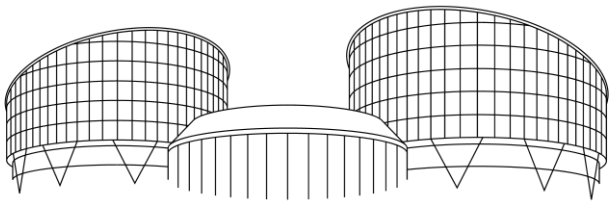

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOPIN v. RUSSIA

(Application no. 57319/10)

JUDGMENT

STRASBOURG

18 December 2012

FINAL

18/03/2013

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

In the case of Sopin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 57319/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Nikolayevich Sopin ("the applicant"), on 6 September 2010.

2. The applicant was represented by Mr S. Trutnev, a lawyer practising in St. Petersburg. 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 his pre-trial detention was excessively lengthy, and that the grounds for it were not appropriate ones.

4. On 16 May 2011 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). Further to the applicant's request, the Court granted priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lived in Moscow until his arrest.

A. Arrest and authorisation of detention

6. On 11 May 2010 the applicant was arrested on suspicion of aggravated fraud. The prosecutor's case was that between November 2004 and April 2005 he, with at least fifteen others, had fraudulently assumed ownership of premises and a plot of land which belonged to a private legal entity in St. Petersburg. The criminal proceedings had been pending since 2005 without any apparent progress, with the criminal case having been closed, reopened, stayed and transferred between various investigating authorities on a number of occasions, until in January 2010 it was assigned to a large group of investigators from the Main Investigation Department of the Investigation Committee of the Russian Federation in Moscow.

7. Moscow investigators lodged a request with the Kuybyshevskiy District Court of St. Petersburg for authorisation of the applicant's remand in custody. The request was supported by a certifying statement issued by a high-ranking police official. The relevant parts of the statement read as follows:

> "As a result of investigation and search operations, such as 'gathering of data' and 'questioning', it has been established that ...
>
> [The applicant] is an active member of the inter-regional organised criminal community headed by 'Vasya Bryanskiy' [Mr V.], which has for a long time been active in the territory of the North-Western and Central Federal Circuits. [The applicant] is a direct subordinate of the leader of [that criminal community], Mr V., with whom he has been committing serious and very serious crimes.
>
> [The applicant] has extensive corrupt contacts with State bodies and with various law-enforcement agencies in St Petersburg, Moscow and other towns in the country.
>
> [The applicant] is a founder of three limited-liability companies; [he] owns a car ... He has substantial financial resources, a travel passport ...; he occasionally travels abroad for business meetings or vacations, [with the most recent visits to] ... Israel [in 2009], Finland... in 2010, Riga ... in 2010 [and] Frankfurt am Main ... in 2010.
>
> According to the available information, if [the court decides] to apply to [the applicant] a measure of restraint other than arrest, [he], understanding his role in a criminal group and the gravity of the crime committed [by him], will take every possible step to obstruct the establishment of the truth in the case, will bribe or threaten witnesses, and will move to another country to avoid criminal responsibility."

8. On 13 May 2010 the Kuybyshevskiy District Court authorised the applicant's placement in custody, having held as follows:

> "[The applicant] is accused of a serious crime against property for which the criminal law establishes punishment of imprisonment for more than two years. The particular circumstances of the crime of which he is accused, committed by an organised group over a lengthy period of time and causing extensive damage to the victims, demonstrate a crime of a particularly audacious nature and thereby an increased danger to society.

The materials presented contain statements by suspect P. and victim T., connecting [the applicant] to the crime he is accused of. At the same time, the victim stated that on a number of occasions, when the documents confirming the transfer of title to the immovable property had been signed, [the applicant] had threatened her and her mother with a gun, thus breaking their will to resist the unlawful actions committed against them. All this was part of the plan which had been developed to take over their property. Given the victim's fear for her life and limb, these circumstances forced her initially to give incomplete statements. In the court's opinion, this is a sign that the individuals involved in the offence influenced the victim with the aim of obstructing the proceedings in the criminal case.

Having regard to the above-mentioned and given the particular circumstances of the crime with which [the applicant] is charged, the significance of the crime and its consequences, the fact that [the applicant] owns a gun (the fact which he has not disputed in the court hearing), his connections in State bodies and law-enforcement agencies, and also the fact that at the material time certain of the perpetrators of the crime committed by that group have not yet been identified, the court has sufficient grounds to conclude that [the applicant], who has a travel passport and relatives living permanently outside Russia, is liable to abscond from the investigation and trial, to threaten victims, witnesses and other participants in the criminal proceedings, or may, in other ways, hinder the proceedings in the case.

Information about [the applicant's] character is not absolute and sufficient to dismiss the [investigator's] request [for the applicant's detention] or to apply a more lenient measure of restraint. The court takes into account that [the applicant] is suffering from a number of illnesses and that he is an elderly person; however, there is no evidence that [the applicant's] state of health precludes his detention, and the court did not receive any proof that [the applicant] is the only caregiver for his relatives.

The materials presented to the court demonstrate that there is sufficient evidence that the crime took place and that [the applicant] may be involved; as well as evidence that the investigating authorities complied with the procedure for the arrest of the suspect (Articles 91 and 92 of the Russian Code of Criminal Procedure) and brought charges against him as prescribed by Section 23 of the Russian Code of Criminal Procedure. At the same time, the task of establishing the guilt of the accused is outside the competence of the court at this stage of the criminal proceedings ...

By virtue of Article 108 § 1.1 of the Russian Code of Criminal Procedure in the absence of grounds listed in sub-paragraphs 1-4 of paragraph 1 of Article 108 of the Russian Code of Criminal Procedure a [court] cannot authorise detention of an individual suspected of or charged with a crime proscribed by Article 159 of the Russian Criminal Code [the fraud], if that crime was committed in connection with business activities.

Having studied the presented materials, the court finds that the crime proscribed by Article 159 § 4 of the Russian Criminal Code with which [the applicant] is charged does not fall within the sphere of business activities, as the intentions of the members of the organised criminal group were aimed at unlawfully taking over title to the premises and a plot of land which belonged [to a private legal entity] which has no connection to any form of business activities."

9. The applicant and his lawyer appealed, arguing that the detention order lacked any grounds and was based on mere assumptions in the

absence of any evidence that the applicant, an elderly and seriously ill person with solid family ties, intended to abscond or reoffend. They further argued that the detention was unlawful, as Russian law did not permit the detention of individuals accused of fraudulent acts committed in the sphere of business activities, which was the offence with which the applicant was charged.

10. On 17 June 2010 the St. Petersburg City Court upheld the detention order, having endorsed the District Court's reasoning.

B. Extension of the applicant's detention on 6 July 2010

11. On 6 July 2010 the Basmanniy District Court of Moscow accepted the investigator's request for an extension of the applicant's detention, having authorised it until 17 September 2010. The District Court reasoned as follows:

> "The investigating authorities have charged [the applicant] with a socially dangerous act, a serious criminal offence for with the criminal law prescribes punishment in the form of no less than two years' imprisonment.
>
> Having assessed in their entirety the circumstances of the case under investigation, the materials and information presented, and the information about [the applicant's] character, the court finds that there are sufficient grounds to conclude that, if released, [the applicant], being charged with [a serious offence], fearing the punishment for that serious offence, [and] being in possession of a travel passport [and] having relatives in foreign countries, will prefer to abscond from the pre-trial investigation and trial; that [he] is liable to influence witnesses and other participants in the criminal proceedings, given that he has acquired specific information about the course of the investigation; that he may destroy evidence for which the investigators are looking now; if released, [the applicant] may develop, together with his accomplices who have not yet been identified by the investigation or in respect of whom search warrants, including international ones, have been issued, a method of working against the investigators' actions aimed at the establishment of the truth in the case.
>
> The above-mentioned circumstances and information are well-founded, real and are corroborated by personal data about [the applicant] who has a travel passport [and] sufficient financial resources, as he is the head of a number of legal entities, and has, on a number of occasions in recent years, travelled abroad, including to visit his daughter in Denmark. That information was received in the course of operational search actions performed within the criminal proceedings. The above-mentioned data runs contrary to the arguments by the defence that the investigator's request for an extension of [the applicant's] detention is not based on any evidence or matters of fact.
>
> In these circumstances there are grounds cited by Article 97 of the Russian Code of Criminal Procedure for an authorisation of detention, which, in its turn, shows that the grounds taken into account when [the applicant's] placement in custody was authorised ... are still present and it is still necessary to apply that measure of restraint. Therefore, the request by the defence for the application of a more lenient measure of restraint unconnected to detention, including bail in the amount of

> 2,000,000 Russian roubles (RUB), should be dismissed because a new [lenient] measure will not exclude the possibility that the applicant will abscond from the investigation, including by leaving Russia, or will commit other acts in order to resist the investigation in the present criminal case, which is currently at the pre-trial stage.
>
> When determining the issue of the extension of [the applicant's] detention, the court takes into account his permanent residence in St. Petersburg, his family situation and the state of his health. The court did not receive any evidence, including from the defence, showing that [the applicant] is unfit for detention in the conditions of the temporary detention facility where he may receive necessary medical assistance; [the applicant] did not complain about the quality of the medical care received [in detention]; [the applicant] also explained that he is not in need of any medicines, including those which are necessary to treat his diabetes.
>
> Moreover, the court takes into account a large number of actions which the investigating authorities have to take to complete the investigation of the criminal case; it finds that the period of extension requested by the investigator is well-founded and reasonable.
>
> While assessing the present request for an extension the court does not find that the investigation is ineffective or delayed. In the court's opinion, the length of the pre-trial investigation is caused by objective factors, such as the nature of the offences under investigation, the large volume of written evidence which requires extensive and time-consuming examination and analysis, and the need to authorise and perform complex expert examinations."

12. On 2 August 2010 the Moscow City Court upheld the order of 6 July 2010, concluding that the District Court's findings were reasonable and based on evidence provided by the investigating authorities. The City Court also noted that the District Court had thoroughly assessed the applicant's personal situation and the state of his health, but had correctly concluded that the grounds for his detention outweighed the arguments for his release.

C. Extension of the applicant's detention on 13 September 2010

13. A further request by an investigator for an extension of the applicant's detention was accepted by the Basmanniy District Court on 13 September 2010, with reasoning similar to that employed by the District Court in its previous decision. The applicant's detention was extended until 17 December 2010.

14. On 20 October 2010 the Moscow City Court dismissed the applicant's lawyers' arguments that the extension of the detention was unreasonable and ill-founded. The City Court supported the District Court's findings that the applicant was liable to abscond and obstruct justice if released.

D. Extension of the detention on 15 December 2010

15. On 15 December 2010 the Basmanniy District Court again extended the applicant's detention for an additional three months, that is until 17 March 2011. It dismissed the applicant's and his lawyers' arguments that the investigators had delayed the criminal proceedings by failing to take any action in the procedure in months, that the applicant had no intention of absconding threatening witnesses or destroying evidence, particularly given that he had voluntarily handed over to the investigators every piece of material evidence which had been in his possession, that his travel passport had also been given to the investigators, and that his family situation, the state of his health and his character warranted his release. The District Court's reasoning was identical to that in the two previous detention orders.

16. A week later police officials provided the Investigation Department with a memorandum which, in so far as relevant, read as follows:

> "According to the available information, if [the court decides] to apply to [the applicant] a measure of restraint other than arrest, [he], understanding his role in a criminal group and the gravity of the crime committed [by him], will take every possible step to obstruct the establishment of the truth in the case, will bribe or threaten witnesses, and will move to another country to avoid criminal responsibility."

17. On 9 February 2011 the Moscow City Court upheld the detention order of 15 December 2010 on appeal.

E. Extension of the detention on 14 March 2011

18. On 14 March 2011 the Basmanniy District Court found it reasonable to remand the applicant in custody for a further period, until 11 May 2011. The District Court considered that the length of the pre-trial investigation in the case was objectively justifiable by complex procedural actions, including a number of expert examinations which the investigators had to perform. In the District Court's opinion, the applicant's release on bail or on his own recognisance would not eliminate the risk that he would abscond and/or tamper with witnesses or destroy evidence. Having examined the medical evidence presented by the defence in support of the argument that the applicant was seriously ill, the District Court concluded that the applicant was still fit for detention.

19. The applicant and his lawyer appealed.

20. In the meantime, on 25 March 2011 the pre-trial investigation was closed and the applicant lodged a written request for the case file to be provided to him and his lawyers for study as soon as possible.

21. At the beginning of April 2011 the applicant and his lawyers started studying the case file materials. On a number of occasions they complained to the investigators that they had not been served with the subsequent

volumes of the case file and that they had thus been forced to adjourn their reading of the file.

22. On 20 April 2011 the Moscow City Court upheld the detention order of 14 March 2011, finding no grounds to question the lawfulness and reasonableness of the District Court's findings.

F. Extension order of 4 May 2011

23. On 4 May 2011 the Moscow City Court extended the applicant's detention until 17 September 2011, reasoning as follows:

> "Despite [the applicant's] age and the facts that he has not been convicted before, that he is registered and permanently resides in St. Petersburg, that he is a national of the Russian Federation, that he is not under psychiatric or drug abuse supervision, that he is suffering from a number of illnesses, [and] that his character has been assessed positively, I find that the necessity to apply to him the measure of restraint chosen earlier has not ceased to exist at the material time, as he has been charged with a serious criminal offence which, according to the prosecution, he committed as a member of an organised criminal group, certain of whose members have not yet been identified, and four of whose members absconded from the investigation and court and [were placed] on the international wanted persons' list; in this regard, the court accepts the investigator's arguments that there are sufficient grounds to conclude that if released [the applicant] will abscond from the pre-trial investigation and trial, will continue his criminal activities, will threaten witnesses and other parties to the criminal proceedings, will destroy evidence, and will interfere with justice in the criminal case in other ways."

24. The extension order was upheld on appeal on 25 May 2011 with the appellate court accepting the City Court's reasoning.

G. The applicant's release on 14 September 2011

25. On 9 June 2011 the applicant informed the investigators that he had read the entire case file.

26. On 22 July 2011 the Moscow Main Investigation Department sent the case to the St Petersburg Main Investigation Department, given that the majority of the victims and witnesses lived in St Petersburg, where the criminal offences had allegedly been committed. On 8 August 2011 investigators in St Petersburg took over the case. On 14 September 2011 a senior investigator of the St Petersburg Main Investigation Department issued a decision authorising the reopening of the pre-trial investigation. In the same decision, having noted that the maximum period for detaining the applicant had expired and that the long-term detention had negatively affected the applicant's health, the senior investigator authorised his immediate release on a written undertaking not to leave the town. The applicant was released the same day.

27. It appears that the criminal proceedings against the applicant are still pending.

II. RELEVANT DOMESTIC LAW

28. The Russian legal regulations of detention are explained in the judgment of *Isayev v. Russia*, no. 20756/04, §§ 67-80, 22 October 2009.

THE LAW

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

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

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

A. Submissions by the parties

30. The Government opened their line of argument with the submission that the Russian courts had authorised the applicant's arrest because they had sufficient reasons to believe that he had taken part in a large-scale fraud. The courts' belief had been based, in addition to other evidence, on statements by the victim, Ms T., and by the applicant's co-accused, Mr P. The Government further submitted that the applicant's continued detention was the result of the courts' assessment of his liability to abscond, obstruct justice and tamper with witnesses, given the gravity of the charges against him, and his personality. The case-file materials demonstrated that the victim, Ms T., had initially made incorrect statements, which the Russian courts had interpreted as evidence of the applicant's ability to manipulate witnesses. In particular, on a number of occasions the applicant had threatened Ms T. and her daughter with a weapon in order to force them into signing the ownership documents. Furthermore, the applicant had the opportunity to leave Russia, as he had a travel passport and had relatives living abroad whom he had visited on a number of occasions. Furthermore, the Government stressed that the Russian courts had attributed particular weight to information provided by police officials. The information

concerned the applicant's involvement in a large criminal group organised and headed for more than ten years by a mob leader, "Vasya Bryanskiy". In the Government's opinion, the investigating authorities' inability to identify all members of the criminal group, the fact that certain of its members had been on the run and that the group had strong ties with corrupt officials in various State bodies, had made the applicant prone to obstruct justice by way of bribing or threatening witnesses. The Government concluded by noting that the authorities had taken effective action in dealing with the case and that there had not been any delays for which they could be held liable. The Government observed that the criminal case was extremely complex, that the case file comprised eighty-three volumes, and that a large number of defendants was involved in the case.

31. The applicant argued that he had initiated the criminal proceedings pertaining to the transfer of title to Ms T.'s and her daughter's shares and that he had been a law-abiding citizen for more than five years since 2005, when the criminal case had been opened in respect of the events in question, having made no attempts to abscond, to commit a criminal offence or to interfere with the course of the investigation. While authorising or extending his detention neither the investigating authorities nor the courts had been able to point to any instance when he had failed to comply with the investigators' or courts' summons or orders. They had also been unable to identify any witness who had been threatened or bribed by the applicant. The courts had never truly considered the application of any other, more lenient, measure of restraint, such as bail or house arrest. The applicant submitted that his detention for more than a year had been primarily based on the gravity of the charges against him, despite the fact that there had not yet been a finding on his guilt or innocence. Having concluded that the applicant was liable to abscond, the courts had in fact imposed on him the burden of proving the absence of such a risk. The applicant pointed out that the domestic courts had linked the risk that he would abscond to the fact that he had a travel passport and relatives abroad. However, the travel passport seized by the investigators during the applicant's arrest had never been returned to him. Furthermore, he had had extremely strong ties to Russia, in the form of his family (his wife, three daughters, two sisters, two granddaughters and his wife's elderly parents), work and household. His age and poor health were additional factors making it unlikely that he would escape. The fact that his daughter lived in Denmark should not have been taken on its own as primary evidence of his intention to evade justice.

32. As to the possibility that he would tamper with witnesses or obstruct justice by other means, the applicant commented that the courts' findings of the existence of that risk had been based only on information provided by the police, which was not supported by any evidence. The credibility of that information had surprisingly never been questioned by the courts, and he had been denied an effective opportunity to challenge the veracity of that

information, as it had no references to sources, was not based on witness statements, and so on. In the applicant's opinion, it was more important that, having extended his detention on a number of occasions, the domestic courts had not once cited a specific episode of his behaviour directed at manipulating witnesses, except for the alleged threatening behaviour with the gun towards Ms T. and her daughter in 2005 to force them to sign the papers. The applicant stated that even if the courts' findings of his behaviour in 2005 had been correct, there was no evidence that he had ever taken steps to contact Ms T. or her daughter or any other witness of the alleged crimes after 2005. He stressed that in all those years he had accidentally met Ms T. once in a street in St. Petersburg, in 2006.

33. In conclusion, the applicant observed that the investigation related to him had been closed in 25 March 2011. There had been no need to detain him after that date, as the evidence had already been collected and the case was ready for trial. However, he had been left in detention for a further six months.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

35. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is *sine qua non* for the lawfulness of his or her continued detention. However, after a certain lapse of time it no longer suffices. In such cases the Court must establish whether the other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are found to have been "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

36. 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 conviction the accused must be presumed innocent, and the purpose of the

provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify his or her continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I).

37. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the evidence for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish the existence of such evidence or to take the place of the national authorities which ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of true statements by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

38. The applicant was arrested on 11 May 2010. He was released by a decision of the investigator on 14 September 2011 on a written undertaking not to leave the town. The period to be taken into consideration therefore lasted for slightly more than sixteen months.

39. Assessing the grounds for the applicant's continued detention, the Court notes that the competent judicial authorities advanced three principal reasons for not granting the applicant's release, namely that the applicant remained under a strong suspicion of having committed the crime of which he was accused, the serious nature of the offence in question and the fact

that the applicant would be likely to abscond and pervert the course of justice if released, given the sentence which he faced if found guilty as charged, his personality and his behaviour when committing the crime.

40. The Court accepts that the reasonable suspicion of the applicant having committed the offence with which he had been charged, being based on cogent evidence, persisted throughout the entire period of his detention. It also agrees that the alleged offence was of a particularly serious nature.

41. As regards the danger of the applicant's absconding, the Court notes that the judicial authorities relied on the likelihood that a severe sentence might be imposed on the applicant, given the serious nature of the offence at issue. In this connection, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established (see *Ilijkov*, cited above, §§ 80-81). However, the Court reiterates that the possibility of a severe sentence alone is not sufficient after a certain lapse of time to justify continued detention based on the danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175).

42. In this context the Court observes that the danger of absconding must be assessed with reference to a number of other relevant factors. In particular, regard must be had to the character of the person involved, his morals, his assets, etc. (see *W. v. Switzerland*, 26 January 1993, § 33, Series A no. 254-A). Having said that, the Court would emphasise that there is a general rule that the domestic courts, in particular the trial court, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed (see *Bąk v. Poland*, no. 7870/04, § 59, ECHR 2007-II (extracts)). In the present case the national courts also relied on other circumstances, including the fact that the applicant had a travel passport and relatives permanently residing outside Russia, that he had frequently travelled abroad and that he had substantial financial resources. While the Court doubts whether those circumstances, taken on their own, could have justified the domestic courts' finding about the necessity of the applicant's continued detention, it is satisfied that the totality of those factors combined with other relevant grounds could have provided the domestic courts with an understanding of the pattern of the applicant's behaviour and the persistence of a risk of his absconding.

43. The Court further observes that one of the main grounds invoked by the domestic courts in their justification for the applicant's detention was the likelihood of his tampering with witnesses and obstructing justice by other means. The Court reiterates that, as regards the risk of pressure being

brought to bear on witnesses, the judicial authorities cited statements by the victims who had complained to the investigating authorities about the threats mounted against them. The authorities also considered that the applicant's substantial financial resources and his ties to the criminal underworld and to "corrupt" officials in various law-enforcement agencies gave him an opportunity to influence witnesses and to destroy evidence if released (see paragraph 7 above). In these circumstances the Court is prepared to accept that at the initial stage of the proceedings the courts could have validly presumed the existence of a risk that, if released, the applicant might abscond, reoffend or interfere with the proceedings given the nature of his criminal activities (see, for similar reasoning, *Bąk*, cited above, § 62).

44. It remains to be ascertained whether the risks of the applicant's absconding or his interfering with justice persisted throughout the entire period of detention. The Court notes the applicant's arguments that his age, state of health and the necessity for him to remain under constant medical supervision considerably reduced the risk of his absconding. While not being convinced that the applicant's medical condition entirely mitigated the risk of his absconding, so that it was no longer sufficient to outweigh his right to a trial within a reasonable time or release pending trial, the Court is of the opinion that the risk of collusion was so high that it could not be negated by the applicant's state of health to the extent that his detention could no longer be warranted. The decisions to extend the detention underlined the fact that the fears of collusion were founded on the specific instances of threats being made against the victims, on the applicant's particular status in the criminal underworld and the fact that the applicant stood accused of an organised criminal act, with several members of the criminal group being on the run. The authorities considered the risk of pressure being brought to bear on the parties to the proceedings to be real. The Court readily understands that in such circumstances the authorities considered it necessary to keep the applicant detained in order to prevent him from disrupting the criminal proceedings. It reiterates that the fear of reprisal, justifiable in the present case, can often be enough for intimidated witnesses to withdraw from the criminal justice process altogether. The Court observes that the domestic courts carefully balanced the safety of the witnesses who had already given statements against the applicant, together with the prospect of other witnesses' willingness to testify, against the applicant's right to liberty.

45. Having regard to the above, the Court considers that the present case is different from many previous Russian cases where a violation of Article 5 § 3 was found because the domestic courts had extended an applicant's detention relying essentially on the gravity of the charges without addressing specific facts or considering alternative preventive measures (see, among many others, *Belevitskiy v. Russia*, no. 72967/01,

§§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-XII (extracts); and *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006). In the present case, the domestic courts cited specific facts in support of their conclusion that the applicant might interfere with the proceedings. They also considered a possibility of applying alternative measures, but found them to be inadequate.

46. The Court believes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants who had been charged with taking part in organised criminal acts. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the existence of the general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending the applicant's detention during the entire period under consideration. The Court does not underestimate the fact that the domestic authorities have to take statements from witnesses in a manner which will exclude any doubt as to their veracity. The Court thus concludes that, in the circumstances of the case, the risk of the applicant interfering with the course of justice actually existed and justified holding him in custody for the entire relevant period (see, for similar reasoning, *Celejewski v. Poland*, no. 17584/04, 4 May 2006, and *Łaszkiewicz v. Poland*, no. 28481/03, §§ 59-60, 15 January 2008). The Court concludes that the circumstances of the case as described in the decisions of the domestic courts, including the applicant's personality and the nature of the crimes with which he had been charged, justified his detention. The applicant's detention was therefore based on "relevant" and "sufficient" grounds.

47. The Court lastly observes that the proceedings were of considerable complexity, regard being had to the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. The remoteness of the criminal acts in time from the institution of the criminal proceedings was another factor in complicating the investigators' task. The Court also does not lose sight of the fact that the authorities needed to balance the necessity to proceed with the investigation against an obligation to ensure that the applicant was fully fit to take part in it. The national authorities displayed diligence in the conduct of the proceedings. In these circumstances, the Court reiterates that while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the authorities to clarify fully the facts in issue, to provide the defence with all the necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed (see, for similar reasoning, *Bąk*, cited above, § 64) .

48. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Lastly, the Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the applicant's detention pending trial admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President