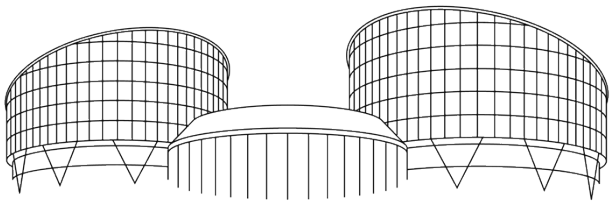

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Applications nos. 23804/10 and 25066/10
Inna Valentinovna ANDRONOVA against Russia
and Elvira Kuzminichna OBENYAKOVA against Russia
lodged on 6 April 2010 and 9 April 2010 respectively

STATEMENT OF FACTS

The applications (nos. 23804/10 and 25066/10) against the Russian Federation were lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mrs Inna Valentinovna Andronova ("the first applicant"), on 6 April 2010, and Mrs Elvira Kuzminichna Obenyakova ("the second applicant"), on 9 April 2010. The applicants were born in 1952 and 1963 respectively. The first applicant is serving her imprisonment sentence in the Orel Region and is represented before the Court by Mr Y. Krasnov, a lawyer practising in Moscow. The second applicant lives in Moscow and is self-represented.

A. The circumstances of the cases

1. Background to the cases

The first applicant is a former chief accountant of ZAO "Moskovskiy Dvorets Molodezhi" ("MDM"), a private Russian limited company, which owned the MDM entertainment centre in Moscow (the Moscow Youth Palace). The second applicant is a former accountant-cashier of MDM. Mr Zabelin was the CEO of MDM at the material time. He was also the CEO of ZAO "Intalia" ("the first shareholder"), a private company which owned 25.23 percent of the shares of MDM. Mr Zabelin also owned 50 percent of OOO "Molodezhniy Dvorets" ("the second shareholder"), a private company which owned 54.67 percent of the MDM shares. Through those two companies, Mr Zabelin controlled 79.9 percent of the MDM capital. The third shareholder of MDM was NGO "Rossiysky Soyuz Molodezhi" ("RSM") which owned 20.1 percent of the shares.

On 24 May 2006 the Russian General Prosecutor's Office ("GPO") opened a criminal case against Mr Zabelin and other unknown persons under suspicion of

fraud, money laundering and tax evasion by legal entity under Articles 159 § 4, 171-1 and 199 § 2 of the Russian Criminal Code ("CC"). The case was assigned no. 18/377442-06.

The charges against Mr Zabelin were amended and reformulated on several occasions: on 12 February, 25 April, and 25 July 2007. According to the most recent versions of the charges, Mr Zabelin was accused of two counts of fraud under Article 159 of the CC. They related to the acquisition by him of two blocks of shares of MDM, representing 20.2 and 26.16 percent of its capital. The decisions on charges stated that Mr Zabelin had obtained the shares in order to get control of MDM and embezzle its profits. The GPO also claimed that, having obtained the control over the company, Mr Zabelin set his monthly salary at the level of 2 million RUB per month (about 50,000 EUR).

On 30 August 2007 Mr Zabelin left Russia for Estonia where he was granted political refugee status (Citizenship and Migration Board, decision no. 153). According to Mr Zabelin, accusations against him where motivated by improper reasons. Thus, in his words "... the GPO decided to make me a witness in the Yukos case, trying to persuade me to give false evidence against top managers of the company which I refused to do". Estonian authorities decided that his prosecution was motivated by his role as a prospective witness in the "Yukos case" and that he risked to be persecuted in Russia for political reasons. The Russian requests for extradition of Mr. Zabelin were refused by Germany (Brandenburg Court of Appeal (Oberlandesgericht), decision of 29 January 2008) as well as Estonia (Harju District Court of Tallinn, decision of 27 February 2008).

On 5 June 2006, before fleeing to Estonia, Mr Zabelin authorised the first applicant to be the acting CEO of MDM and issued a power of attorney in her name. As from 27 June 2006 the first applicant performed functions of the chief accountant and the acting CEO of MDM. In addition to her regular salary as the chief accountant, she received bonuses "in connection with the extension of her work duties" which amounted to 10,476,371 RUB in total (about 260,000 EUR). Those bonuses were approved by herself (as acting CEO) and allegedly agreed with Mr Zabelin.

On 25 September 2006 the first applicant ordered the dismissal of Mr M., a deputy CEO of MDM. Mr M. sued MDM and won the case. On 14 November 2007 the Khamovnicheskiy District Court of Moscow ordered his reinstatement at work as well as the payment of salary arrears for the period of forced absence from work after his dismissal, in total RUB 7,267,602.6 (about EUR 182,000). It appears that the parties did not appeal. On 12 March 2008 the Khamovnicheskiy District Court granted the respondent's request to pay the money awarded to Mr M. in instalments. It set monthly payments at RUB 1,161,433.77 and noted as follows:

> "Hereby the court considers it necessary to draw attention to the fact that this amount of money ... corresponds to the salary which [Mr M.] received in the period until his unlawful dismissal – 1 million roubles, upon which the court calculated [his] salary for the period of forced absence from work".

On 25 June 2008, in a separate set of civil proceedings, the Basmanniy District Court of Moscow dismissed the first applicant from her posts at MDM.

At some point criminal charges against Mr Zabelin were severed from the main criminal case into two separate cases. Investigation in those cases was terminated in his absence and on 21 April 2009 the bill of indictment concerning

the first count of fraud was drawn up. The case was assigned no. 201/374148-08. On 10 February 2010 the Khamovnicheskiy District Court of Moscow convicted Mr Zabelin under Article 159 § 4 of the CC (fraud by a group of persons in a particularly large amount) *in absentia* and sentenced him to 8 years' imprisonment. The court found Mr Zabelin guilty of having obtained by fraud 20.2 percent of MDM shares. The court held that the shares had enabled Mr Zabelin to set his monthly salary at RUB 2,000,000. On 12 April 2010 Moscow City Court upheld the judgment.

The bill of indictment concerning the second count was drawn up on 20 September 2010. The case was assigned no. 201/355039-10. On 20 June 2011 the Khamovnicheskiy District Court of Moscow convicted Mr Zabelin under Article 159 § 3 of the CC (large-scale fraud through abuse of official position) *in absentia* and sentenced him to 4 years' imprisonment. The court found him guilty of having acquired another block of 26.16 percent of the MDM shares by fraud in order to get control over the company and embezzle its profits. The court noted that Mr Zabelin, using his dominant position in the company, had set his monthly salary at RUB 2,000,000. On 17 August 2011 the Moscow City Court upheld the judgment.

2. The applicants' arrest and placement in custody

On 28 May 2008 the applicants were arrested and charged with two counts of aiding Mr Zabelin. The charges were formulated under Article 160 § 4 (embezzlement) in conjunction with Article 33 § 2 of the CC. The charges were brought within the criminal case opened in 2006 against Mr Zabelin and other unknown persons. No formal decision to open a criminal case into the embezzlement was issued. No charges of embezzlement were brought against Mr Zabelin. Accusations against him were formulated under the heading of "fraud".

According to the GPO, the applicants assisted Mr Zabelin in embezzling the benefits of MDM under the guise of salary payments. Thus, he set himself a very high salary (the first count of embezzlement), and also set a very high salary to Mr M., his deputy (the second count of embezzlement). The GPO, however, did not considered Mr M. as an accomplice to that criminal scheme; according to the GPO, a large part of the Mr M.'s official salary in fact went to Mr Zabelin's pockets. Mr M. was therefore considered as a victim of Mr Zabelin's acts. The record of the applicants' arrest of 28 May 2008 stated that the victim M. had pointed to them as the co-authors of that scheme.

On 29 May 2008 the Basmanniy District Court of Moscow remanded the applicants in custody by two separate rulings. The court found that the applicants were suspected of two serious offences, and that they might abscond, interfere with the investigation, or re-offend. It relied on an "operative information note" issued by the Russian Federal Security Service ("the FSB") which stated that, according to operative information, the applicants could flee abroad and hinder the investigation. The court also referred to the applicants' positions within the company which would enable them to put pressure on witnesses (employees of the company), as well as to destroy evidence (documents of the company). The court added that it had taken into account their age, profession and state of health as well as family situation, *inter alia* the fact that the second applicant's husband had recently had a cerebral attack. The court did not mention the possibility of applying other preventive measures.

The applicants appealed against the detention order. They complained that the evidence produced by the prosecution did not amount to a "reasonable suspicion" which would justify their placement in custody. Furthermore, the risks of absconding and interfering with the course of justice were not based on any specific facts.

On 23 June 2008 the Moscow City Court, in a summary fashion, dismissed the appeals as unfounded in two separate rulings.

3. Extensions of the applicants' detention on remand

On 24 July 2008 the Basmanniy District Court extended the applicants' detention until 28 September 2008 by two separate rulings. It referred to the gravity of the charges, the risks of the applicants' absconding, putting pressure on witnesses, destroying evidence and contacting other suspects. The court added, without going into detail, that the investigative authorities had obtained information confirming those risks and that an alternative measure of restraint would not prevent them. It also noted the need to take certain investigative actions mentioned by the investigator and found that several investigative steps had been already taken. The court also noted that it had taken into account the facts that the applicants had Russian citizenship, information about their family situation, state of health, and the fact that they had a permanent place of residence in Moscow.

The applicants appealed and complained that the prosecution had not adduced concrete facts showing that they might abscond, put pressure on witnesses or destroy evidence. They argued that the prosecution had seized all financial documents of the company, and that, therefore, they could not destroy any evidence. They added that, as witnesses in the criminal case of Mr Zabelin, they had cooperated with the prosecution and always appeared before the investigator on his request. The first applicant also argued that the charges of embezzlement were not connected with the criminal case opened against Mr. Zabelin in 2006; no formal decision opening a criminal case into embezzlement was issued and, therefore, her criminal prosecution and detention was unlawful. The second applicant relied on the fact that her husband was seriously ill and needed her assistance and promised to cooperate with the investigation.

On 27 August and 8 September 2008 the Moscow City Court, in a summary fashion, dismissed the appeals of the second and the first applicants respectively.

On 24 and 26 September 2008 the Basmanniy District Court extended detention of the first and the second applicants respectively until 28 November 2008. It referred to the gravity of the charges, unspecified circumstances of the crime, unspecified information about the applicants' personality and came to the conclusion that the applicants, if released, could abscond, re-offend, destroy evidence, put pressure on witnesses or other participants of the criminal proceedings. The court referred to the note of the FSB. The court noted the need for further investigative actions. The court also stated that it had taken into account the applicants' age, family situation, state of health and place of residence.

The applicants appealed. They brought the same arguments as before. The second applicant also complained that the investigation was not diligent enough. Thus, she had participated in the last investigative action on 2 September 2008,

i.e. one month earlier. She further complained that the note produced by the FSB contained simple allegations and were not substantiated.

On 10 November 2008 the Moscow City Court, in a summary fashion, dismissed the applicants' appeals in two separate rulings. It noted, *inter alia*, that the applicants had been charged within the criminal proceedings against Mr Zabelin and other persons, and, therefore, no separate decision to open a criminal case into embezzlement was necessary. The City Court also stated that the note issued by the FSB was admissible evidence.

On 21 and 24 November 2008 the Basmanniy District Court extended detention of the first and the second applicants respectively until 28 January 2009. It referred to the gravity of charges, the extreme complexity of the case and the need for further investigation. The court also referred to the note of the FSB. On the basis of that note the court concluded that the applicants could reoffend, flee from justice, put pressure on witnesses as well as victims, destroy evidence and otherwise hinder the investigation. The court also noted that it had taken into account the applicants' age, family situation and state of health.

The second applicant appealed. She referred to the absence of any criminal record, the need to take care of her ill husband and promised her full cooperation with the authorities. She also noted that the investigator had seized all financial documents of the company and, therefore, she could not destroy any evidence. It appears that the first applicant did not appeal.

On 24 December 2008 the Moscow City Court dismissed the appeal in a summary fashion. It stated that the District Court had extended the applicant's detention in accordance with Russian procedural law which was fully in compliance with international human rights standards.

On 27 January 2009 the Basmanniy District Court extended the applicants' detention until 28 March 2009 by two separate rulings. The Court relied on the same arguments as before. It appears that the applicants did not appeal against the detention order.

On 26 March 2009 the Basmanniy District Court extended the applicants' detention until 24 May 2009 by two separate rulings. It referred to the gravity of charges, the need for further investigation, the risks of absconding, interfering with the course of justice and of reoffending. The court based its decisions on the "operative information" notes issued by the FSB, dated 29 May 2008, 22 July 2008, 23 September 2008, 20 November 2008, 16 January 2009 and 19 March 2009, which gave the court sufficient grounds to believe that if released the applicants might obstruct the proceedings. The court noted that it had taken into account the applicants' age, family situation, profession and their state of health.

The first applicant appealed against the detention order and argued that it had been based on the same considerations as all previous detention orders. She complained that she was a 57-year-old woman and was not dangerous for the society. The notes from the FSB were not supported by any evidence and further investigative actions planned by the investigator were not connected with the charges brought against her. It appears that the second applicant did not appeal.

On 27 April 2009 the Moscow City Court rejected the first applicant's appeal. It referred to the extreme complexity of the case and stated that the circumstances of the crimes in question and the notes produced by the FSB were sufficient to assume the risks mentioned by the District Court.

On 21 May 2009 the Moscow City Court, by a collective detention order, extended the applicants' detention until 24 August 2009. The court noted that some reasons indicated by the prosecution for the applicants' continued detention, such as the risks of re-offending, putting pressure on witnesses and victims and destruction of evidence were not supported by the case file. The court stressed that the investigation had been completed and all the evidence gathered. However, taking into account the extreme complexity of the case (the case file consisted of 54 volumes), the gravity of the charges and the fact that Mr Zabelin was hiding from justice abroad, the City Court found that the applicants might abscond and interfere with the course of justice. The court found it appropriate to extend the applicants' detention for the time necessary to study the case file. The court stated that it had taken into account the applicants' continued detention, their personalities and state of health.

The second applicant appealed. She argued that there were no exceptional circumstances which would justify her ensuing detention over one year, as required by law. It appears that the first applicant did not appeal.

On 2 July 2009 the Supreme Court of Russia dismissed the appeal in a summary fashion.

On 19 August 2009 the Moscow City Court extended the applicants' detention until 24 November 2009 in two separate rulings. The court noted that the prosecution had conducted a number of additional investigative actions and the case file had grown to 72 volumes. The court stressed the extreme complexity of the case and the gravity of charges. It found that the applicant could flee and obstruct the proceedings, taking into account the notes produced by the FSB. The court analysed the conduct of the investigative authorities and found that they were diligent enough. The court stated that it had taken into account the applicants' personality, absence of previous criminal record, their state of health, family situation, positive characteristics, and a permanent place of residence.

The applicants appealed. They argued that there were no exceptional circumstances which would justify their detention. The risks of absconding and interfering with the course of justice were not based on any specific facts. They added that the investigation had been completed, they had already studied the case file and, therefore, could not destroy evidence or otherwise interfere with the course of justice.

On 13 October 2009 the Supreme Court of Russia, by two separate rulings, dismissed the appeals in a summary fashion. It noted that the applicants were charged with crimes committed by a group of persons and that not all of them had been arrested so far.

On 10 November 2009 the criminal case was transferred to the trial court.

On 23 November 2009 the Khamovnicheskiy District Court of Moscow held a preparatory hearing and extended the applicants' detention pending trial until 10 May 2010. It noted that the applicants were charged with serious crimes committed by a group of persons. One of them (Mr Zabelin) was hiding from justice abroad. The court found that the applicants, if released, might contact Mr Zabelin and together with him obstruct the proceedings by producing false evidence, putting pressure on witnesses and the victims. The court considered the circumstances of the case as extraordinary and concluded that the applicants could abscond and re-offend. The court stated that it had taken into account the applicants' family situations, their permanent place of residence and state of

health, and the absence of previous criminal records. The applicants' argument as to the absence of any decision to open the criminal case into two counts of embezzlement was dismissed without reasoning.

On 2 December 2009 the applicants lodged their appeals against the detention order. They complained, *inter alia*, about the absence of any decision to open the criminal case against them on two counts of embezzlement. The risks of absconding, interfering with the course of justice and continuing criminal activity or contacting Mr Zabelin were not based on any specific facts. They also argued that the investigation had been completed and they, therefore, could not destroy evidence or otherwise obstruct the proceedings.

On 19 April 2010 the Moscow City Court upheld the detention order in a summary fashion. It refused the applicant's argument as to the absence of a decision to open the criminal case against them since "the District Court had examined those allegations and found them unfounded".

On 9 April 2010, Federal Law no. 60-FZ of 7 April 2010 came into force. It forbid to detain on remand persons charged *inter alia* with embezzlement, if it was committed "in the area of entrepreneurship".

On 5 May 2010 the Khamovnicheskiy District Court extended the applicants' detention pending trial until 10 August 2010. It stated that the applicants were charged with grave crimes committed by a group of persons and one of them (Mr Zabelin) was hiding from justice abroad. If released, the applicants might contact Mr Zabelin and together with him obstruct the proceedings by producing false evidence. The court considered the circumstances of the case as extraordinary and concluded that the applicants could abscond and interfere with the course of justice. On this basis the court dismissed applications for release on bail in the amount of RUB 1,000,000 (about EUR 25,000) and RUB 500,000 (about EUR 12,500) made by the first and the second applicants respectively. The crimes in question were committed in connection with the applicants' labour duties rather than "in the area of entrepreneurship". The court also noted that it had taken into account the applicants' personalities, i.e. their family situations, their permanent place of residence, state of health, and the absence of previous criminal records.

On 9 August 2010 the Moscow City Court, on the second applicant's appeal, upheld the detention order in a summary fashion.

On 16 July 2010 the Khamovnicheskiy District Court extended the applicants' detention until 10 October 2010 on the same grounds as given in its decision of 5 May 2010.

The applicants appealed. They argued that the criminal offences with which they were charged had been committed "in the area of entrepreneurship". The first applicant pointed out that being the chief accountant and then the acting CEO of MDM she had been involved in the business activities of the company. The actions she was charged with were directly connected with such activities. Therefore, the new law clearly applied to her situation. The applicants further complained that the prosecution had not demonstrated the existence of concrete facts in support of the argument that they might abscond or falsify evidence. They argued that the trial court had already examined the evidence. Furthermore, they were not dangerous for society and had spent already about two years in detention.

On 27 September 2010 the Moscow City Court rejected the applicants' appeals in a summary fashion.

4. Decisions concerning the applicants' application for release

During the trial, at a hearing of 31 March 2010, the applicants lodged an application for release. The presiding judge dismissed it on the same day. Further applications for release lodged by the applicants were dismissed on 16 and 21 April 2010. It follows from the text of the court decisions that they were subject to a separate appeal before the Moscow City Court. The applicants appealed against every decision of the first-instance court.

On 24 May and 9 June 2010 the Moscow City Court considered that the decisions of 31 March, 16 April and 21 April 2010 had been issued during the trial in reply to a motion from the defence; thus, those decisions were not subject to a separate appeal, as follows from Article 355 § 5 (2) of the Code of Criminal Procedure ("the CCrP"). The City Court noted that review of the decisions could be carried out during the subsequent appeal review of a judgment on the merits in the criminal case.

5. The investigation

On an unspecified date the prosecution seized two labour contracts between Mr Zabelin and the shareholders of MDM dated 10 and 11 April 2002 respectively. The only significant difference between them was in the clause concerning Mr Zabelin's salary. While the first contract referred to a "staff schedule", a regulation established within the company which defines ranks and salary levels, the second indicated the exact amount of his monthly salary: RUB 2,000,000. Forensic examinations established that both contracts were signed by the shareholders of the company. The contracts bore valid stamps of the shareholder companies. However, the prosecution was of the opinion that the second contract was forged since two shareholders denied that they had signed the contract of 11 April 2002 on that date. They also denied that any shareholders' meeting had taken place on 11 April 2002.

On an unspecified date the prosecution seized a letter of Mr G., the head of the third shareholder (RSM) at the material time. The letter was dated 11 June 2008 and sent to RSM from England, where Mr G. lived (he left Russia out of fear of criminal prosecution in an unrelated criminal case). In the letter Mr G. stated that he had not signed any documents which would authorise Mr Zabelin to set his salary in the amount of RUB 2,000,000. Mr G.'s letter offered no explanation to his signature on the labour contract of 11 April 2002. The GPO was unable to question Mr Zabelin as well as Mr G.

During the questionings by the GPO of 2 July, 9 October, 3 December and 10 December 2008, the second applicant made repeated confessions in which she confirmed the account of the events proposed by the prosecution.

On 23 March 2009 a new criminal case was opened against the applicants and Mr Zabelin. They were suspected of having misappropriated a part of the MDM employees' wages by fraud, a crime under Article 159 § 4 of the CC. The case was assigned no. 18/383042-09.

On 17 April 2009 the criminal case against the applicants was severed from case no. 18/377442-06, opened in 2006. The severed case was assigned no. 201/383042-09. No formal decision to open a criminal case was issued at that moment.

On 30 March 2009 the new case was joined to case no. 18/383042-09, opened on 23 March 2009. The joint case was assigned no. 201/383042-09.

On 20 April 2009 the charges against the applicants were supplemented with a count of embezzlement (Article 160 of the CC). According to this new charge, as the acting CEO of MDM in the period between October 2007 and May 2008, the first applicant with assistance of the second applicant misappropriated money of the company in the amount of RUB 10,476,371 (about EUR 262,000) through unlawful payment of bonuses to herself. Subsequently, the applicants were also charged with aiding Mr Zabelin in embezzlement of a part of wages of some other employees of MDM. It appears that the prosecution issued two formal decisions to open a criminal case into these counts of embezzlement and joined the new cases to case no. 201/383042-09.

On 17 July 2009 the first applicant asked the investigator in charge of the case to carry out additional investigative actions, *inter alia*, to send a request to the Estonian authorities for questioning Mr Zabelin in relation with the applicants' charges on the basis of a Legal Assistance Treaty between Russia and Estonia. She also asked him to commission an audit of the financial documents of the MDM to establish the exact amount of damages inflicted to the company by the applicants. The first applicant argued that she had received six preliminary indictments with different calculations of the amounts of damages. The investigator rejected the request.

On 29 September 2009 and on 15 October 2009 the alleged victims, Mr M. and the MDM company, acting through its new CEO, brought civil claims for damages against the applicants. Those claims were lodged within the criminal proceedings against the applicants.

On 7 November 2009 the investigation was completed and the final bill of indictment was drawn up. The applicants were charged with four counts of embezzlement as well as with aiding in embezzlement. According to the final version of the charges, the applicants assisted Mr Zabelin in misappropriation of MDM's money under the guise of wage payments to the CEO (first count), aided him in misappropriation of a part of the salary of Mr M. (second count), as well as a part of wages of other employees (third count). The first applicant was also charged with misappropriation of MDM's money through unlawful payment of bonuses to herself; the second applicant was charged with aiding the first in doing so (fourth count).

6. The trial

On 10 November 2009 the criminal case was submitted to the Khamovnicheskiy District Court of Moscow for trial. The applicants asked the trial court to return the case to the prosecution in order to remedy the shortcomings of the investigation. In particular, they pointed out that the investigator had not carried out any audit which was necessary to establish the exact amount of damages inflicted to MDM. The applicants also argued that the sums of damages indicated in the bill of indictment were calculated incorrectly.

On 23 November 2009 the Khamovnicheskiy District Court dismissed the request as unfounded. It noted that the shortcomings in question could be remedied through the examination of evidence at the trial. On 19 April 2009 the Moscow City Court upheld the decision.

On 23 December 2009 the applicants asked the trial court to return the case to the prosecution since the copy of the decision on prosecution and charges of 26 May 2009 attached to the case file did not correspond to the copies thereof,

given to the applicants. On the same date the Khamovnicheskiy District Court dismissed the request as unsubstantiated.

On an unspecified date the number of the case was changed to no. 1-46/10.

On 15 January 2010 the second applicant complained to the trial court that after the defence had studied the case file it was amended and reshuffled by the prosecution. On the same date the Khamovnicheskiy District Court dismissed the complaint as unsubstantiated.

At the trial the applicants pleaded non guilty. In particular, the second applicant declared that her confessions during the investigation were obtained from her by deceit and were therefore not valid. She claimed that she agreed to make confessions in exchange of her release, because she needed to help her seriously ill husband. The applicants insisted that they had paid Mr Zabelin his salary on the basis of his labour contract of 11 April 2002. Mr Zabelin acquainted them with this contract in advance. The applicants also argued that even if they had paid Mr Zabelin his salary on the basis of a forged contract, they could not be held responsible for that since they had to execute his orders and did not know that the contract had been forged.

On 26 January 2010 the applicants again asked the trial court to commission an audit. On 1 February 2010 the Khamovnicheskiy District Court dismissed the request as unfounded. It noted that the amounts of damages would be established in the course of trial. The applicants appealed but were informed by the Moscow City Court that the decision was not subject to a separate appeal (letter of 30 April 2010).

At the hearing of 24 February 2010 the defence submitted the original minutes of the shareholders' extraordinary meeting dated 11 April 2002 which were sent to a defence counsel by Mr Zabelin from Estonia. The minutes contained the decision of the shareholders to the effect that the salary of Mr Zabelin must be RUB 2,000,000 per month. The court attached the minutes to the case file but denied the request made by the defence to carry out an expert examination of the minutes in order to establish their authenticity and when they had been drawn up. The court found that it was not necessary for the resolution of the case.

On 26 June 2010 the defence requested the trial court to order an expert examination of the labour contract dated 11 April 2002 in order to establish the exact time when it was drawn up and signed by Mr Zabelin and the shareholders. The counsel noted that the examination was necessary to prove the innocence of the applicants and referred to contradictions in the testimonies of witnesses in this regard: Mr N. who was the CEO of the second shareholder at the material time, had testified before the investigator on 17 May 2007 that he had signed the contract on 11 April 2002; however, at one of the subsequent questionings at the trial Mr N. changed his testimony and said that the contract had been signed by him "most probably in 2004". Mr P., a representative of the first shareholder company whose signature was on the contract and who had been provided with a power of attorney by the CEO of that shareholder, Mr Zabelin, denied having signed the contract.

On 11 June 2010 the Khamovnicheskiy District Court dismissed the request as unfounded. It noted that the examination in question was not necessary for the resolution of the case.

On an unspecified date the defence submitted to the court a letter from Mr Zabelin's Estonian counsel of 12 May 2009 in which the latter confirmed that Mr Zabelin was prepared to give testimony while remaining in Estonia.

At a trial hearing on 9 July 2010, the first applicant asked the presiding judge whether it was possible to question Mr Zabelin via videoconference. The judge explained that it was impossible since Mr Zabelin in that case could not sign a written form which contained information about criminal liability for intentionally untrue testimony.

On 10 August 2010 the defence declared to the court that civil claims against the applicants were time-barred. On the same day, the prosecution dropped the charges against the applicants as to the third count of embezzlement for the lack of evidence.

7. The applicants' conviction

On 1 October 2010 the Khamovnicheskiy District Court found the applicants guilty of the three remaining counts of the accusations and sentenced them to 6 and 4 years' imprisonment respectively. The court also ordered them jointly to pay compensation of damages RUB 83,989,534 (about EUR 2,100,000) to MDM, and RUB 5,210,000 (about EUR 130,000) to the victim Mr M. respectively.

As to the first count, the court found that the labour contract dated 11 April 2002 was forged by Mr Zabelin. It referred in this regard to the testimony of the representatives of the two shareholders given at the trial. Mr. P., a representative of the first shareholder, denied having signed the contract at all and testified that in 2004 he had given a blank sheet of paper signed by him to Mr Zabelin which the latter could have used for forging the contract. Mr N., the former CEO of the second shareholder, testified that he had signed the contract most probably in 2004. The court, therefore, disregarded his testimony of 17 May 2007, given during investigation, that he had signed the contract on 11 April 2002. The court also based its judgment on the letter of Mr G., the former head of the third shareholder, who had denied having signed that contract at all. At the same time, the court concluded that the labour contract with Mr Zabelin of 10 April 2002 was valid. That contract determined that the salary of Mr Zabelin was defined "by the staff schedule". The court established that in April 2002 the CEO's monthly salary according to the "staff schedule" was RUB 12,000 (about EUR 300). The subsequent redactions of the "staff schedule" contained no information on the CEO's salary which was explained, according to the defendants and some of the witnesses, by the requirements of confidentiality. The court did not take into account the subsequent periodical raisings of wages within the company in relation to inflation. Furthermore, it did not take into consideration the CEO's written orders setting the salary of Mr Zabelin at RUB 2,000,000. The District Court concluded that, pursuant to the valid labour contract, the "lawful" (i.e. properly set by the shareholders) salary of Mr Zabelin must have been RUB 12,000 per month during the period between 1 October 2002 and 31 December 2006. On that basis, the court calculated the amount of damages inflicted to the company as the difference between the *de facto* salary received by Mr Zabelin and the "lawful" salary set in the labour contract.

The court found that the applicants had aided Mr Zabelin in his criminal actions. That finding was supported primarily by the confessions of the second applicant during the investigation. The court dismissed as unsubstantiated the

applicants' argument that the confession had been involuntary. The court also dismissed the applicants' argument that even if they had paid Mr Zabelin his salary on the basis of a forged contract, they could not be held responsible for that since they had to execute his orders and did not know that the contract had been forged. The court referred to the second applicant's confession and noted in this regard that the first applicant had testified during the investigation that she had seen the contract dated 11 April 2002 in 2003 for the first time. The court concluded that the applicants had no legal basis for making payment to Mr Zabelin in the amount of RUB 2,000,000. The court ordered the applicants jointly to pay damages inflicted to the company under this head, i.e. 73,513,163.2 RUB (about 1,838,000 EUR).

As to the second count, the court considered that Mr Zabelin had artificially inflated Mr M.'s salary during the first half of 2006 from RUB 50,000 (about EUR 1,250) to RUB 1,000,000 (about EUR 25,000) through bonuses "in connection with an extension of the work area". The court found it established that Mr M. received only RUB 50,000 per month at the material time. The court held that the difference (RUB 5,210,000) was misappropriated by Mr Zabelin with the applicants' assistance. It based its findings on the testimony of Mr M. as well as on the confession statements made by the second applicant during investigation. The court found that the applicants had managed to receive by fraud Mr M.'s signature on the salary sheets confirming his receipt of the full salary. The court considered that the ruling of the Khamovnicheskiy District Court of 12 March 2008 was irrelevant since it could not prove that the victim had received his salary prior to his dismissal from the company in full. The court ordered the applicants jointly to pay the victim the damages in the amount of RUB 5,210,000 (about EUR 130,000), which was calculated as the amount of his salary according to the documents (RUB 1,000,000 per month) and the amount he was actually receiving (RUB 50,000).

As to the third count, the court held that, being the acting CEO of the company between 1 October 2006 and 28 May 2008, the first applicant misappropriated the money of the company in the amount of RUB 10,476,371 through unlawful bonuses to herself. The court found it established that the first applicant as acting CEO was not allowed to pay the bonuses. The second applicant was found guilty of aiding the first applicant in those criminal activities. The court referred to the fact that all the payments were made by the second applicant on the basis of unlawful orders issued by the first applicant. The court did not address the argument raised by the second applicant that she should be exempt from criminal liability pursuant to Article 42 of the CC since she had acted on the basis of the relevant binding orders issued by the acting CEO of the company and did not know and could not have known that the orders were unlawful. The court ordered both applicants to jointly pay to the company the damages inflicted, i.e. RUB 10,476,371 (about EUR 262,000).

The court did not address the arguments raised by the defence that the civil claims of the victims were time-barred.

8. Appeal proceedings

The applicants appealed against the judgment and raised the following arguments.

They complained that the confession by the second applicant during the investigation had been given under duress. The second applicant's husband was

seriously ill at the material time and the prosecution had promised to release her if she confessed. She confessed, but the prosecution did not keep the promise. A medical certificate confirming the illnesses of the second applicant's husband was attached to the case file.

The applicants also complained about the absence of any decision to open criminal case against them on the two counts of embezzlement which, in their opinion, made their criminal prosecution on those counts unlawful.

The applicants further complained that the trial court had interpreted evidence in breach of their presumption of innocence. In particular, the court based its judgment on the second applicant's confession statements although she had denied it at the trial. Further, the court relied on the testimony given by the first applicant during investigation that she had seen the contract of 11 April 2002 for the first time in 2003 despite her testimony at the trial that she had seen the contract in 2002 and that she had made all the payment to Mr Zabelin on the basis of that contract. On the contrary, the court based its judgment on the testimony given in court by witness Mr N. (the CEO of the second shareholder) that he had signed the labour contract with Mr Zabelin most probably in 2004. Thus, the court disregarded his testimony given during the investigation that he signed the contract on 11 April 2002. They also argued that the testimony of Mr P. (the representative of the first shareholder) was unreliable since he had been previously convicted for aiding Mr Zabelin in misappropriation of the MDM shares and had been released on probation shortly after the applicants' trial.

The applicants' counsels complained about contradictory findings of the trial court that the "lawful" monthly salary of Mr Zabelin must have been RUB 12,000 (about EUR 300) whereas the "lawful" salary of his deputy, Mr M., was RUB 1,000,000 (about EUR 25,000) per month. They also stated that the civil claims of the "victims" were time-barred.

The defence pointed out that requests to question Mr Zabelin, either on the basis of the Legal Assistance Treaty between Russia and Estonia or via a videoconference, were dismissed by the prosecution as well by the trial court.

The defence argued that the applicants had just fulfilled their labour duties. The payments the applicants had made were based on binding orders which were on the face lawful. Therefore, they could not be held responsible for the imputed crimes according to Article 42 of the CC.

The counsels complained that they had often seen the presiding judge, Ms Nalivayko, and the prosecutor in charge of the applicants' case, Ms Guseva, having lunch together in the court's canteen during the trial.

As to the first count more specifically, the defence argued that Mr Zabelin had had under his control about 80 percent of MDM shares which enabled him to set any salary he wished. Thus, he had no need to forge the labour contract of 11 April 2002. In any event, the contract was not forged, as established through forensic examinations. The testimonies of the shareholders that they had not signed the contract or had signed it only in 2004 were contradictory and the trial court had failed to give any plausible explanation of why three authentic signatures of the shareholders appeared on the last page of the contract. The trial court dismissed the request for forensic examination which would help establishing the time when the contract had been drawn up. The trial court also dismissed a similar request in relation to the minutes of the shareholders' meeting during which the decision to conclude the contract in question had been

taken. Those examinations were necessary for the establishment of the truth, given that testimonies of the shareholders had been contradictory.

The applicants' conviction must not have been based on the letter of Mr G. since he had not been given any warning of criminal liability for intentionally false testimony. The defence further argued that even taken the contract of 10 April 2002 as the only valid contract, Mr Zabelin was entitled to set his salary at any level since the contract had referred to the "staff schedule", and the CEO had the power to change it. It was justified not to indicate a large salary of the CEO in the "staff schedule" since it was accessible to all employees and the information on the CEO's salary was confidential. Removal of the information on the CEO's salary from the "staff schedule" could not be regarded as a criminal offence.

As to the second count, the defence referred to the ruling of the Khamovnicheskiy District Court of 12 March 2008 issued in the labour dispute between Mr M. and MDM. That ruling, in the applicants' opinion, was a sufficient proof that Mr M. had received his salary prior to his dismissal from the company in full. Furthermore, his signature on the salary sheets confirmed that he had received his salary in full. It would be unreasonable to assume that Mr M., a former banker, has repeatedly signed for receipt of a salary he actually has not received. The applicants also complained about numerous contradictory statements made by Mr M. on which the court relied only to the extent favourable to the prosecution. In particular, Mr M. testified during the investigation that he had received his salary in full (RUB 1,000,000) and then returned RUB 950,000 to Mr Zabelin. Later he changed his account and stated that he had never received RUB 950,000 in his hands. The applicants also challenged credibility of Mr M. since according to the record of his interrogation of 5 April 2007 the prosecution had found shotgun ammunition at his working place but refrained from institution of criminal proceedings into unlawful possession of ammunition. Furthermore, on 25 September 2006 the first applicant had fired Mr M.; therefore, Mr M. was biased against her.

As to the third count, the defence referred to Article 151 of the Labour Code which provided for additional remuneration when the employee combines different functions. The defence argued that the first applicant had combined two posts within the company in 2006-2008: the chief accountant and the acting CEO. Thus, bonuses awarded to her by herself in connection with the extension of her responsibilities were justified and lawful. Furthermore, the payments were approved by Mr Zabelin by telephone; the latter was prepared to confirm that if the court had questioned him. The defence pointed out that the second applicant had paid the bonuses on the basis of binding orders issued by the acting CEO and referred to Article 42 of the CC.

On 11 March 2011 Federal Law no. 26-FZ of 7 March 2011 entered into force. It removed the minimum sentence in Article 160 § 4 of the CC, which was five years of imprisonment.

On 12 April 2011 Moscow City Court, sitting as a court of appeal, altered the judgment. It applied Article 160 § 4 of the CC, as amended by Federal Law no. 26-FZ. However, that did not result in a reduction of the applicants' sentences because the original sentence remained within the limits of Article 160 § 4 of the CC. The appeal court also reduced the compensation of damages awarded to the company to RUB 83,689,534 (about EUR 2,092,000) and upheld the judgment in other parts. It did not address the applicants' argument

concerning the statute of limitation for the civil claims of the victims as well as their arguments based on Article 42 of the CC. Other arguments were dismissed in a summary fashion.

9. Conditions of detention and medical assistance in the remand prison

Between May 2008 and April 2011 the applicants were kept in remand prison IZ-77/6 in Moscow. The applicants provided the following description of the conditions in the remand prison.

The cell of the first applicant measured about 120 sq. m. and contained 40 persons. Each detainee had therefore about 3 sq. m. of personal space. The second applicant was kept in another cell with 11 inmates. She provided no information on the cell size. The cells were equipped with lavatory pans which offered no privacy to the person using the toilet, who was in view of the cellmates.

The applicants had to sleep on a cold bunk-bed made of iron stripes covered with a thin mattress. The air in the cells was stuffy. The ventilation system in the cell was often broken and repaired only three to four months later. Most of the inmates smoked in the cell as well as in the walking yards and the applicants, non-smokers, were exposed to tobacco smoke. The lightening in the cell was insufficient; the applicants' eyesight has significantly deteriorated because of that. The quality of food in the remand prison was unsatisfactory.

The applicants were allowed to take outdoor exercises only one hour per day in a small stuffy concrete-made yard covered with a roof. They were offered opportunity to take shower once a week. During the court days, the applicants received no outdoor exercise and often missed the possibility to take a shower.

The first applicant suffered from hypertonic disease, extrasystole, myocardial dystonia and varicose veins. The second applicant had problems with gallbladder. She also suffered from hypertonic disease and varicose veins. The applicants were allegedly not able to undergo medical examination in the remand prison, except X-ray examinations. The second applicant could not receive dental prosthesis because such services were unavailable in the prison.

The applicants were allowed to see relatives only through a glass partition twice a month during the trial and only once a month during the investigation. Food parcels from relatives were limited to one parcel per month.

10. Conditions of the applicants' transportation to and from the courthouse

During the detention on remand the applicants were transported to the court house on over 40 occasions. The applicant provided the following description of the transport.

The prison van, "a closed iron stuffy box", was always overcrowded. Owing to the lack of space, five prisoners had to sit on a bench designed only for four persons and some detainees had to stand all the time during the transport. There was no forced air supply and no natural access to fresh air. The route from the remand prison to the court house usually lasted about 2 hours and, the return route was usually taking between 5 and 8 hours.

The prison van was not equipped with a toilet and the detainees were not able to use any toilet en route. The van lacked seat belts or shock absorbers. It jumped on every pothole and the applicants received bruises during each transport. The first applicant, being 176 cm high, often hit her head against the

metal roof of the van. Healthy and ill detainees, even with tuberculosis, were transported together. It was cold in the prison van in the winter and hot in the summer.

The summer 2010 in Russia was extremely hot. According to the applicants, the air temperature in the prison van in the summer was at least 45 degrees Celsius. The temperature of the iron parts of the van rose up to 60 degrees Celsius. Both applicants suffered from varicose veins. Because of the heat, their blood vessels on legs were bursting. Their legs ached.

On the court days, the applicants were woken up at 6 a.m. and returned to the prison at 11-12 p.m. On many occasions the applicants were transported to the court several days in a row (for example, on 1, 2, 7, 8, 9, 14, 15 and 16 July 2010). On those days the applicants were not able to rest or prepare for the hearings.

The applicants were transported to the court even if it was clear in advance that the hearing would not take place. So, on several occasions the applicants' counsels was unable to attend the hearing and had informed the presiding judge thereof in advance.

11. Conditions in the court

During the trial the applicants were kept in a small cage in the courtroom. Whenever the applicants left the cage, they were handcuffed. According to the applicants, on court days they received no exercise and no fresh air. They were provided with hot water only once a day. They were taken to the toilet only on particular times. They had no access to water pan and could not wash their hands.

12. Conditions of detention and medical assistance in the colony

On an unspecified date in April 2010 the applicants arrived at correctional colony IK-6 in the Orel Region. On 29 November 2011 the second applicant was released on probation. The first applicant is still serving her sentence in the colony.

As a retired person, the first applicant has been exempt from work in the colony. She refers to her heart diseases and claims that no specific medical assistance is available in the colony. It is situated far away from a hospital. The first applicant assumes that under such circumstances her health and life are at a serious risk.

The second applicant, until her release, had to work at a garment factory within the colony as a seamstress. She was allegedly forced to work up to 14 hours a day, almost every day. Her salary was about RUB 5,000 (about 125 EUR) a month, but she received only 25 percent thereof. The remaining part went to the colony for food, clothing etc. The convicts were allowed to buy food in the colony's shop only once a month. The shop offered very limited range of products.

On 11 October 2011 the second applicant was admitted to the inpatient medical ward in the colony in connection with high blood pressure. She was discharged on 21 October 2011. At the moment of her discharge a doctor prescribed that she had to work at the factory maximum 7 hours per day. However, the applicant was forced to work between 9 and 12 hours.

Medical assistance in the colony was unsatisfactory. There were only two physicians for over 1,000 convicts. It was difficult to get an appointment with the doctor. The second applicant was not able to receive medical assistance in relation to her eyesight problems since there was no oculist in the colony. There were not enough drugs. The second applicant had to procure the drugs prescribed to her through her relatives. It took up to three weeks to get the prescribed drugs since contact with the relatives was mainly through letters. Telephone conversations were allowed only once a month for 10 minutes.

13. Other facts

According to the first applicant, her personal belongings (a laptop, a mobile phone and a computer hard disc) were seized by the investigator and either not returned to her relatives or returned in a state of despair.

On an unspecified date in 2011 the second applicant initiated proceedings for bringing her sentence into conformity with the new criminal law (Federal Law no. 26-FZ of 7 March 2011). On 14 July 2011 the Kromskoy District Court of the Orel Region granted the application and reduced her sentence from 4 years to 3 years and 11 months' imprisonment. On 27 September 2011 the Orel Regional Court upheld the decision on appeal.

On 18 November 2011 the Kromskoy District Court granted the second applicant's application and released her on probation. According to the official release certificate, she was released on 29 November 2011.

On 21 January 2012 the Kromskoy District Court dismissed the first applicant's application for release. The applicant appealed. The outcome of the proceedings is unknown.

The applicants' supervisory review complaints against their conviction were to no avail.

B. Relevant domestic law and practice

1. Initiating a criminal prosecution and remedies against it

Should there be sufficient grounds to believe that a crime has been committed, the investigator opens a criminal case and initiates a criminal investigation (Articles 140, 145 and 149 of the CCrP). The decision to open a criminal case must include, *inter alia*, grounds and reasons for its opening and the relevant legal provision(s) of the Criminal Code on which basis the criminal case is opened (Article 146 § 2 of the CCrP). A copy of this decision shall be immediately forwarded to a public prosecutor who can quash it as unlawful or unjustified (Article 146 § 4).

Article 46 § 4 of the CCrP provides for the procedural rights of a suspect, including the right to receive a copy of the decision concerning the opening of a criminal case against him/her or a copy of the arrest record. The decision to open a criminal case can be challenged in court under Article 125 of the CCrP (Ruling of the Supreme Court no. 1 of 10 February 2009, § 2).

When an investigator is satisfied that there is sufficient evidence to press charges against a person, he/she issues a formal decision making that person a party to the proceedings as an accused (*постановление о привлечении в качестве обвиняемого*) (Article 171 § 1 of the CCrP). The decision must

include, *inter alia*, the name, the surname and the given name of the individual, the date and place of his/her birth, a description of the crime(s), and the relevant legal provision(s) of the Criminal Code establishing liability for the crime(s) (Article 171 §§ 2 and 3 of the CCrP).

If several persons are accused in one criminal case, a separate decision on prosecution and charges against each of them shall be issued by the investigator (Article 171 § 4 of the CCrP). The investigator had to serve the above decision on the accused in person and to explain to the accused the nature of the charges (Article 172 of the CCrP). The charges brought can be amended or extended in the course of the investigation by a new decision on prosecution and charges to be served on the accused (Article 175 of the CCrP).

A copy of the decision on prosecution and charges shall be forwarded to a public prosecutor (Article 172 § 9 of the CCrP). It appears that the prosecutor cannot quash such a decision. However, it can be challenged in court under Article 125 of the CCrP (Moscow City Court, appeal decision no. 22-9140 of 12 July 2010).

Article 154 of the CCrP sets out a procedure for severing one criminal case from another and requires that a formal decision must be issued by the investigator to that effect. If a criminal case is severed for the purposes of investigation into a new crime or in respect of a new person, the decision must include a decision to open a criminal case (Article 154 § 3).

The Russian Constitutional Court has found that the relevant provisions of the CCrP do not allow criminal prosecution as well as detention on remand (as a part thereof) in respect of a criminal case which was not formally opened (decisions no. 343-O of 18 July 2006, no. 533-O of 21 December 2006). It also held that amending or extending charges brought within a criminal case is possible only within the ambit of the crime(s) (*признаки преступления*) in respect of which the criminal case was opened (decisions no. 600-O-O of 21 October 2008, no. 1636-O-O of 17 December 2009). If another crime is detected in the course of the investigation, a new criminal case must be opened which may be joined to the original case (ibid.).

In contrast, the Russian Supreme Court has held on several occasions that the CCrP does not prescribe a separate decision to open a criminal case when, in the course of an ongoing investigation, an additional crime was detected (appeal decisions no. 6-073/03 of 20 January 2004, no. 14-o06-29 of 25 September 2006).

2. Ban on detention on remand for crimes committed in the area of entrepreneurship

Pursuant to Article 108 § 1.1 of the CCrP, as amended by Federal Law no. 60-FZ of 7 April 2010, detention on remand shall not be applied to a person suspected or accused of committing the crimes under Articles 159 (fraud), 160 (embezzlement) and 165 (causing damage to property by fraud or breach of trust) of the Russian Criminal Code, when such crimes were committed "in the area of entrepreneurship".

The Russian Supreme Court has explained that the crimes in question shall be considered as committed "in the area of entrepreneurship" if they were directly connected with entrepreneurial activities and committed by persons engaged in such activities or involved in them (Ruling no. 15 of 10 June 2010). The Supreme Court added that when deciding whether an activity was

"entrepreneurial", the courts must be guided by Article 2 § 1 of the Civil Code, according to which the entrepreneurial activity is an independent activity, performed at one's own risk, aimed at deriving a profit on a systematic basis from the use of property, the sale of commodities, the performance of work or rendering of services by the persons, registered in this capacity in conformity with the procedure established by law (ibid.).

3. Appeal against decisions related to release from detention pending trial

Article 355 § 5 (2) of the CCrP provides that a separate appeal cannot be lodged against procedural rulings taken by the trial judge in relation to motions lodged by a party to the trial proceedings.

The Constitutional Court has considered that review of such rulings could be carried out during the subsequent appeal review of a judgment on the merits in the criminal case; it was open to a party to renew a motion or request subsequently in the course of the trial (decision no. 4-O of 25 January 2007). However, the Constitutional Court also specified that when a motion during the trial related to release from detention, a court decision on such motion was subject to a separate appeal before a higher court (decisions no. 44-O of 6 February 2004, no. 44-O-O of 7 January 2011).

Similar findings were made by the Presidium of the Supreme Court of Russia (see, for instance, supervisory review ruling no. 354-П08ПР of 17 December 2008; see, however, appeal decision no. 22-2196 of 22 February 2012 by the Moscow City Court).

4. Retrospective effect of the more lenient criminal law

Article 160 of the CC made embezzlement a criminally punishable offence. Article 160 § 4, as in force between 1 January 2010 and 11 March 2011, stated that embezzlement committed by an organised group or "on especially large scale" was punishable by a sentence of imprisonment of five to ten years. The amendments to the CC introduced by Federal Law no. 26-FZ of 7 March 2011 removed the minimum sentence in Article 160 § 4.

Article 10 of the CC provides that where a new criminal law decriminalises an offence, provides for more lenient punishment or otherwise improves the situation of the offender it shall apply with retrospective effect to offences committed before it came into force, even where the offender is already serving a sentence. If the new law provides for a shorter sentence, then the offender's sentence must be reduced accordingly.

The interpretation of the retrospective application principle was given by the Constitutional Court in 2006 (judgment no. 4-P of 20 April 2006) and upheld by the Supreme Court (supervisory review decisions no. 89-D12-14 of 4 September 2012, no. 51-D12-19 of 11 September 2012). This interpretation requires that whatever favourable change has occurred in the criminal legislation in relation to the penalty of imprisonment for a particular offence, such change should necessarily entail a reduction of the sentence of imprisonment already imposed on a convicted person, for instance by the trial court.

5. Criminal liability for execution of orders or instructions

Article 42 of the CC provides that infliction of harm to legally protected interests should not be qualified as an act of crime, when it was caused by a

person acting in execution of a binding order or instruction. Criminal responsibility for infliction of such harm should be borne by the person who gave the illegal order or instruction. A person who committed a deliberate crime in execution of an order or an instruction known to be illegal, should be liable under usual terms.

6. The CEO of a joint-stock company and his/her salary

The CEO of a joint-stock company is in charge of the everyday management of the company (Article 69 § 1 of Federal Law no. 208-FZ of 26 December 1995 "On joint-stock companies"). The CEO operates in the name of the company without a power of attorney, i.e. represents its interests, concludes transactions, hires personnel, issues orders and decisions binding on all employees of the company (Article 69 § 2 of Federal Law no. 208-FZ).

The CEO shall report to the board of directors (supervisory board) of the company and the general meeting of shareholders (Article 69 § 1 of Federal Law no. 208-FZ) which can dismiss the CEO from that post at any time (Article 69 § 4 of Federal Law no. 208-FZ). The shareholders are entitled to bring civil proceedings for compensation of damages on behalf of the company against its CEO (Article 71 § 5 of Federal Law no. 208-FZ).

Article 145 of the Labour Code provides that the amount of the salary of a CEO in a private company should be determined by the parties of the labour contract. The labour contract between a joint-stock company and its CEO should be concluded by the latter and the shareholders of the company (Article 69 § 3 of Federal Law no. 208-FZ). The CEO of a stock company issues regulations within the company, *inter alia*, on the amount of salaries of the company's employees (Article 69 § 2 of Federal Law no. 208-FZ in conjunction with Article 135 of the Labour Code).

Article 151 of the Labour Code provides for additional remuneration for combining jobs (posts) within a company or performing the duties of a temporarily absent employee. The amount of extra pay should be determined by the parties of the labour contract.

7. Mutual legal assistance between Russia and Estonia

On 20 March 1995 the Treaty between the Russian Federation and the Republic of Estonia on legal assistance and legal relationships in civil, family and criminal matters of 26 January 1993 came into force. Article 2 of the Treaty establishes a general obligation for both parties to provide each other with legal assistance in civil and criminal matters in accordance with the provisions of the Treaty. Article 3 of the Treaty sets out the extent of the legal assistance required under the Treaty and provides, *inter alia*, for the taking of evidence from accused persons, defendants and witnesses.

COMPLAINTS

A. Complaints common for both applicants

1. Under Article 3 the applicants make the following complaints:

(1) Conditions of detention in the remand prison were inhuman and degrading;

(2) Conditions of transportation between the remand prison and the court house were inhuman and degrading;

(3) Conditions in the court were inhuman and degrading;

(4) Conditions of detention in the correctional colony were inhuman and degrading;

(5) Medical assistance in the detention facilities was unsatisfactory.

2. Under Article 5 the applicants make the following complaints:

(1) Their detention on remand was unlawful since there was no reasonable suspicion of their involvement in the imputed offences;

(2) Their detention on remand was unlawful since no criminal case on the two counts of embezzlement had been opened;

(3) Their detention on remand was unlawful since the Federal Law no. 60-FZ provided for mandatory bail in cases concerning crimes under Article 160 of the CC committed "in the area of entrepreneurship";

(4) Their detention on remand was unreasonably long and was not based on sufficient reasons;

(5) Their appeals against the detention order of 23 November 2009 were examined by the appeal court only on 19 April 2010;

(6) Their appeals against decisions of 31 March 2010, 16 and 21 April 2010 refusing their applications for release were not examined by the appeal court.

3. Under Article 6 the applicants make the following complaints:

(1) The findings of domestic courts were arbitrary and in breach of their presumption of innocence;

(2) The trial court dismissed their requests for an expert examination of the labour contract between Mr Zabelin and the shareholders as well as of the minutes of the shareholders' meeting which would permit to establish the exact time when the documents had been drawn up;

(3) Their requests to order an audit in order to establish the amount of damages inflicted to MDM were dismissed by the trial court and the investigator;

(4) Criminal proceedings lasted unreasonably long;

(5) The decision in which the charges against them were formulated on 26 May 2009 attached to the case file did not correspond to the copies thereof given to the applicants as well as to the final bill of indictment;

(6) Their supervisory review complaints against the conviction were to no avail;

4. Under Articles 6 and 7 the applicants complain that they were convicted of actions which did not amount to a criminal offence.

5. Under Article 8 the applicants complain that they were only allowed to have restricted contacts with their relatives.

6. Under Article 1 of Protocol no. 1 the applicants complain that they were ordered to pay substantial amounts of money as a result of an arbitrary determination of their civil liability.

7. The applicants also complain that the charges against them were fabricated and their criminal prosecution constituted an abuse of power in connection with alleged persecution of Mr Zabelin by the Russian authorities.

B. Complains specific to each applicant

1. Under Article 3 the first applicant complains that her conviction was inhuman and degrading in itself.

2. Under Article 6 the first applicant makes the following complaints:

(1) Her requests to question Mr Zabelin were dismissed;

(2) She was convicted on the basis of confession statements made by the second applicant under duress;

(3) She was convicted of two counts of embezzlement although no criminal case into those offences had been opened.

3. Under Article 7 the first applicant complains that the appeal court did not reduce her sentence despite a more lenient criminal law which had entered into force before the appeal hearing.

4. Under Article 13 the first applicant complains that she did not have any effective remedy against unfairness of the criminal proceedings.

5. Under Article 1 of Protocol no. 1 the first applicant complains that several items of her property were seized by the investigator and not returned to her relatives or returned in a state of despair.

6. Under Article 5 the second applicant complains that her release on probation was ordered on 18 November 2011 but she was released only on 29 November 2011.

7. Under Article 6 the second applicant complains that the prosecution falsified evidence through recomposing documents in the case file.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicants' detention in remand prison IZ-77/6 in Moscow compatible with Article 3 of the Convention?

2. Were the conditions of the applicants' transport between the remand prison and the court house compatible with Article 3 of the Convention?

3. Was the applicants' placement in a metal cage during the proceedings in the Khamovnicheskiy District Court of Moscow compatible with Article 3 of the Convention?

4. Was the applicants' detention on remand compatible with the requirements of Article 5 § 1 of the Convention, given that no decision to open a criminal case on two counts of embezzlement had been issued against them? In particular, was the applicants' detention lawful, given the case-law of the Constitutional Court of Russia (see "Relevant domestic law and practice")? If not, did that amount to a "gross and obvious irregularity" in terms of Article 5 § 1 of the Convention? Were the applicants' rights affected or restricted by the absence of such a decision?

5. Why was the Federal Law no. 60-FZ of 7 April 2010 not applied to the applicants? Was that law, read in conjunction with Article 108 § 1.1 of the Code of Criminal Procedure, in conformity with the requirements of Article 5 § 1 of the Convention? In particular, are those provisions sufficiently accessible,

precise and foreseeable in their application, in so far as they forbid detention on remand for a number of non-violent crimes committed "in the area of entrepreneurship"? If not, was the applicants' detention, after Federal Law no. 60-FZ of 7 April 2010 came into force, compatible with the requirements of Article 5 § 1 of the Convention?

6. Was the length of the applicants' detention on remand in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? In particular, were there "relevant and sufficient" reasons for the applicants' continued detention?

7. Were the appeal proceedings against the detention order of 23 November 2009 issued by the Khamovnicheskiy District Court in conformity with Article 5 § 4 of the Convention? In particular, were the applicants' appeals examined "speedily"?

8. Was there a violation of Article 5 § 4 of the Convention on account of the courts' alleged failure to examine the applicants' appeals against decisions in relation to applications for release made on 31 March 2010, 16 and 21 April 2010 by the Khamovnicheskiy District Court? Was there, at the material time, any difference concerning the right of appeal in respect of detention orders issued within the periodic review under Articles 109 and 255 of the Code of Criminal Procedure, on the one hand, and court decisions taken during the trial in relation to applications for release, on the other (see "Relevant domestic law and practice")? Was the interpretation given by the Moscow City Court in its rulings of 24 May and 9 June 2010 that review of the decisions could be carried out only during the subsequent appeal review of a judgment on the merits compatible with the "speediness" requirement of Article 5 § 4 of the Convention?

9. Were the criminal proceedings against the applicants fair, as required by Article 6 of the Convention? In answering that question the parties are invited to concentrate specifically on the following allegations of the applicants:

(a) The first argument concerns the allegedly inconsistent character of the court's findings concerning the amounts of "lawful" salaries of the CEO of MDM (RUB 12,000), on the one hand, and of the deputy CEO (RUB 1,000,000), on the other. How could the CEO and the acting CEO be entitled under the law to pay generous bonuses to the deputy CEO, but not to him/herself?

(b) The second argument concerns the alleged failure by the courts to address the applicants' argument that the civil claims of the victims had been time-barred. Did the courts' failure to address that argument in their judgments amount to a violation of Article 6 § 1 of the Convention (cf. *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A)?

(c) The third argument concerns the court's refusal to question Mr Zabelin. Was that refusal compatible with the applicants' right to examination of witnesses on their behalf under the same conditions as witnesses against them, guaranteed by Article 6 § 3 (d) of the Convention?

10. Was the Moscow City Court's refusal to reduce the first applicant's sentence in view of the new version of Article 160 § 4 of the Criminal Code, as amended by Federal Law no. 26-FZ of 7 March 2011, compatible with the "retrospectiveness" requirement of Article 7 of the Convention (cf. *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 109, 17 September 2009 and see "Relevant domestic law and practice")?

11. From the standpoint of Article 1 of Protocol no. 1 to the Convention, the parties are invited to explain what was the justification for the court's pecuniary award against the applicants within the criminal case, in the light of their complaints communicated under Article 6 of the Convention?