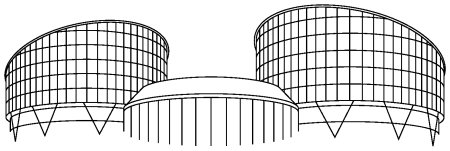

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NOVOKRESHCHIN v. RUSSIA

(Application no. 40573/08)

JUDGMENT

STRASBOURG

27 November 2014

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Novokreshchin v. Russia,

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

Khanlar Hajiyev, *President,*
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Prebensen, *Acting Deputy Section Registrar,*

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 40573/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Nikolayevich Novokreshchin ("the applicant"), on 6 June 2008.

2. The Russian Government ("the Government") were represented by their Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 October 2013 the complaint about an allegedly excessive duration of the pre-trial detention was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

4. The applicant was born in 1976 and lives in Krasnoyarsk.

5. The applicant was prosecuted for drug dealing and running a criminal syndicate, together with seven co-defendants. He was first arrested on 12 October 2005 for selling heroin but released two days later on the undertaking to appear.

6. On 11 November 2005 the applicant was remanded in custody. Subsequently, the criminal case against the applicant was joined with a number of other investigations into drug dealing. On 8 June 2006 the charges against the applicant were re-formulated. He was charged with creating and operating a criminal syndicate, twelve counts of drug dealing, three counts of attempted drug dealing and money laundering.

7. The facts concerning the applicant's pre-trial detention are summarised in the table below.

Decisions	**1st instance court**	**2nd instance court**
1st detention order (pre-trial stage)	11.11.2005 Sovetskiy District Court of Krasnoyarsk	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant does not have a permanent place of residence in Krasnoyarsk; • his permanent place of residence is in Zheleznogorsk (Krasnoyarsk Region), which is a restricted area, which may hinder the investigation; • after his personal inspection the applicant applied physical coercion towards attesting witness K.; • "the applicant has no criminal record but he was prosecuted previously which proves that he is inclined to commit crimes". **Conduct of the proceedings**: not specified. **Alternative preventive measures**: not analysed ("It is impossible to apply another preventive measure"). **Other aspects:** The court noted that the applicant was an individual entrepreneur and a Russian citizen. The court did not specify the authorised period of the applicant's detention.	
2nd detention order (pre-trial stage)	22.12.2005 Sovetskiy District Court of Krasnoyarsk	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice through putting pressure on participants of the criminal proceedings; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant does not have a permanent place of residence in Krasnoyarsk; • his permanent place of residence is in Zheleznogorsk (Krasnoyarsk Region), a restricted area, which may hinder the investigation.	

	Conduct of the proceedings: The court noted that the investigation was not finished. **Alternative preventive measures**: not analysed ("No reasons to lift or change the preventive measure"). **Other aspects:** The court noted that the applicant was an individual entrepreneur and a Russian citizen, that he was married and had no criminal record. The court did not address the applicant's argument that being at large he had not absconded and had appeared before the investigator on his requests.	
3rd detention order (pre-trial stage)	16.03.2006 Sovetskiy District Court of Krasnoyarsk	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant does not have a permanent place of residence in Krasnoyarsk; • his permanent place of residence is in Zheleznogorsk (Krasnoyarsk Region), a restricted area, which may hinder the investigation; • he has neither a job nor a stable income. **Conduct of the proceedings**: The need to conduct investigative actions referred to by the investigator which were: to detect and question other suspects; to obtain results of chemical, psychiatric and phonoscopic examinations; to identify the members of the criminal organisation; to formulate final charges against six co-defendants; to question them, to have them study the expert examination reports; to attach to the case file audio tapes of telephone conversations; to question witnesses; to have the co-defendants and their advocates study the case file, to prepare the bill of indictment; to conduct other investigative action which may prove necessary. **Alternative preventive measures**: not analysed ("No reasons to lift or change the preventive measure"). **Other aspects:** The court noted that the applicant had no criminal record and that he was married. It did not address the applicant's argument that being at large he had not absconded and had appeared before the investigator on his	

	requests. The court also did not address the applicant's argument that the charges against him were ill-founded.	
4th detention order (pre-trial stage)	27.04.2006 Sovetskiy District Court of Krasnoyarsk	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice by, *inter alia*, putting pressure on the witnesses and other participants of the proceedings, destroying evidence; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant does not have a permanent place of residence in Krasnoyarsk; • his permanent place of residence is in Zheleznogorsk (Krasnoyarsk Region), a restricted area, which may hinder the investigation; • during his personal search (*личный досмотр*) the applicant injured an attesting witness; • he has neither a job nor a stable income. **Conduct of the proceedings**: The court established that the investigator had conducted a considerable number of procedural actions: he interrogated 123 witnesses and 8 co-defendants; he conducted 24 chemical forensic examinations, 4 narcological forensic examinations of the co-defendants, 2 biological forensic examinations, 2 dactyloscopic forensic examinations; he ordered psychiatric examinations of six co-defendants and medical examination of witness K.; he carried out 8 face-to-face confrontations between the co-defendants and witnesses, 6 searches in homes of the co-defendants, he examined audio records of telephone conversation between co-defendants and ordered their phonoscopic examination, he issued charging documents against eight co-defendants, he obtained character references for the co-defendants etc. The court noted that additional time was needed to have the co-defendants and their advocates study the case file. **Alternative preventive measures**: not analysed ("No reasons to lift or change the preventive measure"). **Other aspects:** The court noted that the applicant had no criminal record, had a Russian citizenship and that he was married. The court did not address the applicant's argument	

<table>
<tr><td></td><td colspan="2">that the charges against him were ill-founded.</td></tr>
<tr><td>5th detention order (pre-trial stage)</td><td>17.07.2006 Sovetskiy District Court of Krasnoyarsk</td><td>No information</td></tr>
<tr><td>Reasons</td><td colspan="2">Risks:
• absconding;
• interfering with the course of justice;
• re-offending.
Specific factual circumstances:
• gravity of the charges;
• no information that the applicant has a stable income.
Conduct of the proceedings: The court established that the investigator had conducted a considerable number of (unspecified) procedural actions. It noted “the need to obtain results of psychiatric and phonoscopic examinations, to have the co-defendants and their advocates study the expert reports and the case file, to bring final charges against five co-defendants and to question them, to admit as evidence audiotapes of telephone conversations; to sever the case against an unidentified accomplice, to prepare the bill of indictment, to conduct other investigative action which may prove necessary”.
Alternative preventive measures: not analysed (“No reasons to lift or change the preventive measure”).
Other aspects: The court noted that the applicant had no criminal record and had a Russian citizenship. It did not address the applicant’s arguments that being at large he had not absconded and had appeared before the investigator on his requests, that he had a family, a permanent place of residence and that the charges against him were ill-founded.</td></tr>
<tr><td>6th detention order (pre-trial stage)</td><td>17.10.2006 Krasnoyarsk Regional Court</td><td>No information</td></tr>
<tr><td>Reasons</td><td colspan="2">Risks: not specified.
Specific factual circumstances:
• “gravity of the committed crimes”;
• no information that the applicant has a stable income.
Conduct of the proceedings: The court noted that eight co-defendants, including the applicant and their advocates, were studying the case file and additional time therefore was necessary.
Alternative preventive measures: not analysed (“no reasons to change the preventive measure”).</td></tr>
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	Other aspects: The court noted that the applicant had no criminal record and had a Russian citizenship. It did not address the applicant's arguments that being at large he had not absconded and had appeared before the investigator on his requests, that he had a family, a permanent place of residence and that the charges against him were ill-founded. The court used "the circumstances did not change" formula.	
7th detention order (trial stage)	28.12.2006 Krasnoyarsk Regional Court	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice by, *inter alia*, putting pressure on the witnesses and other participants of the proceedings; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant has no job. **Conduct of the proceedings**: The court noted that it had received the case for adjudication on 13 December 2006. (On 28 December 2006 the court ordered remittal of the case to the prosecution to remedy some shortcomings of the investigation.) **Alternative preventive measures**: not analysed. **Other aspects**: Collective detention order in respect of 6 co-defendants. The court used "the circumstances did not change formula".	
8th detention order (pre-trial stage)	09.06.2007 Krasnoyarsk Regional Court	11.09.2007 Supreme Court of Russia
Reasons	**Risks**: not specified. **Specific factual circumstances**: • "gravity of the committed crimes"; • no information that the applicant has a stable income. **Conduct of the proceedings**: The courts stated that eight co-defendants, including the applicant and their advocates, were studying the case file and that additional time therefore was necessary. **Alternative preventive measures**: not analysed ("No reasons to change the preventive measure"). **Other aspects:** The Regional Court noted that the applicant had no criminal record and had a Russian citizenship. The	

	courts did not address the applicant's arguments that being at large he had not absconded and had appeared before the investigator on his requests and that the charges against him were ill-founded. The courts used "the circumstances did not change" formula. The appeal court stated that it was not its task to assess the evidence against the applicant and decide whether the charges against him were well-founded. It noted the complexity of the case (eight co-defendants, case file in 29 volumes).	
9th detention order (pre-trial stage)	12.09.2007 Krasnoyarsk Regional Court	No information
Reasons	**Risks**: • absconding; • interfering with the course of justice; • re-offending. **Specific factual circumstances**: gravity of the charges. **Conduct of the proceedings**: The court noted that the defence was studying the case file and that additional time therefore was necessary. **Alternative preventive measures**: not analysed. **Other aspects**: The court found no change in the reasons for detaining the applicant since the first detention order. It noted that the applicant had a job as a security guard at a private company, a permanent place of residence in Zheleznogorsk (Krasnoyarsk Region), that he had no criminal record, and was married.	
10th detention order (pre-trial stage)	10.12.2007 Krasnoyarsk Regional Court	No information
Reasons	**Risks**: not specified. **Specific factual circumstances**: • "gravity of the committed crimes"; • no information that the applicant has a stable income. **Conduct of the proceedings**: The court noted that eight co-defendants, including the applicant and their advocates, were studying the case file and additional time therefore was necessary. **Alternative preventive measures**: not analysed ("No reasons to change the preventive measure"). **Other aspects:** The court noted that the applicant had a Russian citizenship and no criminal record. It did not address the applicant's arguments that being at large he had	

	not absconded and had appeared before the investigator on his requests, that he had a family and a permanent place of residence and that the charges against him were ill-founded.	
11th detention order (trial stage)	11.03.2008 Krasnoyarsk Regional Court	No information
Reasons	**Risks**: • interfering with the course of justice by, *inter alia*, putting pressure on the participants of the proceedings; • re-offending. **Specific factual circumstances**: • gravity of the charges; • the applicant had no job or stable income. **Conduct of the proceedings**: The court noted that it had received the case for adjudication on 27 February 2008. (On 14 April 2008 the court ordered remittal of the case to the prosecution to remedy some shortcomings of the investigation.) **Alternative preventive measures**: not analysed ("No reasons to lift or change the preventive measure"). **Other aspects:** The court noted that the applicant had a Russian citizenship and no criminal record.	

8. On 25 August and 26 November 2008 and on other dates the Krasnoyarsk Regional Court granted further extensions of the authorised detention period.

9. According to the information submitted by the Government, on 29 April 2010 the Zheleznogorskiy District Court convicted the applicant who remained detained until that date.

THE LAW

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

10. The applicant complained that the duration of his pre-trial detention had been excessively long in breach of Article 5 § 3 of the Convention, which reads as follows:

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

A. Admissibility

11. The Government submitted that the Court should take into account only the period of the applicant's pre-trial detention up until 4 June 2008, the date on his application form, because he did not submit any relevant information about the proceedings after that date. Extending the scope of the case beyond the facts to which the applicant expressly referred, would be tantamount to instituting the proceedings in the absence of an individual complaint. The scope of the case must be considered to have been determined at the moment of communication and it should not be extended arbitrarily in the subsequent proceedings.

12. The Court reiterates that, generally speaking, when determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, most recently, *Idalov v. Russia* [GC], no. 5826/03, § 112, 22 May 2012; *Labita v. Italy* [GC], no. 26772/95, §§ 145-147, ECHR 2000-IV, and, as a classic authority, *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7).

13. In the instant case the applicant was first arrested on 12 October 2005 and released two days later. He was re-arrested on 11 November 2005 and stayed in pre-trial detention until his conviction on 29 April 2010. His pre-trial detention, therefore, consisted of two separate periods.

14. The applicant lodged his application on 6 June 2008, that is to say, more than six months after the end of the first two-day period. Recalling that the six-month rule should be applied, separately, to each period of pre-trial detention (see *Idalov*, cited above, § 135), the Court is not competent to consider whether or not the first period was compatible with the Convention. The application in his part should be declared inadmissible as being lodged out of time.

15. As regards the second period, the Government considered that the period of detention which the Court can take into consideration should extend no later than the most recent detention order to which the applicant referred in his submissions prior to the communication of the case. The Court cannot accept this view. As early as in 1968 it rejected a similar objection by the Austrian Government, noting that the applicant complained not of an isolated act but rather of a situation in which he had been for some time and which was to last until it ends. It would be excessively formalistic to demand that an applicant denouncing such a situation should file a new application after each final decision rejecting a request for release or, as the case may be, after each further order extending his detention (see *Neumeister v. Austria*, 27 June 1968, § 7, Series A no. 8). In the subsequent

Stögmüller v. Austria case the Court developed its position in the following manner (10 November 1969, § 7, Series A no. 9):

> "The Court finds, moreover, that it is in accordance with national and international practice that a court should hold itself competent to examine facts which occurred during the proceedings and constitute a mere extension or the facts complained of at the outset. This is clearly the case in matters of detention while on remand, as courts seized of an application for release take their decisions in the light of the situation which exists at that time. For their part, international judicial bodies have frequently held that compensation for damage resulting from an illegal act of a State must also cover damage suffered by the applicant party after the institution of international proceedings."

16. This was the approach that the Court has upheld in the subsequent cases. Where the applicants had been remanded in custody at the moment of communication but were subsequently released, the Court held itself competent to examine the period of pre-trial detention until the date of release (see, among others, *Mikhail Grishin v. Russia*, no. 14807/08, §§ 4 and 137, 24 July 2012; *Chumakov v. Russia*, no. 41794/04, §§ 4 and 154, 24 April 2012; *Peša v. Croatia*, no. 40523/08, §§ 4 and 93, 8 April 2010; *Paladi v. Moldova* [GC], no. 39806/05, §§ 4, 53, 76 and 77, 10 March 2009; *Korshunov v. Russia*, no. 38971/06, §§ 3 and 47, 25 October 2007, and *Mamedova v. Russia*, no. 7064/05, §§ 4 and 72, 1 June 2006). Similarly, in cases in which the applicants were detained at the moment of communication but were convicted prior to delivery of the Court's judgment, the period taken into consideration spanned until the date of conviction (see, among others, *Arutyunyan v. Russia*, no. 48977/09, §§ 4 and 102, 10 January 2012; *Rafig Aliyev v. Azerbaijan*, no. 45875/06, §§ 4 and 89, 6 December 2011; *Tsarenko v. Russia*, no. 5235/09, §§ 3 and 68, 3 March 2011; *Pelevin v. Russia*, no. 38726/05, §§ 3 and 58, 10 February 2011; *Lind v. Russia*, no. 25664/05, §§ 4 and 74, 6 December 2007, and *Dolgova v. Russia*, no. 11886/05, §§ 4 and 38, 2 March 2006). Finally, where the applicants were in custody both on the date of communication and on the date of delivery of the judgment, the Court examined the State's compliance with the requirements of Article 5 § 3 in respect of the detention period up until the judgment date (see *Mkhitaryan v. Russia*, no. 46108/11, § 89, 5 February 2013; *Şahap Doğan v. Turkey*, no. 29361/07, § 26, 27 May 2010; *Polonskiy v. Russia*, no. 30033/05, § 144, 19 March 2009; *Aleksandr Makarov v. Russia*, no. 15217/07, § 121, 12 March 2009; *Aleksanyan v. Russia*, no. 46468/06, § 181, 22 December 2008; *Yakışan v. Turkey*, no. 11339/03, § 49, 6 March 2007, and *Maglódi v. Hungary*, no. 30103/02, § 32, 9 November 2004).

17. The Court has also examined the issue of exhaustion of domestic remedies in respect of the period of detention which occurred after the lodging of the application. It found that an issue could only arise if the examination of the reasons given by the national courts in the preceding period has not led to the conclusion that, by that date, the detention had

already exceeded a reasonable time. Otherwise, it is clear that the detention on remand which is held to have exceeded a reasonable time on the day when the application was lodged must be found, except in extraordinary circumstances, to have necessarily kept such character throughout the time for which it was continued (see *Stögmüller*, cited above, §§ 8-12, and, as a more recent authority, *Pshevecherskiy v. Russia*, no. 28957/02, §§ 52-54, 24 May 2007).

18. Having regard to its case-law, as cited above, the Court finds that it is competent to examine the period of the applicant's pre-trial detention from 11 November 2005 when he was re-detained to 29 April 2010 when he was convicted at first instance. The complaint concerning that period is not manifestly ill-founded or inadmissible on any other grounds. The Government did not raise any other objections to the admissibility of the application. It must therefore be declared admissible.

B. Merits

19. The Government acknowledged that the applicant's pre-trial detention was incompatible with the requirements of Article 5 § 3.

20. The applicant took note of their acknowledgement.

21. The Court notes that the period to be taken into consideration lasted for four years, five months and eighteen days. Such a length of pre-trial detention is a matter of grave concern for the Court. It reiterates that the Russian authorities were required to put forward very weighty reasons for keeping the applicant in detention for such a long time (see *Korshunov*, cited above, § 47, 25 October 2007, and *Korchuganova v. Russia*, no. 75039/01, § 71, 8 June 2006).

22. 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, *Mamedova*, *Pshevecherskiy* and *Aleksandr Makarov*, all cited above, and also *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012; *Romanova v. Russia*, no. 23215/02, 11 October 2011; *Sutyagin v. Russia*, no. 30024/02, 3 May 2011; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; *Gultyayeva v. Russia*, no. 67413/01, 1 April 2010; *Makarenko v. Russia*, no. 5962/03, 22 December 2009; *Lamazhyk v. Russia*, no. 20571/04, 30 July 2009; *Belov v. Russia*, no. 22053/02, 3 July 2008, and *Shukhardin v. Russia*, no. 65734/01, 28 June 2007).

23. In the instant case, the Government acknowledged that the length of the applicant's detention while on remand had exceeded a reasonable time.

Having regard to its case-law in similar cases and to the facts of the present application, the Court endorses that view and finds that there has been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government considered the claim to be excessive in the light of the Court's case-law in similar cases.

27. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

28. The applicant did not make any claim under this head.

C. Default interest

29. 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 complaint concerning the applicant's detention on remand from 11 November 2005 to 29 April 2010 admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date of the judgment, EUR 5,000 (five 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;

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

Done in English, and notified in writing on 27 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Khanlar Hajiyev
Acting Deputy Registrar	President