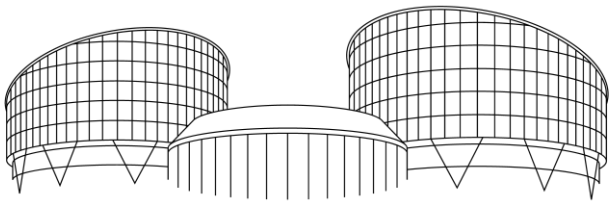

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VELICHKO v. RUSSIA

(Application no. 19664/07)

JUDGMENT

STRASBOURG

15 January 2013

FINAL

27/05/2013

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

In the case of Velichko v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 19664/07) 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 Sergey Viktorovich Velichko ("the applicant"), on 15 December 2006.

2. The applicant was represented by Mr P. Legros and Ms M. Simanova, lawyers practising in Brussels, Belgium, and Murmansk, Russian Federation, respectively. 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; that the length of his pre-trial detention and the criminal proceedings against him had been unreasonable; that the supervisory review of his release on bail, as such, and the ensuing remand in custody had been unlawful and that the procedure followed, in particular, the authorities' failure to ensure his presence at the hearing, had been incompatible with the Convention provisions.

4. On 30 April 2010 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 1965 and is serving a prison sentence in the Murmansk Region.

A. The applicant's arrest and pre-trial detention

6. On 13 January 2005 the applicant was arrested on suspicion of fraud and abuse of power. On 14 January 2005 the Severomorskiy Garrison Military Court authorised the applicant's detention pending investigation. In particular, the court noted as follows:

> "... [The prosecutor] submitted that there were sufficient grounds to believe that [the applicant] might attempt to conceal ... the evidence and to put pressure on witnesses who worked under his supervision or were financially or otherwise dependent on him. The investigators had sufficient material in their possession showing that [the applicant] might interfere with the investigation and the establishment of the truth, or that he might abscond.
>
> ...
>
> The fact that the [applicant's] efforts aimed at interfering with the investigation had a systematic nature was confirmed by ... a recording of a discussion which took place on 27 January 2004 between [the applicant] and [defendant] Shch., during which [the applicant] asked [the defendant] to reconcile the statements they were to give during the questioning to be held by the investigator.
>
> Furthermore, according to the testimony of witness G., [the applicant] asked him to change his earlier statement, threatening him with unpleasant consequences if he refused to comply.
>
> According to the statement of witness S., [the applicant] told him that he was the holder of a Belarusian passport ... and [had] bank accounts abroad.
>
> ...
>
> Having regard to the arguments put forward by [the prosecutor and defence counsel] and to the materials in the case file, [the court] concludes that [the applicant] should be remanded in custody. ...
>
> ... [T]he court takes into account the materials presented by investigators showing that [the applicant] might influence the witnesses or interfere with the proceedings or the establishment of the truth.
>
> Regard being had to the [applicant's] character, age and family situation, the court also takes into consideration [the fact] that he is suspected ... of having committed criminal offences entailing a custodial sentence which exceeds two years."

7. On 12 July 2005 the Severomorskiy Town Court of the Murmansk Region received the case file. The court ordered that the applicant remain in custody pending trial.

8. On 22 December 2005 the Town Court further extended the applicant's pre-trial detention until 11 April 2006.

9. On 5 April 2006 the Town Court extended the applicant's pre-trial detention until 11 July 2006. The applicant asked to be released, arguing that he had a permanent residence and employment, had to support a minor child and had no previous criminal record. He further complained that he suffered from chronic gastritis and chronic duodenal ulcer. However, at the temporary detention centre he had not been receiving the medication and special diet he had been prescribed by his doctor. Lastly, he claimed that he had been unable to prepare his defence owing to the poor conditions of his detention. The court dismissed the applicant's arguments, noting as follows:

> "The grounds for the [applicant's] detention have not ceased to exist, given that [he] is charged with serious criminal offences for which a custodial sentence exceeding two years can be applied in the event of conviction. In such circumstances, the court considers that [the applicant] might abscond or interfere with the administration of justice.
>
> ...
>
> The [applicant's] argument that the medical aid provided is insufficient and that he is not receiving a prescribed diet is not supported by appropriate evidence and is rebutted by the information submitted by the prosecutor. ... The special diet was prescribed for the period from spring to autumn. The prescription was cancelled in November 2005."

10. On 25 April 2006 the Murmansk Regional Court quashed the decision of 5 April 2006 and released the applicant on bail. The court noted, *inter alia*, as follows:

> "According to the materials in the case file, the applicant was taken into custody to prevent him from putting pressure on witnesses and interfering with the administration of justice.
>
> The materials supporting the above measure were, indeed, relevant during the investigation stage of the proceedings ...
>
> To date, the applicant has been indicted, the prosecution has collected the evidence and summarised it in the indictment, the lists of witnesses for both the prosecution and the defence have been prepared, [and] the case is being tried in court.
>
> Accordingly, [the applicant] is not in a position to influence the witnesses for the prosecution and, as a result, to interfere with the establishment of the truth. Moreover, any change by the witnesses in their statements during the trial will be assessed by the court in accordance with [the rules of criminal procedure].
>
> Having regard to the above, the [lower] court's conclusion that the grounds for the applicant's detention have not ceased to exist is not convincing.

The restrictive measure applied to [the applicant] should therefore be less severe."

11. On 27 April 2006 the applicant paid the bail and was released.

12. On 26 May 2006 the Regional Court granted a request made by the prosecutor for supervisory review of the decision of 25 April 2006. On 15 June 2006 the Presidium of the Regional Court quashed the decision of 25 April 2006 by way of supervisory review and remitted the matter for fresh consideration on appeal. It also ordered the applicant's remand in custody pending the appeal hearing. In particular, the court noted as follows:

"It is clear from the [court order] of 14 January 2005 that [the applicant] was remanded in custody in view of the risk of his putting pressure on witnesses, that is of interfering with the administration of justice and the establishment of the truth. The court also took into account the [applicant's] character, family situation and the fact that he was suspected of having committed offences entailing a custodial sentence exceeding two years.

The prosecutor's argument that [the applicant] might abscond was not based on the above-mentioned court order.

Accordingly, [on 25 April 2006] the [Regional Court] verified only one ground underlying the [applicant's] remand in custody, that is a risk of putting pressure on witnesses and interfering with the administration of justice.

Having regard to that ground, [the Regional Court] indicated... that the arguments furnished by the investigators and the court underlying the [applicant's] remand in custody had been relevant during the investigation stage. When the trial started, all the evidence having been collected and all the victims and witnesses having been questioned, the defendant was prevented from interfering with the establishment of the truth ....

However, the materials in the case file show that witness G. asked the [prosecutor's office] to protect him from the [applicant], who pressured [G.] not to testify against him. Furthermore, there is evidence showing that [the applicant has sought to] interfere with the administration of justice by giving instructions to other defendants as regards the charges against them.

The start of the trial does not signify that the risk of [the applicant] interfering with the administration of justice ceased to exist, as the testimonies of the [other defendants] are very important for the correct and objective consideration of the case ... by the [trial] court.

The trial started in July 2005.

The [Regional Court] failed to take into consideration the fact that [the applicant] is the holder of a Belarusian passport with a false name and bank accounts abroad; that he is indicted on sixty charges, each of them being a grievous offence; that he is accused of having committed those offences in concert and that he is the leader of the organised criminal group; and that the damage caused by the crimes of that organised criminal group amounted to 130 million roubles.

The decision adopted by the [Regional Court] is contradictory to the previous court orders extending the [applicant's] pre-trial detention.

On 15 July 2005 the [Town Court], when fixing the trial opening, ordered that [the applicant] should remain in custody.

On 4 August 2005 the [Regional Court] upheld the said decision on appeal.

On 22 December 2005 the [Town Court] extended the [applicant's] pre-trial detention until 11 April 2006.

The [Regional Court] upheld the said decision on appeal.

The above court orders established that the circumstances underlying the applicant's remand in custody have not ceased to exist.

The above court orders came into effect.

The [Regional Court] in its decision [of 25 April 2006] questioned the findings of those decisions, which is impermissible.

As regards the amount of bail, [the court] also agrees with the prosecutor that [the amount of bail imposed on the applicant was insufficient, as he] was released on bail in the amount of 500,000 roubles, which is half as much as the bail imposed on defendant Shch.

Having regard to the above, the decision of the [Regional Court] of 25 April 2006 shall be quashed ..."

13. On 20 June 2006 the applicant was re-arrested.

14. On 27 June 2006 the Regional Court upheld the decision of 5 April 2006 on appeal.

15. On 6 July 2006 the prosecutor asked the Town Court to further extend the applicant's detention referring, *inter alia*, to the fact that the applicant had a foreign passport under a false name and bank accounts abroad. The court ordered that the applicant remain in custody until 11 October 2006. It noted, in particular, as follows:

"The grounds for the [applicant's] detention have not ceased to exist, given that [he] is charged with serious criminal offences for which a custodial sentence exceeding two years can be applied in the event of conviction.

Furthermore, the court has grounds to believe that [the applicant] might abscond or interfere with the administration of justice. The court bases this finding on the materials submitted by the prosecution.

The fact that the applicant, when released for a month and a half, behaved appropriately does not signify that he would not abscond in the future, given the complexity and length of the criminal proceedings and the multiple charges against him."

16. On 5 October 2006 the Town Court extended the applicant's detention until 11 January 2007. The court referred again to the gravity of the charges against the applicant and the risk that he might abscond or interfere with the administration of justice. On 23 November 2006 the Regional Court upheld the decision of 5 October 2006 on appeal.

17. Subsequently, the Town Court extended the applicant's pre-trial detention on 21 December 2006, 4 April 2007, and 3 July 2007 until 11 April, 11 July and 11 October 2007 respectively. The court reiterated the reasoning of the previous court orders. The Regional Court upheld those decisions on appeal on 20 February, 15 May and 31 July 2007.

18. On 4 October 2007 the Town Court extended the applicant's pre-trial detention until 11 January 2008. In particular, the court reasoned as follows:

> "When deciding on the further extension of the [applicant's] pre-trial detention, the court .... considered the following the arguments furnished by the prosecution ... : the gravity of the charges, the risk of [the applicant] absconding or interfering with the proceedings.
>
> At this stage of the trial, the grounds underlying the [applicant's] remand in custody have not ceased to exist. [The applicant] is charged with numerous grievous offences which entail a custodial sentence exceeding two years.
>
> Furthermore, the information contained in the documents submitted by the prosecution and considered by the court ... shows that [the applicant] might abscond or interfere with the administration of justice.
>
> The length of the trial is justified by different factors, such as the number of offences [the applicant] is charged with, a great number of witnesses and [the amount of] documentary evidence, and cannot justify the [applicant's] release."

19. On 27 November 2007 the Regional Court upheld the decision of 4 October 2007 on appeal.

20. On 25 December 2007 the Town Court extended the applicant's pre-trial detention until 11 April 2008. The court reiterated verbatim its reasoning contained in the court order of 4 October 2007.

21. It appears that the applicant's detention pending trial was subsequently extended until his conviction on 27 October 2008.

B. Criminal court proceedings

22. As set out above (see paragraph 6) the applicant was arrested on 13 January 2005. Following the preliminary investigation, the criminal case was received by the Town Court on 12 July 2005 for adjudication. On 15 July 2005 the Town Court fixed the trial in respect of four defendants, including the applicant, for 26 July 2005. Subsequently the trial was deferred until 11 October 2005 due to the fact that two of the defence counsel and several witnesses were on vacation.

23. According to the Government, the criminal case concerned sixty-six counts of fraud and abuse of power. The trial court was to question 139 witnesses and to study substantial volumes of written evidence. The court held 370 hearings.

24. The Government provided the following information as regards the adjournment of the trial hearings:

Date	Reason for adjournment
13 October 2005	Adjourned until 1 November 2005 upon the request of one of the defence counsel for time to study the case-file materials.
14 November 2005	Adjourned until 20 December 2005 due to certain witnesses' failure to appear.
22 December 2005	Adjourned until 27 December 2005 upon the request of one the defendants and his counsel.
11 January 2006	Adjourned until 31 January 2006 upon the request of one of the defendants and his counsel for time to study the case-file materials.
16 March 2006	Adjourned until 4 April 2006 upon the applicant's request for time to study the case-file materials.
6 April 2006	Adjourned until 11 April 2006 upon one of the defendants' request.
22 June 2006	Adjourned until 27 June 2006 due to the illness of one of the defendants.
29 June 2006	Adjourned until 5 July 2006 due to the applicant's illness.
13 July 2006	Adjourned until 18 July 2006 due to a scheduling conflict of one of the defence lawyers.
2 and 10 August 2006	Adjourned until 8 and 15 August 2006 respectively due to a scheduling conflict of one of the defence lawyers.
17 August 2006	Adjourned until 22 August 2006 upon the applicant's request.
15 September 2006	Adjourned until 26 September 2006 due to the prosecutor's sick leave.
4 October 2006	Adjourned until 10 October 2006 upon the applicant's request in view of a pending medical examination.
12 October 2006	Adjourned until 17 October 2006 in order to obtain the attendance of certain witnesses.
29 November 2006	Adjourned until 5 December 2006 due to a scheduling conflict of two of the defence lawyers.
14 December 2006	Adjourned until 19 December 2006 due to the failure of certain witnesses to appear.

Date	Reason for adjournment
21 December 2006	Adjourned until 26 December 2006 upon one of the defendants' request.
28 December 2006	Adjourned until 10 January 2007 due to the holiday season.
11 January 2007	Adjourned until 16 January 2007 upon the prosecutor's request for time to obtain the attendance of certain witnesses.
18 January 2007	Adjourned until 23 January 2007 upon the prosecutor's request for time to prepare the evidence to be presented at the trial.
23 January 2007	Adjourned until 24 January 2007 due to the authorities' failure to ensure the attendance of the applicant and another defendant and due to the failure of two defence lawyers to appear.
25 January, 1, 15 and 22 February and 1 March 2007	Adjourned until 31 January, 6, 20 and 27 February and 3 April 2007 respectively due to the defence lawyers' inability to attend (for various reasons: sick leave, scheduling conflict, additional time to study the case file).
28 May 2007	Adjourned until 4 June 2006 due to one of the defendants' failure to appear.
12 July 2007	Adjourned until 16 July 2007 due to a scheduling conflict of one of the defence lawyers.
19 July 2007	Adjourned until 27 August 2007 due to the prosecutor's sick leave, one of the defence lawyers' vacation, etc.
23 October 2007	Adjourned until 6 November 2007 upon the request of one of the defendants, who replaced his lawyer.
6 November 2007	Adjourned until 13 November 2007 due to the illness of one of the defendants.
27 December 2007	Adjourned until 9 January 2008 due to the holiday season.
24 April 2008	Adjourned until 28 April 2008 due to the presiding judge's sick leave.
7 May 2008	Adjourned until 12 May 2008 upon the request of one of the defendants.
15 May 2008	Adjourned until 19 May 2008 due to the defence lawyers' inability to attend (for various reasons) and the applicant's medical examination.
22 May, 20 and 25 June 2008	Adjourned until 26 May, 23 and 27 June 2008 respectively due to the applicant's medical examination.

Date	Reason for adjournment
4 July 2008	Adjourned until 7 July 2008 due to a scheduling conflict of one of the defence lawyers.
11 July 2008	Adjourned until 15 July 2008 upon the defendants' request for time to prepare their closing arguments.

25. On 22 July 2008 the trial concluded and the court retired for deliberations. The pronouncement of the verdict started on 27 October 2008 and was completed on 5 November 2008. The applicant was found guilty as charged and sentenced to ten years' imprisonment.

26. It appears that none of the parties appealed against the verdict.

C. Conditions of detention

27. According to the applicant, from Monday to Friday of each week he was detained at the temporary detention centre in Severomorsk from 13 January 2005 until his release on bail on 27 April 2006 and from 20 June 2006 when he was again remanded in custody until 5 April 2007. According to the Government, the applicant was delivered to the temporary detention centre and detained there to study the case file, to participate in the trial and in connection with his making motions to the courts examining his case.

1. The description provided by the Government

28. The Government provided the following description of the temporary detention centre. It was located on the ground floor of a five-storey building constructed in 1995. There was no outside exercise area attached to it.

29. The cells where the applicant was detained had the following characteristics:

Cell no.	Surface area (square metres)	Number of bunk beds/cell capacity
1	10.32	6
2	10.85	6
3	12.21	6
4	5.33	2

30. All the cells were equipped with suction and exhaust ventilation and electric lighting. The cells had no windows. Nor was there induction ventilation, toilets, a water supply or dining tables. On certain occasions, the number of detainees held in the cells exceeded their designed capacity.

31. The temporary detention centre underwent a refurbishment in June-August 2007. The ventilation system was reconstructed. Toilets and a night lighting system were installed. Tables and benches were provided.

32. In 2009 the municipal administration allocated a plot of land for the construction of a new temporary detention centre which would be equipped with outside exercise area in compliance with statutory regulations.

2. The description provided by the applicant

33. According to the applicant, he was kept in a windowless cell without any other access to fresh air or daylight. It was dim and stuffy. The only source of lighting was a 40-watt bulb surrounded by a wooden lattice. There was no ventilation. The cell was not equipped with a toilet. During the day time, he was allowed to use the toilet in the building twice a day. For the rest of the time he had to use a bucket placed in the cell. No table or chairs were provided. Nor was there a sink or running water. He was not given any toilet paper. He had to stay indoors all the time without any opportunity for an outdoor walk or exercise.

34. On many occasions the cell where he was detained was overcrowded. The number of inmates varied from six to eight. The beds were metal frames with wooden boards placed over them. The inmates were not provided with mattresses, blankets, pillows or bed sheets.

35. In June 2006 the applicant complained to the Town Prosecutor about the conditions of his detention.

36. On 14 August 2006 the prosecutor admitted the truth of the applicant's allegations in respect of the conditions of his detention at the temporary detention centre and promised that measures in response to the applicant's complaint would be taken.

37. On 20 November 2006 the prosecutor advised the applicant of the authorities' plans to start the construction of a new temporary detention centre in Severomorsk.

38. On an unspecified date the prosecutor informed the applicant that it was impossible to bring the conditions of the detention at the temporary detention centre into compliance with statutory requirements owing to certain financial difficulties.

II. RELEVANT DOMESTIC LAW

A. Conditions of detention

39. The Federal Law on the Detention of Suspects and Defendants charged with Criminal Offences (as amended), in force since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are held in remand prisons (section 8). They may be transferred to temporary detention centres if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or

courthouse is not feasible because of the distance between them. Such detention at a temporary detention centre may not exceed ten days per month (section 13). Temporary detention centres at police stations are designated for the detention of persons arrested on suspicion of a criminal offence (section 9).

40. According to the Internal Regulations of Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be four square metres (paragraph 3.3 of the Regulations). It also made provision for cells in a temporary detention centre to be equipped with a table, toilet, water tap, shelf for toiletries, drinking water tank, radio and refuse bin (paragraph 3.2 of the Regulations). Furthermore, the Regulations made provision for the detainees' right to outdoor exercise of at least one hour per day in a designated exercise area (paragraphs 6.1, 6.40, and 6.43 of the Regulations).

B. Supervisory review

41. The Russian Code of Criminal Procedure (CCP) provides that, once a court refused to remand a defendant in custody pending criminal proceedings against him, the prosecution/law enforcement authorities are estopped from lodging a new request for remand in custody unless new circumstances arise (Article 108 §9 of the CCP).

42. A decision adopted by the appeal court comes into effect on the day of it pronouncement and can be reviewed by way of supervisory review or re-opening of the matter due to newly established circumstances (Article 391 of the CCP). Parties to the criminal proceedings, including the prosecutor, may ask for the supervisory review of a court's final decision (Article 402 § 2 of the CCP).

43. The supervisory-revie w court should notify the parties to the proceedings, including the prosecutor and the defendant and his or her lawyers of the date, time and place of the supervisory-review hearing (Article 407 § 1 of the CCP). The parties present at the hearing may make submissions to the court (Article 407 § 6 of the CCP).

44. An appellate decision may be quashed or modified by way of supervisory review if it is found to be unlawful or unsubstantiated; or if it unreasonably upheld, annul or modify a lower-court decision; or if it was adopted in contravention of the rules of criminal procedure which fact affected its validity (Article 409 § 2 of the CCP).

III. RELEVANT INTERNATIONAL DOCUMENTS

45. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ...However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.
>
> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

46. The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that he had been detained in the temporary detention centre in Severomorsk in conditions incompatible with the provisions 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."

48. The Government did not contest that the conditions of the applicant's detention had fallen short of the requirements of national standards and the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or

Punishment. The local authorities had been actively taking measures aimed at rectifying the situation. At the same time, the Government considered that the fact that the applicant had been detained in such conditions did not show that there had been a positive intention to humiliate or debase him. The conditions of detention in the temporary detention centre had been improved following its refurbishment in June-August 2007. Lastly, they argued that the treatment the applicant had been subjected to as a result of his detention in the temporary detention centre had not gone beyond the threshold of severity set out in Article 3 of the Convention.

49. The applicant maintained his complaint. In his opinion, he had been detained at the temporary detention centre in conditions incompatible with respect for human dignity and had been subjected to hardship exceeding the inevitable level of suffering associated with detention in custody, his health and well-being having been exposed to risk and danger.

A. Admissibility

50. The Court has established in earlier cases that a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interview or other procedural acts would have no incidence on the continuous nature of detention. However, the applicant's release would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months from the end of the situation complained of (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

51. The Court observes that the applicant was repeatedly held in the temporary detention centre during two periods, from 13 January 2005 to 27 April 2006 and from 20 June 2006 to 5 April 2007. Accordingly, the applicant's weekly transfers to the remand prison had no incidence on the continuous nature of the applicant's situation within each of the two periods. However, as the applicant was released in-between, his detention cannot not regarded as a "continuing situation" but rather as two distinct periods.

52. The complaint about the initial period of the applicant's detention followed by his release was submitted more than six months after it had ended. It follows that this complaint has been introduced out of time and must also be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

53. The Court notes that the complaint in respect of the applicant's detention from 20 June 2006 to 5 April 2007 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

54. Article 3 of the Convention, as the Court has observed on many occasions, enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cite above, §§ 92-94).

55. The Court reiterates that it has already examined the conditions of detention obtaining in police stations in various Russian regions and found them to be in breach of Article 3 (see *Kuptsov and Kuptsova v. Russia*, no. 6110/03, §§ 67-72, 3 March 2011; *Nedayborshch v. Russia*, no. 42255/04, §§ 27-33, 1 July 2010; *Khristoforov v. Russia*, no. 11336/06, §§ 22-29, 29 April 2010; *Salikhov v. Russia*, no. 23880/05, §§ 89-93, 3 May 2012; *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008; and *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005).

56. The Government did not dispute that the applicant had been detained in the temporary detention centre in Severomorsk in cells designed only for short-term detention. Nor did they challenge the applicant's account of the conditions of his detention. They also conceded that those conditions had fallen short of the requirements of national standards and the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

57. On the facts, the Court notes that the cells in which the applicant was repeatedly held for over eight months had been designed for short-term detention not exceeding ten days. Accordingly, they lacked the basic amenities indispensable for extended detention. The cells did not have a window and offered no access to natural light or air. There was no toilet or sink. At night, if the applicant wished to go to toilet, he had to use a bucket. Lastly, throughout his detention there the applicant was confined to his cell

for practically twenty-four hours a day without any opportunity to pursue physical and other out-of-cell activities.

58. In the Court's opinion, such conditions of detention must have caused him considerable mental and physical suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention.

59. The Court takes into account the Government's argument that in the present case there was no positive intention to humiliate or debase the applicant. However, the absence of any such intention cannot exclude a finding of a violation of Article 3 of the Convention. Even if there had been no fault on the part of the administration of the temporary detention facility, it should be emphasised that Governments are answerable under the Convention for the acts of any State agency, since what is in issue in all cases before the Court is the international responsibility of the State (see, among other authorities, *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005).

60. There has accordingly been a violation of Article 3 of the Convention on account of the degrading conditions of the applicant's detention in the temporary detention facility in Severomorsk from 20 June 2006 to 5 April 2007.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

61. The applicant complained that the supervisory review of his release on bail conducted on 15 June 2006 and his ensuing remand in custody on 20 June 2006 had, as such, been unlawful, and that the procedure followed, in particular, the authorities' failure to ensure his presence at the hearing, had been incompatible with the requirements of Article 5 of the Convention. The relevant parts of Article 5 of the Convention 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[.]
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

62. The Government contested that argument. In their opinion, the supervisory review of the court decision of 25 April 2006 ordering the applicant's release on bail had been necessary as a result of the lower court's failure to take into account the risk of the applicant's absconding. Furthermore, the applicant and his lawyers had been duly notified of the date and time of the supervisory-review hearing. Accordingly, the applicant's remand in custody and his ensuing detention from 20 to 27 June 2006 had been in compliance with Article 5 of the Convention.

63. The applicant maintained his complaint.

A. Admissibility

64. The Court further notes that the 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

65. The Court notes from the outset that the scope of the complaint concerns the supervisory-review proceedings and the lawfulness of the detention from 20 June 2006, when the applicant was remanded in custody on the basis of the supervisory review decision of 15 June 2006, to 27 June 2006, when the Regional Court upheld the decision of 5 April 2006 which extended the applicant's pre-trial detention until 11 July 2006.

66. As regards the applicant's allegations concerning the unlawfulness of his remand in custody based on the decision of 15 June 2006, 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 was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X).

67. 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 has stressed 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 the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among other authorities, *Savenkova v. Russia*, no. 30930/02, § 65, 4 March 2010).

68. The Court further observes that, although in a different context encountered when considering the right to a fair hearing as guaranteed by Article 6 of the Convention, it has consistently held that the principle of legal certainty requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character, such as correction of fundamental defects or miscarriage of justice (see, among numerous authorities, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

69. In respect of criminal proceedings, the Court has held that the mere possibility of reopening a criminal case is *prima facie* compatible with the Convention, including the guarantees of Article 6. However, the actual manner in which it is used must not impair the very essence of a fair trial. In other words, the power to reopen criminal proceedings must be exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests of the individual and the need to ensure the effectiveness of the criminal justice system (see *Nikitin v. Russia*, no. 50178/99, § 54-61, ECHR 2004-VIII). The Convention requires that the authorities respect the binding nature of a final judicial decision and allow the resumption of criminal proceedings only if serious legitimate considerations outweigh the principle of legal certainty (see *Bratyakin v. Russia* (dec.), no. 72776/01, 14 April 2001).

70. In the previous cases against Russia the Court has upheld the application of the principle of legal certainty in so far as legal procedures of supervisory review were concerned. Furthermore, the Court has considered it appropriate to follow the same logic when this fundamental principle was undermined through other procedural mechanisms, such as, for example, the extension of the time-limit for an appeal (see, for example, *Bezrukovy v. Russia*, no. 34616/02, §§ 37-47, 10 May 2012).

71. Turning to the circumstances of the present case, the Court observes that on 25 April 2006, when reviewing the extension of the applicant's detention on appeal, the Regional Court established that it was no longer necessary to detain the applicant pending trial and ordered his release on bail. The Regional Court examined the circumstances of the applicant's case, including the progress of the criminal proceedings against him and concluded that he could no longer interfere with the administration of justice. The decision of the Regional Court was final and not amenable to

further appeal. On 27 April 2006 the applicant was released. On 15 June 2006, however, the Presidium of the Regional Court found the decision of 25 April 2006 unsubstantiated and contradictory to the previous court orders extending the applicant's pre-trial detention and quashed it by way of supervisory review, remanding the applicant back in custody pending a new appeal hearing. The Presidium also considered that the amount of bail imposed on the applicant was insufficient.

72. The Court accepts that the supervisory review of the applicant's release on bail was a possibility open to the prosecution under domestic law. This fact may be relevant but, for the following reasons, not sufficient to justify the quashing of the final decision ordering the applicant's release, which had already been enforced.

73. The prosecution provided identical grounds when arguing for the extension of the applicant's detention, both before the court of first instance and the appeal court on 5 and 25 April 2006 respectively (see paragraphs 9 and 10 above). Those arguments were examined and dismissed by the Regional Court on appeal, its decision being final. However, when asking for the supervisory review of the decision authorising the applicant's release on bail, the prosecution sought to rely on facts other than those they had referred to before the court of first instance and the appeal court. The Court takes note of the fact that the Government have not provided any explanation as to why the prosecution, being fully aware that the applicant was the holder of a foreign passport, chose not to raise this issue before the court of first instance or the appeal court and had to have recourse to supervisory review proceedings to rectify such an omission on their part. In the Court's view, the consequences of that omission should have been borne by the State and ought not to have been remedied at the expense of the applicant.

74. The Court also notes that, under the domestic law, once the applicant was released on bail, the prosecution was estopped from asking for his new remand in custody should no new circumstances arise (see paragraph 41 above). Accordingly, the Court cannot but view the supervisory-review proceedings concerning annulment of the bail order as an attempt to circumvent the effect of the applicant's release and "an appeal in disguise" which could not justify the departure from the principle of legal certainty.

75. Regard being had to the above, the Court finds that the quashing of the decision of 25 April 2006 ordering the applicant's release on bail by way of supervisory review breached the principle of legal certainty and rendered the applicant's ensuing detention unlawful within the meaning of Article 5 § 1 of the Convention. Accordingly, there has been a violation of that provision of the Convention in respect of the applicant's remand in custody, as authorised by the decision of 15 June 2006. In these circumstances, the Court does not find it necessary to examine the

applicant's allegations that the procedure followed likewise contravened the requirements of Article 5 of the Convention.

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

76. The applicant complained that he had been detained pending trial in the absence of relevant and sufficient reasons. 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."

77. The Government considered that the domestic judicial authorities had duly justified the applicant's pre-trial detention. The applicant had been charged with grievous offences entailing a custodial sentence exceeding two years. If released, the applicant could have interfered with the conduct of the criminal proceedings against him by putting pressure on witnesses or colluding with other defendants.

78. The applicant submitted that his pre-trial detention had not been based on sufficient reasons and had been in contravention of the reasonable time requirement provided for in Article 5 § 3 of the Convention. In his view, the Government's assertion that he might have absconded, if released, was contrary to the circumstances of the case. In particular, when released on bail, he had duly appeared in court for the trial hearings. Nor had there been any evidence before the domestic judicial authorities that he had put undue pressure on witnesses. The prosecutor's allegation that he was the holder of a foreign passport had not been confirmed by any evidence.

A. Admissibility

79. The Court observes that, initially the applicant was detained from 13 January 2005 until 27 April 2006, when the judicial authorities decided that his further detention was no longer necessary and released him. The applicant remained at liberty until 20 June 2006, when, subsequent to the quashing of the bail order, the applicant was re-arrested and remained in custody pending trial until his conviction on 27 October 2008.

80. The Court further observes that, in view of the quashing by way of supervisory review of the appeal court's decision concerning the applicant's release on bail, the applicant's detention was regarded, *de jure*, by the Russian authorities as a continuing situation, even though *de facto* the applicant was at liberty for approximately two months in between the two periods of his detention. In principle, the Court does not exclude a possibility that a brief period during which the applicant was at liberty in

between his repeated remands in custody would be negligible and would not trigger the application of the six-month rule in respect of each period of detention. Such approach will be justified in order to prevent the authorities from circumventing the effect of the applicant's release on formal grounds (see, for example, *Mikhaniv v. Ukraine*, no. 75522/01, §§ 76-89, 6 November 2008, in the context of the lawfulness of the applicant's detention).

81. As regards the situation in the present case, the Court, nevertheless, considers that the applicant's complaint concerns two non-consecutive periods of the applicant's pre-trial detention. In line with its case-law, the Court observes that the six-month rule should be applied, separately, to each period of pre-trial detention (see, *Idalov v. Russia* [GC], no. 5826/03, §§ 127-33, 22 May 2012). Accordingly, the Court cannot consider whether or not the first period of the applicant's pre-trial detention was compatible with the Convention. The applicant's complaint in this regard should be declared inadmissible as being lodged out of time. However, the fact that the applicant had already spent over fifteen months in custody pending the same set of criminal proceedings will be taken into account by the Court in its assessment of the sufficiency and relevance of the grounds justifying his subsequent period of pre-trial detention (from 20 June 2006 to 27 October 2008), which the Court is competent to examine.

82. The Court further notes that the part of the complaint concerning the applicant's pre-trial detention from 20 June 2006 to 27 October 2008 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. General principles

83. The Court reiterates that the question whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110 et seq., ECHR 2000-XI).

84. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time

it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are "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 *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

85. The responsibility falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of a public interest which justifies a departure from the rule in Article 5 and must set them out in their decisions on any applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated 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 (see, for example, *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-X).

86. The Court further reiterates that, although the severity of the sentence faced is a relevant factor in the assessment of the risk of an accused absconding or reoffending, the need to continue the accused's deprivation of liberty cannot be assessed from a purely abstract point of view, only taking into consideration the seriousness of the offence. Nor can the continuation of such detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001).

87. Lastly, the Court accepts that in cases involving numerous accused, the risk that, if released, a detainee might put pressure on witnesses or might otherwise obstruct the proceedings is often particularly high. All these factors can justify a relatively long period of detention. However, they do not give the authorities unlimited power to extend this preventive measure (see *Osuch v. Poland*, no. 31246/02, § 26, 14 November 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). The fact that a person is charged with acting in a criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account (see *Tsarkov v. Russia*, no. 16854/03, § 67, 16 July 2009).

2. Application of these principles to the present case

88. The applicant was remanded in custody on 20 June 2006. He was convicted by the trial court on 27 October 2008. Thus, the period to be taken into consideration lasted approximately two years and four months.

89. The Court observes that on 15 June 2006 the judicial authorities decided to remand the applicant in custody, relying on the gravity of the charges against him, the risk of his absconding or interfering with the administration of justice (see paragraph 12 above). All the subsequent extensions of his detention referred to the same grounds (see paragraphs 15-20 above).

90. The Court notes the suspicion that the applicant had committed the serious offences with which he had been charged and the domestic court's finding that he had attempted to put pressure on witnesses while he had been at liberty. These factors might have initially justified his detention. However, the Court is unconvinced that they could have constituted "relevant and sufficient" grounds for the applicant's ongoing detention, in particular since he had already been detained for over fifteen months at an earlier stage in the same proceedings.

91. When extending the applicant's pre-trial detention, the domestic authorities referred to the gravity of the charges against him, and the risk of his absconding or interfering with the administration of justice by putting undue pressure on witnesses. In sum, the Court is prepared to admit that the combination of the above arguments could justify the applicant's detention as a suspect in the criminal proceedings for some time. The question arises whether the arguments adduced by the courts were sufficient to justify the period of over two years during which the applicant was held in custody.

92. Admittedly, the domestic judicial authorities discussed the evidence furnished by the prosecution in 2005 regarding the alleged attempts by the applicant to put pressure on witnesses or to obstruct the course of the proceedings. The Court recognises that an attempt by the applicant to obstruct justice could have justified his remand in custody in 2005. However, the Court considers that this ground gradually lost its relevance, as the trial proceeded and the witnesses were interviewed. The Court is not therefore persuaded that, throughout the entire period of the applicant's detention, compelling reasons existed to justify the finding that there was a danger he would interfere with witnesses or otherwise hamper the investigation of the case if not detained, let alone to outweigh the applicant's right to a trial within a reasonable time or release pending trial (cf. *Miszkurka v. Poland*, no. 39437/03, § 51, 4 May 2006).

93. As regards the existence of a risk of absconding, the Court accepts that the fact that the applicant might have a dual nationality could be a relevant factor in assessing the flight risk he posed. However, the danger of an accused absconding does not result just because it is possible or easy for him to cross a border: there must be a whole set of circumstances, such as,

in particular, a lack of well-established ties in the country, which give reason to suppose that the consequences and hazards of flight will seem to him or her to be a lesser evil than continued imprisonment (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9). The Court also takes into account that the domestic authorities did not explain why the confiscation of both the applicant's Russian and Belarusian passports would not have been sufficient to prevent him from absconding abroad.

94. Lastly, the Court emphasises that when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case, the authorities did not consider the possibility of ensuring his attendance by the use of other "preventive measures" which are expressly provided for by Russian law to ensure the proper conduct of criminal proceedings. At no point in the proceedings did the domestic courts explain in their decisions why alternatives to the deprivation of the applicant's liberty would not have ensured that the trial would follow its proper course.

95. Having regard to the above, the Court considers that by failing to address the specific facts of the case or consider alternative "preventive measures", the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify the applicant's remand in custody for two years and four months after he had already spent over fifteen months in detention before his release on bail. It holds that the applicant's pre-trial detention has been unreasonably long. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

96. The applicant complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

97. The Court considers 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

98. The Government submitted that the length of the criminal proceedings against the applicant had been reasonable. The matter had been rather complex. It had concerned four defendants, including the applicant, who had been charged with sixty-six counts of fraud and abuse of power. It had called for the collection and assessment of a substantial amount of evidence, including, but not limited to questioning of 139 witnesses. Furthermore, most of the delays during the trial had been attributable to the applicant, the other defendants and their lawyers, who had not been able to attend certain hearings. Lastly, the trial court had had to adjourn several hearings due to the witnesses' failure to appear.

99. The applicant maintained his complaint. He considered that the complexity of the case alone could not justify the overall length of the proceedings against him. There had been no delays in the proceedings that could be attributed to him. Lastly, he argued that the trial court had only heard the case for three days per week, while it could have done so for five days per week, which would have sped up the progress of the trial.

100. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

101. The Court observes that the applicant was arrested on 13 January 2005. It takes this date as the starting point of the criminal proceedings. The verdict in the case was rendered on 5 November 2008. Accordingly, the proceedings against the applicant lasted approximately three years and ten months, a period which spanned the investigation stage and the trial in one instance.

102. The Court considers that the proceedings in issue were complex owing to the number of defendants, the numerous offences they were charged with and the authorities' task of collecting and examining a substantial amount of evidence.

103. The Court further notes that the applicant did not contribute to the length of the proceedings, and that in any event the stay of the proceedings, in particular from 16 March to 4 April 2006 when the applicant needed additional time to study the case file, and from 29 June to 5 July 2006, when the trial proceedings were stayed due to his illness, were negligible.

104. As regards the conduct of the authorities, the Court is satisfied that they demonstrated sufficient diligence in handling the proceedings. There is

nothing in the materials before the Court to suggest that the investigative activities undertaken were in any way protracted or delayed. The trial hearings were held regularly and none of the adjournments had a significantly adverse effect on the length of the proceedings as a whole.

105. Making an overall assessment of the complexity of the case and the conduct of the parties to the proceedings, the Court considers that the length of the proceedings did not go beyond what may be considered reasonable in this particular case.

106. There has accordingly been no violation of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

107. Lastly, the applicant complained that he had been unable to effectively prepare his defence while detained in appalling conditions. Having examined the applicant's allegations under Article 6 of the Convention, the Court finds that, by failing to lodge an appeal against his conviction and to raise the relevant complaint within it, the applicant did not afford the domestic judicial authorities an opportunity to address the issue and, if appropriate, to remedy the situation. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 52,500 euros (EUR) in respect of pecuniary damage, including EUR 2,500 for loss of income and the remaining EUR 50,000 for other financial losses incurred in connection with the criminal proceedings against him. He further claimed EUR 100,000 in respect of non-pecuniary damage.

110. The Government considered the applicant's claims excessive.

111. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained anguish and suffering resulting from his unreasonably long detention in conditions

in contravention of Article 3 of the Convention. The amount claimed, is, however, in the Court's view, excessive. Making its assessment on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

112. The applicant also claimed EUR 5,000 for the work carried out by Ms Simanova and EUR 18,510 for the work performed by Mr Legros. According to the applicant, Mr Legros had spent five hours meeting with the applicant's family, three hours discussing the case with Ms Simanova by telephone, thirteen hours and fifteen minutes on exchanges of correspondence, eight-and-a-half hours studying the case file, three hours and twenty minutes conducting legal research, four-and-a-half hours collecting evidence, one-and-a-half hours preparing an authority form to represent the applicant before the Court and eight hours and forty-five minutes preparing the applicant's submissions following the communication of the case and his claims for just satisfaction. Lastly, he claimed EUR 5,000 for any costs and expenses that Mr Legros might potentially incur in connection with the proceedings before the Court. The applicant also claimed the reimbursement of his expenses incurred in connection with the opening of the file, documentation, telephone calls, emails, photocopying, travel, fax, typing and postage, totalling EUR 1,552.

113. The Government considered the applicant's claim unsubstantiated.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads for the proceedings before the Court.

C. Default interest

115. 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 detention in the temporary detention centre in Severomorsk from 20 June 2006 to 5 April 2007, the applicant's pre-trial detention from 20 to 27 June 2006 as authorised by the court order of 15 June 2006, the length of the applicant's pre-trial detention from 20 June 2006 to 27 October 2008 and the length of the criminal proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the temporary detention centre in Severomorsk from 20 June 2006 to 5 April 2007;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the unlawfulness of the applicant's pre-trial detention from 20 to 27 June 2006 as authorised by the court order of 15 June 2006;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention from 20 June 2006 to 27 October 2008;

5. *Holds* that there has been no violation of Article 6 of the Convention on account of the length of the criminal proceedings against the applicant;

6. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President