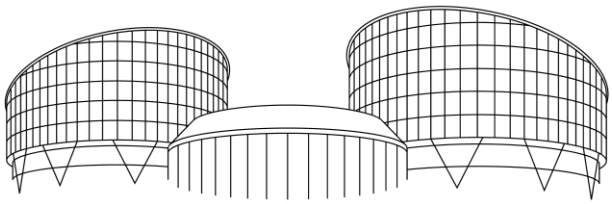

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MIMINOSHVILI v. RUSSIA

(Application no. 20197/03)

JUDGMENT

STRASBOURG

28 June 2011

FINAL

28/09/2011

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 20197/03) 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 Tengiz Valerianovich Miminoshvili ("the applicant"), on 30 May 2003.

2. The applicant was represented by Ms Liptser and Mr Karpinskiy, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that his pre-trial detention had been unlawful and unjustified, that detention proceedings in his case had been unnecessarily long, and that his trial had been unfair.

4. On 13 November 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 (former Article 29 § 3, now Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Moscow.

A. Institution of criminal proceedings against the applicant

6. In 2000 Mr D., a businessman from Moscow informed the police that since 1996 he and his two business partners had been paying a monthly fee to a local gang for "protection". Mr D. gave the police audio records of his telephone conversations with the gangsters, which he had secretly made when the "fee" had become too burdensome for him. The police set up an undercover operation. Police agents secretly observed the meetings between the three businessmen and the gangsters and recorded their conversations. At the last meeting, which took place on 25 September 2000, the businessmen handed to the emissaries of the gang the money they had earlier received from the police. After the receipt of the money the two emissaries of the gang were arrested and the money (which had been previously marked by the police) was seized from them. One of the alleged gangsters was Mr M., the applicant's brother.

7. On 9 April 2001 the applicant was charged with large-scale extortion as part of an organised criminal group (Article 163 § 3 (a) and (b) of the Criminal Code of the Russian Federation). However, because his whereabouts were unknown, on 18 April 2001 the case against the applicant was separated from the case of other members of the group. On 22 May 2001 the applicant was put on a wanted list.

B. The applicant's arrest and detention pending investigation

8. On 1 June 2001 the Moscow City Prosecutor issued a detention warrant in respect of the applicant. It referred to the gravity of the charges and the risk of his absconding, as well as to the fact that the applicant was on the wanted list. The detention warrant did not specify the period of detention.

9. On 7 April 2002 the applicant was arrested at his house in the Moscow Region. On the same date he was detained.

10. On 6 June 2002 the Moscow City Prosecutor authorised the extension of the applicant's detention until 9 August 2002. The detention warrant referred to the gravity of the charges and the risk of the applicant absconding, re-offending or interfering with the investigation. There is no information on whether the applicant appealed against that decision.

11. On 1 August 2002 the Babushkinskiy District Court of Moscow considered the detention request lodged by the prosecution. The defence argued that there were no grounds for continued detention since the applicant had no criminal record, permanently resided in Moscow, and had not tried to flee from the investigation – at the time when he had been on the wanted list he had been living in his summer house in the Moscow Region with his minor children and had not been aware of the proceedings against him. The defence also contended that the charges against the applicant were

unfounded and noted long periods of inactivity on the part of the investigation authorities during previous detention periods.

12. The court rejected those arguments and extended the applicant's detention until 7 October 2002. The court held that the applicant had been accused of grave crimes and that he had to take part in several investigative activities. The court also found that the applicant would flee from justice given that he had previously been on the wanted list, and had been arrested in the Moscow Region. There is no information on whether the applicant appealed against that decision.

13. On 2 October 2002 the District Court extended the applicant's detention until 9 December 2002 holding that there were no grounds to amend or revoke the preventive measure, given the gravity of the charges and the risk of his absconding. There is no information on whether the applicant appealed against the decision.

C. Transferral of the case to the court; first remittal to the prosecutor

14. On 28 November 2002 the investigation was completed and the case file was sent to the Nikulinskiy District Court (hereinafter – the District Court).

15. On 11 December 2002 the District Court scheduled a preparatory hearing. In its decision to hold a preparatory hearing it also ordered that the applicant's detention should remain unchanged. The court neither specified the time-limit for his detention nor gave the reasons for such decision.

16. On 24 December 2002 the preparatory hearing was held. The defence filed a request for release stating that the decision ordering the applicant's detention pending investigation had expired and that he was therefore being unlawfully detained. They also noted that the decision of 11 December 2002 did not contain any reasoning. The District Court rejected the request referring to the gravity of the charges and to the fact that the court had not yet assessed the evidence. As to the subject matter of the accusations against the applicant, the District Court remitted the case to the prosecution because the bill of indictment had been issued improperly and was not ready for examination at the trial. The prosecution was given five days to modify the bill of indictment. The ruling of the District Court referred to Article 236 § 1 (2) of the Russian Code of Criminal Procedure (CCrP) ("Types of decision which can be taken at the preparatory hearing"), Article 237 § 1 (1) ("Returning the case to the prosecutor"), and Article 255 § 3 ("Deciding on the measure of restraint [during the trial proceedings]").

17. The prosecution appealed against the part of this decision concerning the remittal. The defence appealed against the refusal to release the applicant. The appeals were lodged on 26 and 30 December 2002 respectively.

18. According to the Government, the applicant's statement of appeal against the detention order of 24 December 2002 was received by the District Court on 15 January 2003. On 28 January 2003 the applicant was handed a copy of the appeal by the prosecution. The case was received by the Moscow City Court on 13 February 2003. The appeal hearing was scheduled for 5 March 2003. However, since the applicant's lawyers failed to produce powers of attorney, the appeal hearing was adjourned until 13 March 2003.

19. On 13 March 2003 the Moscow City Court allowed the prosecution's appeal and referred the applicant's case back to the District Court for a preparatory hearing. The appeal of the defence was dismissed for the same reasons as given by the District Court in its decision of 24 December 2002. The City Court's decision also referred to the provision in the CCrP establishing a default six-month detention period after the referral of a case to the trial court.

D. Second remittal to the prosecutor

20. On 21 April 2003 the second preparatory hearing was held. The defence filed a new application for release. In addition to the arguments mentioned earlier they referred to the unreasonable period of detention and the lack of special diligence during the proceedings. The District Court once again ordered the case to be remitted to the prosecutor and rejected the request for release, relying on the same arguments as in the previous decision, namely the gravity of the charges and the need to carry out additional investigative activities. The ruling contained references to Articles 236 § 2 (1) and 237 § 1 (1) of the CCrP. Both prosecution and defence appealed.

21. On 5 June 2003 the Moscow City Court returned the case to the District Court for another preparatory hearing. It also upheld the decision of the District Court regarding the applicant's detention.

E. The applicant's detention after the preliminary hearing

22. On 2 July 2003 the District Court scheduled a preliminary hearing, and held that the applicant should stay in custody. It does not appear that the court indicated in its ruling any time-limit for the applicant's further detention.

23. On an unspecified date the defence appealed against the ruling of 2 July 2003.

24. On 9 July 2003 the court held a preliminary hearing and scheduled a hearing on the merits. The District Court rejected the applicant's request for release and confirmed that the applicant should remain detained pending trial, without, however, indicating any time-limit for the detention.

25. On 18 July 2003 the defence lodged an appeal against the decision of 9 July 2003. They claimed that the six-month time-limit for detention pending trial had expired on 28 May 2002 and that the applicant was therefore being detained unlawfully.

26. On 21 July 2003 the applicant's detention pending trial was extended for three months because judgment on the merits had not yet been delivered. The District Court referred to the gravity of the charges and to the fact that the court had not yet assessed the evidence. The defence appealed. The statement of appeal against the decision of 21 July 2003 was dated 30 July 2003, although it is unclear whether it was introduced on that date.

27. On 3 September 2003 the Moscow City Court dismissed appeals against the decisions of 2, 9 and 21 July 2003 holding that the findings of the District Court had been correct.

28. According to the applicant, on 7 October 2003 his detention was extended for three more months, with the same reasoning as before. In support of his assertion the applicant submitted a copy of the ruling of the Nikulinskiy District Court of Moscow of that date, signed by Judge K. The defence appealed against that ruling; the applicant submitted a copy of the statement of appeal with the District Court's stamp on it confirming the date of introduction (16 October 2003) and the incoming mail number (no. 4547). The applicant claimed that the appeal court had never considered the complaint. The Government claimed that on 7 October 2003 the applicant's detention had not been extended, and that the applicant's detention was still covered by the detention order of 21 July 2003.

29. On 21 October 2003 the District Court adopted the judgment in the applicant's case.

F. Mr M.'s trial

30. The applicant's case was initiated jointly with the cases of other members of the organised criminal group, including the applicant's brother, Mr M. They were all accused of large-scale extortion. Owing to the failure to find the applicant, his case was separated from the case of the other members of the group.

31. On 27 December 2002 the Nikulinskiy District Court convicted Mr M. of large-scale extortion as part of an organised criminal group (Article 163 § 3 (a) and (b) of the Criminal Code of the Russian Federation). The District Court was sitting as a panel of three judges comprising a professional judge (Ms K., the president), and two lay judges.

32. The judgment of 27 December 2002 started with the finding that Mr M. had committed extortion in concert with "unidentified persons". In relating the facts of the case the court once mentioned the applicant's name. Specifically, on page 5 of the judgment the court held that an unidentified member of the gang had mentioned in a telephone conversation with one of

the victims that "[the applicant] was unhappy that the victims had not transferred the money to [Mr M.] at his first request".

33. The applicant's name was also mentioned in the part of the judgment summarising the witness statements. In particular, on page 6 of the judgment in connection with the testimony of Mr M., who denied his or his brother's involvement in the criminal group. The District Court, however, found that Mr M.'s testimony was refuted by the incriminating evidence, namely witness statements. Some of the witnesses, as well as confirming the role of Mr M. in the gang, mentioned that the applicant had been an important person in the gang and participated in negotiations as a person of authority (page 7). They further mentioned that the applicant had told the victims that "they had to pay him in order not to pay other persons he had talked to" (page 7), that the money was collected from the businessmen for the applicant (page 8), that "[the applicant] had been introduced [to them] as a leader of the criminal group" (page 8), and that the victims "had paid mobile telephone bills for [the applicant]" (page 8). The District Court also examined information on the telephone communications of Mr M. and the applicant and referred to them in its judgments (without, however, indicating their importance for the conviction).

G. The applicant's trial

34. The applicant's case was heard by Judge K. of the Nikulinskiy District Court (the same judge who had earlier presided over the trial in the case of Mr M.). The first hearing on the merits took place on 29 September 2003.

35. The applicant pleaded not guilty. He did not deny that he knew the victims and that he had had some dealings with them. Namely, he confirmed that he had met with them several times between 1996 and 1999. However, he denied that his involvement in their business had been of a criminal character. He also denied having received from the victims or from Mr M. any criminal payments. He further denied the participation of Mr M., his brother, in any criminal activity.

36. At the following hearings the court heard testimony of two witnesses for the defence, R. and K., who both denied any involvement of the applicant or Mr M. in the crimes. They testified that the money had been paid by the victims to Mr M. as a rental fee for storage space on premises owned by the applicant.

37. The victims (Mr D. and his two partners), on the contrary, testified that in 1996 they had met with the applicant who had offered them criminal "protection" from other gangs and fixed a monthly fee for it. At one of the meetings with the applicant another gangster had threatened the victims with beatings. In the following years the victims had been paying the money to the gang, generally not to the applicant directly but to other gangsters, in

particular to Mr M. However, the victims had understood that the money had been destined for the applicant. The victims had had several other meetings with the applicant in different places where the amount of the monthly fee had been discussed. Other members of the gang had always referred to the applicant as a person of authority. Throughout that period the applicant had been personally involved in the negotiations with other gangs.

38. The court also examined audio records secretly made by one of the victims and later by the police during the surveillance operation. Although the applicant was not identified as one of the speakers on those audio records, other gangsters had often referred to somebody named Tengiz (which is the applicant's first name) who had supposedly been a person of authority within the gang. The applicant claimed that they had probably meant another person also named Tengiz.

39. The District Court also examined other evidence. Witness V. confirmed that several meetings between the applicant and the victims had taken place. Witness Ya., an accountant for the victims, confirmed that one of the alleged members of the applicant's gang had been formally employed by the victims and had been receiving a salary, without, however, doing any actual work. She did not know about any official business transactions or rental agreements between the applicant and the victims. The prosecution also produced the applicant's and other members of the gang's telephone bills which had been paid by the victims, and some other circumstantial evidence.

40. During the court proceedings in the applicant's case the defence requested that Mr M. be summoned. He explained to the courts that Mr M.'s testimony was important. The applicant claimed that according to the victims the money obtained from them had been passed to him by Mr M. and that the examination of the latter "could shed light on these events". The defence also alleged that without proving the fact that the money had been passed to the applicant he could not be found guilty and that Mr M. had to be summoned as all the witnesses referred to him in their testimony. The trial court rejected the request holding that the court had not yet assessed all the evidence.

41. Some time later the defence requested the admission in evidence of Mr M.'s written statement obtained by one of the defence lawyers who had visited Mr M. in prison and had interviewed him. In those statements Mr M. had denied his and his brother's (the applicant) involvement in the gang. The court refused on the ground that the written statement of Mr M. had not been "duly certified" and it was unclear whether that statement had indeed been taken from Mr M.

42. The defence also requested leave to examine the victims of the impugned extortion for a second time, owing to inconsistencies in their earlier submissions. The request was not granted.

43. At some point in the proceedings the defence challenged the judge claiming that she was not impartial. They contended that the same judge had earlier found the applicant's brother guilty in a case closely connected with the applicant's case. Moreover, the defence noted that the trial judge was the same judge who had earlier remitted the case to the prosecutor and might therefore have been prejudiced in this case. However, the judge refused to withdraw. On several later occasions the defence objected to questions put by the judge to the applicant, claiming that those questions were favourable to the prosecution.

44. It took the trial court eight hearings to examine the evidence produced by the parties. The hearings took place on 29 and 30 September, and on 1, 2, 7, 14 and 15 October 2003. The last hearing on the merits was held on 16 October 2003. On that day the court heard the last witness, examined certain written materials in the case file and examined the requests of the defence. The judge, having decided that the examination of evidence was over, invited the parties to proceed with their final submissions. The defence objected to ending the examination of the evidence without summoning Mr M. The objection was rejected. The defence then requested an adjournment for at least one day to prepare their final submissions. The judge ordered a twenty-minute break and then proceeded to the final submissions. These were made after a thirty-minute break. All three lawyers for the applicant were able to make oral submissions, in addition to their written submissions which they had handed to the court.

45. On 21 October 2003 the District Court found the applicant guilty of extortion and sentenced him to seven years' imprisonment and confiscation of criminally obtained assets. In the opening paragraphs of the judgment the District Court found that the applicant and his brother, Mr M., who had earlier been convicted by the same court on 27 December 2002, as well as several other unidentified people, were members of an organised criminal group created to extort large sums of money from local businessmen. Between 1996 and 1998 the applicant had met with those businessmen on several occasions. He had offered them protection from other gangs in exchange for a monthly fee. The money had usually been passed from the victims to the applicant through other members of the group, including the applicant's brother, Mr M. In addition, the victims had been required to pay an unidentified member of the gang's telephone bills and later those of the applicant himself. The judgment contained a detailed account of all payments which had passed through Mr M. to the applicant and of the amounts of the telephone bills paid by the victims. It also described several episodes when unidentified members of the gang had claimed additional payments on the applicant's behalf.

46. The court further analysed the testimony of witnesses R. and K. examined at the request of the defence. The judge noted that although both

R. and K. had referred to the existence of a rental agreement between the victims and the applicant, it had allegedly been concluded in the name of a firm which had ceased to exist by that time and had never been signed by the applicant. Furthermore, the court did not have a copy of that agreement and other evidence in the case file contradicted the submissions of R. and K. Lastly, in a telephone conversation between one of the victims and a member of the gang, the latter had instructed the former to tell the police that the payments had been made within a rental agreement. As a result, the judge dismissed the testimony of R. and K. as unreliable.

47. The applicant's lawyers appealed. In particular, they drew the court's attention to the fact that at the trial the victims had acknowledged that they had been giving the money not to the applicant but to other persons. The applicant's lawyers insisted that the trial court's failure to summon and question Mr M. made the trial unfair.

48. On 17 March 2004 the Moscow City Court examined the appeal by the defence. It amended the judgment of the District Court because of changes in the Russian Criminal Law. The confiscation order in respect of criminally obtained assets was thus quashed. However, the remainder of the judgment of 21 October 2003 was upheld.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Pre-trial detention

49. After arrest the suspect can be placed in custody "pending investigation". Article 108 §§ 1, 3-6 of the new CCrP (of 2001, in force since 1 July 2002) requires a judicial decision by a district court on a reasoned request for detention by a prosecutor, supported by appropriate evidence, before a defendant can be detained or his or her detention extended. Detention "pending investigation" should not exceed eighteen months (Article 109 §§ 1-3). The period of detention "pending investigation" is calculated up to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

50. From the time the prosecutor sends the case to the trial court, the defendant's detention is "pending trial". Upon receipt of the case file the judge must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 228 § 3 and 231 § 2 (6) of the CCrP).

51. 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 of the CCrP).

52. The trial judge can return the case to the prosecutor to remedy the defects impeding the trial (Article 236 § 1 (2) of the CCrP), for instance if the judge has identified serious deficiencies in the bill of indictment (Article 237 § 1 (1) of the CCrP) or a copy of it was not served on the accused. The judge must require that the prosecutor comply within five days (Article 237 § 2) and must also decide on a preventive measure in respect of the accused (Article 237 § 3).

53. By Federal Law no. 226-FZ of 2 December 2008, Article 237 was amended to the effect that, if appropriate, the judge could extend the term of detention with due regard to the time-limits set forth in Article 109 of the CCrP.

54. Pursuant to Article 376 of the CCrP, the court of appeal has to set the date, time and place of an appeal hearing and inform the parties accordingly. The parties should be informed no less than fourteen days in advance of the date of the appeal hearing. The court has to decide whether or not the detainee should be brought to the court of appeal in person. That Article also regulates the arrangements governing a detainee's appearance in appeal proceedings in person and his or her appearance via video-link.

55. For further details concerning Russian legislation on pre-trial detention, detention pending trial and remittal of the case to the prosecution for correcting defects of the bill of indictment, see the cases of *Lebedev v. Russia* (no. 4493/04, §§ 33 et seq., 25 October 2007) and *Shteyn (Stein) v. Russia* (no. 23691/06, §§ 56 et seq., 18 June 2009).

B. *Res judicata* in criminal proceedings

56. Article 90 of the CCrP provides that "factual circumstances established in a court judgment ... which have acquired legal force, should be accepted by a court ... without additional verification. However, such a court judgment cannot predetermine the question of guilt of those persons who had not participated in [those] proceedings".

C. Withdrawal of a judge

57. Articles 61 – 63 of the CCrP describe situations in which a judge cannot sit on the bench in a particular case. The judge must withdraw if he is an injured party in that criminal case, if he has already participated in that criminal case in a different capacity (for example, as a representative of a party, as a witness, etc.), if he is a relative of any participant in the criminal proceedings, or "if there are other circumstances which give reason to believe that [the judge] is personally, directly or indirectly, interested in the outcome of the criminal case". The judge whose impartiality is in doubt must withdraw of his own motion (Article 62 § 1); alternatively, a party to the proceedings may challenge a judge on those grounds (Article 62 § 2).

Article 63 of the CCrP provides that the same judge cannot sit on the bench in the trial court and later in the court of appeal or in the supervisory review court in the same case. The same judge who sat on the bench during the first trial cannot remain in the composition if the case is remitted for re-trial. However, there are no rules governing the participation of the same judge in different, yet related, criminal cases.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

58. The applicant complained that he had been unlawfully detained after his case had been transmitted to the trial court in November 2002. He also contended that the decision of 11 December 2002 had contained no grounds for his continued detention and was thus unlawful. Under the same provision the applicant complained that after the expiry of the six-month period for his detention (following his committal for trial in November 2002) he had been detained in custody without any lawful basis.

Article 5 § 1 (c) of the Convention 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. Admissibility

59. The Government did not forward any formal objections to the admissibility of this complaint. 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

1. The parties' submissions

60. The Government contested that the applicant's rights under Article 5 § 1 of the Convention had been breached. They claimed that the legal basis for the applicant's detention from 28 November 2002 had been the fact that his case was transferred to the District Court for examination on the merits. The Government referred in this connection to Article 255 of the Code of Criminal Procedure (CCrP) of 2001, which provides that the trial judge must decide upon measures of restraint during the trial and has the power to extend detention for six months during the trial. That period can be further extended, each time for a period of three months.

61. As regards the applicant's detention between the remittal of the case from the District Court to the prosecution (24 December 2002) and the quashing of this decision by the court of appeal (13 March 2003), the Government contended that this period should be regarded as a period "pending trial", since the decision to remit the case to the prosecution was not final. The same applied to the period between 21 April and 5 June 2003.

62. The applicant, referring to the cases of *Khudoyorov v. Russia* (no. 6847/02, § 149, ECHR 2005-X (extracts)) and *Ignatov v. Russia* (no. 27193/02, § 80, 24 May 2007), claimed that the mere fact that the applicant's case had been transferred from the prosecution to the trial court was not sufficient to make it "lawful". The detention order of 2 October 2002 had expired on 9 December 2002, and, until the time when the trial court had extended the detention on 11 December 2002, the applicant's detention had therefore had no lawful ground. Such reading of the law was confirmed by the Constitutional Court of Russia in its ruling no. 4-P of 22 March 2005 (cited in the case of *Lebedev*, referred to above).

63. The applicant also argued that the detention order of 11 December 2002 could not be considered as a lawful detention order either, since it had not been supported by any reasoning. Further, the six-month period for detention pending trial had ended on 25 May 2003; therefore, the period of detention after that date and until the next detention order (that of 21 July 2003) had also been unlawful.

2. The Court's assessment

(a) General principles

64. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the

"lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

65. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX, and *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Application to the present case

i. The period between 9 and 24 December 2002

66. The Court observes that from 7 April 2002 the applicant was in pre-trial detention. The last detention order issued during the investigation expired on 9 December 2002, after the case had been transmitted to the District Court, but before the next detention order was issued (on 11 December 2002).

67. The Court notes that the existence of a "gap" between the last extension of the detention ordered at the investigation stage and the first extension ordered by the trial court is a well-known problem of Russian criminal procedure frequently dealt with in the Court's case-law. In a number of cases against Russia the Court has found a violation of Article 5 § 1 on that account (see *Nakhmanovich v. Russia*, no. 55669/00, §§ 67-68, 2 March 2006; *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Khudoyorov*, cited above, §§ 146-148; and *Lebedev*, cited above, §§ 55 et seq.). The Government has not put forward any argument capable of persuading the Court to depart from its well-established case-law in this area. The Government's reference to Article 255 of the CCrP is irrelevant, since this provision describes the powers of the judge to extend detention for the time of the trial and for up to six months after that, but does not define the status of the accused during the period when old detention order (imposed during the pre-trial investigation) has expired and the new one has not yet been imposed. Therefore, in so far as the period between 9 and

11 December 2002 is concerned, the applicant's detention had no lawful basis.

68. The Court further observes that the detention order of 11 December 2002 (which, according to the Government, served as a lawful basis for the applicant's detention for the next six months) did not contain any reasoning and did not refer to any time-limit. As in many previous Russian cases, the applicant's detention for an indefinite period of time (which was only limited by the maximum duration of such detention, provided for in the CCrP) was ordered by a simple phrase that the measure of restraint (detention) "should remain unchanged" (compare the case of *Ignatov*, cited above, § 78; see also *Nakhmanovich*, cited above, §§ 70-71, and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Here again the Court does not see any reason to depart from its previous case-law and considers that the detention order of 11 December 2002 was, by its form, arbitrary, and thus contrary to Article 5 § 1 (c) (see, in addition to the cases mentioned above, *Avdeyev and Veryayev v. Russia*, no. 2737/04, §§ 45-47, 9 July 2009; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 112-114, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-114, 23 April 2009; *Shukhardin*, cited above, §§ 65-70; *Ignatov*, cited above, §§ 79-81; and *Solovyev v. Russia*, no. 2708/02, §§ 97-98, 24 May 2007).

ii. The period between 24 December 2002 and 28 May 2003

69. The Court observes that in the ruling of 24 December 2002 the District Court held, with reference to the gravity of the charges against the applicant, that the measure of restraint should remain the same. In the Court's opinion, it was not a very strong reason for further extending the applicant's detention (for more details, see the Court's analysis under Article 5 § 3 of the Convention below). Nevertheless, it was some sort of justification, and therefore from that moment on the applicant's detention ceased to be "arbitrary". Further, the Court observes that the applicant's detention was ordered by a competent court (see Article 237 § 3 of the CCrP).

70. That being said, the status of the applicant's detention during the subsequent period remains unclear. The Court reiterates its findings in the case of *Shteyn (Stein)* (§§ 91 et seq.), cited above. In that case it was impossible for the Court to define whether the detention after the remittal of the case from the trial court to the prosecutor was, in domestic terms, "pending trial" or "pending investigation". The Court concluded that the absence of sufficiently precise rules concerning the legal grounds for detention following the return of the case to the prosecutor, combined with the authorities' failure to refer to applicable legal norms when extending the detention, seriously affected the "lawfulness" of the applicant's detention.

71. In the present case, when ordering that the applicant should remain in detention, the District Court relied on Article 255 of the CCrP, which

governs detention "pending trial". The Government also claimed in their observations that the applicant's detention remained "pending trial" during the whole period after 24 December 2002. That assertion is open to doubt. In the case of *Shteyn* (cited above, § 16) the domestic courts regarded detention after the remittal of the case from the trial court to the prosecution as detention "pending investigation", governed by Article 109 of the CCrP. Indeed, in the case of *Shteyn* the remittal of the case to the prosecution was upheld by the court of appeal, whereas in the present case it was overturned (see the decision of 13 March 2003). However, that difference is irrelevant. It is important for a detainee to know what the legal grounds for his detention are when the detention is imposed or extended, without waiting for the decision of the court of appeal.

72. The Court considers that, at the relevant time, the law did not define whether detention in such situations should be governed by the rules of Articles 108-109 of the CCrP or Article 255 thereof. Not until 2008 was Article 237 amended to the effect that, if appropriate, the judge could extend the term of detention with due regard to the time-limits set forth in Article 109 of the Code. Be that as it may, the ambiguity of the law in practical terms did not affect the applicant at that stage. The applicant's detention at that stage exceeded neither the maximum eighteen months provided for detention "pending investigation" (see Article 109 of the CCrP), nor the maximum six months provided for detention "pending trial" (see Article 255 of the CCrP). As to the five-day period provided for by Article 237 § 2 of the CCrP, it appears that this time-limit only defined how much time the prosecution had to amend the bill of indictment, and did not concern matters of detention.

73. In sum, given that the domestic courts in the present case acted within their jurisdiction, gave at least some reasons for the applicant's detention, indicated what legal provisions governed the applicant's detention and referred, albeit indirectly, to the maximum time-limit for that particular type of detention, the decision of 24 December 2002 corresponded to the minimum requirements of "lawfulness". The applicant did not indicate any other deficiency in the detention order or detention proceedings of 24 December 2002 which would make his detention unlawful within the meaning of Article 5 § 1 of the Convention.

74. The Court lastly notes that the decision of 21 April 2003 did not refer directly to Article 255 of the CCrP, which establishes the maximum time-limit for detention of the accused pending trial. That omission did not, however, make the District Court's decision unlawful. The decision of 21 April 2003 was almost identical to the decision of 24 December 2002; therefore, the applicant could have understood that after the second remittal of the case to the prosecution he continued to be detained "pending trial".

iii. The period between 28 May and 21 July 2003

75. The Court notes that, according to the CCrP, the six-month period for detention pending trial starts running from the date when the case was received by the trial court, in the present case – from 28 November 2002. If the periods when the case was remitted to the prosecution are to be included in the overall duration of the applicant's detention pending trial (which is the Government's position), the original six-month period should have ended on 28 May 2003. The question is what the legal ground was for the applicant's detention after that date.

76. The Court observes that the original detention order authorising the applicant's detention pending trial was taken on 11 December 2002. On 24 December 2002 and 21 April 2003 the District Court confirmed that the applicant should stay in detention. Furthermore, the court of appeal twice (on 13 March and 5 June 2003) upheld the decisions of the lower courts to maintain the applicant's detention. Finally, on 2 and 9 July 2003 the District Court confirmed that the applicant should remain in detention, thus rejecting the application for release lodged by the defence.

77. Although all those orders confirmed the need for the applicant's continuous detention, in the Court's opinion they cannot be regarded as new decisions extending detention beyond six months taken in accordance with Articles 228 § 3 and 231 § 2 (6) of the CCrP (see, *mutatis mutandis, Melnikova v. Russia*, no. 24552/02, § 61, 21 June 2007). Only in the ruling of 21 July 2003 did the District Court clearly indicate that the detention should actually be extended for a further three months, thus using its powers under Article 255 §§ 2 and 3 of the CCrP. It means that the courts themselves regarded the previous period of the applicant's detention as being covered by the original detention order, that of 11 December 2002. However, that order expired on 28 May 2003 (see above). The Court thus concludes that the applicant's detention from that date and until 21 July 2003 was not covered by any valid detention order.

iv. Summary of the Court's findings under Article 5 § 1 of the Convention

78. The Court concludes that there has been a violation of Article 5 § 1 of the Convention on account of the period of the applicant's detention between 9 and 24 December 2002, no violation on account of the period between 24 December 2002 and 28 May 2003, and a violation of that Convention provision on account of the period between 28 May and 21 July 2003.

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

79. Under Article 5 § 3 of the Convention the applicant complained that his detention had not been based on relevant and sufficient reasons and that

the authorities had not displayed special diligence in dealing with his case while he had been in detention. He referred to 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

80. The Government did not forward any formal objections to the admissibility of this complaint. 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

1. The parties' submissions

81. The Government argued that the applicant's detention had been based on a reasonable suspicion against him and that his continuous detention had been justified by relevant and sufficient reasons. The Government argued that the applicant had been detained because of the gravity of the charges against him, his personality, his role in the organised group which had committed the impugned crimes, and the danger of his absconding. The Government drew the Court's attention to the fact that the applicant had been on the federal wanted list at the time of his arrest.

82. The applicant indicated that he had been in detention from 7 April 2002 until 21 October 2003, that is, one year, six months and fourteen days. He had never tried to hide from the law-enforcement authorities. He had been arrested in his wife's country house where he lived with two of his minor children. In the District Court ruling of 24 December 2002 the court had referred to the gravity of the charges as the sole reason for his detention. That same single reason had been given in the ruling of 21 July 2003 by which his detention was extended for a further three months. At the same time the courts had not considered any arguments in favour of the applicant's release: the fact that he had two children, his positive characteristics, or that he had been decorated for his military service during the Afghan war.

83. Furthermore, the criminal case against the applicant had not been very complicated. After the completion of the criminal investigation, the whole case file had amounted to two volumes only. The prosecution had requested the summoning of only eight witnesses and three victims. The

applicant had not contributed to the length of the proceedings against him in any way. Between 7 April and 1 August 2002 no investigative actions had been carried out. The applicant had been questioned as an accused only on 11 April 2002. The materials in the applicant's case were, to a large extent, copies of the materials in the case concerning his brother and another member of the "organised group". Although the case had been sent to the District Court on 25 November 2002, the preliminary hearing had taken place on 2 July 2003 and the trial had started as late as 29 September 2003. In sum, the authorities had not shown "special diligence" in handling the applicant's case.

2. The Court's assessment

84. The parties seem to agree that throughout the proceedings there was always a reasonable suspicion against the applicant. Therefore, the main issue to address under Article 5 § 3 is whether the applicant's detention was justified by relevant and sufficient reasons throughout the whole period.

85. The Court observes that the "reasonable time" requirement of Article 5 § 3 cannot be assessed *in abstracto*: continued detention can be justified only if there are specific indications of a genuine requirement of public interest which outweighs the rule of respect for individual liberty (see *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A). It must be established whether the grounds given by the judicial authorities could justify the deprivation of liberty. The existence and persistence of 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). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

86. As to the grounds for the applicant's detention pending investigation, the authorities justified it by the risk of his absconding or interfering with the course of justice. The existence of those risks was supported by references to the gravity of the charges and the fact that the applicant had been on the federal wanted list. The authorities also noted that the applicant had to be detained in order to take part in various investigative activities; however, the latter argument cannot justify detention, since it is usually

possible to conduct investigative activities without the accused being necessarily detained.

87. It is questionable whether the fact that the applicant was on the wanted list and arrested in his summer house was proof that he was hiding there. The applicant submitted that he lived there openly with his wife and two children. The fact that the applicant was probably registered at a different address is not decisive. The same concerns the fact that he was on the federal wanted list. The status of a wanted person was attributed by the authorities in circumstances which remain unknown and were not analysed in the court decisions. Consequently, that status as such could not play a decisive role in deciding whether or not the person really tried to evade prosecution.

88. At the same time, the domestic courts are better placed to interpret the facts of the case. The Court notes the fact that crimes imputed to the applicant were allegedly committed as part of an organised group, that the applicant was allegedly a leader of that group, and that other members of the group (including the applicant's brother) were arrested and tried while the applicant was still at large. In such circumstances the Court is prepared to accept that the absence of the applicant at his address, which was known to the authorities, was suggestive of his intention to escape trial. Furthermore, the Court accepts that the applicant's detention could have initially been warranted by the gravity of the charges against him, which could be a relevant argument in assessing the risk of his absconding or tampering with evidence.

89. That being said, the Court observes that in such cases it usually applies the following approach: arguments which are sufficient for detaining an accused in the early stages of proceedings are not necessarily sufficient throughout the whole period of his detention. Thus, as regards the applicant's presumed potential to interfere with the establishment of the truth, "with the passage of time this ground inevitably became less and less relevant" (see *Panchenko v. Russia*, no. 45100/98, § 103, 8 February 2005; *Muller v. France*, 17 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II; and *Debboub alias Husseini Ali v. France*, no. 37786/97, § 44, 9 November 1999). The danger of fleeing may also decrease – for example, if the detainee's health declines (see *Aleksanyan v. Russia*, no. 46468/06, § 192, 22 December 2008).

90. The Court notes that the proceedings in the present case were conducted after the conclusion of the case against other members of the gang to which the applicant allegedly belonged. In such circumstances the applicant's ability to influence witnesses or destroy evidence was seriously limited. This is *a fortiori* true in so far as the applicant's detention pending trial is concerned.

91. As to the danger of absconding, it cannot be gauged solely on the basis of the severity of the possible sentence, at least at the advanced stages

of the proceedings. It must be assessed with reference to a number of other relevant factors; in this context regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, cited above, with further references).

92. The Court notes that after the transferral of the case to the trial court the judge continued to refer to the severity of the charges against the applicant as the only ground justifying his detention. The fact that the court also needed to take evidence is immaterial, as it was shown above, at least for assessing the "relevance and sufficiency" of reasons for the detention of the accused. Furthermore, the courts never addressed the possibility of applying a milder measure of restraint to the applicant, such as bail or house arrest. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, no. 7064/05, §§ 72 et seq., 1 June 2006; *Dolgova v. Russia*, no. 11886/05, §§ 38 et seq., 2 March 2006; *Khudoyorov*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, no. 54071/00, §§ 63 et seq., 7 April 2005; *Panchenko v. Russia*, no. 45100/98, §§ 91 et seq., 8 February 2005; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

93. Having regard to the foregoing considerations, the Court finds that the authorities failed to justify the applicant's continuous detention with reasons which can be regarded as "relevant and sufficient". In these circumstances it is not necessary to examine whether the proceedings were conducted with due diligence. There has therefore been a breach of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention.

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

94. Under Article 5 § 4 of the Convention the applicant complained of the delayed examination of his appeals against the decisions of 24 December 2002, and 2, 9 and 21 July 2003. The applicant also contended that the appeal against the decision of 7 October 2003 had not been examined at all. Moreover, the applicant noted that the courts had failed to respond properly to his arguments that his detention had been unlawful. The applicant referred to Article 5 § 4, which reads as follows:

"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".

A. Admissibility

95. Before starting its legal analysis, the Court must resolve a factual dispute between the parties concerning the date of the last detention order pending trial. The applicant claimed that on 7 October 2003 his detention had been extended for three months, and that the appeal against that detention order had never been considered. The Government claimed that the applicant's detention between 21 July and 21 October 2003 (the date of his conviction) had been covered by the detention order of 21 July 2003. In the Government's words, the applicant had probably meant the detention order of 7 December 2003, by which his detention was covered for the duration of the appeal proceedings.

96. The Court notes that in support of his words the applicant submitted a copy of the detention order of 7 October 2003, signed by a judge, and a copy of his statement of appeal with the stamp of the District Court on it. Those documents were sent by the Court to the Government for comments. The Government did not claim that those documents were fake or otherwise unreliable. The Court further notes that it would have been quite risky for the prosecution to expect that the trial would be over before 21 October 2003. In such circumstances it was natural to request an extension of the detention some time in advance before the expiry of the detention order of 21 July 2003. In such circumstances the applicant's account seems to be credible. The Court concludes that on 7 October 2003 the applicant's detention was extended, and that his statement of appeal against that detention order was indeed lodged on 16 October 2003 with the Nikulinskiy District Court.

97. The Court further notes that the Government did not put forward any formal objections to the admissibility of this complaint. 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

1. The parties' submissions

98. The Government claimed that the delay in the examination of the first appeal against the detention order of 24 December 2004 had been attributable to the applicant's lawyers, who failed to provide the court of

appeal with their powers of attorney. The delay in the examination of the appeals had been related to the need to comply with the formalities provided for by Article 376 of the CCrP. As to the detention order of 7 October 2003, the Government denied its existence (see below), as well as the fact that the applicant had ever appealed. The Government also claimed that the courts of appeal always addressed arguments by the defence.

99. The applicant claimed that the delay in the examination of his appeal against the detention order of 24 December 2002 had amounted to seventy-eight days. His appeals against the detention orders of 2, 9 and 21 July 2003 had been examined with delays of sixty-three, forty-six and forty-four days respectively. Those delays were excessive, in view of the Court's case-law on that matter. Furthermore, the Government's assertion that the courts of appeal always considered arguments by the defence has not been proven with reference to the texts of the appeal courts' decisions. Both the District Court and the Moscow City Court, in reply to very detailed submissions by the defence, delivered summary rulings which referred to the gravity of the charges as the only reason for the extensions. The courts did not address the applicant's argument that the six-month time-limit for his detention pending trial had expired.

2. The Court's assessment

(a) Speediness of the examination of the appeals

100. Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims 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 *Baranowski*, cited above, § 68). Where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Grauzinis v. Lithuania*, no. 37975/97, §§ 30-32, 10 October 2000).

101. In the present case the Government contended that the applicant's appeal against the detention order of 24 December 2002 had reached the court only on 15 January 2003. Furthermore, the Government claimed that the appellate hearing had been adjourned by the court from 5 March until 13 March 2003 owing to the failure of the defence lawyers to produce powers of attorney. Those facts are not contested by the applicant, so the Court finds them established. In sum, out of the seventy-eight days that elapsed between the date of the detention order and the date of its confirmation by the court of appeal, only one month and eighteen days are attributable to the authorities. Nevertheless, in the light of its consistent case-law the Court finds that even that delay, in view of the complexity of the case and other relevant factors, is excessive and cannot be considered compatible with the "speediness" requirement of Article 5 § 4 (compare, for

example, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII, where the review proceedings which lasted twenty-three days were not "speedy", and *Mamedova*, cited above, § 96; where the appeal proceedings lasted thirty-six, twenty-six, thirty-six, and twenty-nine days). There has accordingly been a breach of Article 5 § 4.

102. According to the applicant the delays in the examination of the detention orders of 2, 9 and 21 July 2003 amounted to sixty-three, forty-six and forty-four days respectively. The Government did not contest those figures. The Court observes that it usually calculates delays attributable to the authorities from the date the competent court received the statement of appeal (see the Court's findings regarding the detention order of 24 December 2002 above; see also *Lebedev*, cited above, §§ 99 et seq.). The materials of the case file show that the appeal against the second decision was received by the District Court on 18 July 2003. The date of the introduction of the appeals against the first detention order is unknown, whereas the appeal against the third detention order was signed by the applicant's lawyers on 30 July 2003. In such circumstances, and in absence of the Government's comments on this point, the Court finds that the appeals against the above three detention orders were introduced on 2 July 2003 for the first one (that is, the date of the detention order itself), 18 July 2003 for the second (the actual date of receipt of the appeal by the District Court), and 30 July 2003 for the third detention order (the date indicated on the statement of appeal). It follows that the periods attributable to the authorities amounted to sixty-two days, forty-six days and thirty-five days respectively.

103. The Government claimed that the court of appeal had had to comply with the requirements of Article 376 of the CCrP before starting the examination of the case. They appear to have been referring to the duty of the court to give the parties two weeks' advance notice of the upcoming appeal hearing. However, the fact that the courts had to comply with some domestic formalities does not absolve the State from its obligations under the Convention. Furthermore, the Court observes that the domestic law applied the same two-week notice period to the appeal proceedings on the merits and the appeal proceedings concerning detention. The Court reiterates that detention proceedings should be conducted speedily, sometimes at the expense of certain other procedural guarantees (see the Court's finding in *Jablonski*, cited above, § 93, where it held that there was special need for a swift decision determining the lawfulness of detention in cases where a trial is pending). This is why detention proceedings should only comply with the most basic, "minimal" guarantees of fairness (if compared with the more rigorous standard of fairness established under Article 6 of the Convention – see *Lebedev*, cited above, § 76). The Court does not need to take a stand as to whether the two-week notice period for the preparation of an appeal in detention proceedings is sufficient or

excessive *per se*. The Court simply finds that in the circumstances of the case, which was, by all appearances, quite simple, the application of this rule unnecessarily protracted the detention proceedings. The Court does not see why that period could not have been shorter. Lastly, the delays involved in the examination of the appeal in the present case were longer than two weeks, and the Government has not provided any explanation for the remaining time. The Court concludes that the appeals against the detention orders of 2, 9 and 21 July were not examined speedily. There has therefore been a breach of Article 5 § 4 on that account.

(b) Failure to examine the appeal of 16 October 2003 against the detention order of 7 October 2003

104. The Court has found it established that the appeal against the detention order of 7 October 2003 lodged by the defence on 16 October 2003 was never examined (see above). Since the Government denied the very existence of the detention order of 7 October 2003, they did not make any comments as to the appeal proceedings. The Court observes that "where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4, in particular, as concerns the speediness of the review by the appellate body of a detention order imposed by the lower court" (see *Lebedev*, cited above, § 96). This was said in respect of the requirement for speedy review, but it is *a fortiori* true in respect of the right of access to the court of appeal. From 7 October 2003 the applicant's detention was covered by a new detention order, and the applicant had the right to challenge it even though it applied only until 21 October 2003. After his conviction of 21 October 2003 it was no longer necessary to decide on the applicant's continued detention, since the applicant, in terms of the Convention, was from that day forward detained under Article 5 § 1 (a). However, the court of appeal had at least a duty to verify the lawfulness of the applicant's detention between 7 and 21 October 2003.

105. The Court recalls that where the domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Toth v. Austria*, judgment of 12 December 1991, Series A no. 224, § 84; see also *Khudobin v. Russia*, no. 59696/00, §§ 122 et seq., ECHR 2006-XII (extracts)). The Court considers that the authorities' failure to examine the appeal against the detention order of 7 October 2003 deprived the applicant of his right to have the lawfulness of his detention reviewed and amounted to a breach of Article 5 § 4 of the Convention.

(c) Alleged failure of the court of appeal to address all arguments by the defence

106. Having regard to the above finding, and to the Court's findings relating to the "relevance and sufficiency" of the reasons for the applicant's

continuous detention under Article 5 § 3 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 5 § 4 on account of the alleged failure of the domestic courts to address all of the arguments by the defence.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

107. Lastly, the applicant complained that the proceedings in his case had been unfair. In his words, the judge sitting in his criminal case had not been impartial. The applicant further complained that the judge had refused to re-examine the victims, failed to summon a witness, Mr M., or admit his written submissions, and had not given the defence enough time to prepare properly their final submissions. The applicant relied on Article 6 §§ 1 and 3 of the Convention which, in so far as relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal .....
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

A. Admissibility

108. The Government did not forward any formal objections to the admissibility the applicant's complaints under Article 6 of the Convention. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged bias of the trial court

109. The first complaint by the applicant under Article 6 § 1 of the Convention concerns the alleged bias of Judge K. owing to her previous involvement in Mr M.'s case.

(a) The parties' submissions

110. The Government maintained that the judge in the applicant's case had not been partial. The participation of that judge in the trial against Mr M. and other members of the gang to which the applicant belonged was not, under Russian law, a reason for her to withdraw from the applicant's case. The Government also claimed that the professionalism required of a judge and his experience were by themselves a sufficient guarantee of her impartiality in the circumstances.

111. The applicant maintained that the list of grounds under Russian law which might lead to the withdrawal of a judge from proceedings was not exhaustive. Therefore, the judge might and was required under the domestic law to consider whether her participation in the applicant's case was appropriate in view of her earlier involvement in the case concerning the applicant's brother and other members of the gang.

112. The applicant further claimed that Judge K. was not impartial both under the objective and subjective tests developed in the Court's case-law. He referred to the case of *Hauschildt v. Denmark* (24 May 1989, §§ 51-53, Series A no. 154) where the Court found a breach of Article 6 § 1 on account of the judge's participation in the previous proceedings involving the determination of the existence of "a very high degree of clarity" as to the question of the suspect's guilt. The applicant further distinguished the present case from the case of *Lindon, Otchakovsky-Laurens and July v. France* ([GC], nos. 21279/02 and 36448/02, ECHR 2007-XI), where a journalist was convicted of defamation by the same judges who had previously convicted two other journalists for virtually the same act of defamation. In that case the Court found that "even though [the two cases] were connected, the facts in the two cases differed and the "accused" was not the same". The applicant submitted that in the present case Judge K. had, on the contrary, made incriminating statements in respect of the first applicant in the judgement concerning the applicant's brother. As to the alleged subjective bias of Judge K., the applicant prayed in aid numerous examples of her procedural decisions favourable to the prosecution but not to the defence, namely her refusal to summon and examine Mr M. and give the defence more time for the preparation of their final submissions.

(b) The Court's assessment

i. Subjective impartiality

113. The Court reiterates that impartiality, within the meaning of Article 6 § 1 of the Convention, normally denotes the absence of prejudice or bias. There are two tests for assessing whether a tribunal is impartial: the first consists of seeking to determine a particular judge's personal conviction or interest in a given case and the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, for example, *Gautrin and Others v. France*, 20 May 1998, § 58, *Reports* 1998-III, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII). In applying the first test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see, among other authorities, *Padovani v. Italy*, 26 February 1993, § 26, Series A no. 257-B, and *Kyprianou*, cited above, § 119).

114. The applicant's criticism levelled at Judge K. with regard to her procedural decisions taken during the trial does not persuade the Court that there was bias on her part. Without discussing whether her decisions were justified, the Court notes that there was nothing in them to reveal any predisposition against the applicant. There thus remains the objective test. The principal question here is whether the involvement of the judge in the proceedings against other members of the gang would make an objective observer believe that she was not impartial to judge the applicant's case (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III, and *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

ii. Objective impartiality – general principles

115. The Court observes that, in a number of cases, it has come to the conclusion that the involvement of the same judge in two sets of proceedings concerning the same events may arguably raise an issue under Article 6 § 1 of the Convention. Thus, in the case of *Ferrantelli and Santangelo* (cited above, § 59), the Court held that the applicants' fear as to the lack of impartiality of a judge sitting in their case, after he had already examined the case of a co-accused, was justified. The Court noted that, in the judgment against the co-accused, that judge had made certain findings concerning the applicants' participation in the imputed criminal offences. In particular, the applicants had been referred to as "co-perpetrators" and their roles in the criminal offences had been described in detail. Moreover, the judgment convicting the applicants cited numerous extracts from the first judgment (see, for similar reasoning, the case of *Rojas Morales v. Italy*, no. 39676/98, § 33, 16 November 2000).

116. In more recent cases, however, the Court has found that the applicant's fears about a judge's bias in similar circumstances were

unfounded (see *Schwarzenberger v. Germany*, no. 75737/01, §§ 37 et seq., 10 August 2006, and *Poppe v. the Netherlands*, no. 32271/04, § 22 et seq., 24 March 2009). The Court stated that the mere fact that a judge had already tried a co-accused was not, in itself, sufficient to cast doubt on that judge's impartiality in that applicant's case. The work of the criminal courts, as a matter of practice, frequently involves judges presiding over various trials in which a number of co-accused persons stand charged. The Court considers that the work of criminal courts would be rendered impossible if, by that fact alone, a judge's impartiality could be called into question. An examination is needed, however, to determine whether the earlier judgments contained findings that actually prejudged the question of the applicant's guilt. In *Schwarzenberger*, cited above, the Court emphasised that the assessment of facts in the judgment given against the applicant clearly differed from that in the judgment against the co-accused. The judgment convicting the applicant did not contain any references to the judgment against the co-accused, showing that the judges had given fresh consideration to the applicant's case. Further, in the judgment against the co-accused, the established facts about the applicant's involvement in the crimes were essentially based on the co-accused's submissions, and thus did not constitute the Regional Court's assessment of the applicant's guilt. In *Poppe*, cited above, the Court gave a more detailed reasoning on that last point, finding it decisive that the applicant's name had been mentioned only in passing in the judgments against the co-accused and that the trial judges had not addressed, determined or assessed whether the applicant's involvement fulfilled all the relevant criteria necessary to constitute a criminal offence and, if so, whether the applicant was guilty of having committed such an offence. On the basis of those elements, the Court distinguished the cases of *Schwarzenberger* and *Poppe* from *Ferrantelli and Santangelo* (cited above) and *Rojas Morales* (cited above) (see also *Thomann v. Switzerland*, 10 June 1996, § 35, *Reports* 1996-III, where the court noted that in the second round of the proceedings the judges had been in no way bound by their first decision and had reconsidered the whole case with all the issues raised by the case remaining open; see also, *mutatis mutandis*, the Court's reasoning in the case of *Lindon, Otchakovsky-Laurens and July*, cited above, § 79).

iii. Objective impartiality - application to the present case

117. Turning to the present case the Court notes that the judgment in Mr M.'s case was referred to in the judgment in the applicant's case. However, Judge K. mentioned Mr M.'s judgment not as a source of information, but in passing, when speaking of the proceedings concerning other members of the gang in the opening paragraphs of the judgment. There is no direct evidence that the findings of Mr M.'s judgment were somehow relied on by Judge K. in the proceedings against the applicant.

What is more, Article 90 of the CCrP clearly stipulated that those findings could not have the force of *res judicata* in the applicant's case. Formally speaking, Judge K. was required to conduct a fresh examination of the charges against the applicant, relying only on the evidence examined at his trial. The judge was not precluded from coming to the conclusion that the applicant had not taken part in the criminal activities of which his brother, Mr M., had earlier been convicted. In this respect the situation in the present case was closer to the case of *Schwarzenberger* than it was to the case of *Ferrantelli and Santangelo*, both cited above.

118. The judgment in Mr M.'s case as any judgment in Russia contained both the court's own factual findings and a summary of evidence confirming those findings. In so far as the District Court's own findings are concerned, the applicant's name was never mentioned in any incriminating context. The court never directly referred to the applicant as a "perpetrator" or "co-offender", for example (compare *Ferrantelli and Santangelo*, cited above). As the Court held in *Poppe*, cited above, "whether the applicant's involvement with [other criminals] fulfilled all the relevant criteria necessary to constitute a criminal offence and, if so, whether the applicant was guilty, beyond reasonable doubt, of having committed such an offence was not addressed, determined or assessed by the trial judges" (§ 28). Furthermore, "there [was] no specific qualification of the involvement of the applicant or of the acts committed by him, criminal or otherwise" (ibid.).

119. Indeed, several witnesses named the applicant as the leader of the gang and described his role in some of the episodes imputed to Mr M. That information was reproduced in the judgment; however, it was presented in the judgment as reported speech, and not as the court's own findings. It can be seen from the judgment that the information about the applicant's involvement in the gang was not a condition *sine qua non* for the conviction of Mr M. At least, there is no indication that the Nikulinskiy District Court would not have come to the same conclusions in Mr M.'s case if all references to the applicant's name had been removed. These circumstances lead the Court to conclude that the judgment in Mr M.'s case did not contain findings that actually prejudged the question of the applicant's guilt in subsequent proceedings (compare *Poppe*, cited above, § 26).

120. The Court also takes note of the Government's argument that the professionalism and experience of Judge K. guaranteed her impartiality. The Court agrees that the assessment of a judge's ability to examine the case without any bias may depend on the nature of the adjudicative body. Thus, in the present case Judge K. was a professional judge. As such, she was *a priori* more prepared to disengage herself from her previous experience in Mr M.'s trial than, for instance, a lay judge or a juror.

121. The Court concludes that the trial court was impartial and that there has been no violation of Article 6 § 1 of the Convention on that account.

2. Additional questioning of the victims

122. The second complaint by the applicant under Article 6 §§ 1 and 3 (d) of the Convention, cited above, concerns his inability to re-examine the victims during the trial. The Court notes that, as can be seen from the materials of the case, the applicant had adequate opportunity to examine them during the trial at least once. However, at a later stage he requested their repeated examination owing to some inconsistencies in their testimony. The Court reiterates that the right to call witnesses is not absolute and can be limited in the interests of the proper administration of justice. An applicant claiming a violation of his right to obtain the attendance and examination of a defence witness should show that the examination of that person was necessary for the establishment of the truth and that the refusal to call that witness was prejudicial to his defence rights (see *Guilloury v. France*, no. 62236/00, § 55, 22 June 2006). Although it is normally for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce, there might be exceptional circumstances which could prompt the Court to conclude that the failure to hear a person as a witness was incompatible with Article 6 (see *Destrehem v. France*, no. 56651/00, § 41, 18 May 2004, and *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158). The applicant did not explain with sufficient clarity why the re-examination of the victims had been needed, and why the defence had been unable to put all necessary questions to them during their first examination. In such circumstances the Court considers that the domestic court's refusal to summon them again was not arbitrary. It follows that there has been no breach of Article 6 §§ 1 and 3 (d) of the Convention on that account.

3. Refusal to examine Mr M. or admit his written statement

123. The Court now passes to the applicant's next complaint, namely that Mr M., who had been the key witness in the trial against the applicant, had not been summoned to court, and that Mr M.'s statement had not been admitted to the case file.

124. The Government noted in their observations that under the domestic law courts should always allow the examination of witnesses who had arrived at court and were prepared to give evidence. As to witnesses who were absent, courts had discretion as to whether or not they should be called. Mr M., at the moment of the applicant's trial, had been serving his prison sentence in the penitentiary institution. His name had not been specified "in the list of witnesses subpoenaed" for the defence. Consequently, the District Court had decided that his appearance was not necessary.

125. As to the refusal of the District Court to admit Mr M.'s written statement to the case file, the Government claimed that that statement had

been obtained by the defence in breach of the procedural rules provided for by the CCrP. Since Mr M. had not been given the formal status of a sworn witness, and was not made aware of the criminal liability for false testimony, his written statement had been inadmissible evidence.

126. The Government lastly claimed that the applicant had been successful in obtaining the attendance of at least two witnesses for the defence; as to three other witnesses whose appearance he had initially sought, the applicant had agreed to the continuation of the proceedings in their absence.

127. The applicant maintained that the Government's reference to the duty of courts to hear witnesses who appeared before them was irrelevant. Mr M. had been in detention and was therefore unable to come to court without being summoned. The applicant further claimed that there was nothing in the CCrP to exclude the summoning of a detained witness to court. Mr M. had been a key witness in the circumstances since he had witnessed almost every episode imputed to the applicant.

128. As to the refusal of the court to admit in evidence Mr M.'s witness statement, it was contrary to the ruling of the Constitutional Court of the Russian Federation which found that such statements could be admitted at least for the purpose of assessing the need to examine the witness in person.

129. The Court reiterates that Article 6 § 3 (d) does not require the attendance and examination of every witness on the accused's behalf. It is for the domestic courts to decide whether it is necessary or advisable to examine witnesses (see *S.N. v. Sweden*, no. 34209/96, § 44, ECHR 2002-V, with further references to *Bricmont v. Belgium*, cited above). Similarly, the requirement of a fair trial does not impose an obligation on a trial court to question a witness merely because a party has sought it. It remains for the court to judge whether such a measure would serve any useful purpose (see *H. v. France*, 24 October 1989, §§ 60-61, Series A no. 162-A). Where the defendant wants a witness to be questioned he must support his request by explaining why it was important for the witnesses concerned to be heard (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22, and *Bricmont*, cited above). Finally, the Court reiterates that the scope of the rights guaranteed by Article 6 § 3 must, in particular, be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

130. The Court notes that, given his position in his own case, Mr M. was a witness for the defence in the applicant's trial. The requests lodged by the defence to call that witness were sufficiently reasoned and relevant to the subject matter of the accusation. The principal question is therefore to what extent the questioning of a witness could lead to another evaluation of the case (see, in this respect, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V, and *Guilloury*, cited above, § 64).

131. The Court reiterates that "in circumstances where the applicant's conviction was based primarily on the assumption of his being in a particular place at a particular time, the principle of equality of arms and, more generally, the right to a fair trial implied that the applicant should be afforded a reasonable opportunity to challenge the assumption effectively" (see *Popov v. Russia*, no. 26853/04, § 183, 13 July 2006). In the present case Mr M. was not, strictly speaking, an "alibi witness" – at least, in the proceedings the applicant did not deny that he had met with the victims on several occasions and that he had been involved in certain business transactions with them. He simply denied that he had ever claimed money from the victims for "protection". Although the role of Mr M. cannot be described as that of an "alibi witness", he could admittedly have been a useful source of information for the court.

132. That being said, the relevance and even potential usefulness of a witness for the defence does not automatically require the trial court to secure his attendance. In those Russian cases where a violation of Article 6 § 3 (d) of the Convention was found on account of the failure of the trial court to call witnesses for the defence, the Court always emphasised the comparative weakness of the prosecution case. Thus, in the concluding paragraphs of the case of *Polyakov v. Russia* (no. 77018/01, § 36, 29 January 2009) the Court stressed that "the only direct evidence showing that the applicant had sold drugs ... was the putative purchaser's deposition made during the pre-trial investigation, which she retracted at the trial". In *Popov*, cited above, the Court noted that "the identification evidence before the court thus comprised the conflicting evidence of four schoolchildren who had difficulties in recollecting events after half a year, and the identification parade itself had taken place more than half a year after the fight to which the identification related" (§ 181). In contrast, in *Dorokhov v. Russia* (no. 66802/01, § 74, 14 February 2008), where no violation of Article 6 § 1 (d) was found, the Court emphasised that "the arguments in favour of the applicant's guilt [had been] quite weighty. Several people [had] testified at the trial that they had bribed him with the car. Therefore, even if [the absent witnesses for the defence] had been called and heard, their testimony would most likely not have led to the applicant's acquittal". A similar line of reasoning was employed by the Court in the case of *Thomas v. the United Kingdom* (dec.) no. 19345/02, 10 May 2005, where the Court found that the applicant's complaint of the failure of the British courts to admit exculpating evidence was manifestly ill-founded. In that case the Court noted, *inter alia*, that "the conviction was upheld and the view expressed that there was a strong circumstantial case against the applicant". The question is to which of these two categories the present case belongs.

133. As can be seen from the applicant's own submissions before the court of appeal, he considered that the fact that he had received money from

the victims through Mr M. was decisive for the outcome of the case. This argument is not without merit: a large part of the trial court's factual findings concerned the amounts paid by the victims through Mr M., allegedly to the applicant. Furthermore, the trial court itself did not consider the questioning of Mr M. unnecessary *ab intio*: the trial court rejected the first request of the defence for Mr M. to be examined holding that the court had not yet assessed all the evidence. This formula might be interpreted as postponing the examination of Mr M. to some later stage in the proceedings. However, in the subsequent hearings the trial court did not return to this question. When the defence again requested that Mr M. be examined, the trial judge dismissed that request and proceeded to the final submissions, without, however, explaining why Mr M. should not be questioned. Finally, the court of appeal ignored the question of the non-appearance of Mr M. at the trial, despite this point having been clearly formulated by the applicant in his statement of appeal.

134. The Court notes that the domestic court was aware that Mr M. was in prison at that time. It was therefore not particularly difficult to summon him or to at least secure his questioning via video-link. Contrary to what the Government suggested, the fact of a witness being held in prison does not, in the Court's view, create a serious obstacle for questioning him.

135. The Court attaches special importance to the fact that the applicant clearly demonstrated in his request that the examination of witness Mr M. would have been arguably useful for the defence, and that it was not, as it appears, particularly difficult to secure his attendance and examination in one form or another. Notwithstanding that, the domestic courts at two levels of jurisdiction failed to give any explanation as to why the appearance of Mr M. was not necessary. The Court reiterates that it is generally not its task to take the place of the national authorities in the establishment of the facts of a case (see *Perna*, cited above, § 29); see also, *mutatis mutandis*, *Bykov v. Russia* [GC], no. 4378/02, § 66, ECHR 2009-..., and *Mamedova*, cited above, § 79), and, especially, in the examination of the relevance of the evidence offered by a party. In such circumstances the Court will not speculate on the question whether the testimony of Mr M. could have led to the applicant's acquittal or reduction of his sentence, for example.

136. The Court concludes that the failure of the trial court to allow the examination of Mr M. at the trial amounted to a violation of Article 6 §§ 1 and 3 (d) of the Convention.

137. In view of the above, the Court does not see any need to decide on the refusal of the District Court to admit Mr M.'s written statement to the case file.

4. Insufficient time for the preparation of the defence

138. Under Article 6 § 3 (b) of the Convention the applicant complained that the defence had only been given twenty minutes to prepare their final submissions.

139. The Government maintained that the hearing had been adjourned for thirty minutes. Following the adjournment the applicant's lawyers had given the court twenty-one pages of written submissions, prepared beforehand. It followed that the defence had been well prepared. In addition, the applicant had been represented by three professional lawyers who had made lengthy final submissions. The Government concluded that the applicant's rights under Article 6 § 3 (b) had not been breached.

140. The applicant maintained that the time given to the defence for the preparation of final submissions had clearly been insufficient. The hearing of final submissions started almost immediately after the very intense hearings on the merits of 14, 15 and 16 October 2003, when the parties had produced and cross-examined various items of evidence. The case had been with the court since December 2002; in such circumstance there was no justification for the court's refusal to adjourn the hearing of final submissions for at least one more day. The fact that the defence lawyers had made oral and written final submissions did not prove that they were well prepared to do so. The lawyers had had no other choice but to present their case; so, in order to use that opportunity they had taken the floor and given the judge draft notes prepared by the applicant during the trial for his final submissions.

141. The Court notes that the investigation of the case continued for over one year, so, generally speaking, the applicant had sufficient time, after being served with the decision to charge him, for the preparation of his defence and for developing his counter-arguments (*Padin Gestoso v. Spain* (dec.), no. 39519/98, 8 December 1998). However, the Court should not lose sight of the dynamics of trial proceedings. The Court does not exclude that even where the defence is familiar with the case they must be given additional time after certain occurrences in the proceedings in order to adjust their position, prepare a request, lodge an appeal, and so on. Such "occurrences" may include, for instance, changes in the indictment (as in *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 60 et seq., ECHR 1999-II), adoption of a judgment by the trial court (*Hadjianastassiou v. Greece* (16 December 1992, § 34, Series A no. 252), introduction of new evidence by the prosecution (*G.B. v. France*, no. 44069/98, §§ 60 et seq., ECHR 2001-X), or a sudden and drastic change in the opinion of an expert during the trial (ibid, §§ 64 et seq.).

142. The amount of time to be given to the defence in such situations cannot be defined *in abstracto*. The Court has to decide in the light of all the circumstances of the case which might be relevant in this context. Turning to the present case the Court notes that, although the case concerned very

serious accusations, the applicant was represented by three professional lawyers who were familiar with the case. Indeed, a thirty-minute break is insufficient for the preparation of final submissions, even where three lawyers are involved, but such submissions could have been prepared in advance. It should come as no surprise to a professional lawyer that following the stage of examination of evidence at the trial the parties are invited by the judge to make oral submissions. In view of the overall duration of the trial and the time afforded to the defence for elaborating their arguments at the earlier stages of the proceedings, the adjournment given to the defence at the end of the trial does not appear to deprive the applicant of the very essence of his right under Article 6 §§ 1 and 3 (b) of the Convention. There has therefore been no violation of Article 6 on this account.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

144. The applicant claimed 420,000 Russian roubles (RUB) in respect of pecuniary damage related to loss of income during the time of his detention pending investigation and trial, plus 90,000 euros (EUR) on account of non-pecuniary damage in connection with suffering and distress he endured because of his detention, conviction and separation from his family.

145. The Government claimed that it was not the Court's task to define whether the applicant's criminal prosecution, detention and conviction had been justified. Consequently, the Government invited the Court to reject the applicant's claims in full, in so far as they related to lost income. As to the applicant's claim in respect of non-pecuniary damage, the Government submitted that if the Court found a violation, that would in itself constitute sufficient just satisfaction in this case.

146. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see *Khudoyorov*, cited above, § 221; *Ječius v. Lithuania*, no. 34578/97, § 106, ECHR 2000-IX; and *Kalashnikov v. Russia*, no. 47095/99, § 137, ECHR 2002-VI). On the other hand, in the light of the materials in its possession it awards the applicant EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

147. The applicant also claimed RUB 15,800 for the costs and expenses incurred before the domestic courts plus RUB 244,150 for those incurred before the Court, which represented *in toto* EUR 7,020 at the rate applicable on the date of the submission of the claims. The applicant produced copies of receipts and of the agreement between him and his lawyers on legal representation.

148. The Government claimed that those amounts were not necessary or reasonable and that the applicant's claims should therefore be rejected.

149. 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 the Government did not claim that the costs had not been "actually incurred"; however, they questioned their necessity and reasonableness. Regard being had to the documents in its possession and the above criteria, in particular to the complexity of the case, the amount of legal work involved, the character of the violations found and their relation to the original complaints by the applicant, and in view of other relevant factors, the Court considers it reasonable to award the applicant EUR 5,000, plus any tax that may be chargeable to him on that amount.

C. Default interest

150. 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* admissible the applicant's complaints:
   (a) under Article 5 § 1 of the Convention that his pre-trial detention was unlawful;
   (b) under Article 5 § 3 thereof that his detention was too lengthy;
   (c) under Article 5 § 4 thereof that there have been delays in the review of his pre-trial detention and that the appeal court failed to address all of the arguments of the defence and examine his appeal against the detention order of 7 October 2003;
   (d) under Article 6 §§ 1 and 3 (b) and (d) of the Convention that the applicant did not have a fair trial;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the period of the applicant's detention from 9 to 24 December 2002;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention on account of the period of the applicant's detention from 24 December 2002 to 28 May 2003;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the period of the applicant's detention from 28 May to 21 July 2003;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of the applicant's pre-trial detention;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the delays involved in the examination of the appeals against the detention orders of 2, 9 and 21 July 2003, and on account of the failure of the Moscow City Court to examine the appeal against the detention order of 7 October 2003;

7. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention on account of the alleged failure of the domestic courts to address all of the arguments by the defence in the detention proceedings;

8. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the judge's alleged bias;

9. *Holds* that there has been no violation of Article 6 § 3 (b) of the Convention on account of the applicant's inability to obtain additional questioning of the victims;

10. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention on account of the trial court's failure to summon and examine witness M. on behalf of the applicant, and that there is no need to decide on the domestic courts' refusal to admit Mr M.'s written statement;

11. *Holds* that there has been no violation of Article 6 § 3 (b) of the Convention on account of the time given to the defence to prepare final submissions;

12. *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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, to be converted into Russian roubles 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President