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

FIRST SECTION

CASE OF FEDORENKO v. RUSSIA

(Application no. 39602/05)

JUDGMENT

This version was rectified on 13 December 2011
under Rule 81 of the Rules of the Court

STRASBOURG

20 September 2011

FINAL

20/12/2011

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

In the case of Fedorenko v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 39602/05) 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 Igor Sergeyevich Fedorenko (“the applicant”), on 27 October 2005.

2. The applicant, who had been granted legal aid, was represented by Ms K. Moskalenko and Ms V. Bokareva[1], lawyers of the Centre of Assistance to International Protection situated in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of the lawfulness of and lack of sufficient reasons for his detention on remand, the speediness of the examination by an appellate court of his appeal against a court order authorising his initial placement in custody, and a violation of his presumption of innocence. He relied on Article 5 §§ 1, 3 and 4 and Article 6 § 2 of the Convention.

4. On 16 May 2007 the President of the First Section decided to grant priority to the application under Rule 41 of the Rules of Court.

5. On 3 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

[1] Rectified on 13 December 2011: “Ms K. Moskalenko and Ms V. Bokareva” was added.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1976 and lives in St Petersburg.[1]

A. The applicant's placement in detention

7. On 18 January 2005 criminal proceedings were opened in connection with an offence of fraud committed by unidentified persons with a view to acquiring a flat in Moscow by way of selling it on behalf of its deceased owner, an offence punishable under Article 159 § 3 of the Russian Criminal Code.

8. On 27 April 2005 the applicant was detained on suspicion of having committed that fraud and questioned as a suspect. He denied his involvement in the offence.

9. On the same date the investigating authorities filed a request with the Golovinskiy District Court of Moscow ("the District Court") to authorise the applicant's detention on remand.

10. On 28 April 2005 the District Court, composed of judge B., granted the investigator's request and, with reference to Articles 100 and 108 of the Russian Code of Criminal Procedure, ordered the applicant's pre-trial detention, stating that he "had committed a serious criminal offence punishable under the criminal law with a term of imprisonment of more than two years" and that the investigating authority had grounds to believe that he might abscond and obstruct the investigation, if at liberty. No time-limit for the detention was indicated in the decision.

11. On 3 May 2005 the applicant's two lawyers lodged an appeal on his behalf against the decision of 28 April 2005 requesting the applicant's immediate release. They also complained of a violation of the presumption of innocence on account of the District Court's statement that the applicant "[had] committed a serious criminal offence".

12. According to the Government, the appeal of 3 May 2005 was received by the District Court on the same date and then sent to the Moscow City Court for further processing. The latter court scheduled a hearing for 17 May 2005. On 16 May 2005 the Moscow City Court received the applicant's request in which he expressed his wish to participate in person in the examination of his appeal. In the Government's submission, the Moscow City Court had then to postpone the hearing until 25 May 2005 to be able to comply with the applicant's request.

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[1] Rectified on 13 December 2011: "He is currently serving a sentence of imprisonment following his conviction in proceedings unrelated to the present case." has been deleted.

13. On 25 May 2005 the Moscow City Court dismissed the applicant's appeal and upheld the decision of 28 April 2005. It noted that, when authorising the applicant's detention on remand, the District Court had taken into account the fact that the applicant was suspected of having committed a serious criminal offence and had reasonably concluded that the applicant might continue his criminal activity, if at large. The Moscow City Court rejected the argument of the applicant's legal counsel that the District Court had found the applicant guilty when stating in its decision of 28 April 2005 that he "[had] committed a serious offence". In this respect the appellate court noted that it was clear that this had been a "technical error".

B. The applicant's detention pending investigation

14. On 4 May 2005 the applicant was formally charged with fraud punishable under Article 159 § 3 of the Russian Criminal Code.

15. On 23 June 2005 the District Court, at the investigator's request, extended the applicant's pre-trial detention until 18 July 2005. It referred to the fact that the applicant had been charged with a serious offence and stated that, if at liberty, the applicant might flee from justice and obstruct the establishment of the truth.

16. On 14 July 2005 the District Court, at the investigator's request, further extended the applicant's pre-trial detention until 18 September 2005 on the grounds that the investigation had not been completed and that a number of investigative actions were still to be carried out. The court rejected a request by the applicant's lawyers, who referred to the fact that the applicant had no previous criminal record and that he had psoriasis, to release the applicant on bail, which the applicant's father undertook to pay, or subject to an undertaking not to leave his place of residence. It stated that there were no grounds for revoking or altering the applicant's preventive measure, given that he had been charged with a serious criminal offence and that, taking into account the circumstances of the case and the applicant's personality, there were reasons to believe that he might abscond, continue his criminal activity, threaten witnesses and obstruct the investigation. The applicant's appeal against this decision was dismissed by the Moscow City Court on an unspecified date.

17. On 15 September 2005 the District Court extended the applicant's pre-trial detention until 27 October 2005. It stated, in particular, that the investigating authorities needed more time to complete the investigation, that the applicant had been accused of a serious criminal offence and that the nature of the charges against him and the fact that the other co-accused were suspected of having committed another serious crime made the court believe that, if released, the applicant might continue his criminal activity, abscond and obstruct the establishment of the truth.

18. On 24 October 2005 the District Court ordered that the applicant should remain in detention until 18 November 2005. The court referred to the same reasons and also to the complex nature of the criminal case against the applicant.

19. On 14 November 2005 the District Court further extended the applicant's detention until 18 January 2006 referring to the same reasons. The Moscow City Court upheld this extension on appeal on 14 December 2005.

20. On 12 January 2006 the District Court extended the applicant's pre-trial detention until 18 March 2006. In its decision the court relied on the seriousness of the criminal offence imputed to the applicant which was punishable under the criminal law by a term of imprisonment ranging between five and ten years. This decision was upheld on appeal by the Moscow City Court on 27 February 2006.

21. On 17 March 2006 the District Court ordered that the applicant should remain in detention until 27 April 2006. It does not appear that the court gave any reasons other than those to which it had referred earlier.

C. The applicant's detention pending trial

22. On 17 April 2006 the applicant's case file was remitted to the District Court for examination on the merits.

23. By a decision of 26 April 2006 the District Court scheduled a hearing in the case and ordered that the applicant should remain in custody. No time-limit for this detention was indicated. The applicant's request for release was rejected on the ground that the initial decision ordering the applicant's detention had been taken in accordance with the requirements of Articles 97, 99 and 108 of the Russian Code of Criminal Procedure and that, at present, the court found no reason to revoke or change the applicant's preventive measure, given, in particular, the necessity to ensure the proper conduct of the criminal proceedings. The applicant's appeal against this decision was dismissed by the Moscow City Court on 24 May 2006.

24. On 22 September 2006 the District Court extended the applicant's detention pending trial until 17 January 2007. It appears that the District Court gave similar reasons for its decision. On 30 October 2006 the Moscow City Court upheld this decision on appeal.

25. On 25 December 2006 the Presidium of the Moscow City Court quashed the court decisions of 26 April and 24 May 2006 in supervisory review proceedings because of a procedural shortcoming concerning the applicant's co-defendant and remitted the case for fresh consideration. It also ordered that the applicant's preventive measure should remain unchanged.

26. On 11 January 2007 the District Court further extended the applicant's detention pending trial until 17 April 2007, with reference to the

absence of any grounds for revoking or altering the applicant's preventive measure in view of the seriousness of the charges against him, his personality and "the circumstances which the court had taken into account when ordering the applicant's placement in detention, and which remained unchanged at present". In the Government's submission, on 19 February 2007 the Moscow City Court upheld this decision on appeal.

D. The applicant's conviction

27. In a judgment of 16 April 2007 the District Court convicted the applicant as charged and sentenced him to four years and six months' imprisonment.

28. On 23 July 2007 the Moscow City Court upheld the applicant's conviction on appeal, having reduced his sentence to four years and three months' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

29. Since 1 July 2002, criminal-law matters have been governed by the Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001, "the Code").

1. Preventive measures

30. "Preventive measures" include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99). In exceptional circumstances, and when there exist grounds provided for by Article 97, a preventive measure may be applied to a suspect, taking into account the circumstances listed in Article 99 (Article 100). If necessary, the suspect or accused may be asked to give an undertaking to appear (Article 112).

2. Time-limits for detention

(a) Two types of remand in custody

31. The Code makes a distinction between two types of remand in custody: the first being "pending investigation", that is, while a competent agency – the police or a prosecutor's office – is investigating the case, and the second being "before the court" (or "pending trial"), at the judicial stage.

(b) Time-limits for detention "pending investigation"

32. A custodial measure may only be ordered by a judicial decision in respect of a person who is suspected of, or charged with, a criminal offence punishable by more than two years' imprisonment (Article 108). The time-limit for detention pending investigation is fixed at two months (Article 109). A judge may extend that period up to six months (Article 109 § 2). Further extensions may only be granted by a judge if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

(c) Time-limits for detention "pending trial"

33. From the time the prosecutor sends the case to the trial court, the defendant's detention is "before the court" (or "pending trial"). The period of detention pending trial is calculated up to the date on which the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

3. Proceedings before an appellate court

34. If a convict wishes to participate in an appeal hearing, he or she should indicate that wish in the statement of appeal (Article 375 § 2).

35. Upon receipt of the criminal case and the statements of appeal, the judge fixes the date, time and place for a hearing. The parties shall be notified of the date, time and place of the hearing no later than fourteen days before the scheduled hearing (Article 376 §§ 1 and 2).

B. Practice of Russian courts

36. In its resolution no. 1 of 5 March 2004 "On the Application by Courts of the Russian Code of Criminal Procedure", as in force at the relevant time, the Russian Supreme Court noted with regard to the provisions of Article 255 § 3 of the Code, that, when deciding on an

extension of a defendant's detention pending trial, the court should indicate the grounds justifying the extension and its time-limit (paragraph 16).

37. In its ruling no. 245-O-O of 20 March 2008, the Russian Constitutional Court noted that it had reiterated on several occasions (rulings nos. 14-P, 4-P, 417-O and 330-O of 13 June 1996, 22 March 2005, 4 December 2003 and 12 July 2005 respectively) that a court, when taking a decision under Articles 100, 108, 109 and 255 of the Russian Code of Criminal Procedure on the placement of an individual into detention or on the extension of a period of an individual's detention, was under obligation, *inter alia*, to calculate and specify a time-limit for such detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

38. The applicant complained that his detention on the basis of the court decisions of 28 April 2005, 26 April 2006 and 25 December 2006 had been unlawful because in those decisions the court had failed to indicate any time-limit or give sufficient reasons for his detention. This complaint falls to be examined under Article 5 § 1 (c) of the Convention, which reads 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 ..."

A. Submissions by the parties

39. The applicant submitted that, in its decision of 28 April 2005, the District Court had indicated no time-limit when authorising his initial detention, which had placed him in a situation of uncertainty as to how long he would remain in custody and thus had rendered his detention ordered by that court unlawful. The applicant contested the Government's argument to the effect that it had been clear that Article 109 of the Russian Code of Criminal Procedure had been applicable in his situation. He argued in this

respect that the decision of 28 April 2005 had made no reference to that Article. He also argued that Article 108 of the Russian Code of Criminal Procedure, which, as suggested by the Government, contained no requirement for a domestic court to specify a time-limit for an individual's initial detention, thus fell foul of the "quality of law" standard established in Article 5 § 1.

40. The applicant conceded that, as pointed out by the Government, it was clear from Article 109 of the Russian Code of Criminal Procedure that the initial period of pre-trial detention by virtue of Article 108 of that Code could not exceed two months, a fact which, as a general rule, lawyers representing those detained were aware of. He argued, however, that the said time-limit was, in fact, a maximum period for initial pre-trial detention, and should not be applied automatically, as the Government seem to have suggested. The applicant insisted that a domestic court should decide on the duration of pre-trial detention in each case individually, and that, in the absence of a clearly specified time-limit for such a detention, a relevant court decision would not constitute a sufficient legal basis for an individual's pre-trial detention.

41. The applicant also submitted that on 26 April 2006 the District Court extended the term of his detention pending trial without giving sufficient reasons for this decision or fixing any period for that detention, and that, when quashing on 25 December 2006 the decision of 26 April 2006, as upheld on 24 May 2006, the Presidium of the Moscow City Court had ruled that the applicant should remain in detention, but failed to provide any reasons or time-limit for that detention. In his view, his detention on the basis of the aforementioned decisions had been in breach of Article 5 § 1 (c) of the Convention.

42. The Government, on their part, insisted that the entire period of the applicant's detention on remand had been compatible with the principle of lawfulness under Article 5 § 1 (c) of the Convention. In particular, as regards the decision of 28 April 2005 by which the applicant's placement in pre-trial detention was ordered, the Government pointed out that the District Court had referred in its decision to Article 108 of the Russian Code of Criminal Procedure. They argued that this legal provision set no requirement for a domestic court to indicate a time-limit in its decision ordering an individual's placement in pre-trial detention, as it was clear from the wording of Article 109 of that Code that the initial period of such detention could not exceed two months. The Government insisted that the applicant's lawyers should have been aware of the time-limits established in Article 109 of the Russian Code of Criminal Procedure, and could have explained to the applicant that his detention ordered by the court on 28 April 2005 would not have lasted more than two months. The Government thus contended that the decision in question, and the period of the applicant's

detention on the basis of that decision, had met the requirements of Article 5 § 1 (c) of the Convention.

43. The Government further argued that, after the applicant's case had been remitted to the court for trial on 17 April 2006, his further detention on remand had been covered by Article 255 of the Russian Code of Criminal Procedure, which set time-limits for detention pending trial. Accordingly, even though the District Court had not specified in its decision of 26 April 2006, by which it had ordered the applicant's continued detention, the period for that detention, it had been clear that, in accordance with Article 255 of the Russian Code of Criminal Procedure, this period could not have exceeded six months from the date on which his case had been sent to the trial court, and that upon the expiry of that period the trial court could have extended the term of his detention pending trial each time for no longer than three months. The Government also argued that the fact that on 25 December 2006 the Presidium of the Moscow City Court had set aside by way of supervisory review the decision of 26 April 2006, as upheld by the appellate court on 24 May 2006, had not rendered the applicant's detention pending trial pursuant to that decision unlawful, given that the District Court had acted within its competence when taking that decision, and that, in any event, the decision in question had been quashed in view of procedural shortcomings in respect of another co-defendant rather than the applicant.

B. The Court's assessment

1. Admissibility

44. The Court observes at the outset that the applicant complained of the unlawfulness of his detention ordered by the court on 28 April 2005, and 26 April and 25 December 2006. As regards the detention on the basis of the court order of 28 April 2005, it ended on 23 June 2005, when another detention order was issued. The detention on the basis of the court order of 26 April 2006 lasted until 22 September 2006, when the District Court took another decision to extend the applicant's detention. Lastly, the period of the applicant's detention after the decision of 25 December 2006 ended on 11 January 2007, when the District Court further extended the applicant's detention pending trial. The Court will thus examine the lawfulness of the applicant's detention in respect of each of these periods.

45. The Court further considers that the applicant's complaint concerning the first two periods mentioned above 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.

46. As regards the third period, the Court observes that on 25 December 2006 the Presidium of the Moscow City Court quashed the decision of 26 April 2006, as upheld on 24 May 2006, and remitted the case for fresh examination. It also stated that the applicant's preventive measure "should remain unchanged". The applicant seem to have argued that, in the absence of any reasons or time-limits for his continued detention in the decision of 25 December 2006, his detention following that decision had not been lawful within the meaning of Article 5 § 1 (c) until 11 January 2007, when a fresh court order maintaining the applicant's custodial measure was issued. On the facts of the case it is clear, however, that on 22 September 2006 the Golovinskiy District Court of Moscow extended the term of the applicant's detention pending trial until 17 January 2007 (see paragraph 24 above), and that therefore the period of the applicant's detention between 25 December 2006 and 11 January 2007 was covered by that order. As the applicant did not challenge the validity of the order of 22 September 2006, the Court is satisfied that the period of his detention from 25 December 2006 until 11 January 2007 was lawful within the meaning of Article 5 § 1 (c). It therefore finds that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Merits

(a) The applicant's detention between 27 April and 23 June 2005

47. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that detention be "lawful", which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see, as a recent authority, *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010-...). It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature, and the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. However, since under Article 5 § 1 of the Convention failure to comply with domestic law may entail a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006, and *Shteyn (Stein) v. Russia*, no. 23691/06, §§ 89 and 94, 18 June 2009).

48. In the present case, in its decision of 28 April 2005 the Golovinskiy District Court of Moscow authorised the applicant's placement in custody, with reference to Articles 100 and 108 of the Russian Code of Criminal Procedure. It also provided certain reasons for its decision (see paragraph 10

above). At the same time, the District Court remained silent as to how long the applicant should remain in detention. In this latter respect, the Government argued that Article 108 of the Russian Code of Criminal Procedure imposed no obligation on domestic courts to indicate any time-limit when ordering an individual's placement in pre-trial detention. The Court observes that this argument contradicts the interpretation of the relevant national legislation given by the Russian Constitutional Court, which emphasised on several occasions that the national courts were under an obligation to set a time-limit, when ordering an individual's placement in, or extending the period of, detention on remand, at any stage of criminal proceedings (see paragraph 37 above). It is therefore clear that, by omitting to specify such time-limit, the court order of 28 April 2005 failed to conform to the applicable rules of the domestic criminal procedure.

49. The Court further reiterates that defects in a detention order do not necessarily render the underlying detention as such "unlawful" for the purposes of Article 5 § 1; the Court has to examine whether the flaw in the order against an applicant amounted to a "gross and obvious irregularity" such as to render the underlying period of detention unlawful (see *Mooren v. Germany* [GC], no. 11364/03, § 84, ECHR 2009-..., and *Kolevi v. Bulgaria*, no. 1108/02, § 177, 5 November 2009).

50. In the present case, it has been established above that the court order of 28 April 2005 was deficient because of a failure to indicate a period during which the applicant's custodial measure should remain in place. The Court notes the Government's argument that Article 109 of the Russian Code of Criminal Procedure clearly provided that the initial period of pre-trial detention may not exceed two months. It also takes into account the fact that the applicant acknowledged that he had been aware of that provision. The Court, however, is not persuaded that the maximum time-limit provided for in Article 109 of the Russian Code of Criminal Procedure should be applied implicitly each time when an individual's placement in custody is being authorised by a domestic court. It is true that this period, in itself, does not appear unreasonably long and could be justified by the need for the authorities to ensure the proper conduct of various investigative actions. Nevertheless, the Court agrees with the Russian Constitutional Court that, however short a period of one's detention on remand may be, it should be clearly defined by a domestic court, this being an essential guarantee against arbitrariness. With this in mind, the Court considers that the absence of any specific time-limit in the District Court's decision of 28 April 2005 amounted to a "gross and obvious irregularity" capable of rendering the applicant's detention pursuant to that order arbitrary and therefore "unlawful" within the meaning of Article 5 § 1 (c).

51. Accordingly, there has been a violation of Article 5 § 1 (c) on that account.

(b) The applicant's detention between 26 April and 22 September 2006

52. The Court notes that on 26 April 2006 the Golovinskiy District Court of Moscow extended the term of the applicant's detention, for which it gave certain grounds, but did not set any time-limit (see paragraph 23 above). The Government argued in this respect that, given that the applicant's case had been sent to the court for trial on 17 April 2006, as of this date his detention on remand had been covered by Article 255 of the Russian Code of Criminal Procedure, which provided that the applicant could remain in custody for a period of no longer than six months from the moment when his case had been transmitted to the trial court, and that thereafter each extension should be ordered by a court for a period not exceeding three months. The Government seem to have suggested that in such circumstances it had been unnecessary for the District Court to fix any time-limit for the applicant's detention pending trial in its decision of 26 April 2006.

53. The Court observes at the outset that on 25 December 2006 the Presidium of the Moscow City Court quashed, by way of supervisory review, the District Court's decision of 26 April 2006, as upheld by the appellate court on 24 May 2006, and sent the case for fresh examination. As was stressed by the Government, the Presidium of the Moscow City Court had referred in its decision to some procedural violations in respect of another co-accused, and not the applicant. Against this background, the applicant clearly retains his status of a "victim", within the meaning of Article 34 of the Convention, of the violation alleged.

54. The Court further observes that it has established in paragraph 48 above that the national legislation, as interpreted by the Russian judicial authorities, imposed, among other essential conditions, that detention should have a time-limit, and that in the absence of any such time-limit, a relevant court order cannot be regarded as being in conformity with the applicable rules of the domestic criminal procedure (see, in a similar context, *Logvinenko v. Russia*, no. 44511/04, § 37, 17 June 2010). The Court finds that this conclusion is also valid with regard to the court order of 26 April 2006, and rejects the Government's relevant argument.

55. It further considers that the situation in which the applicant found himself following the decision of 26 April 2006 was comparable to that after the court order of 28 April 2005 examined in paragraphs 48-49 above. In particular, even assuming that the applicant knew that the time-limits provided for in Article 255 of the Russian Code of Criminal Procedure were applicable when the District Court extended the term of his detention on 26 April 2006, it is unclear, and the Government did not provide any explanation in this respect, whether the applicant was aware of the date on which his case was remitted to the court for trial so as to be able to calculate the six-month period of his detention pending trial, provided for in the aforementioned Article. In any event, similarly to its finding in paragraph

50 above, the Court considers that a court's failure to specify a period, during which a person concerned should remain in detention after his or her case is referred to a court for trial, put such a person in a situation of uncertainty, as a period of six months is far too long to be applied implicitly on the sole ground that a criminal case has been lodged with a court competent to examine it. In the Court's opinion, a person's detention on the basis of such a court order is therefore tainted with arbitrariness.

56. In the light of the foregoing, the Court thus finds that the failure of the District Court to indicate a time-limit for the applicant's continued detention in its decision of 26 April 2006 amounted to a "gross and obvious irregularity" with the result that the applicant's detention pursuant to that order was arbitrary and therefore "unlawful" within the meaning of Article 5 § 1 (c).

57. Accordingly, there has been a violation of Article 5 § 1 (c) on that account.

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

58. The applicant complained that the domestic courts had failed to give sufficient reasons for his continued pre-trial detention, which had been excessively long. He relied on Article 5 § 3 of the Convention, which provides as follows:

> "3. 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 ..."

A. Submissions by the parties

59. The applicant insisted that when extending his pre-trial detention the domestic courts had failed to give relevant and sufficient reasons. Throughout the entire period of his detention, either during the investigation or pending trial, the courts had mostly referred to the seriousness of the charges against the applicant, stating that he had been accused of an offence punishable with a term of imprisonment. The applicant thus argued that he had in fact been kept in detention in anticipation of a custodial sentence.

60. He further pointed out that the domestic courts had stated, in general terms, that the applicant might abscond, continue his criminal activity or obstruct the proceedings in his criminal case in another way. However, they had never specified those reasons or provided more detailed explanations or evidence in support of their relevant decisions. The applicant also argued that the domestic courts had repeatedly disregarded his arguments in favour of his release subject to another preventive measure. In particular, they had never taken into account his argument to the effect that he had been able to

provide guarantees of his proper conduct if at liberty, the absence of any prior criminal record, his established social connections and positive references. The applicant also submitted that his detention on remand had lasted for almost two years and insisted that the authorities had failed to display due diligence in conducting the proceedings against him. He thus argued that the national authorities had failed to justify his prolonged detention pending trial, in breach of Article 5 § 3 of the Convention.

61. The Government argued that there had been relevant and sufficient grounds for the applicant's continued detention. In their submission, the national courts had taken into account the seriousness of the charges against the applicant and his personality. They had had reasons to believe that the applicant might flee from justice or obstruct the establishment of the truth, given, in particular, that the criminal proceedings in question had been brought against several persons, the identity of one of those persons not having been established, and no preventive measures being applied in respect of another one. The Government thus insisted that there had been no violation of Article 5 § 3 in the present case.

B. The Court's assessment

1. Admissibility

62. The Court 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.

2. Merits

63. According to the Court's well-established case-law, in 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 (see *Belevitskiy v. Russia*, no. 72967/01, § 99, 1 March 2007).

64. In the present case, the applicant's pre-trial detention lasted from 27 April 2005, when he was arrested, until 16 April 2007, when he was convicted by the trial court, that is, for one year eleven months and twenty days. In this latter respect, the Court observes that it has found above that the applicant's detention on remand from 28 April to 23 June 2005 and from 26 April to 22 September 2006 was unlawful, and therefore in breach of Article 5 § 1 (c) of the Convention. These findings may, in principle, make it unnecessary to discuss, from the standpoint of Article 5 § 3 of the Convention, the sufficiency and relevance of the grounds given by the

domestic court to justify the applicant's detention during those two periods. Nevertheless, for the sake of clarity the Court considers it appropriate to examine the entire period of the applicant's detention.

65. The Court is prepared to accept that the applicant's detention in the present case could have initially been warranted by a reasonable suspicion that he had been involved in the commission of a criminal offence. In this connection, it reiterates that the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-153, ECHR 2000-IV).

66. In the present case, the domestic courts authorised the extension of the applicant's detention pending trial on ten occasions, relying mainly on the seriousness of the charges against him and his potential to abscond, influence the witnesses, obstruct the course of the investigation, or reoffend, if at large (see paragraphs 15-21, 23-24 and 26 above).

67. As regards the courts' reliance on the seriousness of charges as the decisive element, the Court has repeatedly held that this reason cannot by itself serve to justify long periods of detention (see, among other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X (extracts)). Although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001). This is particularly true in cases, such as the present one, where the characterisation in law of the facts – and thus the sentence faced by the applicant – was determined by the prosecution without judicial control of the issue whether collected evidence supported a reasonable suspicion that the applicant had committed the imputed offence (see *Rokhlina v. Russia*, no. 54071/00, § 66, 7 April 2005).

68. It remains to be ascertained whether the domestic courts established and convincingly demonstrated the existence of concrete facts in support of their conclusions that the applicant could abscond, influence witnesses, obstruct justice or reoffend. The Court reiterates in this respect that it is incumbent on the domestic authorities to establish the existence of concrete facts relevant to the grounds for continued detention. Shifting the burden of

proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina*, cited above, § 67, and *Ilijkov*, cited above, §§ 84-85).

69. The Court observes in this connection that the domestic courts mostly assessed the applicant's potential to abscond, influence witnesses, obstruct the investigation or reoffend mainly with reference to the applicant's "personality" and the circumstances of the criminal case against him. At no point, however, did the domestic courts describe the applicant's personality in detail, disclose any evidence, or mention any particular facts of the applicant's case warranting his continued detention. The judiciary never specified why, notwithstanding the arguments put forward by the applicant in support of his requests for release, they considered the risk of his absconding, interference with the witnesses or with the course of justice, or reoffending to exist and to be decisive. Moreover, the preliminary investigation in the present case had ended by 17 April 2006, but the applicant remained in detention on remand for another year, until 16 April 2007, during which period the courts, in their decisions to extend the applicant's detention pending trial, simply stated that there were no reasons to revoke or change the applicant's preventive measure, as "the circumstances which the court had taken into account when ordering the applicant's placement in detention remained unchanged" (see paragraphs 23-24 and 26 above). The Court reiterates in this connection that whilst at the initial stages of the investigation the risk that an accused person might pervert the course of justice could justify keeping him or her in custody, after the evidence has been collected that ground becomes less strong (see *Mamedova v. Russia*, no. 7064/05, § 79, 1 June 2006).

70. The Court observes that, examining the lawfulness of and justification for the applicant's detention, the domestic courts also referred to the fact that other co-accused in the case had been suspected committing another serious criminal offence (see paragraph 17 above). It reiterates in this respect that the behaviour of a co-accused cannot be a decisive factor for the assessment of the risk of the detainee's absconding. Such assessment should be based on personal circumstances of the detainee (see *Mamedova*, cited above, § 76).

71. The Court further emphasises that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at the trial (see *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005, and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). It does not appear that during the period under consideration the domestic courts once considered the possibility of ensuring the applicant's attendance by the use of other "preventive

measures" – such as a written undertaking not to leave a specified place or bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings, or, at the very least, that they sought to explain in their decisions why such alternatives would not have ensured that the trial would follow its proper course.

72. Having regard to the materials in its possession, the Court is not convinced that the domestic courts' decisions were based on an analysis of all the relevant facts. The Court agrees with the applicant that the authorities took no notice of the arguments in favour of his release pending trial, such as, for instance, the absence of any prior criminal record, or his father's undertaking to provide an amount for the applicant's release on bail. While extending the applicant's detention by means of identically or similarly worded detention orders, the domestic authorities had no proper regard to his individual circumstances.

73. Overall, the Court considers that by failing to refer to specific relevant matters or to consider alternative "preventive measures" and by relying essentially on the seriousness of the charges, the authorities extended the applicant's detention on grounds which cannot be regarded as "sufficient". They thus failed to justify the applicant's continued deprivation of liberty. In such circumstances it is therefore not necessary to examine whether the case was complex or whether the proceedings were conducted with "special diligence".

74. In the light of the foregoing consideration, the Court finds that there has been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

75. The applicant complained that his appeal against the court decision of 28 April 2005, by which his pre-trial detention had been ordered, had not been examined speedily by the appellate court. He referred to Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

76. The applicant pointed out that it had taken the Moscow City Court twenty-two days to examine his appeal of 3 May 2005 against the court order of 28 April 2005 authorising his placement to pre-trial detention. He conceded that it was on 16 May 2005 that he had lodged his request to ensure his presence during the examination of his appeal, but argued that there had been no reasons to postpone the examination of his appeal, which had originally been scheduled for 17 May 2005, until 25 May 2005. In his submission, the authorities could have taken him to the hearing the day after

he had filed his request, given that he had been in detention, that is, under the control of the State. The applicant thus insisted that he had not contributed to the lengthy examination of his appeal against the detention order of 28 April 2005, and argued that this delay was attributable to the authorities.

77. The Government insisted that there had been no delays attributable to the authorities in the examination of the applicant's appeal of 3 May 2005. They stated, in particular, that the domestic authorities had initially scheduled a hearing before the appellate court for 17 May 2005, as they were bound by Article 376 § 2 of the Russian Code of Criminal Procedure, which required that the parties were to be informed of the time and date of the examination of an appeal at least fourteen days in advance. However, on 16 May 2005, that is, a day before the hearing, the applicant filed a motion concerning his personal presence at the hearing, and the court had to postpone the examination of the applicant's appeal until 25 May 2005 to be able to ensure his attendance.

78. The Government further contended that, by virtue of Article 375 § 2 of the Russian Code of Criminal Procedure, which, in accordance with the interpretation given to this Article by the Russian Constitutional Court, was also applicable in a situation such as the applicant's, he should have indicated his intention to take part in the appellate proceedings in his appeal against the District Court's decision. The Government went on to note that there had been no indication to that effect in the appeal of 3 May 2005, although the applicant's lawyers had undoubtedly been aware of the provisions of Article 375 § 2 of the Russian Code of Criminal Procedure and could have consulted the applicant on this point. They further seem to have argued that the applicant had deliberately lodged his request a day before the hearing in an attempt to protract the proceedings.

79. The Government thus insisted that they had not been responsible for the allegedly lengthy examination of the appeal of 3 May 2005 and argued that there had been no violation of Article 5 § 4 in the present case.

80. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also provides for their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II). The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

81. In the present case, the parties agreed that the applicant's defence counsel had lodged an appeal against the initial detention order of 28 April 2005 on 3 May 2005, and that an examination of that appeal by the Moscow City Court had been scheduled for 17 May 2005, that is, within fourteen

days – which appears to have been the shortest statutory time-limit possible under domestic law (see paragraph 35 above) – of receipt of the appeal by the appellate court. However, a day before the appeal hearing the applicant lodged a request seeking to have his attendance at that hearing secured by the appellate court. The latter granted the applicant's request but postponed the hearing until 25 May 2005. It therefore took the appellate court twenty-two days to examine the applicant's appeal against the detention order authorising his placement in custody, a period which, in itself, does not appear particularly long. Moreover, it is also clear that the applicant himself caused a delay in the examination of his appeal by lodging a request for his personal participation in the appeal hearing a day before the date for which that hearing was initially scheduled. In the absence of any explanation on the applicant's part in this respect, the Court accepts the Government's argument that nothing prevented the applicant, who had been assisted by two lawyers, to express his intention to take part in the proceedings before the appellate court in the appeal of 3 May 2005.

82. The Court furthermore cannot agree with the applicant's argument to the effect that there had been no need to postpone the hearing, as the authorities could have taken him to it the day after he had lodged his request, given that he had been under their control. In this connection, the Court is not convinced that authorities should be expected to arrange for the immediate transport to a courtroom of any detainee who seeks his or her personal attendance in court proceedings a day before a scheduled hearing, as this does not appear to be enough notice. It thus considers that the applicant's conduct did indeed delay the examination of his appeal and that, in the circumstances of the present case, his relevant complaint raises no issue under Article 5 § 4 of the Convention.

83. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

84. The applicant complained under Article 6 § 2 of the Convention that in the District Court's decision of 28 April 2005, by which his placement in pre-trial detention had been ordered, it had been taken as established that he had committed a criminal offence, which violated his right to be presumed innocent. The relevant part of Article 6 reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

85. The Court 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

86. The applicant pointed out that the decision in question had been taken before formal charges had been brought against him, before the investigation had ended and before his criminal case had been examined by a court. He argued that by stating that "he had committed a serious criminal offence" the District Court had taken the part of the prosecuting party and had held him criminally liable before the criminal charge against him had been determined, thus prejudging the outcome of the criminal proceedings against him.

87. The Government argued that during the examination of the applicant's appeal against the District Court's decision of 28 April 2005 the Moscow City Court, in its decision of 25 May 2005, had rejected the applicant's complaint as groundless, stating, in particular, that the District Court had made a "technical error", and had not prejudged the outcome of the criminal proceedings against the applicant. The Government insisted that there were no reasons to consider that the District Court had acted in bad faith or negligently when stating that the applicant "had committed a serious criminal offence".

88. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005). It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. In this regard the Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence (see, among other authorities, *Ismoilov and Others v. Russia*, no. 2947/06, §§ 161 and 166, 24 April 2008). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the

particular circumstances in which the impugned statement was made (see *Daktaras v. Lithuania*, no. 42095/98, § 43, ECHR 2000-X).

89. In the present case, the Court notes that the decision complained of was taken a day after the applicant was arrested by the police. Although at that time no formal charges were brought against him, his arrest and detention formed part of the investigation and made him a person "charged with a criminal offence" within the meaning of Article 6 § 2. The impugned statement by the District Court had a direct link with that investigation, and Article 6 § 2 therefore applies in this case (see *Allenet de Ribemont v. France*, 10 February 1995, § 37, Series A no. 308).

90. The Court further observes that in its decision of 28 April 2005 the District Court stated that the applicant should have been placed in pre-trial detention because he "[had] committed a serious criminal offence punishable under the criminal law with a term of imprisonment of more than two years" (see paragraph 10 above). The statement was not limited to describing a "state of suspicion" against the applicant; as it stood, it was represented as an established fact, without any qualification or reservation, that the applicant was involved in the commission of a serious crime.

91. The Court cannot accept the Government's argument to the effect that "it was a technical error", as stated by the Moscow City Court in the appeal proceedings (see paragraph 13 above). In this respect, the Court notes that the appellate court provided no explanation as to the grounds on which it based its relevant conclusion. Nor did it specify whether "the error" to which it referred could be explained by the unfortunate use of words by judge B. of the District Court, or by a misprint when a printed version of the decision of 28 April 2005 was prepared, or by some other reasons. Moreover, the appellate court made no attempt to alter the relevant wording of the District Court's decision, thus failing to rectify the defect complained of.

92. In the light of the foregoing, the Court considers that the wording of the District Court's decision of 28 April 2005 and, namely, its statement that the applicant "[had] committed a serious criminal offence" amounted to a declaration of the applicant's guilt, in the absence of a final conviction, and breached his right to be presumed innocent.

93. Accordingly, there has been a violation of Article 6 § 2 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. Lastly, the applicant complained that he had not been promptly informed of the charges against him in breach of Articles 5 § 2 and 6 § 3 (a) of the Convention.

95. Having regard to the materials in its possession, the Court finds that this part of the application does not disclose any appearance of a violation

of the Convention provisions. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

1. Pecuniary damage

97. The applicant claimed 463,473.22 Russian roubles (RUB), approximately 11,400 euros (EUR), in compensation for pecuniary damage, stating that his family had spent this amount when sending supplementary food, clothes and cigarettes to him during his detention on remand, and buying railway tickets. He also sought RUB 136,080 (approximately EUR 3,400) in respect of lost earnings during the entire period of his detention on remand.

98. The Government contested this claim as unsubstantiated.

99. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim (see *Ječius v. Lithuania*, no. 34578/97, §§ 104-6, ECHR 2000-IX, and *Khudoyorov*, cited above, §§ 219-21).

2. Non-pecuniary damage

100. The applicant sought compensation in the amount of EUR 50 for each day of detention found by the Court to have been in breach of Article 5 § 1 (c) and EUR 49,000 for the other violations of his rights in respect of non-pecuniary damage.

101. The Government disputed this claim as excessive, arguing that a finding of a violation would suffice.

102. The Court observes that it has found a violation of Article 5 § 1 (c) on account of the applicant's pre-trial detention between 27 April and 23 June 2005 and between 26 April and 22 September 2006 as well as a violation of Articles 5 § 3 and 6 § 2 of the Convention. The applicant must have suffered anguish and distress on account of those infringements of his rights, which cannot be compensated by a mere finding of a violation. Having regard to these considerations and judging on an equitable basis, the

Court finds it reasonable to award the applicant EUR 15,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

103. The applicant also claimed RUB 81,000 (approximately EUR 2,000) for the costs and expenses incurred before the domestic courts. He enclosed copies of his contracts with lawyers and receipts confirming that he had paid them various amounts at various times.

104. The Government contested this claim as unsubstantiated.

105. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court is satisfied that the expenses in question were actually incurred. It further considers their amount to be reasonable. The Court therefore awards EUR 2,000, that is, the full amount claimed, under this head, less EUR 850 already received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicant on this amount.

C. Default interest

106. The Court considers it appropriate that the default interest 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 under Article 5 § 1 (c) concerning the applicant's detention on remand from 27 April to 23 June 2005 and from 26 April to 22 September 2006 and the complaints under Articles 5 § 3 and 6 § 2 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention on remand from 27 April to 23 June 2005 and from 26 April to 22 September 2006;

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

4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,150 (one thousand one hundred and fifty euros) in respect of costs and expenses;

(iii) any tax, including value-added tax, that may be chargeable to the applicant on the above amounts;

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

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

Done in English, and notified in writing on 20 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President