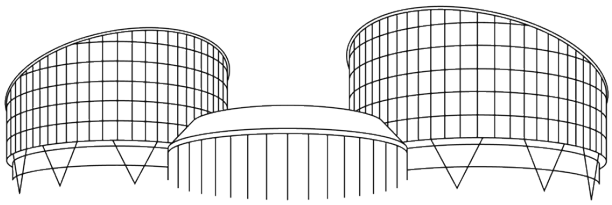

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MANULIN v. RUSSIA

(Application no. 26676/06)

JUDGMENT

STRASBOURG

11 April 2013

FINAL

11/07/2013

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

In the case of Manulin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 26676/06) 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 Kirill Viktorovich Manulin ("the applicant"), on 3 April 2006.

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

3. The applicant alleged that he had been detained in inhuman conditions and that his detention had been excessively long.

4. On 17 September 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 1985 and lives in Moscow.

A. Background information

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

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

8. They asked for a meeting with the President, the deputy head of the Presidential Administration and the President's economic advisor. Through the windows they distributed leaflets with a printed letter to the President that listed his ten alleged failures to comply with the Constitution and contained a call for his resignation.

9. The intruders stayed in the office for one-and-a-half hours until the police broke down the blocked door and arrested them. They did not offer any resistance to the authorities.

B. The criminal proceedings against the applicant

10. On 17 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's detention, relying on the gravity of the charges, the circumstances in which the offences imputed to him had been committed, the methods employed by the offenders and the risks of him absconding, reoffending, putting pressure on witnesses or interfering with the investigation in some other way.

11. The applicant appealed, asking the court to apply a more lenient preventive measure. He submitted that the District Court's findings had not been supported by concrete facts. On 19 January 2005 the Moscow City Court upheld the detention order on appeal, finding that it had been lawful, well-reasoned and justified.

12. On 21 December 2004 the applicant was charged with the attempted violent overthrow of the State (Article 278 of the Criminal Code) and intentional destruction of and damage to property in a public place (Articles 167 § 2 and 214).

13. On an unspecified date the prosecutor asked the court to extend the applicant's detention until 14 April 2005, referring to the need for further investigation. The applicant asked to be released. He referred to his clean criminal record, permanent residence in Moscow and the fact that he was a student. He also stated that he could not influence the witnesses because he was not acquainted with them.

14. On 4 February 2005 the Zamoskvoretskiy District Court of Moscow extended the applicant's detention until 14 April 2005, referring to the gravity of the charges, the circumstances in which the offences imputed to him had been committed and the risks of him absconding or interfering with the proceedings. The circumstances referred to by the applicant had been

taken into account at the time of his remand in custody. As those circumstances had not changed, there was no reason to vary the preventive measure.

15. On 16 February 2005 the charges against the applicant were amended to participation in mass disorder, an offence under Article 212 § 2 of the Criminal Code.

16. On 14 April 2005 the Zamoskvoretskiy District Court extended the applicant's detention until 14 July 2005 for the following reasons:

> "There are no reasons to vary the preventive measure. Taking into account the gravity of the charges and [the applicant's] individual situation, the court considers that there are sufficient indications that [he], once released, might abscond.
>
> At the same time, bearing in mind that the parties to the criminal proceedings have already started studying the case file, the extension asked for by the prosecution appears to be excessive and must be limited to three months. This period will be sufficient for all parties to the proceedings to effectively study the entire case file."

17. The applicant appealed, submitting that the District Court's findings had been hypothetical and had not been supported by concrete facts. On 7 June 2005 the Moscow City Court upheld the extension order on appeal, finding that it had been lawful, well-reasoned and justified.

18. On 7 June 2005 the investigation was completed and thirty-nine people, including the applicant, were committed for trial.

19. On 20 June 2005 the Tverskoy District Court of Moscow scheduled a preliminary hearing for 30 June 2005 and held that all the defendants should meanwhile remain in custody.

20. On 30 June 2005 the Tverskoy District Court held a preliminary hearing. It rejected the defendants' requests to be released and ordered that they should remain in custody pending trial, citing the gravity of the charges against them and the risk of their absconding or obstructing justice. On 17 June 2005 the Moscow City Court upheld that decision on appeal.

21. The trial started on 8 July 2005.

22. During a hearing on 27 July 2005 the applicant and his co-defendants lodged applications for release. On the same date the Tverskoy District Court rejected the requests, finding that their detention was lawful and justified. On 5 October 2005 the Moscow City Court upheld that decision on appeal.

23. On 10 August 2005 the applicant and his co-defendants filed new applications for release. On the same date the Tverskoy District Court rejected the requests. It held:

> "The court takes into account the defence's argument that an individual approach to each defendant's situation is essential when deciding on the preventive measure.
>
> Examining the grounds on which ... the court ordered and extended detention in respect of all the defendants without exception ... the court notes that these grounds still persist today. Therefore, having regard to the state of health, family situation, age,

> profession and character of all the defendants, and to the personal guarantees offered by certain private individuals and included in the case file, the court concludes that, if released, each of the defendants might abscond or obstruct justice in some other way ...
>
> In the court's view, in these circumstances, having regard to the gravity of the charges, there are no grounds for varying or revoking the preventive measure in respect of any defendant ..."

24. On 2 November 2005 the Moscow City Court upheld the decision on appeal, finding that it had been lawful, sufficiently reasoned and justified.

25. On 8 December 2005 the Tverskoy District Court found the applicant and his co-defendants guilty of participation in mass disorder. It sentenced the applicant to three years' imprisonment, but suspended the sentence and placed him on probation for two years. The applicant was immediately released.

26. On 29 March 2006 the Moscow City Court upheld the conviction on appeal.

C. Conditions of the applicant's detention

27. From 14 December 2004 to 8 December 2005 the applicant was held in remand centre no. IZ-77/3 in Moscow.

28. According to the applicant, the remand centre was overcrowded. His cell measured about 28 square metres and housed eight to fifteen inmates. The light in the cell was never turned off, disturbing the applicant's sleep. The cell was infested with cockroaches. It was equipped with a lavatory pan. The pan was separated from the living area by a partition of a metre in height, with the result that the person using the toilet was in view of other inmates. The applicant was allowed to take a shower once a week. Hot water was often unavailable. The applicant had a daily walk of about an hour. The exercise yard was covered and measured 15 square metres.

29. According to the Government, from 14 December 2004 to 3 February 2005 the applicant was held in cell no. 413, from 3 February to 22 October 2005 in cell no. 432, from 22 to 28 October 2005 in cell no. 435, from 28 October to 23 November 2005 in cell no. 432 again, and from 23 November to 8 December 2005 in cell no. 433. All cells measured 18.3 square metres, except cell no. 435 which measured 18.5 square metres. Each of the cells had five sleeping bunks and housed five inmates. The applicant had a separate bunk at all times and was provided with bedding. In support of their position, the Government submitted floor plans of the cells showing the placement of furniture, certificates issued by the remand centre governor on 22 October 2010 and several written affidavits by the warders, some of them dated 19 October 2010 and others undated. They also produced selected pages from the prison population register which recorded, for each day, the number of sleeping bunks and the number of inmates in each cell,

the total number of inmates in each of the seven wings of the remand centre and the total number of inmates in the entire remand centre.

30. Relying on certificates of 22 October 2010 from the remand centre governor and written statements by the warders dated 21 October 2010, the Government further submitted that all cells were equipped with toilet facilities which were separated from the living area by a partition. There was forced ventilation in the cells. The windows were large and were not blocked by shutters. The cells had sufficient artificial light, which was located so as not to disturb the sleep of the inmates. There were no insects or rodents in the detention facility, as all the cells were disinfected regularly. Inmates had an hour-long daily walk in the exercise yards, which were sufficiently large to allow each inmate to do physical exercise.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the conditions of his detention from 14 December 2004 to 8 December 2005 in remand centre no. IZ-77/3 in Moscow had been in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

33. The Government argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not sought compensation for non-pecuniary damage before a court. To prove the effectiveness of that remedy, they referred to three judgments awarding Mr B., Mr R. and Mr E. monetary compensation for inadequate conditions of detention or inadequate medical assistance. It had been also open to the applicant to complain to the governor of the detention facility or to a prosecutor, such a complaint being, in the Government's opinion, an

effective remedy. They referred to maintenance works which had been carried out in the remand centres in the Moscow and Smolensk regions following an inspection by the Prosecutor General.

34. The Court has already rejected identical objections by the Russian Government in a number of cases regarding conditions of detention, having found that a tort action or a complaint to the detention facility governor or a prosecutor could not be regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-91, 12 March 2009; *Kokoshkina v. Russia*, no. 2052/08, § 52, 28 May 2009; *Ananyin v. Russia*, no. 13659/06, § 62, 30 July 2009; *Artyomov v. Russia*, no. 14146/02, § 112, 27 May 2010; *Arefyev v. Russia*, no. 29464/03, § 54, 4 November 2010; and *Gladkiy v. Russia*, no. 3242/03, § 55, 21 December 2010). In the case of *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 100-119, 10 January 2012), having found a violation of Article 13 of the Convention, the Court concluded that for the time being the Russian legal system does not offer an effective remedy that could be used to prevent such an alleged violation or its continuation and provide the complainant with adequate and sufficient redress in connection with a complaint of inadequate conditions of detention.

35. In the case at hand, the Government submitted no evidence to enable the Court to depart from these findings with regard to the existence of an effective domestic remedy for the structural problem of overcrowding in Russian detention facilities. Although they referred to several judicial and prosecutor's decisions which had allegedly provided redress for inadequate conditions of detention, they did not produce copies of those decisions. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

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

B. Merits

37. The Government submitted that the conditions of the applicant's detention had been satisfactory. The number of inmates in his cells had corresponded to their design capacity and he had been provided with an individual bunk and bedding at all times. He had also spent substantial periods of time outside his cell. In particular, he had participated in investigative measures, had had meetings with counsel and family visits, and had been taken daily to the exercise yard and regularly to the shower room. Inmates also had the opportunity to pray in specially-designated premises or work in production workshops. They could also obtain a

psychological consultation. The cells had had natural and artificial light and forced ventilation. All sanitary and hygiene standards had been met. Inmates had received food three times a day. In sum, the conditions of the applicant's detention had been compatible with Article 3.

38. The applicant maintained his claim.

39. The Court observes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-77/3 in Moscow. In particular, they disagreed about the cell sizes and the number of inmates in the cells, as well as on their sanitary state, lighting and ventilation and as regards outdoor exercise arrangements. However, there is no need for the Court to establish the veracity of each and every allegation. The focal point for its assessment is the living space afforded to the applicant.

40. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the validity of the applicant's allegations (see, among other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 79, ECHR 2005-IV, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

41. In support of their submissions as to the cell sizes, the number of inmates per cell and the availability of an individual sleeping place, the Government produced certificates issued by the prison governor, written affidavits by the warders and selected pages from the prison population register which recorded, for each day, the number of sleeping bunks and the number of inmates in each cell, the total number of inmates in each of the seven wings of the remand centre and the total number of inmates in the entire remand centre (see paragraph 29 above).

42. The certificates from the prison governor were issued on 22 October 2010, long after the applicant had left the remand centre. The Court has repeatedly declined to accept the validity of similar certificates on the grounds that they could not be viewed as sufficiently reliable, given the lapse of time involved and the absence of any supporting documentary evidence (see *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007; *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; *Kokoshkina,* cited above, § 60; *Kozhokar v. Russia*, no. 33099/08, § 95, 16 December 2010; *Idalov v. Russia* [GC], no. 5826/03, §§ 99-100, 22 May 2012; and *Zentsov and Others v. Russia*, no. 35297/05, § 43, 23 October 2012). Similarly, as regards the statements by the warders submitted by the Government, the Court considers it extraordinary that in October 2010, almost five years after

the applicant's detention in that facility had come to an end, the officials were able to recollect the exact number of inmates who had been detained together with the applicant (see, for similar reasoning, *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; *Guliyev v. Russia*, no. 24650/02, § 39, 19 June 2008; and *Grigoryevskikh v. Russia*, no. 22/03, § 57, 9 April 2009). The certificates and the affidavits by the warders are therefore of little evidentiary value for the Court.

43. Turning next to the copies of the prison population register produced by the Government, the Court notes, firstly, that the Government preferred to submit the copies of certain pages only, covering thirty-six days out of the 354 days that the applicant spent in the remand centre. It finds such incomplete and selective evidence unconvincing (see, for similar reasoning, *Sudarkov,* cited above, § 43, and *Kokoshkina,* cited above, § 60). It further observes that on all thirty-six pages the entries in respect of the number of detainees in the applicant's cells were visibly altered, with a figure having been erased and another figure, corresponding in all cases to the number of sleeping bunks in the cell, having been written over instead. It is significant that on each page only the entries concerning the applicant's cells were altered, the entries in respect of the other cells remaining intact. The entries recording the total number of inmates in the applicant's wing and the total number of inmates in the entire remand centre were also visibly altered. The Government did not indicate at what point and for what purpose the information in the register had been altered. The Court has already found that alterations in a prison population register, without any explanations as to their origin, reason and timing, made the information contained in it unreliable (see *Glotov v. Russia*, no. 41558/05, § 25, 10 May 2012).

44. The Court further observes that it has already found that remand centre no. IZ-77/3 was severely overpopulated at the time when the applicant was held there (see *Vladimir Sokolov v. Russia*, no. 31242/05, §§ 47 and 58-64, 29 March 2011, and *Kolunov v. Russia*, no. 26436/05, §§ 30-38, 9 October 2012, where a violation of Article 3 was found in respect of applicants held in that remand centre in 2005). The examination of the extracts from the prison population register submitted by the Government confirms this finding. Indeed, it reveals that in most of the cells in the remand centre the number of inmates exceeded the number of sleeping bunks. The Court finds it noteworthy that only the applicant's cells were unaffected by that problem, in particular in view of the visible alterations to the entries concerning those very cells described above.

45. Having regard to the above considerations, the Court considers that the Government have not substantiated their argument that the number of inmates in the applicant's cells did not exceed the capacity they were designed for. Accordingly, the Court accepts the applicant's submissions that the cells in remand centre no. IZ-77/3 were overcrowded.

46. Lastly, the Court cannot but note that the plans of the cells submitted by the Government show that in each cell a substantial part of the surface was occupied by sleeping bunks. The rest of the space was taken up by a table and a bench, a wardrobe and a cubicle in which a lavatory pan was situated. That arrangement left inmates with literally no free space in which they could move (see, for similar reasoning, *Aleksandr Makarov,* cited above, § 94, and *Ushakov v. Russia*, no. 10641/09, § 42, 25 October 2011). It follows that for almost a year the applicant was confined to his cell, which was overcrowded and crammed with furniture, day and night, save for one hour of daily outdoor exercise.

47. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see, for example, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Vlasov v. Russia*, no. 78146/01, §§ 79-85, 12 June 2008; *Ananyev and Others,* cited above*,* §§ 120-166; *Dmitriy Sazonov v. Russia*, no. 30268/03, § 28-33, 1 March 2012; *Kolunov,* cited above, §§ 30-38; and *Zentsov and Others,* cited above, §§ 38-45).

48. Having regard to its case-law on the subject and the material submitted by the parties, the Court reaches the same conclusion in the present case. That the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of anguish and inferiority capable of humiliating and debasing him. The Government's submission that he spent considerable time outside his cell (see paragraph 37 above) is not supported by evidence.

49. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand centre no. IZ-77/3 in Moscow, which amounted to inhuman and degrading treatment within the meaning of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

50. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain him and that the domestic courts had not had due regard to the defence's arguments. Under Article 5 § 3, he complained of a violation of his right to trial within a reasonable time and alleged that the detention orders had not been based on sufficient reasons. The relevant parts of Article 5 read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial ..."

A. Admissibility

51. As regards the applicant's complaint that his detention was unlawful, the Court notes that on 17 December 2004 the Khamovnicheskiy District Court of Moscow ordered the applicant's remand in custody. The applicant's detention was subsequently extended on several occasions by the domestic courts.

52. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question of whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (compare *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-X (extracts)).

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

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

B. Merits

55. The applicant submitted that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody for almost one year.

He had offered to post bail. However, the domestic authorities had continuously extended his detention, without demonstrating the existence of concrete facts in support of their conclusion that he might abscond, interfere with the investigation or reoffend. They had shifted the burden of proof to the applicant to show that there were no such risks and that he could be safely released.

56. The Government submitted that the decisions to remand the applicant in custody had been lawful and justified. The domestic courts had examined such factors as the applicant's character, age, state of health and occupation. They had also envisaged the possibility of applying a more lenient preventive measure. The information provided to the judges had, however, given them reason to believe that, if released, the applicant might abscond or interfere with the proceedings. They had also taken into account the gravity of the charges against him. The applicant's pre-trial detention had therefore been based on "relevant and sufficient" reasons. Moreover, the length of the detention had not been excessive. The criminal proceedings had been complex because they had involved thirty-nine defendants, many witnesses and numerous pieces of physical evidence. The Government considered that there had been no violation of Article 5 § 3 of the Convention.

57. The Court observes that the applicant was remanded in custody on 14 December 2004. On 8 December 2005 the trial court convicted him of a criminal offence, put him on probation and immediately released him. The period to be taken into consideration lasted almost twelve months.

58. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention and found a violation of that Article on the grounds that the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive measures (see, among many others, *Khudoyorov,* cited above; *Panchenko v. Russia*, no. 45100/98, 8 February 2005; *Rokhlina v. Russia*, no. 54071/00, 7 April 2005; *Mamedova v. Russia*, no. 7064/05, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, 24 May 2007; *Solovyev v. Russia*, no. 2708/02, 24 May 2007; *Ignatov v. Russia*, no. 27193/02, 24 May 2007; *Mishketkul and Others v. Russia*, no. 36911/02, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, 28 June 2007; *Belov v. Russia*, no. 22053/02, 3 July 2008; *Matyush v. Russia*, no. 14850/03, 9 December 2008; *Aleksandr Makarov,* cited above; *Avdeyev and Veryayev v. Russia*, no. 2737/04, 9 July 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Makarenko v. Russia*, no. 5962/03, 22 December 2009*; Gultyayeva v. Russia*, no. 67413/01, 1 April 2010; *Goroshchenya v. Russia*, no. 38711/03, 22 April 2010; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Khodorkovskiy v. Russia*, no. 5829/04, 31 May

2011; *Romanova v. Russia*, no. 23215/02, 11 October 2011; and *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012).

59. The Court further notes that it has previously examined similar complaints lodged by the applicant's co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Dolgova v. Russia*, no. 11886/05, §§ 38-50, 2 March 2006; *Lind v. Russia*, no. 25664/05, §§ 74-86, 6 December 2007; *Kolunov,* cited above, §§ 48-58; and *Zentsov and Others,* cited above, §§ 56-66). In each case the Court noted, in particular, the domestic courts' reliance on the gravity of the charges as the main factor for the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice, their reluctance to devote proper attention to discussion of the applicant's personal situation or to have proper regard to the factors pointing in favour of his or her release, the use of collective detention orders without a case-by-case assessment of the grounds for detention in respect of each co-defendant and the failure to thoroughly examine the possibility of applying another, less rigid, measure of restraint, such as bail.

60. Having regard to the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Indeed, the domestic courts inferred the risks of absconding, reoffending or interfering with the proceedings essentially from the gravity of the charges against the applicant. They did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that he presented such risks. They gave no heed to important and relevant facts supporting the applicant's petitions for release and reducing the above risks, such as his clean criminal record, a permanent place of residence and studies at a university. Nor did they consider the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure. Finally, after the case had been submitted for trial in June 2005 the domestic courts issued collective detention orders, using the same summary formula to refuse the applications for release and extend the pre-trial detention of thirty-nine people, notwithstanding the defence's express request that each detainee's situation be dealt with individually.

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

62. There has accordingly been a violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

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

65. The Government submitted that the claim was excessive.

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

B. Costs and expenses

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

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

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

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 11 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President