indicate the exact period for which the extension is made."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

69. The applicant complained under Article 5 § 1 (c) that his detention on remand in the period between 28 June 2006 and 24 April 2008 had been unlawful. The relevant part of Article 5 provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

A. Admissibility

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

B. Merits

1. Submissions by the parties

71. Referring to the relevant provisions of domestic law, the decision of the Plenum of the Supreme Court of 29 October 2009 (see paragraph 68 above) and the decision of the Constitutional Court of 6 June 2003 (see paragraph 65 above), the Government submitted that the provisions of the domestic law providing for the possibility of extending a detainee's detention pending investigation beyond the maximum of eighteen months on the ground of the need for him or her to study the case file were sufficiently accessible, precise and foreseeable in their application, and did not upset the "quality of law" and the "legal certainty" requirements. Such extension was only possible if, aside from the necessity for a defendant to study the case file, there remained relevant and sufficient reasons for continuing to hold him or her in custody, the end-date of the detention period in question depending solely on how soon the defendant would finish studying the case file.

72. The applicant argued that his lawyer had been granted access to the case file less than thirty days before the expiry of the maximum period of

detention indicated in Article 109 § 3 of the Code of Criminal Procedure, for which reason the extensions of his detention pending the investigation beyond eighteen months had been unlawful. He further submitted that the decision of the Plenum of the Supreme Court of 29 October 2009, which interpreted Article 109 § 7 of the Code of Criminal Procedure as requiring the domestic courts to indicate the exact period for which the extension of detention pending the study of the case file is made, referred to by the Government, did not exist when he was reading the case file in 2006-08.

2. The Court's assessment

(a) General principles

73. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration is compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent individuals from being deprived of their liberty in an arbitrary fashion (see, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X (extracts)).

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

(b) Application of these principles in the present case

75. The Court observes that the applicable provisions of domestic law permitted up to eighteen months' detention during an investigation (hereinafter "the maximum detention period") in respect of individuals accused of particularly serious offences (Article 109 § 3, cited in paragraph 53 above). The domestic law further provided that the period in question could be extended if the defendant was granted access to the case file no

later than thirty days before the expiry of the maximum detention period and if the thirty-day period proved insufficient for him or her to read the entire case file. If several defendants were involved in the proceedings and the thirty-day period was insufficient for at least one of them to read the entire case file within the thirty-day period, the maximum detention period could be extended in respect of those defendants who had completed reading the case file, provided that the necessity for a custodial measure for them persisted and there were no grounds for choosing another preventive measure (Article 109 §§ 5, 7 and 8, cited in paragraphs 55, 57 and 58 above).

76. In the present case, involving the applicant and fifteen co-defendants, the maximum eighteen-month period of the applicant's detention during the investigation expired on 28 June 2006 (see paragraph 18 above). The applicant was granted access to the case file on 18 May 2006, which is over thirty days before the expiry of the maximum detention period (see paragraphs 20-22 above), but the thirty-day period proved insufficient for him to read all seventy-five volumes of the case file. For that reason, at the request of the investigator, on 23 June 2006 the Regional Court extended the applicant's detention until he and his lawyer had finished studying the case file, but not beyond 24 September 2006. The court relied on Article 109 § 7 of the Code of Criminal procedure. The applicant's detention pending the study of the case file was subsequently extended for the same purpose and by reference to the same legal provision on 18 September 2006, 18 January, 21 May and 11 September 2007, until 24 January, 24 May and 24 September 2007 and 24 January 2008 respectively. It was further extended on 18 January 2008 until 24 April 2008, pending the study of the case file by co-defendants.

77. The Court recalls that it has previously examined a similar situation in the case of *Tsarenko v. Russia* (no. 5235/09, 3 March 2011).The Court applied the following line of reasoning:

> "60. In the present case, the eighteen months' detention of the applicant during the investigation expired on 12 September 2008. Upon request of the investigator, the City Court granted an extension until 4 October 2008 for the purpose of studying the case file. It relied on Article 109 §§ 7 and 8 of the Code of Criminal Procedure. Subsequently, further extensions for the same purpose and by reference to the same legal provision were granted by the City Court on 1 October and 3 December 2008, 3 February, 1 and 28 April 2009. The parties disagreed on whether such repeated extensions were permitted under the applicable provisions of the domestic law. The Court has already examined a similar situation in the *Korchuganova v. Russia* case, in which it had regard to the interpretation given by the Russian Constitutional Court of the relevant provisions of the Code of Criminal Procedure (§ 51, case cited above). The Court noted that, according to the Constitutional Court's binding clarifications of 13 June 1996 and 25 December 1998 (cited in paragraphs 41 and 42 above), in the absence of an express legal provision for repeated extensions of detention on the ground that the defendant has not finished studying the file, the granting of such repeated applications for extension of the defendant's detention was not permitted by

law and incompatible with the guarantee against arbitrary detention. The restrictive interpretation adopted by the Constitutional Court is consonant with the requirements of Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see, among others, *Sherstobitov v. Russia*, no. 16266/03, § 113, 10 June 2010; *Shukhardin v. Russia*, no. 65734/01, § 67, 28 June 2007; *Nakhmanovich v. Russia*, no. 55669/00, § 79, 2 March 2006; and *Khudoyorov*, cited above, § 142).

61. The case-law of the Russian Constitutional Court required that a possibility to grant multiple extensions on the same ground be expressly mentioned and provided for in the criminal-procedure law. The adoption of a new Code of Criminal Procedure in 2003 did not affect the validity or applicability of the Constitutional Court's case-law and the text of new Article 109 closely followed that of the former Article 97. The Constitutional Court's decision of 19 March 2009, to which the Government referred, did not alter the Constitutional Court's position [...]. The courts of general jurisdiction in the instant case, and the Government in their submissions before the Court, adopted an extensive interpretation of Article 109, claiming that, in the absence of an express prohibition on multiple extensions on the same ground, the competent court should remain free to grant as many extensions as it considered appropriate in the circumstances of the case. However, neither the domestic courts nor the Government were able to show that the new Article 109 contained an express provision for repeated extensions of the detention period for this purpose. It follows that their extensive interpretation of this provision sat ill with the restrictive interpretation adopted by the Russian Constitutional Court and was incompatible with the principle of the protection from arbitrariness enshrined in Article 5 of the Convention. Accordingly, the legal basis for the extension orders of 1 October and 3 December 2008, 3 February, 1 and 28 April 2009, which covered the period of the applicant's detention from 4 October 2008 to 20 May 2009, was deficient and the applicant's detention for that period was in breach of Article 5 § 1."

78. In the present case the Court sees no reason to depart from its previous conclusion to the effect that the provisions of Russian law governing detention pending study of the case file by a defendant are not foreseeable in their application and fall short of the "quality of law" standard required under the Convention in so far as they do not contain any express rule regarding the possibility of repeated extensions of a defendant's detention pending study of the case file.

79. It considers, therefore, that in so far as the applicant's complaint concerned the period between 28 June and 24 September 2006, there has been no violation of Article 5 § 1 of the Convention since the applicant's detention in the above period had a legal basis in Article 109 § 7 of the Code of Criminal Procedure permitting the court to extend the detention period beyond eighteen months if that was necessary to allow the defendant to study the case file. However, as regards the subsequent period between 24 September 2006 and 24 April 2008, in the absence of any express provision in Article 109 for repeated extensions of the detention period for this purpose, the Court finds that there has been a violation of Article 5 § 1 of the Convention.

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

80. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

82. The Government submitted that the applicant's detention had been based on "relevant and sufficient" reasons, in compliance with Article 5 § 3 of the Convention. The applicant had been suspected of several particularly serious crimes and membership of an organised criminal group with settled structure, connections between its members, means of conspiracy and protection against law-enforcement authorities. Several members of the group were still in hiding at the time. Several witnesses and victims had expressed fear of being subjected to unlawful pressure and reprisal by the applicant and other members of the group in connection with their statements. There was sufficient factual information substantiating the above concerns. The assessment of the above elements had led the domestic court to the conclusion that if released the applicant might abscond or otherwise interfere with the administration of justice in the case.

83. The applicant argued that the main argument put forward by the domestic authorities for his continued detention had been the gravity of the charges against him. He went on to say that the reasoning applied by the domestic court lacked any specifics pertaining to his individual situation.

2. The Court's assessment

(a) General principles

84. In determining the length of detention during judicial proceedings under Article 5 § 3 of the Convention, the period to be taken into

consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see *Panchenko v. Russia*, no. 45100/98, § 91, 8 February 2005; *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV; and *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7).

85. 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 in a given case 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, § 30, Series A no. 254-A, and *Pantano v. Italy*, no. 60851/00, § 66, 6 November 2003).

86. The persistence of reasonable suspicion that an arrested person 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 continued to justify deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita,* cited above, §§ 152 and 153). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

(b) Application of these principles in the present case

(i) Period to be taken into consideration

87. The applicant was taken into custody on 28 December 2004. On 28 March 2011 he was convicted. The total length of the applicant's pre-trial detention amounted, therefore, to six years and three months. The particularly inordinate length of the applicant's pre-trial detention is a matter of grave concern for the Court.

(ii) Grounds for continued detention

88. The Court observes that the initial choice of a custodial measure in respect of the applicant in December 2004 was prompted by the suspicion of his membership of an organised criminal group, banditry, extortion and fraud, and the risk that he would threaten victims and witnesses (see paragraph 8 above).

89. Subsequently, when the case against the applicant was being investigated, between December 2004 to June 2006, the domestic court extended the applicant's detention on five occasions, citing as reasons the particular gravity and organised nature of the crimes with which the applicant had been charged, the complexity of the case and the necessity to carry out various investigative actions, as well as the risk that the applicant would abscond and obstruct the proceedings by exerting pressure on witnesses and victims. The latter risk was substantiated by statements from witness D. that he had been threatened by the applicant, and information obtained by the Organised Crime Unit at the Ryazan Regional Department of the Interior, to the effect that the members of the criminal group of which the applicant was a suspected member were making inquiries about people questioned in the case as witnesses and victims, with a view to subjecting them to unlawful influence. The Court does not lose sight of the fact that in April 2006 further charges were brought against the applicant on account of various other criminal activities (see paragraphs 12-19 above).

90. Afterwards, from June 2006, when the investigation of the case was completed, to April 2008, when the applicant and his co-defendants finished reading the case file, the applicant's detention was extended on six occasions. Further to the necessity for the applicant and his co-defendants to read the case-file material before the case was transferred to the Regional Court for trial, the extension orders relied on the nature and the gravity of the charges against the applicant and the risk of his absconding or otherwise obstructing the proceedings. On each occasion the court noted that the circumstances which determined the choice of the preventive measure persisted (see paragraphs 23-30 above). The Court notes that it has found above that the applicant's detention on remand for most of this period, from 24 September 2006 to 24 April 2008, was unlawful, and therefore in breach of Article 5 § 1 of the Convention (see paragraph 79 above). This finding makes it unnecessary to discuss, from the standpoint of Article 5 § 3 of the Convention, the sufficiency and relevance of the grounds given by the domestic court to justify the applicant's detention during that period (see *Fedorenko v. Russia*, no. 39602/05, § 64, 20 September 2011).

91. The Court further observes that during the trial stage between April 2008 and March 2011 the applicant's detention was extended on eleven occasions. The decisions concerned the applicant and nine co-defendants. The domestic court took into consideration the gravity and the nature of the charges against the defendants, the reasonableness of the suspicion justifying the placement of each defendant in custody, the risks of the defendants interfering with the course of the proceedings by absconding, exerting pressure on victims and witnesses and reoffending. The court also took into account the time each defendant had already spent in custody, personal data in respect of each defendant, and the possibility of applying a more lenient preventive measure. The existence of the risk that the applicant

would put pressure on witnesses and victims was demonstrated by reference to statements by prosecution witness Yezh. and co-defendant S., the application of safety measures in respect of certain witnesses, questioning of certain witnesses under pseudonyms and in conditions keeping them invisible to the applicant and co-defendants, the fact that the defendants breached the court order during the questioning of certain prosecution witnesses and that during the trial some witnesses changed their testimony in respect of the applicant and two other co-defendants. As regards the risk of absconding and reoffending, the domestic court relied on the fact that criminal proceedings were instituted against other suspected members of the criminal group who had not yet been found and arrested, and that the applicant and other detained co-defendants had not been working anywhere for a long time before their arrest. The domestic court further referred to the big volume of the case involving multiple episodes and numerous participants. In its most recent detention order the domestic court also considered the issue of compliance of the overall length of the applicant's and nine co-defendants' detention with the reasonable time requirement (see paragraphs 32-42 above).

92. Having regard to the foregoing, the Court is satisfied that the reasons advanced by the domestic court to justify the applicant's continued detention on remand were both "relevant" and "sufficient". It remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

(iii) Conduct of the proceedings

93. In assessing whether the "special diligence" requirement has been met, the Court will have regard to the overall complexity of the proceedings, any periods of unjustified delay and the steps taken by the authorities to speed up proceedings to ensure that the overall length of detention remains "reasonable" (see *Kevin O'Dowd v. the United Kingdom*, no. 7390/07, § 70, 21 September 2010, with further references).

94. The Court accepts that the applicant's case, concerning organised crime and involving several defendants, a large number of victims and witnesses, was rather complex. It reiterates in this respect that in cases involving numerous defendants, collecting evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-suspects (see *Yudayev v. Russia*, no. 40258/03, § 72, 15 January 2009). In the present case the investigation was carried out over the period of eighteen months from December 2004 to June 2006. The Court does not discern any significant periods on inactivity in the investigation.

95. Thereafter, for a period of almost two years from June 2006 to April 2008 the applicant and other defendants were studying the case file. While the applicant cannot be blamed for taking the full advantage of his

right to have adequate time for the preparation of his defence, it remains the court's function to observe that the overall length of detention remains "reasonable". To this end, when extending the applicant's detention pending the study of the case material the domestic court should have on each occasion verified whether any further detention for that purpose continued to be reasonable. In the present case, however, the domestic court never made such assessment until October 2007 when the investigator filed a request for limiting the time for the applicant to complete his studying of the case file.

96. Subsequently, for almost three years from April 2008 to March 2011 the case was being examined by the trial court. The Court is mindful that the right of an accused in detention to have his case examined with particular expedition should not unduly hinder the efforts of the courts to carry out their tasks with proper care (see *Shenoyev v. Russia*, no. 2563/06, § 56, 10 June 2010; *Contrada v. Italy*, 24 August 1998, § 67, *Reports of Judgments and Decisions* 1998-V; and *Wemhoff,* cited above*,* § 17). However, in the present case the Government have not put forward any evidence showing that the trial court acted with proper care and expedition.

97. Having regard to the foregoing and the particularly inordinate length of the applicant's pre-trial detention amounting to six years and three months, the Court considers the domestic authorities had failed to display "special diligence" in the conduct of the proceedings against him. There has, therefore, been a violation of Article 5 § 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicant complained under Article 5 § 1 about the alleged unlawfulness of his arrest and under Article 1 of Protocol No. 1 about pecuniary losses sustained as a result of his allegedly unlawful arrest and detention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 43,016.5 euros (EUR) in compensation for pecuniary damage for loss of earnings during the years in detention. He further claimed EUR 100,000 in compensation for non-pecuniary damage.

102. The Government submitted that the applicant's claim for pecuniary damage should be dismissed as wholly unsubstantiated. They further expressed their view that the applicant's claim for compensation for non-pecuniary damage had been excessive.

103. The Court does not discern any causal link between the violations found and the pecuniary damage alleged (see, most recently, *Miminoshvili v. Russia*, no. 20197/03, § 146, 28 June 2011, with further references).

104. On the other hand, in the light of the materials in its possession and making its assessment on an equitable basis, it awards the applicant EUR 15,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

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

C. Default interest

106. 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 lawfulness of the applicant's detention between 28 June 2006 and 24 April 2008 and the length of the applicant's detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention between 28 June and 24 September 2006;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention between 24 September 2006 and 24 April 2008;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the fact that the domestic authorities had failed to display "special diligence" in the conduct of the proceedings against the applicant;

5. *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 15,000 (fifteen 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 29 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President