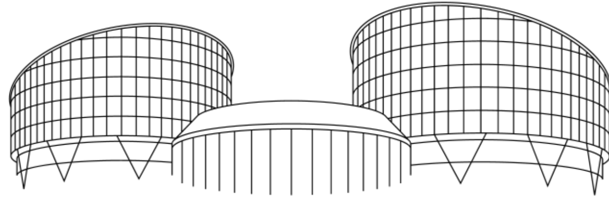

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VALERIY SAMOYLOV v. RUSSIA

(Application no. 57541/09)

JUDGMENT

STRASBOURG

24 January 2012

FINAL

24/04/2012

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

In the case of Valeriy Samoylov v. Russia**,**

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

Peer Lorenzen, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 57541/09) 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 Valeriy Nikolayevich Samoylov (“the applicant”), on 30 September 2009.

2. The applicant was represented by Ms O. Mikhaylova and Ms A. Polozova, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 22 April 2010 the President of the First Section decided to give priority treatment to the application and to give notice of it to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. On 17 June 2010 the President of the Chamber, to which the case had been allocated, decided not to indicate to the respondent Government, under Rule 39 of the Rules of Court, the interim measure the applicant was seeking (release from detention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and is detained in an unspecified detention facility.

A. Criminal proceedings against the applicant

6. The applicant had been a Moscow district prosecutor. He retired in 2006.

7. The national authorities initiated criminal proceedings against several individuals on suspicion of large-scale embezzlement and abuse of power committed by an organised criminal group and involving public officials (see also paragraph 17 below). It appears that in September 2007 the applicant was interviewed as a witness.

8. According to the national authorities (see paragraph 25 below), from October 2007 onwards the applicant did not comply with the investigating authority's summons for interview and was not living at his registered address.

9. On 14 March 2008 investigator G. issued a decision by which the applicant was given the status of an accused in the above-mentioned criminal proceedings. On the same day the investigator issued a decision prohibiting the applicant from leaving his town of residence and imposing "good behaviour" (*подписка о невыезде и надлежащем поведении*) (see also paragraph 59 below). The decision read as follows:

> "[The applicant] is registered as residing at the following address...The investigating authority's attempts to determine his actual whereabouts were unsuccessful. There are sufficient reasons to consider that he has attempted to flee prosecution. Therefore, I order a preventive measure consisting of the prohibition to leave the town of residence and the requirement of good behaviour."

According to the applicant, neither he nor his lawyer was informed of those decisions at the time.

10. On the same day, the investigator ordered that the applicant's name be put on the federal wanted list. This order was enforced on 1 April 2008.

11. According to the applicant, during this period of time he did not go into hiding; he was receiving treatment in a hospital and participated in public events. For instance, on 14 March 2008 he attended a public ceremony for the 75th anniversary of the prosecution service and was given an honorary certificate by the Moscow prosecutor.

12. On 17 March 2008 the applicant met investigator G. and was given a summons for an interview on 24 March 2008. On that date the applicant was admitted to town hospital no. 52. On the same day, investigator K. interviewed the applicant's son. The latter stated that the applicant had been admitted to hospital but could not indicate the address of the hospital.

13. On 8 April 2008 the applicant was transferred to a military hospital.

14. In reply to an enquiry from investigator K., the town hospital informed him on 15 April 2008 that the applicant had been admitted to that hospital from 24 March to 7 April 2008. In reply to another enquiry, the military hospital informed the investigator, apparently on 23 April 2008,

that the applicant had been a patient there since 8 April 2008, and that his treatment was expected to be completed by 30 April 2008.

15. In reply to investigator G.'s summons for an interview on 24 April 2008, the applicant's lawyer stated that the applicant was receiving in-patient treatment in the military hospital, and requested that the decision to order the addition of the applicant's name to the federal wanted list be revoked.

16. On the same day, 24 April 2008, arresting officers visited the applicant in the hospital and took him to the Investigations Department at about 4 p.m. The arrest record was drafted in the following terms:

> "The arrest has been effected under Article 91 § 1 (2) and § 2 of the Code of Criminal Procedure because eyewitnesses indicated [the applicant] as the perpetrator; he had previously attempted to evade prosecution and his name had been put on the federal wanted list. If at large, [the applicant] would continue to evade prosecution, pursue his criminal activities, threaten other participants in proceedings, destroy evidence or otherwise obstruct the proceedings."

The applicant made a handwritten comment on the record, indicating that he had not been identified by any eyewitnesses, had been living in his flat in Moscow and had not attempted to evade prosecution. The applicant was provided with a copy of the investigator's order listing the charges against him. The applicant was then interviewed in the presence of counsel until around midnight in connection with these criminal charges. In addition to detailed comments on the charges against him and relevant other matters, the applicant stated that he had been forced to leave the military hospital, and asked to be re-admitted or provided with medical assistance.

17. The applicant was accused of membership of an organised criminal group (*преступное сообщество*), involving, *inter alia,* a district prosecutor, an investigator and several senior officers. According to the investigating authority, this group was structured, had a stable membership with assigned roles in criminal activities, internal discipline and sophisticated planning, involving participants outside the criminal group, including officials in law-enforcement agencies. According to the investigating authority, in early 2007 this group set up bogus criminal proceedings and held searches of the premises of several private companies, seized their property, and misappropriated other property. The applicant was charged under Article 159 § 4 of the Criminal Code (embezzlement as part of an organised group or on a large scale), Article 286 § 3 in conjunction with Article 33 § 4 (incitement to abuse of power causing serious damage), and Article 210 § 2 (membership of a criminal group).

18. The investigator sought judicial authorisation of the applicant's continued detention, alleging that since January 2007 the applicant had been a member of an organised criminal group which had committed various acts of fraud with the aid of public officials in office. The investigator referred to the applicant's failure to comply with the preventive measure, his previous

employment as a public prosecutor, and the existence of strong corruptive links between him and certain officials in the prosecution service or law-enforcement agencies. The investigator relied in that connection on the results of the tapping of the applicant's telephone conversations with others.

19. On 25 April 2008 the Zamoskvoretskiy District Court of Moscow held a hearing at which it confirmed the lawfulness of the applicant's arrest and authorised his continued detention in the following terms:

> "Bearing in mind the gravity of the charges, the public dangerousness of the offences, the factual circumstances of the case and the addition of [the applicant's] name to the wanted persons list, the court has reasons to consider that if at large he would evade prosecution, influence witnesses or co-accused or otherwise obstruct the proceedings. The court is satisfied that the investigating authorities first learnt about the admission of [the applicant] to a specific medical facility only on 23 April 2008. The authority had first been informed about his admission to hospital no. 52 after his discharge from this hospital. When ordering measures to determine his whereabouts the authority had no relevant information."

20. The applicant appealed, contending that the first-instance court had not examined any evidence concerning the allegation that he would evade prosecution. He argued that he had permanent residence in Moscow; the prosecution had been aware of his whereabouts from the tapping of his mobile phone; there was no reason to put his name on the wanted persons list since on 17 March 2008 he had had an interview with the investigator. In any event, until 14 March 2008 the applicant had had witness status in the criminal proceedings and thus had not been under an obligation to inform the investigating authority of his whereabouts.

21. On 15 May 2008 the Moscow City Court upheld the detention order.

22. On 30 May 2008 the applicant was given access to the criminal case file.

23. On 19 June 2008 the District Court held a hearing. The investigator argued that the applicant should be kept in detention for one more month because time was required to allow the defendants and their lawyers to study the case file, to draft a bill of indictment before submitting the criminal case to a trial court. The investigator argued that the grounds for detention persisted, in view of the gravity of the charges and the circumstances of the criminal case. Accepting that the investigating authority needed more time to complete the investigation, the District Court extended the applicant's detention until 13 August 2008. The court mentioned the gravity of the charges and the addition of the applicant's name to the wanted persons list.

24. On 11 August 2008 the District Court extended his detention until 13 January 2009 on similar grounds. On 30 December 2008 the term of detention was extended until 24 April 2009.

25. On 11 March 2009 the City Court extended the applicant's detention until 13 May 2009, with reference to Article 109 § 7 of the Code of

Criminal Procedure (CCrP) (see paragraph 57 below). The court held as follows:

> "[The applicant] has been charged with serious criminal offences...The present case is particularly complex, and has required a large number of investigative measures and assessment of a large amount of documents concerning commercial activities. The file consists of 190 volumes. Fifteen individuals have been charged. The exceptional nature of the case is evident. [The applicant] has been charged with three offences and has been studying the case file since 30 May 2008. There were no unjustified delays in the investigation; [the applicant] was promptly given access to the file. As can be seen from the schedule for studying the file, the defendants study it on a daily basis, except weekends and public holidays.
>
> According to the version of the investigating authority, the offences in question were committed by an organised criminal group. The relevant reasons for detention persist.
>
> After interviewing [the applicant] as a witness in September 2007, since October 2007 the investigating authority issued summons for interviews, which is confirmed by [the applicant's] wife, the summons and other reports. [The applicant] did not attend interviews, was not at his registered address, and his whereabouts could not be determined. For these reasons, on 14 March 2008 his name was added to the wanted persons' list.
>
> The above circumstances suffice to conclude that if released he would evade prosecution. Moreover, it is necessary to complete the study of the case file; he may also continue his criminal activities. Alternative preventive measures would not suffice..."

26. On 14 April 2009 the Supreme Court of Russia upheld the detention order of 11 March 2009.

27. On 20 April 2009 the City Court extended the detention of five defendants, including the applicant, until 13 August 2009. Referring to Article 109 of the CCrP, the court mentioned the complexity of the criminal case; that the offences had spanned a long period of time; and that some defendants needed to finish studying the case file. The court refused bail, including for health reasons.

28. The applicant appealed, arguing that his detention could not be extended beyond the twelve-month period indicated in Article 109 § 2 of the CCrP. On 1 June 2009 the Supreme Court rejected his arguments and upheld the detention order of 20 April 2009.

29. On 23 July 2009 the criminal case was submitted for trial in the City Court. The trial started on 5 August 2009. On that date, the court refused the detainees' applications for release and left the "preventive measure unchanged", referring to the gravity of the charges and the risk that they would flee justice and put pressure on the victims and witnesses on account of the status of public officials held by some of them, including the applicant. Referring to Article 255 of the CCrP, the court held as follows:

> "Given the gravity and the number of charges, the present case discloses a public interest and importance which plead, despite the presumption of innocence, in favour

> of limitation of the [defendants'] liberty; it is not possible to choose a less intrusive preventive measure."

30. The applicant appealed, contending that the courts had not relied on any averred facts to draw conclusions as to the existence and pertinence of the above-mentioned risks, and that his detention after 24 April 2009 had been unlawful. On 30 September 2009 the Supreme Court upheld the above-mentioned court decision.

31. On 13 January and 19 April 2010 the City Court issued detention orders extending the applicant's and his co-accused's detention pending trial. These detention orders read as follows:

> "Given the number of defendants, the gravity and the number of charges, the present case is exceptional (also as to its volume and complexity)...An extension of the period of the defendants' detention is necessary in view of the need to complete the trial, to prevent risks of fleeing justice and putting pressure on victims or witnesses, this latter risk being real because of the previous professional activity of certain defendants in law-enforcement agencies.
>
> The grounds cited for ordering and extending detention at earlier stages of the proceedings persist; no new circumstances have been mentioned by the defence...
>
> Given the gravity and the number of charges, the present case discloses a public interest and importance which plead, despite the presumption of innocence, in favour of limitation of the [defendants'] liberty; it is not possible to choose a less intrusive preventive measure."

32. It appears that the applicant was convicted on 9 June 2010.

B. Medical care

1. Medical care provided to the applicant prior to his arrest and detention

33. In February 2006, March, July and September 2007 and March 2008 the applicant was admitted to various civil hospitals and one military hospital for treatment in relation to a number of conditions of varying degrees of seriousness. From 24 March to 7 April 2008 the applicant was admitted to a town hospital with the following diagnoses: Quincke's oedema, chronic recurrent nettle rash, intolerance to a number of drugs, focal bulbitis, non-atrophic gastritis, chronic gastroduodenitis and symptoms of hepatitis.

34. On 7 or 8 April 2008 the applicant was admitted to the neurology unit of a military hospital with the following diagnoses: chronic hypertensive encephalopathy and asthenic syndrome, coronary heart disease, exertional angina (pectoris), high blood pressure, kidney maldevelopment, oesophagal hernia, and bronchitis. The applicant's medical history reads as follows:

"The patient complained of headaches, dizziness, heavy fatigue, insomnia, and recurrent chest pain.

Anamnesis: For a number of years the patient has the following diagnoses: hypertensive encephalopathy, generalised spinal osteochondrosis...Outpatient and in-patient treatment gave positive results. The recent observations disclose a more severe pain syndrome.

Objective examination data and tests: The patient's global condition is satisfactory...The general blood and urine tests are normal; biochemical blood tests are normal; negative testing for hepatitis B and C; an electrocardiogram discloses an obstruction of intra-ventricular conduction and indications of left ventricular hypertrophy.

Treatment: regimen, diet, medication and vitamins...The patient has been discharged from hospital in a satisfactory condition. Recommendations include monitoring by a neuropathologist and a therapist; blood pressure control, diet no. 10, medication by Enalapril (one pill in the morning), Predurtal (one pill twice a day) and Aspikor (one pill regularly)[1]; no load-bearing affecting the spine, no exposure to cold; massage and exercise therapy."

35. In reply to a request from the investigator dealing with the applicant's criminal case (see paragraph 14 above), the hospital informed him that the applicant's course of medical treatment was expected to be completed by 30 April 2008.

2. Medical care provided to the applicant after his arrest and during his detention

(a) Medical assistance after the arrest

36. On 24 April 2008 arresting officers visited the applicant in the military hospital and took him to the Investigations Department at about 4 p.m.. The applicant made the following written comment on the arrest record:

"I am unfit for any further interview, suffering acute chest pain and high blood pressure".

37. The applicant was then interviewed in connection with the criminal charges against him. In addition to detailed comments concerning the charges against him and other relevant matters, the applicant stated that he had been forced to leave the military hospital, and asked to be re-admitted to it or given medical assistance in detention.

38. According to the applicant, at some point during the interview he had a hypertensic attack; the investigator called the emergency services, who provided the applicant with medical assistance. The applicant subsequently amended his statement, alleging that the investigator had refused to call the emergency services.

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1. Names of medical substances are given hereafter in accordance with the classification of drugs adopted in the Russian Federation.

39. After the interview the applicant was placed in a temporary detention centre or a cell in the police station and, allegedly, was not provided with medical assistance or food. The applicant unsuccessfully sought the institution of criminal proceedings against the investigator(s).

40. The applicant lodged complaints of inadequate medical assistance after his arrest. On 13 May 2008 an investigator in the Moscow Investigations Department dismissed them. By a letter of 22 July 2008, the Investigations Department considered that the above complaints did not disclose any criminal offence and that the applicant had received and was receiving the necessary medical assistance.

(b) Medical care in remand centre no. 77/6 and the prison hospital

41. On 28 April 2008 the applicant was transferred to Moscow remand centre no. 77/6. During his admission to the remand centre he was examined by the duty medical assistant, who concluded that his state of health was satisfactory. The applicant informed the medical assistant of his health problems and the medication he was taking. The medical documents submitted by the applicant were admitted to the file. The applicant underwent compulsory tests such as fluographic imaging. According to the Government, on 28 April 2008 he was placed under supervision by the medical staff and received medication for his chronic conditions.

42. On 11 July 2008 the applicant was examined by a doctor in connection with his complaints of double vision and dizziness. His blood pressure was measured and he was prescribed medication with Enalapril (one pill twice a day) and Validol (one pill). According to the applicant, there was no documentary proof that he had received this medication, which, in any event, was “scarce”.

43. The applicant was again examined on 7 October 2008, when he complained of headaches and dizziness.

44. On 25 December 2008 the applicant complained that his state of health was not being attended to by medical specialists in various fields (a cardiologist, a therapist, a neuropathologist, a pulmonologist, an endocrinologist and a gastroenterologist) and that his discharge from hospital in April 2008 had prevented him from receiving a proper diagnosis from an allergist, in order to exclude any undesirable medication. On 15 January 2009 the Moscow Investigations Department examined his complaint and concluded, with reference to an information note from the remand centre, that the applicant’s state of health was satisfactory, that he could request the necessary medical assistance in the remand centre or challenge any refusal before a prosecutor or a court. In addition, by a letter of 16 January 2009 the Moscow Prosecutor’s Office indicated that the applicant had received the requisite treatment for his symptoms, as requested in July and October 2008.

45. In December 2009 the applicant sought an expert report from Ms P., professor and deputy chair of the psychotherapy and narcology department of a Moscow university, concerning his illnesses over a period of time since 2006. Having assessed the available medical data (see paragraphs 33 and 34 above), Ms P. made the following findings in her report of 4 December 2009:

> "The patient requires monitoring by medical specialists in various fields (a cardiologist, a neuropathologist, a pulmonologist, an endocrinologist, a gastroenterologist and an allergist) and constant intake of medication under the supervision of a medical professional. The recommendations include diet, blood pressure control, glucose blood control, thyroid hormone control, lipidic control, as well as exclusion of static spinal pressure and load lifting, and exclusion of exposure to cold.
>
> Non-provision of specialised medical care may cause irreparable health damage and result in the exacerbation of chronic illnesses, disability (a heart attack or a cerebrovascular accident) or death."

46. On 2 January 2010 the applicant was examined by the senior medical officer of the remand centre in connection with his complaints of headaches, dizziness and pain in the thoracocervical area and was given medication.

47. From 21 February to 16 March 2010 the applicant was admitted to a prison hospital of remand centre no. 77/1 in order for additional examinations by specialist doctors, such as a neuropathologist and a cardiologist, to be carried out. The applicant had an electrocardiogram and was prescribed medication with Korinfar, Papazol and Validol. It appears that in March 2010 the applicant made a written statement that he no longer wished to be treated in the prison hospital. The discharge certificate contained recommendations of monitoring, blood pressure control, and medication with Korinfar and Papaverin.

48. After his discharge from the hospital the applicant was transferred back to remand centre no. 77/6. He was examined by the senior medical officer of the remand centre, who prescribed medication and medical check-ups twice a year.

49. In May 2010 the applicant sought another expert opinion from Professor P. Having assessed the available medical data (see paragraphs 33 and 34 above), on 21 May 2010 Ms P. expanded her earlier report, finding as follows:

> "Recurring episodes of Quincke's oedema pose a real risk to life because of the absence of data concerning the syndrome aetiology and the absence of diagnosis and treatment of an allergic condition, which is indispensable. In the absence of treatment, there is a heightened risk of anaphylactic shock."

50. On 16 August 2010 the applicant was examined by the remand centre doctor in connection with complaints of pain in the ankle joint. The doctor diagnosed dermatitis and athrosis, and prescribed medication. It

appears that two days later the applicant refused to take the drugs, referring to raised blood pressure after earlier medication. On 25 August 2010 the applicant was again examined by the doctor, who modified his prescriptions.

51. The Government submitted to the Court nine written statements made by the medical staff of remand centre no. 77/6, to the effect that the applicant had made no complaints concerning medical care or food rations and that he had been provided with adequate medical care. The Government produced detailed descriptions of the food rations provided to detainees in remand centre no. 77/6 in 2008-2010, as well as food and water quality reports issued by the specialised unit of the Prisons Department.

II. RELEVANT DOMESTIC LAW

A. Health care in detention facilities

52. Russian law gives detailed guidelines for the provision of medical assistance to detained individuals. These guidelines, found in joint Decree no. 640/190 of the Ministry of Health and Social Development and the Ministry of Justice, on Organisation of Medical Assistance to Individuals Serving Sentences or Detained ("the Regulation"), enacted on 17 October 2005, are applicable to all detainees, without exception. In particular, section III of the Regulation sets out the procedure for initial steps to be taken by the medical personnel of a detention facility on admission of a detainee. On arrival at a temporary detention facility all detainees must have a preliminary medical examination before they are placed in cells shared with other inmates. The examination is performed with the aim of identifying individuals suffering from contagious diseases or in need of urgent medical assistance. No later than three days after the detainee's arrival at the detention facility he should receive a medical examination, including fluorography. During the in-depth examination a prison doctor should record the detainee's complaints, study his medical and personal history, record injuries if present, as well as recent tattoos, and schedule additional medical procedures if necessary. A prison doctor should also authorise laboratory analyses to identify sexually transmitted diseases, HIV, tuberculosis and other illnesses.

53. Subsequent medical examinations of detainees are performed at least twice a year or at a detainee's request. If a detainee's state of health has deteriorated, medical examinations and assistance should be provided by medical personnel of the detention facility. In such cases a medical examination should include a general medical check-up and additional methods of testing, if necessary, with the participation of particular medical specialists. The results of the examinations should be recorded in the

detainee's medical history. The detainee should be fully informed of the results of the medical examinations.

54. Section III of the Regulation also sets the procedure for cases of refusals by detainees to undergo medical examination or treatment. In each case of refusal, an entry should be made in the detainees' medical record. A prison doctor should explain to the detainee the consequences of his refusal to undergo the medical procedure.

55. Detainees take prescribed medicines in the presence of a doctor. In a limited number of cases the head of the medical department of the detention facility may authorise medical personnel to hand over a daily dose of medicines to the detainee for unobserved intake.

B. Detention pending investigation

56. Article 109 § 2 of the Code of Criminal Procedure concerning detention pending investigation provided at the time that after the initial period of detention for two months, another period of detention of up to six months could be ordered by a court. After six months, detention could be ordered up to twelve months in relation to serious and particularly serious offences if the case was particularly complex. It followed from Article 109 § 3 of the Code that detention beyond twelve months and up to eighteen months could be ordered in cases of particularly serious offences.

57. Under Article 109 § 5, after the closure of the preliminary investigation but no later than thirty days before the expiry of the applicable maximum period of detention (see above), the defendant should be given access to the case file. If the defendant obtained access to the file less than thirty days before the expiry of this period of detention, he should be released when this period reached its term. However, if the time afforded for studying the file was insufficient a court could authorise an additional period of detention until such time the defendant finished studying the file (Article 109 § 7). This extension also applied to any other co-defendant who may have already finished studying the file.

C. Other relevant legislation

58. Under Article 56 of the Code of Criminal Procedure a witness should comply with a summons issued to him by an investigator or a court; for failure to comply a witness may be brought before the authority which issued the summons.

59. A suspect, an accused or defendant may be subject to a preventive measure consisting of a written undertaking by that person not to leave their location of residence without permission from an investigator or a court and/or to respond to any summons issued by them and/or to refrain from any other conduct obstructing the proceedings (Article 102 of the Code).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicant complained that he had not been, and was not being, provided with appropriate medical care, in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties’ submissions

1. The applicant

61. The applicant first argued that his complaints concerning medical care after the arrest in April 2008 and during his subsequent detention in remand centre no. 77/6 and the prison hospital of remand centre no. 77/1 were closely linked to each other, concerned an uninterrupted period of detention, and had the same factual and legal basis. Thus, in his view, the facts of the case disclosed a continuing situation requiring the whole period of detention to be taken into consideration, despite the six-month rule under Article 35 § 1 of the Convention.

62. As to the substance of the complaints, the applicant argued that his arrest and detention were unacceptable on account of his medical conditions at the time; that he had not been provided with medical assistance after his arrest and during the first days of his detention. He contended, in respect of the period of his detention in the remand centre, that he had not been provided with monitoring by specialist medical staff. In his written observations, the applicant raised further grievances concerning the subsequent period of detention, and amended his initial allegations as follows. According to him, none of the recommendations made during his in-patient treatment in April 2008 (see paragraph 34 above) had been complied with after the arrest and during his detention. No previously prescribed medication had been provided in the remand centre and in the prison hospital. Since the medication prescribed by the prison doctor provoked allergies, the applicant stopped taking it. His blood pressure had been checked on three occasions during a period of over two years in detention.

2. The Government

63. The Government submitted that the applicant had complained in April, September and December 2008 at the domestic level about his medical care, whereas the present application had been lodged on

30 September 2009. They concluded that the applicant had not complied with the six-month rule under Article 35 § 1 of the Convention.

64. As to the substance of the complaints, the Government argued that the applicant had been provided with the necessary medical care in the remand centre and the prison hospital. His medical conditions had been, and continued to be, monitored on a regular basis by the medical staff of the remand centre. He had received in-patient treatment and medication in compliance with prescriptions. The recommendation issued before his detention had been also taken into consideration. He had also been admitted to a prison hospital and had been discharged in a satisfactory condition. There had been no valid reason to provide him with a special diet. The standard ration for detainees was compatible with his medical condition.

B. The Court's assessment

1. Admissibility

65. First, the Court will examine the parties' arguments concerning compliance with the six-month rule under Article 35 § 1 of the Convention.

66. In the present case, the applicant's initial grievances before the Court were raised on 30 September 2009. It related to the continuing period of his detention from 24 April 2008 and concerned the medical care during the first days of his detention and the alleged unavailability of monitoring by specialist medical staff in remand centre no. 77/6. In June 2010 he extended his earlier allegations in relation to the period of his detention after September 2009 (see paragraph 62 above). Therefore, the present case concerns the period of the applicant's detention from 24 April 2008 to June 2010.

67. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the relevant complaint has been lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies (see, among others, *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009; *Otto v. Germany* (dec.), no. 21425/06, ECHR 2009-...; and *Baryshnikova v. Russia* (dec.), no. 37390/04, 12 November 2009).

68. The Court also reiterates that complaints which have as their source specific events which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Camberrow MM5 AD v. Bulgaria*, (dec.), no. 50357/99, 1 April 2004). At the same time, the concept of a "continuing situation" refers to a state of affairs in which there are continuing activities by or on behalf of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002-VII). In cases where there is a continuing situation and no relevant final decision at the domestic level, the six-month period runs from the

cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). Thus, the Court has to decide whether the relevant period of the applicant's detention constitutes a "continuing situation", and thus meets the six-month time-limit.

69. The applicant's complaints concern problems relating to insufficient medical care which he allegedly had to endure during the uninterrupted period of his detention. It follows that the facts of the case can be regarded as a continuing situation (see, for instance, *Vladimir Sokolov v. Russia*, no. 31242/05, § 56, 29 March 2011, and, by contrast, *Vladimir Vasilyev v. Russia* (dec.), no. 28370/05, 1 July 2010). Accordingly, the Court dismisses the Government's objection to this effect.

70. The Court considers that the complaint concerning medical care in detention from 24 April 2008 to June 2010 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) General principles

71. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

72. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's psychological and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III, with further references).

73. In the context of deprivation of liberty the Court has consistently stressed that to fall under Article 3 the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention (see, *mutatis mutandis*, *Tyrer v. the*

United Kingdom, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

74. Furthermore, the Court reiterates that allegations of ill-treatment should be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. Failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see, in various contexts, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 179, ECHR 2007-IV; *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004; *Aleksandr Leonidovich Ivanov v. Russia*, no. 33929/03, §§ 27-35, 23 September 2010; and *Boris Popov v. Russia*, no. 23284/04, §§ 65-67, 28 October 2010).

75. Regarding the issue of health care in detention facilities, the Court reiterates that under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately ensured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

76. Where complaints are made of failure to provide requisite medical assistance in detention, it is not essential for such a failure to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee has been subjected to treatment incompatible with the guarantees of Article 3 (see *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010). The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was in breach of that Article (ibid).

77. Thus, although Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds save for exceptional cases (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001), a lack of

appropriate medical treatment may raise an issue under Article 3, even if the applicant's state of health does not require his immediate release.

78. The national authorities must ensure that diagnosis and care in detention facilities, including prison hospitals, are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing his or her condition from worsening (see *Pitalev v. Russia*, no. 34393/03, § 54, 30 July 2009, with further references).

79. On the whole, while taking into consideration "the practical demands of imprisonment" the Court reserves sufficient flexibility in deciding, on a case-by-case basis, whether any deficiencies in medical care were "compatible with the human dignity" of a detainee (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). In its assessment the Court gives thorough scrutiny to the question concerning the compliance with recommendations and prescriptions issued by medical professionals, in the light of specific allegations made by the applicant and with due regard to the gravity of the medical condition.

80. At the same time, the Court considers that an unsubstantiated allegation of no or unsatisfactory medical care is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question, related medical prescriptions and recommendations which were sought, made or refused, as well as some evidence – for instance, expert reports – capable of disclosing serious failings in the applicant's medical care.

81. The Court also reiterates that its task is to determine whether the circumstances of a given case disclose a violation of the Convention in respect of an applicant, rather than to assess *in abstracto* national legislation of the respondent State, its regulatory schemes or the complaints procedure used by an applicant. Thus, mere reference to the domestic compliance with such legislation or schemes, for instance as regards licensing of medical institutions or qualifications of medical professionals, does not suffice to oppose an alleged violation of Article 3 of the Convention. It is fundamental that the national authorities dealing with such an allegation apply standards which are in conformity with the principles embodied in Article 3 (see paragraphs 71-79 above).

(b) Application of the principles to the present case

82. The Court observes that between February 2006 and his arrest on 24 April 2008 the applicant was admitted to various hospitals on several occasions (see paragraphs 33 and 34 above). As can be seen from two expert reports, submitted by the applicant, his medical condition required specialised medical care, including monitoring by medical specialist in

various fields, and constant intake of medication under the supervision of a medical professional (see paragraphs 45 and 49 above). On 24 April 2008 the applicant was taken by arresting officers from a medical facility in order to bring him before an investigator in relation to a pending criminal case (see paragraphs 14-16 above). Thereafter, the applicant was kept in a remand centre, as well as in a hospital of another remand centre.

83. The applicant argued that his arrest and detention were unacceptable on account of his medical conditions at the time and that he had not been provided with medical assistance after his arrest. However, the main thrust of his argument concerned the alleged absence or inadequacy of medical care provided to him between 24 April 2008 and June 2010 (see paragraph 62 above).

84. The Court should determine whether during the relevant period of detention the applicant needed regular medical care, whether he was deprived of it as he claims, and if so whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004, and *Sarban v. Moldova*, no. 3456/05, § 78, 4 October 2005).

85. The Court considers, and it is common ground between the parties, that at least some of the applicant's medical conditions during the relevant period of time were relatively serious and required a wide range of treatment.

86. Having assessed the available material, the Court cannot but observe that the applicant made, at different stages of the proceedings before the Court, contradictory statements concerning (non-)availability of emergency assistance on the day of his arrest in relation to a hypertensic crisis (see paragraph 38 above). Therefore, the Court does not find it established that the applicant was refused medical assistance on the day of his arrest.

87. The Court also reiterates that Article 3 cannot be interpreted as laying down general obligations not to detain a person or to release a detainee on health grounds. While it is worrying that the applicant's treatment in the hospital was interrupted, the Court considers that this fact in itself does not entail a violation of Article 3 of the Convention, provided that, given the practical demands of imprisonment, the authorities made appropriate arrangements for ensuring the applicant's health and well-being in detention.

88. Indeed, the main thrust of the applicant's argument before the Court concerns the alleged unavailability of monitoring by specialist medical staff between April 2008 and June 2010. Focusing on the question of appropriate arrangements for ensuring the applicant's health and well-being in detention, the Court has to assess the applicant's specific allegations.

89. The Court observes in that connection, and it is undisputed between the parties, that during his admission to the remand centre the applicant was examined by a medical assistant, who added to the file the medical

documents submitted by the applicant. According to the Government, on 28 April 2008 the applicant was placed under supervision by the medical staff and received medication for his chronic conditions. The issue of monitoring was examined at the domestic level and was dismissed as unfounded. The Court does not find sufficient reasons to disagree with the domestic assessment. Nor did the applicant challenge in any national proceedings the findings made during the inquiries (see paragraphs 39, 40 and 44 above).

90. It does not follow from the reports compiled at the applicant's request in December 2009 and May 2010 that he had been refused proper monitoring or that it had adversely affected his medical condition(s), to the extent offending the guarantees of Article 3 of the Convention (see paragraphs 45 and 49 above). Similarly, it has not been substantiated that the allegedly unsatisfactory frequency of blood pressure checks disclosed a serious failing which was such as to violate the requirements of Article 3 of the Convention. As to other aspects of his medical care, including his allegations concerning "scarcity" of medication (see paragraph 42 above), the applicant has not substantiated them and has not submitted appropriate evidence.

91. In view of the foregoing, the Court considers that, given the practical demands of imprisonment, the authorities made appropriate arrangements for ensuring the applicant's health after his arrest and during his detention.

92. The Court recognises that detained applicants may have difficulties in collecting evidence to substantiate, both at the national level and before this Court, their grievances relating to previous or ongoing deficiencies in medical care in detention. This is especially so when such grievances involve complex medical issues. Nevertheless, the Court considers that the applicant, who was represented at the national level and before this Court by a lawyer, did not provide sufficient and convincing arguments disclosing that any averred and allegedly serious failings on the part of the national authorities from 24 April 2008 to June 2010 were such as to violate the requirements of Article 3 of the Convention.

93. Accordingly, there has been no violation of Article 3 of the Convention.

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

94. The applicant complained that his arrest and detention had been unlawful, in breach of Article 5 § 1 of the Convention, which reads as follows:

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

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

95. First, the applicant argued that there had been no factual grounds for considering that he had not complied with the initial preventive measure against him (obligations not to leave his town of residence and to comply with the investigating authorities’ orders). Since this circumstance served as a reason for his arrest this could not be considered lawful. Second, as the charges against him did not fall within the category of “particularly serious offences” (see paragraph 56 above), his detention should not, in any circumstance, have been maintained after the expiry of the twelve-month period on 24 April 2009 for which reason the subsequent detention was unlawful, in breach of Article 109 § 2 of the Code of Criminal Procedure (CCrP).

96. The Government argued that the applicant’s arrest and detention from 24 April 2008 to April 2009 had been lawful within the meaning of the CCrP. Second, the Government argued that the period of detention since April 2009 had been regulated by Article 109 of the CCrP.

97. The Court considers that by application of the six-month time-limit under Article 35 § 1 of the Convention it has no jurisdiction to examine the applicant’s complaint concerning the alleged unlawfulness of his arrest on 24 April 2008. Concerning this point, the final decision in the normal chain of exhaustion of domestic remedies was taken on 15 May 2008 by the city court, while the related complaint was raised before this Court on 30 September 2009. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

98. Second, the Court has examined the above-mentioned complaint concerning the applicant’s allegedly unlawful detention after 24 April 2009. It is noted that the applicant’s detention until 5 August 2009 was covered by Article 109 of the CCrP. In the present case the twelve-month period would expire on 24 April 2009. On 20 April 2009 the city court maintained the applicant in custody with reference to Article 109 §§ 5 and 7. These were the provisions which regulated detention during the procedure for studying the case file before the case was submitted for trial (see paragraph 57 above). Thus, the Court concludes that the applicant’s detention from 20 April to 5 August 2009, when the trial started, was lawful under Article 109 of the CCrP.

99. Furthermore, it is noted that on 5 August 2009 the applicant’s detention was lawfully extended pending the trial under Article 255 of the CCrP. Accordingly, there is no indication that the applicant’s detention pending the trial from 5 August 2009 to 9 June 2010, when he was convicted, was unlawful in domestic terms.

100. Lastly, the Court does not find any reasons to consider that the applicant's detention pending the investigation and the trial was arbitrary or otherwise in breach of Article 5 § 1 of the Convention. The applicant's arguments concerning sufficiency of reasons for his detention will be examined below under Article 5 § 3 of the Convention.

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

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

102. The applicant complained that the length of his detention pending the investigation and trial had been unreasonable and had not been based on relevant and sufficient reasons, in breach of Article 5 § 3 of the Convention, which reads as follows:

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

A. The parties' submissions

103. The Government argued that the applicant's arrest and detention had been justified with reference to the nature of the criminal activities which were the factual basis of the charges against him and several other persons. In view of his status as a (former) public official, the applicant could have obstructed the course of the investigation, if at large; he could have influenced the testimony of witnesses, of whom he had been either a hierarchical superior or a supervising official. The applicant had failed to comply with the initial preventive measure (an obligation not to leave his town of residence) and had thus been treated as a fugitive. The national courts had thoroughly assessed all relevant circumstances, including the applicant's state of health or alternative preventive measures. The courts had given weight to the arguments pertaining to the complexity of the case and the number of investigative measures to be carried out, and had made sure that the proceedings were carried out with special diligence.

104. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

105. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No

other ground for declaring it inadmissible has been established. Thus, it should be declared admissible.

2. *Merits*

(a) General principles

106. The Court reiterates that the existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the assessment of the continued detention. However, with the lapse of time this suspicion no longer suffices. The national authorities must establish the existence of specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, §§ 62 and 63, ECHR 2009-...). It should be established whether the other grounds given by the authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). Where such grounds were relevant and sufficient, the Court must also be satisfied that the national authorities displayed special diligence in the conduct of the proceedings.

107. The Court reiterates that the risk of flight should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8; *Shenoyev v. Russia*, no. 2563/06, § 55, 10 June 2010; and *Ściebura v. Poland*, no. 39412/08, § 30, 15 February 2011).

108. As to the risk of obstruction of the proceedings, the national authorities should have regard to pertinent factors such as the advancement of the investigation or judicial proceedings and their resumption, or any other specific indications justifying the fear that the applicant might abuse his regained liberty by carrying out acts aimed, for instance, at the falsification or destruction of evidence (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A).

109. The risk of reoffending, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and personality of the person concerned (see, among others, *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225, and *Paradysz v. France*, no. 17020/05, § 71, 29 October 2009).

110. Furthermore, in the Court's view, the concerted or organised nature of the alleged criminal activities may be relevant for the assessment of specific risks. The existence of a general risk flowing from it may be accepted as the basis for detention at the initial stages of the proceedings (see *Kučera v. Slovakia*, no. 48666/99, § 95, 17 July 2007, and *Celejewski v. Poland*, no. 17584/04, §§ 37 and 38, 4 May 2006). In cases concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings is not negligible.

111. Lastly, the Court reiterates that, by reason of their particular gravity and the public reaction to them, certain offences may give rise to public disquiet capable of justifying a period of detention (see *I.A. v. France*, 23 September 1998, § 104, *Reports of Judgments and Decisions* 1998-VII, and *Bouchet v. France*, no. 33591/96, § 43, 20 March 2001). In exceptional circumstances – and subject to there being sufficient foundation for it – this factor may therefore be taken into account for the purposes of Article 5 § 3 Convention. However, this ground can be regarded as relevant and sufficient only if it is based on circumstances capable of showing that the defendant's release would actually prejudice public order. In addition, detention will continue to be legitimate only if public order actually remains threatened; its continuation cannot be used to anticipate a custodial sentence (see *Kemmache v. France*, 27 November 1991, § 52, Series A no. 218, and *Tomasi v. France*, 27 August 1992, § 91, Series A no. 241-A).

(b) Application of the principles to the present case

112. The applicant was arrested on 24 April 2008 and convicted by a trial court on 9 June 2010. Noting that the applicant's grievance relates to the entire period of his detention pending the investigation and the trial (see by contrast, *Kevin O'Dowd v. the United Kingdom*, no. 7390/07, §§ 71-77, 21 September 2010), the period to be considered under Article 5 § 3 of the Convention amounted to two years, one month and fifteen days.

113. The Court considers that the suspicion against the applicant was a reasonable one in the circumstances and that it persisted during the above period of time. It accepts that the existence of this suspicion justified the applicant's arrest and the initial period of detention.

114. As to the subsequent period of detention, the Court has to establish whether the other grounds given by the authorities continued to justify the deprivation of liberty. As can be seen from the detention orders, when extending the applicant's detention the domestic courts justified their findings concerning the risks of flight or obstruction with reference to the seriousness of the charges and the alleged obstructive behaviour of the applicant before his arrest on 24 April 2008. The Court will examine in turn the relevant aspects, as they were referred to by the national courts.

(i) Risks of evading justice and obstructing the proceedings

115. The Court observes that the applicant's arrest and detention were based on the authorities' findings concerning the applicant's previous behaviour between October 2007 and March 2008. The Court cannot but observe that during this period of time the applicant had the status of witness in criminal proceedings. In any event, the Court was not provided with any material which could enable it to rely on any pertinent factors concerning the period from September 2007 to March 2008, as mentioned in the detention order of 11 March 2009 (see paragraph 25 above).

116. Having examined the available material, the Court is satisfied that the applicant was effectively informed of the summons issued on 17 March 2008. However, it does not appear that he gave any undertaking in respect of the obligations contained in the initial preventive measure, namely the obligation not to leave his town of residence and good behaviour (see paragraph 59 above). While at that time the applicant was a suspect in a pending investigation and was required to reply to summons, the Court does not have sufficient elements in its possession to allow it to conclude that the applicant had acted in such as a way as to give credence to the allegations put forward by the investigator and the court which had detained him, in order to substantiate the risks of evading justice or obstructing the proceedings.

117. The detention decisions also mentioned the organised nature of the criminal activities for which the applicant and other persons were being prosecuted. Indeed, the applicant was accused in connection with his alleged membership of a structured criminal group, which had stable membership with assigned roles in criminal activities, internal discipline and sophisticated planning, involving participants outside the criminal group, including officials of law-enforcement agencies. The applicant was charged under an Article of the Criminal Code making it a separate criminal offence to be a member of such a criminal group. The applicant was also prosecuted for embezzlement in an organised group or on a large scale and incitement to abuse of power causing serious damage.

118. However, it does not appear from the available material that the concerted nature of the alleged criminal activities formed the significant part of the detention courts' reasoning at the advanced stage of the proceedings, namely after the completion of the preliminary investigation in May 2008.

119. No other convincing elements were adduced in the domestic proceedings to substantiate the risks of flight and obstructing the proceedings at the advanced stages of the proceedings to justify the applicant's detention for over two years.

120. Therefore, the Court concludes that they were not convincingly established.

(ii) Risk of reoffending

121. The Court observes that while not established in the initial detention order, this risk was mentioned without any further assessment at subsequent stages of the proceedings, for instance in March 2009 (see paragraphs 19 and 25 above). However, it was not established that the risk of further offences was a plausible one and that the preventive measure was appropriate, for instance in the light of the applicant's previous criminal record or personality. Therefore, the Court is not convinced that the risk of reoffending was sufficiently established.

(iii) Protection of public order

122. The Court also observes that the respondent Government and, the national courts between July 2009 and April 2010, referred to the "public interest and importance" at stake in the present case (see paragraphs 29 and 31 above). In so far as they may be understood to rely on the protection of public order as a ground for detention, the Court notes that it does not appear that Russian law recognised prejudice to public order caused by an offence as a ground for detention (see *Aleksandr Makarov v. Russia*, no. 15217/07, § 137, 12 March 2009). In any event, no such ground for detention was articulated clearly by the national courts. The courts did not explain why the continued detention of the applicant was necessary in order to prevent public disquiet and did not examine whether the applicant presented a danger to public safety. Therefore, the arguments of the Government referring to the protection of public order cannot be seen as a sufficient basis for extending the applicant's detention. The Court reiterates in that connection that it is not its task to take the place of the national authorities which ruled on the applicant's detention (see *Ilijkov v. Bulgaria*, no. 33977/96, § 86, 26 July 2001).

123. Lastly, the Court observes that from March to August 2009 the applicant's detention was justified with reference to the fact that the defence was still studying the case file at the time, and that the file was undeniably voluminous (see paragraph 25 above). The Court considers that a mere reference to the need to carry out investigative measures, such as those referred to above, is not as such a relevant consideration justifying the continued detention (see also *Shteyn (Stein) v. Russia*, no. 23691/06, § 117, 18 June 2009). It is accepted that the length of the period of time dedicated to the pre-trial study of the case file by the defendant was meant to enforce his procedural rights, in particular those protected by Article 6 § 3 (b) and (c) of the Convention. However, the reasonableness of the related period of detention should have been assessed with reference to the relevant risks and individualised factors convincingly pleading for a departure from the rule of respect for individual liberty, as it is contained in Article 5 § 1 of the Convention, and with due regard to the presumption of innocence.

(iv) Conclusion

124. In view of the foregoing, the Court concludes that the Russian authorities failed to adduce relevant and sufficient reasons to justify extending the applicant's detention to two years and over one month. There has therefore been a violation of Article 5 § 3 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

125. Lastly, the applicant raised a number of complaints under Article 6 of the Convention in relation to the pre-trial proceedings in his criminal case. In November 2010 he also raised grievances concerning the material conditions of detention in the remand centre and the conditions of transport and confinement in the courthouse.

126. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

129. The Government considered that this claim was unrelated to the complaints raised in the present application.

130. The Court disagrees and considers that the distress and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Having regard to the nature of the violation found in the present case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

131. The applicant also claimed EUR 1,400 for the costs and expenses paid by Mrs M.A. Samoylova for the legal representation of the applicant before the Court by Ms O. Mikhaylova.

132. The Government contested this claim.

133. 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. It should be noted that certain complaints were declared inadmissible. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards EUR 1,000, plus any tax that may be chargeable to the applicant. This amount should be paid to Mrs M.A. Samoylova.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning medical care in detention from 24 April 2008 to June 2010 and length of detention pending investigation and trial admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

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

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
(b) that the respondent State is to pay Mrs M.A. Samoylova, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one

thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable on the date of settlement;
(c) 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;

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

Done in English, and notified in writing on 24 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Peer Lorenzen President