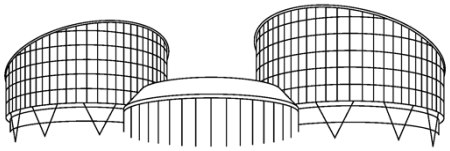

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MITYANIN AND LEONOV v. RUSSIA

(Applications nos. 11436/06 and 22912/06)

JUDGMENT

STRASBOURG

7 May 2019

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 Mityanin and Leonov v. Russia,

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 26 March 2019,

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

PROCEDURE

1. The case originated in two applications (nos. 11436/06 and 22912/06) 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 two Russian nationals, Mr Aleksandr Nikolayevich Mityanin ("the first applicant") and Mr Mikhail Nikolayevich Leonov ("the second applicant") ("the applicants"), on 1 February and 10 May 2006 respectively. Further complaints were raised subsequently, between 2006 and 2013.

2. The applicants, who had been granted legal aid, were represented by Mr Aleksey Nikolayevich Laptev, a lawyer admitted to practice in Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 14 October 2015 the complaints under Articles 5, 6 and 8 of the Convention were communicated to the Government and the remainder of the applications was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1971 and 1976 respectively and are detained in Kharp.

5. The applicants were co-defendants in domestic criminal proceedings.

A. Mr Mityanin

1. Detention and criminal proceedings in 2003-06

6. In July 2003 the applicant was arrested in the town of Syktyvkar on suspicion of committing a criminal offence. He was ordered not to leave his town of residence. He was subsequently detained on an unspecified date. His detention was later extended. On 29 January 2004 the Syktyvkar Town Court extended his detention until 19 February 2004. On 18 February 2004 the prosecuting authorities completed their pre-trial investigation and submitted the case for trial. On 10 March 2004 the Syktyvkar Town Court extended the applicant's detention. On 21 April 2004 the trial judge returned the criminal case to the prosecutor and dismissed the defence's application for release, thereby maintaining detention on remand.

7. The applicant was also accused of committing a criminal offence in the town of Ivanovo. In April 2004 the Syktyvkar Town Court ordered his detention in relation to this criminal offence too.

8. Subsequently, the related proceedings were pursued before the courts in the town of Ivanovo.

9. On 3 August 2004 the Oktyabrskiy District Court of Ivanovo extended the applicant's detention "pending investigation" (under Article 109 of the Code of Criminal Procedure – hereinafter "the CCrP") until 5 October 2004.

10. On 13 September 2004 the District Court scheduled a preliminary hearing in the criminal case and also held that the applicant should remain in detention, pending trial (Article 228 of the CCrP).

11. In December 2004 a local newspaper published an article recounting the relevant events and also indicating that the accused should be presumed innocent until proved guilty.

12. In the meantime, it appears that the district judge returned the case to the prosecutor, which entailed, apparently, modifying the legal basis for the applicant's detention pending trial (Article 255 of the CCrP) or pending investigation (Article 109 of the CCrP); this in turn necessitated the re-calculation of the respective periods of detention.

13. In particular, on 20 December 2004 the judge decided to return the criminal case to the prosecutor (Article 237 of the CCrP) and held that the

applicant should remain in detention. The applicant appealed. On 14 February 2005 the Ivanovo Regional Court upheld the judgment.

14. On 18 February 2005 the prosecutor received the case file.

15. On 9 March 2005 the prosecutor lodged an application for a fresh detention order to be issued (apparently under Article 109 of the CCrP, since the case was again "pending investigation").

16. On 14 March 2005 the District Court extended the applicant's detention until 4 June 2005. On 24 March 2005 the Regional Court upheld the judgment. These court decisions were examined on 3 March 2006 by the Presidium of the Regional Court on supervisory review. The Presidium upheld them, also stating that the applicant's detention between October 2004 and March 2005 had been lawful.

17. In the meantime, the applicant lodged an application for release. On 1 February 2006 the District Court dismissed it. The applicant appealed. On 23 March 2006 the Regional Court stated that this decision was not appealable.

18. In the meantime, on 20 February 2006, the District Court extended the applicant's detention until 23 May 2006. On 23 March 2006 the Regional Court upheld this extension.

19. It appears that, in the meantime, in February 2006 the court again returned the case to the prosecutor. Apparently, the case was resubmitted to the court in or around August 2006.

20. On 21 December 2006 the applicant was convicted of an armed robbery undertaken by a group of people. On 14 June 2007 the Regional Court upheld the judgment.

21. Mr Mityanin brought a civil claim under Article 1070 § 1 and Article 1100 of the Civil Code for compensation because there had been no valid court decision authorising his detention from 20 February until 10 March 2004 (see above). By a judgment of 4 October 2012 the Town Court ruled that (i) during the relevant period the case against the applicant had been pending before the trial court and that his continued detention had thus been lawful; and (ii) in the absence of any element of illegality there was no legal basis for awarding compensation. It stated as follows:

> "The detention matter had been determined by a court and in compliance with the rules that had been applicable at the time. The staff of the detention centre had no legal reasons for releasing [the applicant] after 19 February 2004, including in view of the absence of any information from the prosecutor that the case had been submitted for trial to the Town Court. Consequently, [the applicant's] detention from 19 February to 27 April 2004 was lawful. In addition, this court takes into account the decision of 21 April 2004 in the part concerning the dismissal of the application for release and the decision to maintain detention on remand. Hence, as regards the object of this case, there has been no violation of the rights or freedoms (including those under Article 5 of the Convention) ... Since the detention was lawful, there is no lawful basis for compensation on account of any non-pecuniary damage ..."

22. On 27 December 2012 the Komi Regional Court upheld the judgment.

> "Under Article 227 §§ 1 and 3 of the CCrP receiving a criminal case a judge must forward it if another court is competent, to list a preliminary hearing or list a hearing. Where a case concerns a defendant who is detained on remand, a judge must decide within fourteen days. Pursuant to Article 228 § 3 of the CCrP a judge must also determine whether the preventive measure should be amended or cancelled ... It follows from those rules that as soon as a criminal case is submitted for trial the detention matter is decided under Article 227 of the CCrP. The authorised period of detention had not yet expired when the case was submitted for trial. The detention matter was then determined by the judge within the applicable time-limits. Thus, there is no legal basis for awarding compensation.
>
> Pursuant to Article 61 § 2 of the Code of Civil Procedure, a court is bound in respect of the circumstances that were ascertained by a final and enforceable court decision in another case. Those circumstances cannot be contested during the examination of another case between the same parties ... Thus, it was correctly taken into account that the Regional Court of the Komi Republic had stated in its decision of 25 May 2012 (in reply to an application for release) that the detention from 19 February to 27 April 2004 had been lawful."

2. Another set of criminal proceedings and publication of a newspaper article in 2008

23. On 12 January 2008 the authorities in Syktyvkar opened criminal proceedings against the applicants and others under Article 210 of the Criminal Code in respect of the creation and functioning of a "criminal community" (*преступное сообщество*).

24. On an unspecified date Mr Mityanin was formally charged with this criminal offence.

25. On 18 January 2008 a local newspaper published an article entitled "Boxers in detention", stating that it was the first time that a criminal case under this provision of the Criminal Code had been initiated in the region and that it concerned well-known sportsmen.

26. The article read as follows:

> "This is the first time that the law-enforcement authorities of the region have filed charges against a group of former sportsmen, [having accused] them of running a criminal community.
>
> ...
>
> Officially, they are all businessmen, sports benefactors or organisers of various sports events. Unofficially, the law-enforcement authorities believe, they are members of the so-called Loginovskaya Gang, which was created in the second half of the 1990s ...
>
> According to information [issued by] the press office of the FSB [the Federal Security Service], the gang members devised an efficient mechanism of securing regular income by way of extortion from businessmen. Those who did not cooperate were subjected to various forms of pressure, such as arson in respect of businesses or vehicles, or violence ...

> The law-enforcement authorities have been working on the gang for several years. On 12 January 2008 the investigating unit of the regional department of the FSB initiated criminal proceedings against the gang leaders and active members. They are accused of committing an offence under Article 210 of the Criminal Code ("Running a criminal community").
>
> Lawyers say that this Article of the Criminal Code is rarely used because it is exceedingly difficult to prove the running of a criminal community. In our region this is the first time it is being used ...
>
> According to information [issued by] the press office of the regional department of the FSB, two more persons – [the first applicant's first name and last name] and [the second applicant's first name and last name] – are already serving prison terms for other offences. In December 2006 the Ivanovo [District Court] convicted them of robbery. [The first applicant's last name] was sentenced to eight years' imprisonment ...
>
> The arrest of the suspects received wide coverage in the Ezhvinskiy district of Syktyvkar ..."

27. The article was accompanied by photographs of the arrested people, including the applicant.

28. Mr Mityanin brought court proceedings under Articles 152 and 152.1 of the Civil Code (see paragraphs 43-45 below) against the newspaper. According to the applicant, it was stated in the article that he had been an active member of the so-called "Loginovskaya Gang", which had lived off income from the extortion and "protection" of businesses, with recourse to violence against, and the destruction of the property of, business people who refused to cooperate. The applicant sought, *inter alia*, a refutation (*опровержение*) of the allegation that he was an active member of the criminal community, considering this statement to be defamatory. According to the applicant, the author of the article (who referred to official sources) implied that the applicant had been a member of a notorious "gang", and that he was therefore guilty of committing an offence under Article 210 of the Criminal Code.

29. By a judgment of 17 October 2011, the Syktyvkar Town Court of the Komi Republic dismissed Mr Mityanin's claims. The court considered that the applicant had not proved that the information in the article had been untrue, and that that information had corresponded to the fact that there was an ongoing criminal investigation in respect of, *inter alia*, the applicant. A successful defamation claim would require that the following conditions be met cumulatively: (i) the information in question had been disseminated to at least one other person; (ii) the content of such information had tarnished the dignity, honour or business reputation of the person concerned; and (iii) the information did "not correspond to reality" (that is to say it [was] untruthful). The court concluded that the applicant had failed to establish the falsity of the contested information. Lastly, noting that a newspaper was not required to verify information coming from an official source, the court ruled that the case disclosed an exception to the requirement that consent

had to be given for the publishing of information relating to one's private life and one's photograph. In the court's view, as required in order for a statutory exception to be made, the case disclosed "an interest relating to public and State security", while the publication had been aimed at informing the public of the "appearance of a person in relation to a criminal investigation".

The judgment also reads as follows:

> "Having obtained the investigator's approval, the press officer of the regional department of the Federal Security Service provided the respondent with information about the criminal investigation opened in respect of the claimant and [the] implication [of his involvement] in the criminal community ... The investigating authority was interested in receiving further information, in particular as regards possible eyewitnesses to the crimes. Thus, the respondent was given the above-mentioned information and [the applicant's] photograph."

30. Mr Mityanin lodged an appeal against the Syktyvkar Town Court's judgment. On 8 December 2011 the Komi Regional Court upheld the judgment, referring to the fact that the newspaper had acquired the contested information from an official source, had referred to this source in the article, and had merely recounted this information. The appeal court pointed out that the information had been true and non-defamatory, since it had "corresponded to the information [adduced by] the preliminary investigation"; it was important to apprise the public of the appearance of the person in relation to a case receiving media coverage.

31. In the meantime, in a separate defamation case the applicant challenged another article (apparently with similar content) published by another newspaper in April 2011. By a default judgment (*заочное решение* – that is to say without hearing either of the parties) of 7 September 2011, the Town Court considered that the respondent had failed to prove the veracity of the impugned statements; the court awarded Mr Mityanin 5,000 Russian roubles (RUB) in respect of non-pecuniary damage and ordered the newspaper to publish a refutation. It appears that this judgment was not appealed against, and thus became final. The applicant subsequently referred to the judgment of 7 September 2011 in the course of the criminal trial, alleging a violation of the presumption of innocence. The court refused to allow a copy of the judgment to be placed in the case file, considering, *inter alia*, that the findings of the civil court were irrelevant for the determination of the criminal charge.

32. It appears that on 23 June 2014 the applicant was convicted of several counts of multiple offences (including murder and membership of a criminal community) and sentenced to life imprisonment. The applicant submits that in the statement of appeal he and his co-defendants raised certain arguments relating to the above-mentioned publication. On 10 July 2015 the Supreme Court of Russia upheld the judgment.

B. Mr Leonov

33. On 4 December 2003 the applicant was arrested in the town of Syktyvkar on suspicion of committing robbery and theft in Syktyvkar. On 5 December 2003 the Syktyvkar Town Court authorised his detention. On 29 January 2004 his detention was extended until 19 February 2004. On an unspecified date, the prosecutor completed the investigation and submitted the case for trial. On 21 April 2004 the judge returned the case to the prosecutor, and held that the preventive measure of detention should remain unchanged. On 27 April 2004 an investigator ordered the applicant's release in exchange for an undertaking from him not to leave his area of residence. However, the applicant was not released.

34. In separate proceedings, in March 2004 the applicant was charged in relation to an armed robbery in the town of Ivanovo. On 29 April 2004 the Ukhtinskiy Town Court of the Komi Republic authorised the applicant's detention pending investigation in relation to this robbery. The applicant did not appeal.

35. The applicant was then transferred to the town of Ivanovo for further proceedings.

36. On 24 June 2004 his detention was extended until 5 August 2004; on 3 August 2004 his detention was extended until 5 October 2004. On 7 September 2004 the case was submitted to the Oktyabrskiy District Court of the Ivanovo Region. On 13 September 2004 the District Court ordered that the applicant's detention pending trial be continued. Later on, the judge returned the case to the prosecutor. It was resubmitted to the judge on an unspecified date. On 20 December 2004 the District Court again returned the criminal case to the prosecutor and, *inter alia*, ordered him to redraft the bill of indictment. The District Court also ordered that the applicant be kept in detention pending the prosecutor's further actions. On 14 February 2005 the Regional Court upheld the above-mentioned decisions. The applicant's detention was extended in 2005. In August 2005 the criminal case was resubmitted for trial before the District Court. It appears that in February 2006 the court again returned the case to the prosecutor. Apparently, the case was resubmitted to the court in or around August 2006.

37. On 21 December 2006 the applicant was convicted of a number of criminal offences. He was then transferred to a prison in the Komi Republic.

38. In 2012 the applicant lodged complaints concerning the lawfulness of his detention from 19 February until 29 April 2004. The relevant prosecutor's office refused to deal with this complaint. He challenged it under Chapter 25 of the Code of Civil Procedure (hereinafter "the CCP" – see paragraph 53 below) and asked to be taken to a court hearing from the detention facility. The Syktyvkar Town Court replied to the motion by indicating that the motion would be dealt with at a hearing on the merits. By a judgment of 24 September 2012 the Town Court heard the respondent and

dismissed the applicant's complaint. The court indicated in the judgment that it was appropriate to examine the case without the claimant being present because the applicable legislation made no provision for conveying a claimant to a court hearing. As to the merits of the complaint, the court indicated that the applicant's complaint had been dealt with the appropriate official, in compliance with the applicable procedure and that the official had provided reasons for dismissing the complaint. The applicant appealed; on 3 December 2012 the Komi Regional Court upheld this judgment.

39. The applicant also brought proceedings (again under Chapter 25 of the CCP) against the head of the relevant remand centre, who had kept him there allegedly unlawfully during the contested period. On 24 September 2012 the same judge of the Town Court heard the respondent and rejected the applicant's claims in that case too. Having listed the relevant provisions of Article 5 of the Convention, the CCrP and the Code of Civil Procedure as well as the procedural history of the criminal case (see paragraphs 33-34 above), the court concluded that the applicant's detention during the impugned period had been in compliance with the legislation in force at the time in question; that the head of the remand centre had had no legal basis for releasing the applicant, having information that the criminal case had been pending before a trial court. On 3 December 2012 the Regional Court upheld the judgment, considering as follows:

> "The first-instance established the relevant circumstances and based its judgment on the provisions of the CCrP. It was right to conclude that there had been no legal basis for releasing the applicant after 19 February 2004, given that the head of the remand centre had had information that the criminal case had been submitted for trial. Thus, [the applicant's] detention from 19 February to 29 April 2004 had been lawful ... The court was correct to dismiss the argument that, receiving no extension decision, the head of the remand centre should have released [the applicant] after 19 February 2004 ... Article 255 § 2 of the CCrP provides that the detention pending trial should not exceed six months, except for situations listed in paragraph 3 ... Thereafter, the relevant court can extend detention in cases relating to serious and particularly serious offences ... Thus, given that the criminal case was submitted for trial before the Syktyvkar Town Court and taking note of the decision of 21 April 2004 (in the part relating to the dismissal of the application for release), this decision should be *de facto* considered as a decision to extend [the applicant's] detention within the time-limits mentioned in Article 255 of the CCrP ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Protection of private life, reputation and honour

1. Russian Constitution

40. Article 23 of the Constitution protects the inviolability of one's private life, honour and good name.

41. Article 24 of the Russian Constitution prohibits the collection, storage, use or dissemination of information about a person's private life without that person's consent.

42. Article 25 of the Constitution guarantees the inviolability of one's home. No one should be permitted to enter anyone's home against the will of its residents, except in instances prescribed by a federal law or under a court order.

2. Civil Code of the Russian Federation

43. Article 152 of the Code, as worded at the time in question, provided that a citizen had the right to seek a judicial order for the refutation of information which had tarnished his honour or reputation, if the person that disseminated this information failed to prove that it "corresponded to reality".

44. Affirmations about facts or event which in fact did not take place at the time relevant to the contested information should be classified as "not corresponding to reality" (under paragraph 7 of Ruling no. 3 of 24 February 2004 by the Plenary Supreme Court of Russia). It is not admissible to classify as "not corresponding to reality" information which is contained in court decisions, decisions issued by an authority carrying out a preliminary investigation, or other official documents that can be challenged by means of another legal procedure (ibid.). Under Article 152 of the Civil Code, the burden of proving that the contested information "corresponds to reality" lies with the respondent. The claimant must prove that the impugned information has been disseminated by the respondent and that the information has tarnished the claimant's reputation (Ruling no. 3, paragraph 9).

45. Article 152.1 of the Civil Code was introduced in 2006 and prohibits the dissemination and use of a person's image (by means of a photograph or video, for instance) without that person's consent. Such consent is not required, *inter alia*, for the use of such an image in the State's interest or the public interest.

3. Mass Media Act of 27 December 1991

46. Section 41 of the Media Act does not contain any general rule concerning the use of a person's image in relation to criminal proceedings. However, it provides that the mass media is not allowed to divulge, either directly or indirectly, information leading to the divulging of a minor's identity when that minor has committed or is suspected of having committed a criminal offence. The minor's or his parents' consent to such divulging is required.

47. Section 49 of the Act provides that a journalist is legally required to seek the consent of an interested person for the dissemination of information

relating to that person's private life, except when "[dissemination] is necessary for the protection of the public interest".

48. Under section 57 of the Act, as worded at the time, an editorial board or a journalist would not be held liable for disseminating information that did not correspond to reality or tarnished one's reputation or honour or otherwise impinged upon one's rights and legitimate interests, where such information was contained in a reply to a request for information or in a press release issued by a public authority or another organisation.

4. Personal Data Act of 27 July 2006

49. Section 3 of the Act defines "personal data" as any information directly or indirectly identifying a specific person.

50. A journalist can process such data without the consent of the person concerned for the purposes of his professional activities and/or the lawful activities of the mass media, provided that such processing does not violate the person's rights (section 6 of the Act).

5. Code of Criminal Procedure

51. Article 161 of the Code provides that an investigator may authorise the disclosure of "information" relating to the preliminary investigation of a criminal case if such disclosure does not impinge upon the investigation and does not violate the rights or legitimate interests of the persons involved in the investigation. The investigator should determine the extent of the disclosure.

B. Other material

52. In 2009 the Plenary Supreme Court of Russia stated that a detention decision taken at the pre-trial stage of proceedings continued to be valid following submission of the criminal case for trial but only within the time-limit set in that detention decision (ruling no. 22 of 29 October 2009, paragraph 20).

53. Chapter 25 of the Code of Civil Procedure, as worded at the time, provided for a procedure for lodging a claim challenging actions or inaction on the part of public officials that had adversely affected a person's rights or freedoms. Such a claim could be lodged within three months of the date on which the person concerned learned of the violation of his or her rights or freedoms (Article 256 of the CCP).

54. The Plenary Supreme Court of Russia considered, in a differing context of claims arising from unlawful actions by bailiffs, that a monetary claim for compensation under Article 1069 of the Civil Code could not be dismissed merely because there had been no separate proceeding resulting in an acknowledgment that a bailiff's (in)action had been in breach of

Russian law; a civil court dealing with the compensation claim would need to assess the legality in the compensation case (ruling no. 50 of 17 November 2015, paragraph 82). It is unclear whether a similar approach is prescribed for claims under Article 1070 § 1 of the Civil Code in conjunction with Article 1100 relating to detention under the Code of Criminal Procedure, in particular as regards situation mentioned in paragraph 52 above (see, however, decision no. 1049-O of 2 July 2013 by the Russian Constitutional Court, and cassation decision no. 33-1335 of 14 February 2011 by the Perm Regional Court).

THE LAW

I. JOINDER OF THE APPLICATIONS

55. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

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

56. The first applicant, Mr Mityanin, complained under Article 5 § 1 of the Convention that his detention from 20 February until 10 March 2004 had been unlawful. He also alleged that his detention from 5 October 2004 until 14 March 2005 had been unlawful, and that this unlawfulness had in turn adversely affected the lawfulness of the relevant calculations made under Articles 109 and 255 of the CCrP relating to the ensuing period of his detention until June 2005 (see *Shteyn (Stein) v. Russia*, no. 23691/06, §§ 89-95, 18 June 2009).

57. The second applicant, Mr Leonov, complained under Article 5 § 1 of the Convention that his detention from 20 February until 29 April 2004 had been unlawful.

58. Article 5 § 1 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. The parties' submissions

1. The Government

59. The Government argued that the first applicant had not been detained prior to 29 April 2004 and that he had first raised the above-mentioned matters relating to his detention in an application form dated 13 June 2006. The matters relating to February and March 2004 had been raised before the Court on 11 September 2013, while the relevant domestic proceedings had ended on 27 December 2012. The Government also submitted that, as of 2006, domestic remedies had not yet been exhausted by the applicant in respect of this period.

60. As to the second applicant, the Government acknowledged a violation of Article 5 § 1 of the Convention. In their further observations the Government maintained their position on the merits and raised an admissibility issue, arguing that the applicant should have raised the complaint within six months of the end of the situation complained of. The remedies he had used were not to be taken into account. In particular, a civil action in respect of non-pecuniary damage sustained on account of unlawful detention was not subject to any time-limit, and had been used by the applicant years after the situation complained of (they refer to *Norkin v. Russia* (dec.), no. 21056/11, § 15, 5 February 2013).

2. The applicants

61. The first applicant submitted that the Government's submissions were factually wrong and that he had complied with the six-month rule.

62. The second applicant submitted that the Government were estopped, on account of Rule 55 of the Rules of Court, from first raising an inadmissibility issue in their further observations in reply to the applicant's observations. After being afforded an opportunity to comment on the Government's further submissions, the applicant stated, in particular with reference to the subsidiary principle, that it was appropriate to afford the national authorities an opportunity to put right the alleged violation, which the applicant had done, initially without the benefit of legal advice. Namely, he had asked, to no avail, the criminal court in his case to issue a special ruling (*частное определение*) under Article 226 of the Code of Criminal Procedure. Later on, in 2012, he had lodged a complaint with the prosecutor's office and had then challenged its decision on judicial review (see paragraph 38 above). Lastly, he had brought civil proceedings against the remand centre on account of its allegedly unlawful failure to release him and on account of the non-pecuniary damage caused by that failure to release him (see paragraph 39 above). This course of action had had a reasonable prospect of success since under the Custody Act the head of the remand centre had had a clear obligation to release him, not having been

served with any court decision authorising or extending the applicant's detention on remand. The applicant had obtained a decision on the merits of this claim.

63. The applicants further argued that the approach adopted by the Court in the *Norkin* decision specifically concerned a structural problem relating to the lack of effective remedies in respect of conditions of detention. No similar findings had ever been made by the Court in relation to issues arising under Article 5 § 1 of the Convention. Moreover, the *Norkin* decision had been based on the Court's earlier findings (in particular under Article 13 of the Convention). No similar findings had ever been reached in respect of Article 5 § 1 of the Convention. On the contrary, the Court had generally taken a flexible approach to the question of the exhaustion of domestic remedies in respect of this type of complaint and had accepted a variety of domestic decisions for the purpose of Article 35 § 1 of the Convention (see, regarding – *inter alia* – a civil action for damages *Trepashkin v. Russia*, no. 36898/03, § 66, 19 July 2007; *Shulepova v. Russia*, no. 34449/03, §§ 1, 15-27 and 36, 11 December 2008; and *Fedotov v. Russia*, no. 5140/02, §§ 1, 15-20 and 31-35, 25 October 2005; see, in respect of court proceedings against the head of a remand centre *Starokadomskiy v. Russia (no. 2)*, no. 27455/06, §§ 1, 32 and 39-40, 13 March 2014).

B. The Court's assessment

1. Admissibility

(a) The first applicant's detention between October 2004 and March 2005, and between March and June 2005

64. As to Mr Mityanin's detention from 5 October 2004 until 14 March 2005 and then until 4 June 2005, the Court considers that the domestic courts acted within their powers in making the decisions, and there is nothing to suggest that they were invalid or unlawful in domestic law (compare with *A.B. v. Russia*, no. 1439/06, §§ 153-59, 14 October 2010, and *Miminoshvili v. Russia*, no. 20197/03, §§ 70-74, 28 June 2011). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) The applicants' detention in early 2004

65. The Court sees no need to examine whether the Government are prevented from making the six-month objection as regards the second applicant's detention, since it finds in any event that it concerns a matter which falls under the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Béláné Nagy v. Hungary* [GC],

no. 53080/13, § 71, ECHR 2016, concerning compatibility *ratione materiae*) – in this case with the benefit of the submissions by both parties.

66. In 2013 both applicants lodged complaints with the Court under Article 5 § 1 of the Convention about their detention in early 2004 – namely that at that time there had been no valid court decisions authorising their continued detention during that period.

67. First of all, there is no reason to doubt that the applicants were deprived of their liberty during the relevant periods of time.

68. As regards the first applicant (Mr Mityanin), the impugned period of detention lasted from 20 February until 10 March 2004; the related domestic proceedings ended on 27 December 2012, and the first applicant raised his related complaint before the Court in his letter dated 26 June 2013 (see paragraph 21 above).

69. As regards the second applicant (Mr Leonov), the impugned period of detention lasted from 19 February until 29 April 2004; the related domestic proceedings ended on 3 December 2012, and the second applicant raised his related complaint before the Court on 7 May 2013 (see paragraphs 38 and 39 above).

70. In the civil proceedings in 2012, Mr Mityanin asked the court to assess the legality of a period of his detention from 20 February to 10 March 2004 and, following that finding, to award him compensation on account of non-pecuniary damage caused by unlawful deprivation of liberty (see paragraph 21 above). The civil court did not dismiss Mr Mityanin's claims on any procedural ground. On the contrary, it dealt with the question of legality as regards the period of detention and then examined and dismissed the related monetary claim.

71. As to Mr Leonov, who brought proceedings under Chapter 25 of the CCP against the head of the remand centre where he had been kept, the court found that the head of the remand centre had been aware that the criminal case against the applicant was pending before a trial court. It concluded that Mr Leonov's detention had complied with the legislation in force at the time.

72. The Court reiterates that Article 35 § 1 of the Convention allows only remedies which are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 130-32, 19 December 2017). It follows that if an applicant has recourse to a remedy which is doomed to fail from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (ibid; see also *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016). However, for example, the six-month time-limit can be considered as dating from the decision resulting

from the use of an extraordinary remedy (because it was not directly accessible, for instance) where, as a matter of fact, the relevant court did accept the case for examination and had the opportunity to set aside the impugned judgment, if necessary, and to remit the case to the lower court, and therefore to remedy the situation complained of by the applicant (see *Öztürk v. Turkey* [GC], no. 22479/93, §§ 45-46, ECHR 1999-VI; see also *Raichinov v. Bulgaria* (dec.), no. 47579/99, 1 February 2005).

73. In respect of both these two periods of detention, the respective applicants pursued a remedy which they were not required to pursue in order to exhaust domestic remedies, and in respect of both periods of detention they obtained a first decision from the domestic courts that the detention in question had been lawful (see paragraphs 21 and 39 above). There has been no suggestion, and there is no indication, that the proceedings had no prospects of success or could not afford redress. Thus, in the particular circumstances of the case they should be taken account as regards the applicants' compliance with the six-month rule under Article 35 § 1 of the Convention. In view of the above finding, the Court finds it unnecessary to determine whether the legality of detention was also at stake in the first set of proceedings under Chapter 25 (see paragraph 38 above).

74. Accordingly, in the circumstances of the present case the applicants complied with the six-month rule under Article 35 § 1 of the Convention by raising the related complaint before the Court on 7 May and 26 June 2013, within six months after the appeal decision of 3 and 27 December 2012 respectively.

75. The Court also dismisses as unsubstantiated the Government's plea of non-exhaustion since they did not specify what (other) remedies were available and could provide adequate redress, and thus had to be exhausted.

76. The Court considers that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established. Thus they must be declared admissible.

2. Merits

77. The Court notes that on 29 January 2004 the Syktyvkar Town Court extended Mr Mityanin's detention until 19 February 2004. On 18 February 2004 the prosecuting authorities completed their pre-trial investigation and submitted the case for trial. It was then only on 10 March 2004 that the Town Court took a fresh decision extending the applicant's detention. Subsequently, his claim for compensation on account of the lack of any valid judicial decision for the period from 20 February to 10 March 2004 was dismissed. The courts considered that during that period the case against the first applicant had been pending before the trial court and that his continued detention had thus been lawful. As to Mr Leonov's complaint about his detention from 20 February until 29 April 2004, the Court notes

that following expiry of a detention order on 19 February 2004, it does not follow from the available material that his detention was lawfully extended until at least 21 April 2004 when the Ukhtinskiy Town Court of the Komi Republic authorised his detention pending investigation. Having regard to its case-law on the matter (see, among many others, *Khudoyorov v. Russia*, no. 6847/02, § 144-51, ECHR 2005-X (extracts), and *Lebedev v. Russia*, no. 4493/04, §§ 55-59, 25 October 2007), the Court concludes that there has been a violation of Article 5 § 1 of the Convention as regards Mr Mityanin's detention from 20 February to 10 March 2004 and Mr Leonov's detention from 20 February to 21 April 2004.

III. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

78. The applicants alleged a violation of Article 5 § 3 of the Convention in relation to their detention in that the domestic authorities had failed to exercise diligence in the conduct of the criminal proceedings; this had resulted in their being convicted in December 2006. The first applicant also complained under Article 5 § 4 of the Convention about the refusal to examine his appeal against the court decision of 1 February 2006 rejecting his application for release (see paragraph 17 above).

79. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established. Thus, they must be declared admissible.

80. The Government acknowledged the violations in respect of the first applicant. As regards the second applicant, the Court notes that in their observations the Government clearly acknowledged a violation. However, in their final plea in those observations they stated that there had been "no violation" of Article 5 § 3 of the Convention. Given the fact that the second applicant's situation was identical to that of the first applicant, and given the unequivocal position of the Government in respect of him, the Court considers that the final plea regarding the second applicant contained a typographical error.

81. According to the Court's established case-law, under Article 5 § 3, where grounds cited by the judicial authorities to justify the continued deprivation of liberty are relevant and sufficient it should be considered whether the national authorities displayed "special diligence" in the conduct of the proceedings (see, as a recent authority, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, ECHR 2016 (extracts)). Indeed, this was the thrust of the applicants' complaint before the Court. It does not appear that the national courts took any heed of the related arguments. Taking note of the Government's acknowledgment of the violation and the pace of the proceedings (in particular, various omissions

between January 2004 and December 2006 (for the first applicant) and December 2003 and December 2006 (for the second applicant) resulting in the remittal of the case to the prosecutor and impeding the examination of the charge by the trial court), the Court concludes that in the present case there has been a violation of Article 5 § 3 of the Convention in respect of each applicant (see also, *mutatis mutandis*, *Radchikov v. Russia*, no. 65582/01, § 50, 24 May 2007).

82. Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for a system of appeal, the appellate body must also comply with the requirements of Article 5 § 4 (see *Lebedev*, cited above, § 96). Taking note of the Government's acknowledgment, the Court concludes that there has been a violation of Article 5 § 4 of the Convention as to the refusal to examine the first applicant's appeal against the court decision of 1 February 2006 rejecting his application for release (see, in the same vein, *Makarenko v. Russia*, no. 5962/03, §§ 122-25, 22 December 2009; *Chuprikov v. Russia*, no. 17504/07, §§ 82-87, 12 June 2014; and *Manerov v. Russia*, no. 49848/10, §§ 35-38, 5 January 2016).

IV. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

83. The applicants complained under Article 5 § 5 of the Convention that the domestic court decisions issued in 2012 had adversely affected their right to compensation on account of their unlawful detention in early 2004 in breach of Article 5 § 1.

84. Article 5 § 5 reads as follows:

> "5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

85. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court (ibid.).

86. In their observations in 2016 the applicants also alleged, for the first time, a violation of Article 5 § 5 of the Convention in conjunction with Article 5 § 3 regarding the period of detention, which had ended in December 2006. Indeed, the Court has found a violation of Article 5 § 3

(see above). However, it is noted that the matter of a right to compensation in this respect was not part of the application lodged before the Court or among the issues communicated to the respondent Government. Nor is there any reason to interpret the Government's observations, as the applicants did, as acknowledging a violation of Article 5 § 5 of the Convention in relation to Article 5 § 3. Accordingly, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

87. As regards Article 5 § 5 and Mr Mityanin's detention from 20 February to 10 March 2004 and Mr Leonov's detention from 20 February to 21 April 2004, the Court considers that the related complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible has been established. Thus it must be declared admissible.

B. Merits

88. Having regard to its case-law on the matter (see, among others, *Boris Popov v. Russia*, no. 23284/04, §§ 84-86, 28 October 2010), the Court concludes that there has been a violation of Article 5 § 5 of the Convention as regards Mr Mityanin's detention from 20 February to 10 March 2004 and Mr Leonov's detention from 20 February to 21 April 2004.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

89. The second applicant alleged that there had been a violation of Article 6 § 1 of the Convention on account of his absence from the hearings in his civil cases, which resulted in the judgments of 24 September 2012, as upheld on appeal on 3 December 2012 (see paragraphs 38-39 above).

90. Article 6 § 1 of the Convention reads as follows in the relevant part:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

91. The Government submitted that the complaint was belated where it concerned the hearings on 24 September 2012 and that there had been a violation of Article 6 as regards the hearings on 3 December 2012.

92. The applicant submitted that, as regards Article 6 of the Convention, the admissibility of any related complaint (including compliance with the six-month rule) should be assessed, taking into account such proceedings in their entirety. Thus, it was appropriate to take into account the appeal decision dated 3 December 2012 when calculating the start of the six-month period.

93. The Court agrees with the applicant. The Court also considers that this complaint is not manifestly ill-founded within the meaning of

Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established. The Court accordingly declares the complaint admissible.

94. Noting certain essential factual and legal similarities of the present case with the matters examined in detail by the Court in *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, §§ 49-53, 16 February 2016, and also having regard to the Government's acknowledgment, the Court concludes that in the present case there have been violations of Article 6 § 1 of the Convention in respect of each of the two sets of proceedings, as taken as a whole, initiated by the second applicant.

VI. ALLEGED VIOLATIONS OF ARTICLE 6 § 2 AND ARTICLE 8 OF THE CONVENTION

95. The first applicant complained about the contents of the newspaper article of 18 January 2008 and the accompanying dissemination of his photograph, stating that it had violated the presumption of innocence. He also complained in substance that the above-mentioned facts constituted a disproportionate interference with his private life on account of the dismissal of his defamation case against the newspaper.

96. Article 6 § 2 of the Convention reads as follows:

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

97. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The first applicant

98. As regards Article 6 § 2 of the Convention, the applicant argued that the statements in the above-mentioned publication affirming his membership of a criminal community (which is a criminal offence under Article 210 of the Criminal Code) had been attributable to a public official and amounted to an affirmation of his guilt in respect of such an offence. Moreover, the civil courts in the present case had failed in their positive obligation to uphold the presumption of the applicant's innocence in the light of the breach of the presumption of innocence on the part of the

newspaper. The applicant submitted that his co-defendants had raised this matter in relation to the impugned article and other articles in the appeal against the judgment of 23 June 2014 by which he had been convicted of several criminal offences.

99. As to Article 8 of the Convention, the applicant argued that the impugned article, the publication of his photograph by the newspaper and the dismissal of his civil case against it had constituted a disproportionate "interference" with his private life. He also mentioned that the information recounted by the journalist in his article had been provided by the regional department of the FSB; the public authority had thereby branded the applicant a "member of a gang", which had adversely affected his reputation. A civil case in a case brought by Mr Leonov in 2013 confirmed that the photograph(s) had been provided to the newspaper by the FSB. The applicant concluded that the "interference" with his private life had pursued no legitimate aim and had been disproportionate.

2. The Government

100. The Government submitted that the impugned article had contained truthful information, as confirmed by the preliminary investigation at the time – namely that a criminal investigation had been pending in respect of the applicant in relation to the commission of a crime under Article 210 of the Criminal Code. The article had merely stated that the applicant was suspected of participation in a criminal community. Under the Mass Media Act of 1991, neither the newspaper, nor its editor, nor the author of the article, could be held liable for the dissemination of any defamatory or false information or statements contained in an official document or press release.

101. Under Article 152.1 of the Civil Code, the publication of a person's photograph was lawful, even without that person's consent, where it was necessary in the pursuit of the public interest, such as the need to identify and put an end to a threat to society or the environment, or in the interests of public safety. Certain information about the applicant had touched upon matters of State security and public safety. It had been important to inform the public about the applicant's appearance.

B. The Court's assessment

1. Admissibility

(a) Article 6 § 2 of the Convention

102. In so far as the violation of the presumption of innocence in respect of the applicant might be attributable to the State on account of the official statement relayed (either verbatim or paraphrased) by the newspaper in the article of 18 January 2008, the Court notes that it is uncontested that the

article was based on official information provided by the regional department of the FSB. There is nothing to indicate that the impugned part of the publication (in which the applicant was presented as a "member of a gang") constituted a verbatim reproduction of (or an otherwise direct quotation from) any part of that official information. In other words, even accepting that the impugned wording might give the impression of an affirmative statement in relation to the applicant's guilt in respect of the charge of membership of a criminal community, the available material does not confirm that it is the State that should be held responsible under Article 6 § 2 on this account. Accordingly, this part of the complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

103. Next, the applicant argued that respect for the presumption of innocence was incumbent on public officials as well as (as is pertinent in the present case) on newspapers and journalists – especially when they relayed official information; he also argued that the State had a positive obligation under Article 6 § 2 of the Convention to ensure the protection of this presumption against violations by the mass media. The Court observes that this line of argument was not part of the applicant's defamation case against the newspaper, as raised under Articles 152 and 152.1 of the Civil Code and as finally determined in December 2011. It has not been submitted that Russian law afforded the applicant any particular remedy in this context or that he used it. The Court has no reason to consider that the raising of this matter during a criminal trial and during an appeal against conviction was a relevant or effective remedy in this context. The present complaint was raised in May 2012, while the event complained of occurred on 18 January 2008. Accordingly, the above proceedings thus being irrelevant in the present case for the purpose of the six-month rule, the this complaint has been introduced out of time and must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Article 8 of the Convention

104. At the domestic level and then in his application form and observations before this Court the applicant does not appear to make any separate complaint or adduce specific arguments under Article 8 of the Convention (for instance, regarding lawfulness or proportionality) in respect of any "interference" by "a public authority" on account of a public official providing the newspaper with the applicant's photograph or any information falling within the scope of his "private life" (see paragraphs 28-30 and 99 above; compare *Sciacca v. Italy*, no. 50774/99, §§ 26-31, ECHR 2005-I). There is insufficient material before the Court to clarify the origin of the photograph or to confirm that the article contained any quotations from any public official (see also paragraph 102 above).

105. Therefore, in so far as substantiated the Court considers that the applicant's complaint before the Court is limited to the domestic courts' dismissal of his defamation case against the newspaper. In cases of the type being examined here, what is at issue is not an act by the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicants' private life. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even within the sphere of relations of individuals between themselves (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 98, ECHR 2012). That also applies to the protection of a person's picture against abuse by others (ibid).

106. As regards this aspect of the case, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible has been established. Thus it must be declared admissible.

2. Merits

Article 8 of the Convention

(i) General principles

107. The Court reiterates that a positive obligation may arise for the State under Article 8 of the Convention to protect the "private life" of persons targeted in ongoing criminal proceedings (see *Craxi v. Italy* (no. 2), no. 25337/94, §§ 63-64, 17 July 2003; *A. v. Norway*, no. 28070/06, §§ 65-75, 9 April 2009; and *Egeland and Hanseid v. Norway*, no. 34438/04, § 53, 16 April 2009).

108. The standards developed in cases relating to Article 10 of the Convention are pertinent when a case is brought, as in the present case, by a "victim" of free speech whose Article 8 rights have been adversely affected. With regard to cases in which a violation of the rights guaranteed under Article 8 is asserted and the alleged interference with those rights originates in an expression, the Court has already found that the protection granted by the State should be understood as one taking into consideration its obligations under Article 10 of the Convention. In cases concerning an article published in a newspaper, the protection of private life has to be balanced against, *inter alia*, the freedom of expression guaranteed by Article 10 of the Convention (see *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, § 56-58, 16 July 2013, with further references). As a matter of principle, the rights guaranteed by these provisions deserve

equal respect and the outcome should not, in principle, vary according to whether the complaint is brought with reference to Article 10 or Article 8 of the Convention. Accordingly, the margin of appreciation should in principle be matching whichever Article is cited (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 87, 7 February 2012, and *Von Hannover* (no. 2), cited above, § 106). Where a balancing exercise between those two rights has been undertaken by the national authorities, in line with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts. In other words, there will usually be a wide margin of appreciation afforded by the Court if the State is required to strike a balance between competing private interests or competing Convention rights (for a recent statement on the applicable approach, see *Fürst-Pfeifer v. Austria*, nos. 33677/10 and 52340/10, §§ 40-42, 17 May 2016).

109. The Court also reiterates that the press should normally be entitled to rely, acting in good faith, on the content of official reports without having to undertake independent research (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, §§ 68 and 72, ECHR 1999-III, and *Colombani and Others v. France*, no. 51279/99, § 65, ECHR 2002-V). This means that journalists must be free to report on events on the basis of information gathered from official sources without further verification, namely as regards the veracity of the facts presented in the official document (see *Selistö v. Finland*, no. 56767/00, § 60, 16 November 2004, as confirmed in *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 51, 2 October 2012, where the Court also specified that the journalist had not "adopt[ed] the allegations as her own"). More recently, it applied that approach to information given orally by a public prosecutor in charge of the prosecuting authorities' relations with the press, thereby constituting a sufficient factual basis for an article that was "based" on this information (see *Axel Springer AG*, cited above, § 105).

110. As regards the use of a photograph, the Court considered that where a photograph published within the context of reporting on pending criminal proceedings has no informational value in itself, there must be compelling reasons to justify an interference with the defendant's right to respect for his private life (see *Khuzhin and Others v. Russia*, no. 13470/02, § 117, 23 October 2008). The following elements should be weighed as regards the publication of a photograph: the position of the applicant, the position of the newspaper, and the nature and subject matter of the article at issue (see *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, § 34, 14 December 2006, and *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 58, ECHR 2000-I, where the Court found a violation of Article 10 of the Convention).

(ii) Application of the principles to the present case

111. First of all, the Court notes that applicant has made no specific argument that the determination of his defamation case against the newspaper was not "in accordance with the law". The focus of the issue before the Court is on whether the domestic courts struck a proper balance between his rights and those of the newspaper.

112. Next, the Court reiterates that in order for Article 8 to come into play, an attack on a person's reputation or honour must attain a certain level of seriousness and be carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 72, ECHR 2016). It is uncontested that the dissemination of the applicant's photograph together with a statement accusing him of criminal conduct and ascribing to him a pattern of related criminal activities attains the requisite level of seriousness.

113. It is agreed between the parties, and the Court accepts it, that the matter relating to the dissemination of the applicant's photograph in the newspaper article was subject to regulation at the domestic level on the basis of Article 152.1 of the Civil Code (see paragraph 45 above). The Court notes that the national courts justified the publication of the photograph by citing the exception to the statutory rule of consent, stating that it was in the public interest for the photograph to be disseminated. The courts stated that the dissemination of the photograph could serve to aid the gathering of further information and prompt eyewitnesses to the crimes bring investigated (or to further crimes) to come forward. The Court has no reason to doubt that this was a plausible eventuality in view of the nature and scale of the alleged criminal activities.

114. As to the contents of the article, the applicant argued in substance that the way in which he had been portrayed in the article had adversely affected his reputation and honour. The applicant furthermore argued that in order to avoid an unjustified affront to his reputation or honour, the newspaper should have been more careful in its presentation of the information obtained from the official source. As at the date of the publication, the applicant, who was a convict serving a prison term for an unrelated criminal offence, had not been formally charged with the offence of being a member of a criminal community (he was simply a suspect); *a fortiori*, he was not standing trial and had not been convicted on such a charge at the time.

115. It is common ground between the parties that the impugned article reported on a matter of public interest, namely on pending investigations relating to a criminal community; as mentioned in the article, it was the first time that such a large-scale investigation on such a charge had been pursued in the region. It is uncontested that the impugned article contributed to "a debate of general interest". As already mentioned above, the public does, in principle, have an interest in being informed, and in being able to inform

itself, about criminal proceedings, while strictly observing the presumption of innocence. The degree of that interest will vary, however, as it may evolve during the course of the proceedings according to various factors, such as how well the person in question is known, the circumstances of the case and any further developments arising during the proceedings (see *Verlagsgruppe News GmbH*, cited above, § 42). In that connection, the Court has stated that especially at the early stage of criminal proceedings the disclosure of a suspect's identity may be particularly problematic and that national courts may take measures to protect him or her against "trial by media" and to give effect to the presumption of innocence (ibid.). Given that the publication at issue contributed to a debate of general interest, there was little scope under Article 10 § 2 of the Convention for restrictions (ibid., § 43).

116. Next, the Court observes that the applicant was neither a public figure nor someone who had previously been in the public eye. However, the question of whether or not a person whose interests have been violated by reporting in the media constitutes a public figure is only one element among others to be taken into account (see the case of *Eerikäinen and Others v. Finland*, no. 3514/02, §§ 66-72, 10 February 2009, in which the article in question concerned an ordinary individual but where the court nevertheless found that the order to pay compensation for the damage caused by publishing her name and picture within the context of a report on an issue of general interest had not been "necessary" within the meaning of Article 10 § 2 of the Convention). The methods by which the information had been obtained were not in dispute between the parties. The information was provided by a public authority and it has not been contested that this course of action was lawful. As regards the form of the article at issue, the Court notes that the language used was neither offensive nor provocative. Moreover, the claimant was not the focus of the article; rather, the focus was on other people who had been recently arrested. The Court cannot therefore find that the disclosure of the claimant's identity amounted to "trial by media". It could not be discounted that the impugned article had some repercussions on his "private life". In so far as the thrust of the claim relating to an affront to his reputation or honour was based on allegations of fresh (that is to say recently discovered) criminal conduct, it could be admitted that the fact that the applicant was serving a final prison sentence had some, albeit limited, relevance in this specific regard.

117. Indeed, the applicant does not seem to take any particular issue with respect to the above considerations. In the applicant's submission, the key consideration concerned the veracity of the information contained in the article. Indeed, the issue of whether an individual is a member of a gang is not "merely a matter for speculation but is a factual assertion capable of being substantiated by relevant evidence" (compare *Jalbă v. Romania*, no. 43912/10, § 37, 18 February 2014). In these circumstances,

notwithstanding the margin of appreciation afforded to the domestic courts as regards the classification of an utterance as a statement of fact or as a value judgment, the Court considers that the phrase constituted statements of fact (see, by way of comparison, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 41, ECHR 2003-XI).

118. The Court accepts that the wording of the phrase relating to treating the applicant as a "member of a gang" might raise a concern, in particular given the fact that he was being accused of a related crime. However, the Court observes that the contested statement was preceded by a paragraph explaining that the recently arrested people were "accused" (in its ordinary rather than its legal meaning) of a criminal offence under Article 210 of the Criminal Code. The article also had an introductory phrase mentioning that the persons in question were "accused" of running a criminal community. At one point the article mentioned that the arrestees were suspects. Reading the article as a whole it could be reasonably understood that the applicant was at the time merely suspected of a criminal offence relating to membership of a criminal gang and its arguably unlawful activities. Lastly, the Court agrees with the domestic courts that the journalist relied in good faith on the official source in so far as the article was based on the content of official information (see the case-law cited in paragraph 109 above).

119. Therefore, the respondent State did not fail in its positive obligation under Article 8 of the Convention as regards the publication of the applicant's photograph (see, for comparison, *Egeland and Hanseid*, cited above, §§ 56-65) and the contents of the article.

120. Lastly, it is noted that the applicant has not submitted any further, specific argument suggesting that the domestic courts hearing his defamation claim failed to perform a proper balancing exercise between the right to freedom of expression and the right to respect for his "private life", having regard to a variety of pertinent factual and legal elements (see, in this connection, *Bédat*, cited above, §§ 49-54). Nor has he argued that the domestic courts did not apply standards which were in conformity with the principles embodied in Articles 8 and 10 of the Convention or did not base themselves on an acceptable assessment of the relevant facts (compare *Terentyev v. Russia*, no. 25147/09, § 24, 26 January 2017).

121. There has therefore been no violation of Article 8 of the Convention in respect of Mr Mityanin.

VII. OTHER ALLLEGED VIOLATIONS OF THE CONVENTION

122. The Court has examined the remaining complaint under Article 34 of the Convention, as submitted by the first applicant in 2016. 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 it does not disclose any appearance of a violation of the rights and freedoms set out in

the Convention or its Protocols. Accordingly, 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.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The first applicant claimed 42,500 euros (EUR): EUR 15,000 and EUR 5,000 in respect of non-pecuniary damage in relation to Article 5 §§ 3 and 4 of the Convention, respectively; EUR 15,000 in respect of Article 5 §§ 1 and 5 as regards his detention in early 2004; EUR 7,500 in relation to Article 8 of the Convention. Lastly, he claimed EUR 20,000 in loss of earnings in relation to Article 5 §§ 1 and 3.

125. The second applicant claimed EUR 58,000: EUR 15,000 and EUR 3,000 in respect of non-pecuniary damage in relation to Article 5 § 3 and Article 6 of the Convention respectively; EUR 35,000 and 5,000 in respect of Article 5 §§ 1 and 5 as regards his detention in early 2004. Lastly, he claimed EUR 10,000 in loss of earnings in relation to Article 5 §§ 1 and 3.

126. The Government made no comment.

127. Leaving aside the question of a causal link between the violation found under Article 5 § 3 as regards the "special diligence" requirement or Article 5 § 1 and the pecuniary damage alleged, the Court observes that the applicants have not substantiated the claim; it therefore rejects it. On the other hand, it awards each applicant EUR 12,700 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

128. The first applicant claimed EUR 1,500 and EUR 12,400 for the costs and expenses incurred, respectively, at the domestic level and before the Court; he also claimed postal costs of 1,157 Russian roubles. The second applicant claimed EUR 10,600 for the costs and expenses incurred before the Court. Both applicants also claimed awards amounting to 10% of the "award under Article 41 of the Convention, representing the costs of translating the observations into English and as a premium for the representative's services".

129. The Government made no comment.

130. 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. Furthermore, they are only recoverable to the extent that they relate to the violation found (see *Murray v. the Netherlands* [GC], no. 10511/10, § 134, ECHR 2016). Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses incurred in the domestic proceedings. In so far as the claims for costs and expenses are related to the violations that it has found (and regard being had to the Government's acknowledgement of certain violations and the legal-aid awards made by the Council of Europe in respect of both applicants), the Court considers it reasonable to award the sum of EUR 1,000 to each applicant, plus any tax that may be chargeable to each applicant, covering costs under all heads for the proceedings before the Court. The resulting amount of EUR 2,000 should be paid directly to the applicants' representative, Mr A. Laptev, as requested.

C. Default interest

131. 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

1. *Decides*, unanimously, to join the applications;

2. *Declares*, by a majority, the complaints under Article 5 § 1 (in respect of early 2004), Article 5 §§ 3, 4 and 5, Articles 6 § 1 and 8 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention in respect of each applicant;

4. *Holds*, by six votes to one, that there has been a violation of Article 5 § 3 of the Convention in respect of each applicant;

5. *Holds*, by six votes to one, that there has been a violation of Article 5 § 4 of the Convention in respect of the first applicant;

6. *Holds*, by six votes to one, that there has been a violation of Article 5 § 5 of the Convention in respect of each applicant;

7. *Holds*, unanimously, that there have been violations of Article 6 § 1 of the Convention in respect of each of the two sets of proceedings instituted by the second applicant;

8. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention in respect of the first applicant;

9. *Holds*, by six votes to one,
(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) to each applicant - EUR 12,700 (twelve thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) to each applicant - EUR 1,000 (one thousand euros), plus any tax that may be chargeable to each applicant, in respect of costs and expenses; the resulting amount of EUR 2,000 (two thousand euros) is to be paid directly to the applicants' representative before the Court, Mr A. Laptev;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-mentioned amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

10. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges De Gaetano and Dedov are annexed to this judgment.

V.D.G.
J.S.P.

PARTLY DISSENTING OPINION OF JUDGE DE GAETANO

I regret I cannot share the view of the majority as regards operative point number eight of the judgment. In my view, in this case there was a violation of Article 8 in respect of applicant Mityanin.

Given that the first applicant was accused of being a member of a "criminal gang" (which was, in itself, a criminal offence), there was a thin line between stating that someone was merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual had committed a reprehensible act punishable by criminal law. In this context the least one would have expected of the journalist was to display a degree of caution – in particular with regard to the manner of presenting the information obtained from the official source – when clarifying the state of suspicion against the applicant in relation to his alleged membership of a criminal gang and in relation to the criminal activities attributed to the gang members in the article. For the ordinary reader it would have been extremely difficult to grasp the subtleties of the legal context. While the article imparted factual information about the investigation that was largely true, the way in which it was presented wrongly conveyed the impression that there was a factual basis justifying the view that the applicant had in fact engaged in the imputed criminal conduct.

Moreover, the domestic courts justified the publication of the applicant's photograph by citing the exception to the statutory rule of consent, ruling that it was in the public interest to disseminate the information. The applicant – who, it must be reiterated, was neither a public figure nor someone otherwise in the public eye – was, at the material time, in custody; he was therefore not a fugitive from justice. It was not argued at the domestic level that, for instance, the showing of the photograph could have been necessary for enlisting public support in determining his whereabouts. It was, it is true, mentioned that publishing the article and the photograph *might* serve to help in the gathering of further information, possibly by prompting eyewitnesses to come forward. This appears to be an entirely spurious argument, since the article itself did not contain any appeal for witnesses.

In sum, and in my view, the national courts in this case did not perform the necessary balancing exercise between the right to freedom of expression on the one hand and the right to respect for one's "private life" on the other. They failed to give relevant and sufficient (and therefore convincing) reasons, did not apply standards which were in conformity with the principles embodied in Article 8 and 10 of the Convention, and they did not base their decisions on an acceptable assessment of the crucially relevant facts. I therefore conclude that there was a violation of Article 8 with regard to the first applicant.

For the avoidance of doubt, I voted with the majority on operative point number nine (just satisfaction). Even if the majority had found a violation of Article 8, the amount awarded by way of non-pecuniary damage would, in my view, have sufficed for all the violations in respect of the first applicant.

PARTLY DISSENTING OPINION OF JUDGE DEDOV

To my regret, I cannot agree with the majority that the applications under Article 5 satisfied the requirements of the six-month limit. Indeed, this is a borderline case, and it is worthwhile dissenting in order to set out another possible approach.

No time-limit and uncertainty

The applicants lodged a civil claim for non-pecuniary damages in respect of their unlawful pre-trial detention, which had lasted for almost six years after their conviction. The absence of any time-limit under domestic law (Articles 2018 and 1100 of the Russian Civil Code) creates some degree of uncertainty, which is contrary to the purpose of the six-month rule, which is to ensure that cases are examined within a reasonable time. It is vital to prevent the authorities from being in a situation of uncertainty for lengthy periods of time (see *Mocanu and Others v. Romania* [GC], § 258, and *Lopes de Sousa Fernandes v. Portugal* [GC], § 129).

The Court has already dealt with just such a problem in the Russian context in the leading case of *Norkin* v. Russia (dec.), no. 21056/11, 5 February 2013), where an application lodged belatedly after civil proceedings was considered inadmissible. This approach was then confirmed in various committee decisions (see *Zhirko v. Russia*, 8696/12, 17 September 2013; *Andrianov v. Russia*, 14293/10, 17 September 2013; *Gavrilov v. Russia*, 9789/12, 17 September 2013), which, in my view, means that it is part of the Court's well-established case-law.

Later, in the case of *Shishkov v. Russia* (no. 26746/05, 20 February, 2014) the Court proposed a more nuanced approach depending on the access to legal advice and the effectiveness of the civil action in court:

> "84. Having regard to the Court's conclusions about domestic remedies in *Ananyev and Others* (cited above, §§ 100-119), under the current approach recourse to civil proceedings would not, normally, be taken into consideration for the purpose of applying the six-month rule. For instance, in a recent case of *Norkin v. Russia* ((dec.), no. 21056/11, 5 February 2013) the applicant obtained a final judgment in 2010 awarding him derisory compensation in respect of unacceptable conditions of detention he had endured in a remand centre in 2007. The Court considered that by that time, its case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention had been sufficiently established (see *Mamedova v. Russia*, no. 7064/05, § 55, 1 June 2006; *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007, and *Benediktov v. Russia*, no. 106/02, § 20, 10 May 2007). The Court concluded that the applicant's complaint regarding the inadequate conditions of his detention should have been lodged within six months of the day following his transfer out of the remand centre. The applicant should have been aware of the ineffectiveness of the judicial avenue he had made use of, long before he lodged his application with the Court.

> 85. However, in *Norkin v. Russia* the Court also mentioned that in older cases concerning conditions of detention and domestic proceedings before 2007, as in the present case, a different approach could be warranted. Indeed, at the time there were only two examples of case-law in which the Court rejected as unsubstantiated the Russian Government's objection as to the non-exhaustion of domestic remedies in relation to conditions of detention in remand centres (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004). In several cases lodged in 2003, the Court calculated the six-month period as starting to run from the date of the final judgment in a civil action for compensation in the cases in which it found no indication that the applicant, having no access to legal advice, was aware, or should have become aware, of the futility of that action (see, among others, *Skorobogatykh v. Russia*, no. 4871/03, §§ 32-34, 22 December 2009; *Roman Karasev v. Russia*, no. 30251/03, §§ 41-42, 25 November 2010, and *Gladkiy v. Russia*, no. 3242/03, § 63, 21 December 2010).
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> 86. In view of the above, in the particular circumstances of the present case, the Court accepts that the applicant, who did not benefit from legal assistance, could have reasonably considered in 2005 to 2006 that a civil action for damages in relation to conditions of detention in a temporary detention centre had some prospect of success. Thus, the Court does not find it appropriate to dismiss the present complaint as belated on this account."

I doubt that access to legal assistance could serve as a precondition for "reasonably considering" that the civil action should have a prospect of success. In any event, in the present case the applicants had access to a highly qualified lawyer who advised them to bring a civil action in order to create a basis for the application of Article 5 of the Convention. And they should have been aware of the futility of such actions because the courts had previously rejected their appeals within the criminal proceedings, so that the domestic courts never in fact concluded that the detention was unlawful.

Problem of effective remedy

The effectiveness of the civil action is an integral part of the problem. According to another established precedent, a domestic remedy which is not subject to any precise time-limit and thus creates uncertainty cannot be regarded as effective (see *Williams v. the United Kingdom* (dec.), no. 32567/06, 3 August 2006, and *Nicholas v. Cyprus*, no. 63246/10, 9 January 2018, §§ 38-39). There are no examples to confirm that civil proceedings can result in a finding that a detention was unlawful. This has prompted the Court to presume that such a remedy is not effective (see *Belchev v. Bulgaria* (dec.), no. 39270/98, 6 February 2003; *Nakhmanovich v. Russia* (dec.), no. 55669/00, 28 October 2004; and, more recently, *Porowski v. Poland*, no. 34458/03, § 98, 21 March 2017). This presumption could be overturned, and an action for damages could be regarded as an effective remedy which needs to be exhausted, provided that its practicability has been convincingly established (see *Lawniczak v. Poland*

(dec.), no. 22857/07, § 41, 23 October 2012, and *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008).

The cases of *McCaughey and Others v. the United Kingdom* (no. 43098/09, 17 July 2013), *Hemsworth v. the United Kingdom* (no. 58559/09, 16 July 2013) provide examples of the impact of pending civil proceedings and ongoing investigations on the Court's assessment of the substantive and procedural complaints arising out of alleged unlawful killings having occurred many years previously. The Court decided not to examine the applicants' argument, under the substantive limb of Article 2, to the effect that their close family members had been unlawfully killed. It observed that a civil action was pending, and the issue of the lawfulness or otherwise of the deaths as well as the establishment of the material facts could be determined in the course of the civil proceedings. These examples, being very specific, are, in my view, inapplicable to the present case. However, the opposite approach which was adopted by the Court in the cases of *Izci v. Turkey* (no. 42606/05, 23 July 2013) and *Athan v. Turkey* (no. 36144/09, 3 September 2013) would be applicable. In both cases the Government's objection that the applicants could have brought compensation proceedings is rejected with reference to settled case-law (see *Atalay v. Turkey,* no. 1249/03, § 29, 18 September 2008; *Ali Güneş v. Turkey*, no 9829/07, § 32, 10 April 2012; and *Pekaslan and Others v. Turkey*, nos. 4572/06 and 5684/06, § 47, 20 March 2012).

In paragraphs 72 and 73 of the present judgment the majority used a new criterion to assess the effectiveness of the remedy – the examination of the merits of the complaint by a competent judicial body. The majority stressed that the applicants obtained a first decision from the domestic courts (within the civil proceedings) that the detention in question had been lawful. They concluded therefore that "there has been no suggestion, and there is no indication that the proceedings had no prospects of success or could not afford redress."

It is not easy to accept that conclusion. The primary purpose of the civil action is to claim moral damages under domestic law. It presumes that there should be a separate decision establishing the unlawfulness of the detention. The civil action is not designed to act as an appeal and, therefore, the judicial body cannot be considered competent to offer effective redress and the action had no prospect of success.

The situation was different in the present case. Within the criminal proceedings, the applicants did not appeal against some decisions authorising detention, and they unsuccessfully appealed in respect of other detention orders. Since the applicants did not challenge the detention orders within the criminal proceedings, the civil action could be rejected by a civil court on the basis of Article 134 of the Code of Civil Procedure, since a separate decision on the same matter had already been taken by a court.

Or else the civil court could declare the claim inadmissible due to the absence of any decision declaring the detention unlawful. However, domestic civil procedure is not flexible enough to respond to such challenges. It needs the criteria (doctrines) used by the Court, such as an arguable claim or the absence of any prospect of success (*явно не обоснованная жалоба*).

It is difficult to determine whether the problem arising from the present case is structural or could be resolved by the existing specialised mechanisms focused on the problem of redress for unlawful detention. As things stand, the current situation in domestic law (see paragraphs 52-54 of the judgment), including the positions of the Russian Supreme Court (Ruling no. 50 of 17 November 2015 and Ruling no. 22 of 29 October 2009) and of the Russian Constitutional Court (Decision no. 1049-O of 2 July 2013 and Decision no. 149-O-O of 17 January 2012) are unclear, and do not take into account the most important factor in avoiding uncertainty for the authorities – which is time.