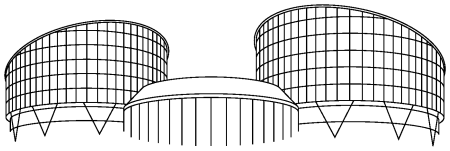

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KAVKAZSKIY v. RUSSIA

(Application no. 19327/13)

JUDGMENT

STRASBOURG

28 November 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kavkazskiy v. Russia,

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

Helena Jäderblom, *President,*
Luis López Guerra,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 19327/13) 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 Nikolay Yuryevich Kavkazskiy ("the applicant"), on 31 January 2013.

2. The applicant was represented by Mr A.V. Babushkin and Mr S.A. Minenkov, lawyers practising in Moscow. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant complained that his arrest and pre-trial detention had not been based on relevant and sufficient reasons and alleged that various aspects of his detention had amounted to degrading treatment.

4. On 10 September 2013 the application was communicated to the Government and granted priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and lives in Moscow.

A. Demonstration of 6 May 2012

6. The background facts relating to the planning, conduct and dispersal of the public event at Bolotnaya Square are set out in more detail in *Frumkin v. Russia* (no. 74568/12, §§ 7-65, 5 January 2016) and *Yaroslav Belousov v. Russia* (nos. 2653/13 and 60980/14, §§ 7-33, 4 October 2016). The parties' submissions on the circumstances directly relevant to the present case are set out below.

7. On 6 May 2012 a public event entitled the "March of Millions" was held in central Moscow to protest against the allegedly rigged presidential elections. The event had been approved by the city authorities in the form of a march followed by a meeting at Bolotnaya Square which was supposed to end at 7.30 p.m. The march was peaceful and held without any disruptions, but when the marchers arrived at Bolotnaya Square it turned out that barriers installed by the police had narrowed the entrance to the meeting venue allegedly restricting the space allocated for the meeting. To control the crowd the police cordon forced the protestors to remain within the barriers. There were numerous clashes between the police and protesters. At 5.30 p.m. the police ordered that the meeting finish early and began to disperse the participants. It took them about two hours to clear the protestors from the square.

8. On the same day the Moscow city department of the Investigative Committee of the Russian Federation opened criminal proceedings to investigate suspected acts of mass disorder and violence against the police (Articles 212 § 2 and 318 § 1 of the Criminal Code). On 18 May 2012 the file was transferred to the headquarters of the Investigative Committee for further investigation. On 28 May 2012 an investigation was also launched into the criminal offence of organising acts of mass disorder (Article 212 § 1 of the Criminal Code). The two criminal cases were joined on the same day.

B. The applicant's arrest and pre-trial detention

9. The applicant is a human rights activist and a lawyer of an NGO, the Committee for Civil Rights (*Комитет за гражданские права*). On 6 May 2012 he arrived at Bolotnaya Square to participate in the demonstration and during its dispersal kicked an unidentified police officer in the arm. After these events the applicant continued to live at his usual address and to pursue his normal activities, including taking part in authorised public events.

10. On 25 July 2012 the applicant's flat was searched; the police seized the applicant's clothes, domestic and international passports, other documents and his computer. On the same day the applicant was arrested on suspicion of having participated in acts of mass disorder on 6 May 2012.

11. On 26 July 2012 the Basmannyy District Court ordered the applicant's pre-trial detention until 25 September 2012 on the following grounds:

> "The prosecution bodies suspect [the applicant] of having committed a serious offence punishable with imprisonment of over two years.
>
> ... the court concludes that there are grounds to consider that [the applicant], if at liberty, is likely to abscond from the investigation and trial, to act in person or through proxy with the aim of avoiding criminal liability, to continue [his] criminal activity, to destroy evidence and otherwise obstruct the investigation, which is at its initial phase.
>
> Operational-search activities are now underway, aimed at establishing [the applicant's] possible connections with other active participants of the mass disorders which took place at Bolotnaya Square in Moscow and its environs, therefore, if at liberty, [he] might co-ordinate his position with unidentified accomplices.
>
> ... No factual information excluding the detention of [the applicant] on health grounds has been submitted to the court. The court takes into account that [the applicant] may request medical assistance in the detention facility, if necessary ..."

12. The District Court dismissed an application by the applicant for an alternative preventive measure, such as house arrest, and stated that his state of health did not preclude him from detention. On 5 September 2012 the Moscow City Court upheld the detention order.

13. On 2 August 2012 the applicant was charged with the offence laid down in Article 212 § 2 of the Criminal Code (participation in mass disorder accompanied by violence) and accused, in particular, of having kicked a police officer.

14. On 24 September 2012 the Basmannyy District Court extended the applicant's detention until 6 November 2012, having found that the circumstances that had justified the detention order had not changed. The District Court dismissed the applicant's allegations of lack of medical assistance in the remand prison as unsubstantiated. It stated that the applicant's state of health was satisfactory and did not warrant his release. On 15 October 2012 the Moscow City Court upheld the extension order.

15. On 31 October 2012 the Basmannyy District extended the applicant's detention until 6 March 2013 on essentially the same grounds as earlier. On 26 November 2012 the Moscow City Court upheld the extension order.

16. On 4 March 2013 the Basmannyy District Court examined a new application for an extension of the applicant's pre-trial detention. The applicant complained of exacerbation of chronic diseases in detention. He asked to be released on bail and presented personal guarantees from two prominent public figures, including a human-rights activist, who vouched for him. On the same day the District Court extended the applicant's detention until 6 July 2013. It considered that a milder preventive measure, including release on bail, would not prevent the applicant from obstructing the proper administration of justice. The applicant's allegations in respect of

the deterioration of his health were dismissed; the court relied on the medical statement from the remand prison, according to which his health was satisfactory. On 17 April 2013 the Moscow City Court upheld the extension order.

17. On 24 May 2013 the applicant's criminal case was transferred to the Zamoskvoretskiy District Court of Moscow for the determination of criminal charges.

18. On 6 June 2013 that court granted another extension of the applicant's detention, until 24 November 2013. The decision concerned eleven defendants. Along with the seriousness of the charges, the court based its decision on the findings that "the reasons which had initially warranted the detention have not changed" and that "no other measures of restraint would secure the aims and goals of the judicial proceedings". The Moscow City Court upheld this extension order on 2 July 2013.

19. On 2 August 2013 the Presidium of the Moscow City Court examined the supervisory appeal lodged by the Ombudsman of the Russian Federation. It rectified the extension orders of 24 September and 31 October 2012, and 4 March and 6 June 2013 as well as the Moscow City Court's decision of 15 October 2012. The Presidium found that the applicant's detention had been unjustified and that the detention orders had not been supported by relevant facts; it also took account of his worsening health. The Presidium lifted the detention order and placed the applicant under the house arrest until 2 October 2013 under the following conditions: prohibition from leaving his house or changing his place of residence; prohibition from communicating with co-defendants and witnesses; prohibition from sending and receiving correspondence; prohibition from using any means of communication. On the same day the applicant was released from pre-trial detention.

20. On 26 September 2013 the Zamoskvoretskiy District Court extended the applicant's house arrest until 2 January 2014. It referred to the seriousness of the charges and considered that as a human-rights activist the applicant could communicate with different authorities and persons and thus obstruct the course of criminal proceedings. On 28 October 2013 the Moscow City Court upheld this decision on appeal.

21. On 18 December 2013 the State Duma passed the Amnesty Act, which exempted people suspected and accused of criminal offences under Article 212 §§ 2 and 3 of the Criminal Code from criminal liability.

22. On 19 December 2013 the applicant applied for the termination of the criminal proceedings against him under the Amnesty Act. On the same day the Zamoskvoretsky District Court granted his application and lifted the house arrest.

C. Medical assistance in remand prisons

23. Prior to his detention, the applicant was diagnosed with an organic lesion of the central nervous system, hypertensive syndrome, tonsillitis, chronic gastritis, atopic dermatitis, osteochondrosis and dorsopathy (back pain). According to the applicant, these diseases required regular medical supervision, diet and lifestyle adjustments.

24. From 27 July 2012 to 2 August 2013 the applicant was held in remand prison IZ-77/2 in Moscow. Upon his admission to the prison he underwent a health check which revealed no health issues except atopic dermatitis and scoliosis. The applicant provided the detention facility with his medical records which stated his chronic ailments.

25. On 31 August 2012 the applicant underwent a medical examination by a general practitioner ("GP"). He was diagnosed with vegetative-vascular dystonia, dorsopathy, osteochondrosis, kyphoscoliosis, and first- or second-degree obesity. He received a prescription for a special diet limiting intake of fats and quickly-absorbed carbohydrates.

26. The applicant was subsequently examined by a GP on 25 September, 19 October and 26 November 2012, and 24 January, 15 and 25 February, and 15 March 2013. The examinations revealed no negative dynamics in the state of the applicant's health; the prescriptions for the special diet were renewed each time.

27. By letter of 2 November 2012 the head of the IZ-77/2 informed the applicant's father that chronic gastritis was not on the list of diseases which allow patients to receive additional nutrition.

28. On 30 November 2012 the applicant's lawyer complained to the prison chief of the deterioration of his client's health, in particular, of his regular headaches, back pain and weight-gain. He alleged that the applicant had put on 20 kg over the five months in detention and requested an inpatient medical examination.

29. On 31 January 2013 the applicant was examined by a neurologist and received a prescription for treatment in relation to vegetative-vascular dystonia. At the regular check-up by a GP on 15 February 2013 the applicant stated that his condition had improved; he was recommended to continue the prescribed treatment.

30. On 14 February 2013 the applicant's lawyer reiterated his application for a medical examination and asked to give the applicant access to a gym.

31. On 4 April 2013 a medical commission composed of a GP, an infection specialist, a surgeon and two administrators examined the applicant and his medical history. In addition to the previous diagnoses, they established chronic liver disorder and recommended that he continue the special diet.

32. On 14 April 2013 the applicant was temporarily transferred to the medical wing of IZ-77/1. Upon his admission he was found to be suffering from second- or third-degree obesity (at this stage he weighed 109 kg and was 178 cm in height) and was prescribed the same diet as before.

33. In IZ-77/1 the applicant underwent series of medical examinations and tests, including an abdominal ultrasound, a thyroid echography, an electrocardiogram, roentgenofluorography, X-ray examinations of his skull and spine, and blood tests. He was regularly examined by a GP who adjusted the treatment according to the results of the tests. The applicant also had a consultation with a dermatologist.

34. The public commission for the monitoring of detention facilities visited the applicant on 17 and 24 April and 2 May 2013. According to the journal of their visits, the applicant did not complain of inadequate medical assistance in IZ-77/1.

35. The discharge summary (*выписной эпикриз*) from the medical wing of IZ-77/1, issued on 17 May 2013, contained the results of the applicant's medical examinations. He was diagnosed with osteochondrosis, dorsopathy, fatty liver, hypercholesterolemia, vegetative-vascular dystonia, acne and first-degree obesity. The applicant received a prescription for physiotherapy and a special diet; he was also recommended to undergo a magnetic resonance imaging procedure in relation to a suspected cerebral condition, which had to be carried out in a different hospital equipped with the appropriate scanning device. On the same day the applicant was transferred back to IZ-77/2.

36. On 6 July 2013 the applicant lodged a complaint about the authorities' failure to carry out his medical examination to the Tverskoy District Court of Moscow. On 4 September 2013 the Tverskoy District Court refused to examine this complaint.

37. The magnetic resonance imaging procedure had not been carried out before the applicant's release from the detention facility on 2 August 2013.

38. After release the applicant had a medical examination at the town hospital and a consultation with a prominent gastroenterologist. The doctor confirmed the applicant's previous diagnoses related to the digestive system and prescribed him medical treatment, a special diet and physical exercise.

D. Transfer between the detention centre and the court

39. The applicant's description of the conditions of detention during his transfer from the remand prison to court and back was identical to that in the case of *Yaroslav Belousov* (cited above, §§ 69-73).

E. Conditions in the courtroom

40. On 6 June 2013 court proceedings began in hearing room no. 338 and at the end of July moved to hearing room no. 635 of the Moscow City Court. The defendants, including the applicant, were held in glass cabins in both hearing rooms, as described in *Yaroslav Belousov* (cited above, §§ 74-76). From 2 August 2013 the applicant was no longer placed in the glass cabin owing to a change in the measure of restraint for him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. The Criminal Code of the Russian Federation provides as follows:

Article 212 Mass disorder

"1. The organisation of mass disorder, accompanied by violence, riots, arson, destruction of property, the use of firearms, explosives and explosive devices, as well by armed resistance to a public official, shall be punishable by four to ten years' deprivation of liberty.

2. Participation in the types of mass disorder provided for by paragraph 1 of this Article shall be punishable by three to eight years' deprivation of liberty.

3. The instigation of mass disorder provided for by paragraph 1 of this Article, or the instigation of participation in such acts, or the instigation of violence against citizens, shall be punishable by a restriction of liberty for up to two years, or community service for up to two years, or deprivation of liberty for the same term."

42. For a summary of the relevant domestic law provisions governing pre-trial detention and for the practice of the domestic courts in that matter see the case of *Zherebin v. Russia* (no. 51445/09, §§ 16-25, 24 March 2016).

43. Article 107 § 1 of the Code of Criminal Procedure ("the CCrP") provides that house arrest consists of a suspect's or an accused's isolation at his or her domicile, combined with restrictions or prohibitions, such as (1) leaving the house where he or she lives, (2) communicating with certain persons, (3) receiving and sending correspondence, (4) using the Internet and other means of communication. The court may subject a suspect or an accused to all of these restrictions or prohibitions, or part of them. A suspect or an accused can be put under house arrest for up to two months; this term can be extended by the court under the same conditions as pre-trial detention.

44. The Amnesty Act of 18 December 2013 was passed by the State Duma on the occasion of the twentieth anniversary of the adoption of the Constitution of the Russian Federation. It applied, *inter alia*, to pending criminal proceedings against people suspected and accused of criminal offences under Article 212 §§ 2 and 3 of the Criminal Code.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION DURING PRE-TRIAL DETENTION

45. The applicant submitted a number of complaints under Article 3 of the Convention. First of all, he argued that he had not received adequate medical assistance while in detention. He also complained of the conditions of his transfer to and from the court-house and the conditions of detention in the convoy room of the Moscow City Court. Lastly, he stated that his confinement in glass cabins during the court hearing had amounted to inhuman and degrading treatment. Article 3 of the Convention reads as follows:

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

A. Admissibility

46. 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 failure to provide adequate medical assistance

47. The applicant complained that during his pre-trial detention he had not been given adequate medical assistance in relation to his multiple health disorders. He argued, in particular, that his health had significantly deteriorated in custody and claimed that his requests for a medical examination had been disregarded. Furthermore, he alleged that the medical prescriptions for a special diet and physical exercise had been neglected, which had caused him significant headaches and back pain, and to gain weight. In particular, the applicant could not eat most of the regular prison meals and sustained himself on dairy products purchased at the prison shop and groceries sent by his family. This provided him with insufficient intake of vegetables and fruit owing to the limits on what he was allowed to receive in parcels. The applicant claimed that he and his lawyer had lodged numerous requests and complaints with the investigator and the prosecutor's office. Furthermore, he had brought his health issues to the attention of the court in the detention proceedings and had lodged a separate claim to the Tverskoy District Court, to no avail. According to the applicant, after his

release his condition had gradually improved, mainly through physical activity and controlled diet.

48. The Government, for their part, contended that the applicant had been receiving regular medical care and that he had not raised any health issues before the public commission for the monitoring of detention facilities during their visits. They denied that he had lodged a formal complaint about the lack of medical assistance.

49. The Court reiterates that even though Article 3 does not entitle a detainee to be released "on compassionate grounds", it has always interpreted the requirement to secure the health and well-being of detainees, among other things, as an obligation on the State to provide detainees with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI; and *Khudobin v. Russia*, no. 59696/00, § 96, ECHR 2006-XII (extracts)). The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists that, in particular, authorities must ensure that diagnosis and care are prompt and accurate (see *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; and, *mutatis mutandis*, *Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006), and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114; *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006; and *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005).

50. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

51. In the present case it is common ground that the applicant had been suffering from a number of chronic conditions pre-dating his detention and required regular medical supervision in relation to those conditions. What is in dispute between the parties is the extent to which these ailments had aggravated in detention and the adequacy of the medical assistance provided to him.

52. The Court observes that, when being taken into custody, the applicant informed the authorities of his state of health and of the need for medical supervision. From the very beginning he and his lawyer submitted regular health complaints and requests for medical examinations, and when they considered that the applicant's needs had not been met, lodged

complaints with the prison authorities, the prosecutor's office and, ultimately, the courts.

53. The Court further notes that in the first eight months of detention the applicant was examined by a general practitioner on average once a month. At these consultations the doctor confirmed the earlier diagnoses of the chronic conditions but found no alarming developments. The only prescription made in that period was for the special diet (the Court will come back to the adequacy of the applicant's nutrition below). The applicant was also examined by a neurologist, who prescribed treatment for vegetative-vascular dystonia; as a result, the applicant's condition improved. Therefore, there is nothing in the case file to suggest that in the initial eight-months' period the medical practitioners overlooked an important deterioration of the applicant's health or neglected to treat it. At a later stage, when the applicant's rapid weight-gain, compounded by other recurring symptoms, such as headaches and back pain, became obvious, the medical commission referred him for a comprehensive inpatient examination. The Court considers that the applicant's persistent health complaints, especially in the light of his medical history known to the authorities, should have prompted an earlier response. However, the medical evidence available in the case file gives it no grounds to conclude that the referral for the inpatient examination had been delayed to the point of putting the applicant at risk.

54. The applicant did not contest the thoroughness or the outcome of the ensuing inpatient examination in IZ-77/1 which lasted for one month, and the Court finds no shortcomings in this respect. As regards its follow-up, however, the Court observes that the recommendations for a magnetic resonance imaging procedure, physiotherapy and a special diet were not carried out. Yet there was no indication that the imaging procedure was urgent, and the need for special radiological equipment may explain a certain delay in carrying it out.

55. The Court further notes that no such reasons existed for the authorities' failure to implement the two remaining recommendations. The omission as regards the special diet, which had been prescribed on multiple occasions, is unexplainable. It appears that the prison authorities did not consider themselves bound to make the necessary adjustments to comply with the prescription, either by providing the applicant with appropriate nutrition or by allowing him to receive it from his family in the right quantities. However, the Court does not consider that this omission caused the applicant sufferings of a duration and severity passing the threshold of Article 3 of the Convention, primarily owing to his release. On 2 August 2013 the Presidium of the Moscow City Court quashed the applicant's detention orders and changed the preventive measure to house arrest, having specifically noted the applicant's health issues. It is of particular relevance that the Presidium's decision came two and a half months after the

conclusions of the complete medical examination, rapidly enough to allow the applicant's treatment before his condition deteriorated further. The fact that the applicant's state of health improved after his release from detention is consistent with this assessment.

56. In the light of these circumstances, the Court considers that there had been no failure on the part of the Russian authorities to provide the applicant with the adequate medical assistance.

57. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

2. Conditions of transfer to and from court

58. The applicant alleged that his transfers from the remand prisons to court and back had amounted to inhuman and degrading treatment. He complained about the frequency and the length of those transfers, of appalling conditions at the prison assembly sections and in the police vans, and of the intensity of the schedule, which did not leave him sufficient time to sleep. The applicant argued that the combination of the above factors had led to physical exhaustion and mental distress.

59. The Court has examined the conditions of transfer to and from court, which were common to the applicant and his co-defendant, in the case of *Yaroslav Belousov* (nos. 2653/13 and 60980/14, §§ 105-10, 4 October 2016). It found that those conditions amounted to inhuman and degrading treatment contrary to Article 3 of the Convention on account of a lack of sufficient rest and sleep on the days of court hearings, overcrowding and generally poor conditions in the prison assembly sections and convoy cells at the Moscow City Court, lengthy transfers between the remand prisons and the court and poor conditions during the transfers. The Court sees no reason to depart from those findings in the present case. Although the applicant had to endure this treatment for one month only, it was capable of causing him sufferings attaining the threshold of severity required to characterise it as inhuman or degrading within the meaning of Article 3 of the Convention, given his poor state of health and the intensity of the hardship involved. Accordingly, there has been a violation of Article 3 of the Convention in that respect.

3. Confinement in glass cabins during court hearings

60. The applicant complained that his confinement in glass cabins during court hearings amounted to inhuman and degrading treatment. The Government submitted that that the security installations in question neither constituted degrading treatment nor caused significant discomfort to the applicant and his co-defendants.

61. The Court summarised the principles on confinement in glass cabins in *Yaroslav Belousov* (cited above, §§ 120-22). It has examined the

conditions of detention in hearing rooms nos. 338 and 635 at the Moscow City Court, which were common to the applicant and his co-defendants, including Mr Belousov (ibid, §§ 123-28), and found a violation in respect of issues identical to those in the present case. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion. Accordingly, there has been a violation of Article 3 of the Convention on account of the confinement in a glass cabin in hearing room no. 338 at the Moscow City Court, and no violation of Article 3 of the Convention as regards the conditions of detention in hearing room no. 635.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

62. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention had not been based on a "reasonable suspicion" that he had committed a criminal offence. He also complained that his pre-trial detention and house arrest had not been justified by "relevant and sufficient reasons", as required by Article 5 § 3 of the Convention. Article 5 of the Convention, in so far as relevant, 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 ...
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

63. As regards the alleged unlawfulness of the applicant's detention, the Court notes that it was the Basmannyy District Court of Moscow which ordered that measure and that the same court subsequently extended it on several occasions. After the case had been sent for trial, the detention order was issued by the Zamoskvoretskiy District Court of Moscow. That court also extended the applicant's house arrest, imposed by the Presidium of the Moscow City Court. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were

invalid or unlawful under domestic law. Accordingly, the applicant's detention was imposed and extended in accordance with a procedure prescribed by law.

64. As regards the allegation that the applicant's detention was not based on a reasonable suspicion that he had committed criminal offences, his complaint under Article 5 § 1 of the Convention overlaps to a large extent with his complaint under Article 5 § 3 of the Convention about the authorities' failure to adduce relevant and sufficient reasons justifying the extensions of his detention pending criminal proceedings. The Court reiterates that while Article 5 § 1 (c) of the Convention is mostly concerned with the existence of a lawful basis for detention within criminal proceedings, Article 5 § 3 of the Convention deals with the possible justification for such detention. Moreover, according to the Court's established case-law under the latter provision, the persistence of a reasonable suspicion is a *sine qua non* for the validity of the continued detention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts)). The Court therefore deems it more appropriate to deal with this complaint under Article 5 § 3 of the Convention (see *Kovyazin and Others v. Russia*, nos. 13008/13 and 2 others, § 71, 17 September 2015; *Taranenko v. Russia*, no. 19554/05, § 46, 15 May 2014; and *Khodorkovskiy v. Russia*, no. 5829/04, § 165, 31 May 2011).

65. The Court observes that the Government did not dispute applicability of Article 5 of the Convention to the applicant's house arrest. According to its case-law, house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of this provision (see *Buzadji*, cited above, § 104, and the cases cited therein). Having regard to the modalities of the applicant's house arrest as described in paragraph 19 above, the Court accepts that it constituted deprivation of liberty in the sense of Article 5 (see, *mutatis mutandis, Ermakov v. Russia*, no. 43165/10, § 238, 7 November 2013).

66. Furthermore, the Court finds that the applicant's complaint of a violation of Article 5 § 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that this part of the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

67. The parties made essentially the same submissions under Article 5 of the Convention as in *Kovyazin and Others* (cited above, §§ 73-74). The applicant additionally stated that when extending his house arrest on 26 September 2013, the domestic courts failed to assess his personality, his behaviour while under house arrest, his state of health and the possibility for him to earn a living.

68. The relevant general principles applicable in this case were summarised by the Court in *Kovyazin and Others* (cited above, §§ 75-78). In addition, the Court has recently noted that the same criteria should apply to the assessment of reasons advanced by the domestic authorities to justify house arrest as to pre-trial detention (see *Buzadji*, cited above, §§ 112-14).

69. The period of deprivation of liberty to be taken into consideration in this case started on 25 July 2012, the date of the applicant's arrest, and ended on 19 December 2013, when he was released following the application of the Amnesty Act. Accordingly, the period to be taken into consideration is one year and five months, including one year's pre-trial detention and five months' house arrest. Having regard to the considerable length of deprivation of liberty in the light of the presumption in favour of release, the Court finds that the Russian authorities were required to put forward very weighty reasons for maintaining that measure against the applicant.

70. It appears from the applicant's detention orders and the Government's observations that the primary reason for the applicant's deprivation of liberty was the seriousness of the charges. The domestic courts considered that the applicant, faced with the risk of prison, was likely to abscond, influence witnesses, or interfere with the administration of justice. In addition, the domestic courts dismissed the applicant's application to be released on bail which was supported by statements signed by two prominent public figures agreeing to vouch for him. Furthermore, the decision prolonging house arrest did not rely on any reasons in support of such a measure other that the seriousness of the offence imputed to him and the risk of obstructing the course of the criminal proceedings (see paragraph 20 above).

71. The Court has previously examined similar complaints lodged by the applicant's co-defendants and found a violation of their rights set out in Article 5 § 3 of the Convention (see *Kovyazin and Others*, cited above, §§ 82-94, and *Yaroslav Belousov*, cited above, §§ 133-38). The Court noted, in particular, the domestic courts' reliance on the seriousness of the charges as the main factor for the assessment of the potential to abscond, reoffend or obstruct the course of justice, and their reluctance to pay proper attention to a discussion of each applicant's personal situation or to have proper regard to factors pointing in favour of release. It also noted the use of collective detention orders without a case-by-case assessment of the grounds for detention in respect of each co-defendant and the failure to thoroughly examine the possibility of applying a less rigid measure of restraint, such as bail.

72. The Court stresses that in the present case the Presidium of the Moscow City Court quashed the applicant's detention orders after a year of pre-trial detention and changed the preventive measure to house arrest. It specifically noted that the reasons invoked by the domestic courts for

extending detention had been abstract and repetitive; the courts had failed to take into account that the applicant had made no attempts to flee or to obstruct criminal proceedings from the moment of their initiation until his arrest and that he had had chronic diseases which could worsen in detention.

73. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it that the applicant's pre-trial detention and house arrest were justified by relevant and sufficient reasons. Indeed, the specific offence imputed to the applicant – kicking a police officer – may have initially warranted his pre-trial detention. However, with the passage of time the nature and the seriousness of the offence as the ground for the applicant's continued detention inevitably became less and less relevant (see *Kovyazin and Others*, cited above, § 85, and *Artemov v. Russia*, no. 14945/03, § 75, 3 April 2014). The Court further notes that the applicant's detention was extended by the same collective order of 6 June 2013 as that of his co-defendants, without any individual assessment of his situation (*Kovyazin and Others*, cited above, §§ 92-93). Similarly, the domestic courts failed to convincingly demonstrate that house arrest was still necessary as a preventive measure when extending it.

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

75. The applicant complained that the conditions of his detention and placement in the courtroom had been incompatible with the guarantees of a fair hearing. He relied on Article 6 of the Convention, which in so far as relevant reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

76. The Court notes that the applicant lodged this complaint while the criminal proceedings against him were still pending. It further notes that the applicant did not reiterate it after the proceedings were discontinued following the application of the Amnesty Act. The Court has previously held that in cases where an accused had been granted an amnesty he could no longer claim to be a victim of alleged violations of the Convention during the proceedings, given that he was no longer affected at all (see *Correia de Matos v. Portugal* (dec.), no. 48188/99, 15 November 2001, ECHR 2001-XII). Having regard to the fact that the applicant in the present case was relieved of any effects of the proceedings to his disadvantage, the Court considers that he cannot claim to be the victim of a breach of Article 6 of the Convention.

77. The Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 for non-pecuniary damage.

80. The Government contested the claims as unsubstantiated and excessive.

81. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court observes that it has found a violation of Articles 3 and 5 of the Convention in respect of the applicant. In those circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant did not submit any claims under this head. Accordingly, there is no call to award him any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints raised under Articles 3 and 5 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention as regards the alleged failure to provide the applicant with adequate medical assistance;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of transfer to and from court;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the confinement in a glass cabin in hearing room no. 338 at the Moscow City Court;

5. *Holds* that there has been no violation of Article 3 of the Convention on account of the confinement in a glass cabin in hearing room no. 635 at the Moscow City Court;

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

7. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President