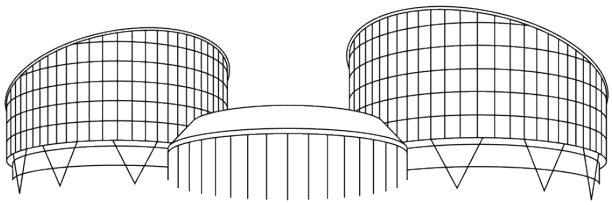

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOLUNOV v. RUSSIA

(Application no. 26436/05)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

09/01/2013

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

In the case of Kolunov 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,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 26436/05) 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 Aleksey Vladimirovich Kolunov ("the applicant"), on 1 June 2005.

2. The applicant was represented by Mr D. Agranovskiy, a lawyer practising in Elektrostal, Moscow Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions pending criminal proceedings against him and that his pre-trial detention had been unreasonably long.

4. On 9 March 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Moscow.

A. Background information

6. The applicant is a member of the National Bolsheviks Party.

7. On 14 December 2004 a group of about forty members of the National Bolsheviks Party occupied the waiting area of the President's administration building in Moscow and locked themselves in an office on the ground floor.

8. The members of the group asked for a meeting with the President, the deputy head of the President's administration and the President's economic adviser. They handed out leaflets through the windows, featuring a printed letter to the President which listed ten ways in which he had failed to comply with the Constitution and which called for his resignation.

9. The intruders stayed in the office for an hour and a half until the police broke down the locked door and arrested them. They did not offer any resistance to the authorities.

B. The criminal proceedings against the applicant

10. On 16 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's detention on the following grounds:

> "[The applicant] is suspected of having committed several offences, one of which is particularly grievous. If at liberty, he may continue his criminal activities, interfere with the investigation or put pressure on witnesses. He might abscond or prevent the investigation of the truth."

11. On 21 December 2004 the applicant was charged with the attempted violent overthrow of State power (Article 278 of the Criminal Code) and the intentional destruction and degradation of others' property in public places (Articles 167 § 2 and 214).

12. On 7 February 2005, referring to the gravity of the charges against the applicant, the Zamoskvoretskiy District Court of Moscow extended the applicant's detention until 14 April 2005.

13. On 16 February 2005 the applicant's charge was amended to that of participation in mass disorder, an offence under Article 212 § 2 of the Criminal Code.

14. On 14 April 2005 the District Court granted the prosecution's request for an extension of the applicant's detention until 14 July 2005, for the following reasons:

> "... the defendants and their counsel have started to study the case file. Given the file size (12 volumes) and the number of persons studying it (39 defendants and their counsel), the court considers that there are sufficient reasons to extend [the applicant's] detention for three months, because he has not yet finished studying the case file while his counsel has not yet started.
>
> Notwithstanding the fact that [the applicant] has a registered place of residence in Moscow, the court, taking into account the gravity of charges and the fact that the

> grounds justifying his placement into custody still persist today, sees no reason to apply a more lenient preventive measure."

15. On 19 May 2005 the Moscow City Court upheld the decision of 14 April 2005 on appeal, finding that it had been lawful, sufficiently reasoned and justified.

16. On 7 June 2005 the investigation was completed and thirty-nine persons, including the applicant, were committed for trial. On 20 June 2005 the Tverskoy District Court of Moscow scheduled the preliminary hearing for 30 June 2005 and decided that all the defendants should meanwhile remain in custody.

17. On 30 June 2005 the District Court held a preliminary hearing. It rejected the defendants' requests for release taking into account their characters, age, state of health, family situation and stability of lifestyle. However, it found, referring to the gravity of the charges, that "the grounds on which the preventive measure [had been] previously imposed, still exist[ed]" and that "the case file gave sufficient reasons to believe that, once released, the defendants would flee or interfere with the trial". It therefore ordered that all the defendants should remain in custody pending trial.

18. On an unspecified date in July 2005 the applicant and his co-defendants lodged applications for release. The District Court rejected these requests on 27 July 2005, finding that their detention was lawful and justified. On 5 October 2005 the City Court upheld the decision of 27 July 2005 on appeal.

19. On 10 August 2005 the applicant and his co-defendants lodged new applications for release. On the same day the District Court rejected the requests. It held:

> "The court takes into account the defence's argument that an individual approach to each defendant's situation is essential when deciding on the preventive measure.
>
> Examining the grounds on which ... the court ordered and extended the detention period in respect of all the defendants without exception ... the court notes that these grounds still persist today. Therefore, having regard to the state of health, family situation, age, profession and character of all the defendants, and to the personal guarantees offered on their behalf by certain private individuals and included in the case file, the court concludes that, if released, each of the applicants might abscond or obstruct the course of justice in some other way ...
>
> In the court's view, in these circumstances, having regard to the gravity of the charges, there are no grounds for varying or revoking the preventive measure in respect of any defendant ..."

20. On 2 November 2005 the City Court upheld the decision of 10 August 2005 on appeal.

21. On 16 November 2005 the District Court extended the detention in respect of all the defendants, including the applicant, until 7 March 2006. The court stated as follows:

> "According to the materials in the criminal case file, the circumstances taken into account by the court when it authorised the pre-trial detention period and its extension for all the defendants still persist.
>
> Regard being had to the above and taking into account the state of health, family situation, age, employment and character of all the defendants, the court concludes that, if at liberty, each of them might abscond or otherwise interfere with the criminal proceedings."

22. On 8 December 2005 the District Court found the applicant and his co-defendants guilty of participation in mass disorder. It gave the applicant a three-year suspended sentence and then released the applicant on three years' probation.

C. Conditions of detention

23. The applicant was held in remand prison no. IZ-77/3 in Moscow from 24 December 2004 to 8 December 2005. According to his submission, he was detained in a cell together with eleven other inmates. The cell was overcrowded. The light was never turned off which disturbed the applicant's sleep. The cell was not ventilated. The lavatory pan was separated from the living area by a makeshift partition – one metre in height. The person using the toilet was in view of other inmates. The applicant was allowed to take a shower for ten minutes once a week and a daily walk for about an hour per day. Inmates were not given enough food and medicine, save for aspirin and other analgesics. The applicant claimed that he suffered from epilepsy but received no treatment.

24. According to the Government, the applicant was detained in cells nos. 218, 219, 413, 508, 526 and 611. At all times he was provided with his own bed, bedding and cutlery. Not only did the cells where he was held provide access to daylight, they were equipped with artificial lighting as well. The ventilation system was in good working order. In addition the vents in the windows permitted access to fresh air. All cells had a sink, a water tap and a toilet which was separated by a partition, one metre in height, from the living area. The applicant could take at least one shower per week for fifteen minutes. During the day the lighting was on from 6 a.m. to 10 p.m., with lower-voltage bulbs being constantly in use to light the lavatory at night. The applicant was provided with three meals a day and unlimited access to medical care.

II. RELEVANT DOMESTIC LAW

25. For a summary of the relevant domestic law provisions governing conditions and length of pre-trial detention, see the cases of *Dolgova v. Russia*, no. 11886/05, §§ 26-31, 2 March 2006, and *Lind v. Russia*, no. 25664/05, §§ 47-52, 6 December 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained that he had been detained in appalling conditions in remand prison no. IZ-77/3 in Moscow in contravention of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

27. The Government contested that argument. Relying on the certificates prepared by the remand prison administration and the statements made by the remand prison officers in 2009, they asserted that the conditions of the applicant's detention had been in compliance with the standards required by Article 3 of the Convention. The Government were unable to submit original documents concerning the applicant's detention, explaining that they had been destroyed on account of the expiration of the statutory time-limit for their storage.

28. The applicant maintained his complaint.

29. The Court finds that it 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

30. The general principles concerning the conditions of detention are well established in the Court's case-law and have been summarised as follows (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012):

> "139. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> 140. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the

absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

141. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

142. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005)."

31. Turning to the facts of the instant case, the Court observes that the parties disagreed as to most aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent Government failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

32. In particular, the Court notes that the applicant, although without citing the measurements of the cells where he had been detained, maintained his assertion that at all times the cells had been overcrowded. The Government did not contest the applicant's argument. Without providing any detail as to the cells' size or population, they merely claimed that the conditions of the applicant's detention had been in compliance with the standards required by Article 3 of the Convention.

33. The Court takes also cognisance of the fact that on numerous previous occasions it has examined the issue of conditions of detention in remand prison no. IZ-77/3 in Moscow and found that the inmates had been detained there in severely overcrowded cells in contravention of the requirements set forth in Article 3 of the Convention (see, for example, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007, conditions of detention in 2001-02; *Belashev v. Russia*, no. 28617/03, §§ 50-60, 4 December 2008, conditions of detention in 2002-03; and *Vladimir Kozlov v. Russia*, no. 21503/04, §§ 36-46, 20 May 2010, conditions of detention in 2001-03). One of the more recent cases concerned the same time period as

the present one (*Vladimir Sokolov v. Russia*, no. 31242/05, §§ 58-64, 29 March 2011, conditions of detention from 13 January to 5 December 2005).

34. The Court further reiterates that Convention proceedings such as the present application do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, § 66 in fine, ECHR 2000-VI).

35. In the present case the Government failed to provide any original documents to refute the applicant's allegations, claiming that they had been destroyed after the expiry of the statutory time-limit for their storage. Their submissions were based on the statements of the remand prison officers made some four years after the events under consideration. The Court cannot, however, view such documents as sufficiently reliable (see, among other authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009).

36. Accordingly, the Court accepts the applicant's argument that the cells where he had been detained for almost a year had been overcrowded and that the personal space afforded to him had been insufficient. It also notes that the applicant had to spend twenty-three hours per day in such conditions.

37. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; and most recently *Ananyev*, cited above, §§ 120-66).

38. Having regard to the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court concludes, therefore, that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in remand prison no. IZ-77/3 in Moscow between 24 December 2004 and 8 December 2005.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

39. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds on which to put him in detention pending his trial. Under Article 5 § 3, he complained of a violation of his right to trial within a reasonable time and alleged that there were not sufficient grounds for his detention.

The relevant parts of Article 5 read 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;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

40. The Government contested that argument. They submitted that the applicant's pre-trial detention had been in compliance with the requirements set forth in Article 5 of the Convention.

A. Admissibility

41. As regards the applicant's complaint that his detention was unlawful, the Court notes that on 16 December 2004 the Moscow District Court had ordered the applicant to be taken into custody because of the gravity of the charges laid against him. The applicant's detention was subsequently extended on several occasions by the domestic courts.

42. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (see *Khudoyorov*, cited above, §§ 152 and 153).

43. The Court finds that the applicant's detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

44. As regards the applicant's complaint about the violation of his right to trial within a reasonable time or to be released pending trial, the Court finds that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

45. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

46. 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 ensure his release once the continuation of his detention has ceased to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30-32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8).

47. 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; and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of

respect for individual liberty and set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts and take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov,* cited above, § 86; and *Labita*, cited above, § 152).

2. Application to the present case

48. The applicant was placed in custody on 14 December 2004. On 8 December 2005 the trial court convicted him of a criminal offence and immediately released him on probation. The period of detention to be taken into consideration lasted, accordingly, almost twelve months.

49. The Court observes that the applicant was apprehended on the premises on which the impugned offences had allegedly been committed. It accepts therefore that his detention could have initially been warranted by a reasonable suspicion of his involvement in these offences. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicant's continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

50. While the investigation was pending the domestic courts consistently relied on the gravity of the charges as the main factor for their assessment of the applicant's potential to abscond, re-offend or obstruct the course of justice. They did not demonstrate the existence of concrete facts in support of their conclusions.

51. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; also see *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov,* cited above, § 81).

52. This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial examination of whether the evidence collected supported a reasonable suspicion that the applicant had committed the imputed offence. Indeed, the initial charge of the violent overthrow of State power, which was a particularly serious criminal offence according to the domestic classification, had been accepted by the District Court on 7 February 2005 without any inquiry having been

carried out, although this was later amended to a lesser charge of participation in mass disorder. Nevertheless, when the same court extended the applicant's pre-trial detention on 14 April 2005, its reasoning remained unaffected by such re-classification (compare *Dolgova*, cited above, § 42).

53. After the case had been submitted for trial in June 2005 the trial court used the same summary formula to refuse the petitions for release and extend the pre-trial detention of the thirty-nine defendants, notwithstanding the defence's express request that each detainee's situation be dealt with individually. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova,* cited above*,* § 76; and *Dolgova*, cited above, § 49, 2 March 2006). By extending the applicant's detention by means of a collective detention order the domestic authorities had no proper regard to his individual circumstances. It is even more striking that the extension order of 20 June 2005 only stated that "all defendants should remain in custody" without giving any grounds for their continued detention.

54. The Court further observes that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Article of the Convention provides not only for the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Jabłoński*, cited above, § 83). In the present case the authorities did not consider the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure.

55. The Court has frequently found a violation of Article 5 § 3 of the Convention in cases brought against the Russian Federation where the domestic courts extended an applicant's detention by relying essentially on the gravity of the charges and by using formulaic reasoning without addressing the concrete facts of the case or considering alternative preventive measures (see *Belevitskiy*, cited above, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 106 et seq., ECHR 2006-XII (extracts); *Mamedova v. Russia,* cited above, §§ 72 et seq.; *Dolgova*, cited above, §§ 38 et seq.; *Khudoyorov*, cited above, §§ 172 et seq.; *Rokhlina*, cited above, §§ 63 et seq.; *Panchenko*, cited above, §§ 101 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 65 et seq., ECHR 2003-IX (extracts)).

56. The Court further notes that it has previously examined similar complaints lodged by the applicant's co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Dolgova*, cited above, §§ 38-50, and *Lind*, cited above, §§ 74-86). Having regard to the

materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

57. In view of the above, the Court considers that by failing to address concrete facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient". In these circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government submitted that the applicant's right had not been infringed and no compensation should be awarded to him. In any event, they considered the applicant's claim excessive and suggested that the acknowledgment of a violation would constitute adequate just satisfaction.

62. The Court observes that the applicant spent almost a year in custody, in inhuman and degrading conditions, with insufficient justification. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation alone. Making its assessment on an equitable basis, it awards him EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's pre-trial detention and the excessive length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President