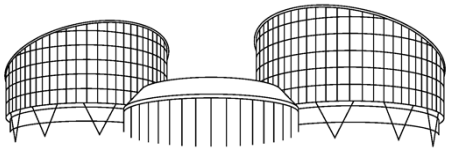

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NAVALNYY v. RUSSIA (No. 2)

(Application no. 43734/14)

JUDGMENT

STRASBOURG

9 April 2019

FINAL

09/09/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Navalnyy v. Russia (No. 2),

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,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 19 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 43734/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksey Anatolyevich Navalnyy ("the applicant"), on 6 June 2014.

2. The applicant was represented by Ms O. Mikhaylova, a lawyer practising in Moscow. 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. The applicant alleged that he had been placed under pre-trial house arrest because the authorities had pursued political ends, in breach of Articles 5, 10 and 18 of the Convention.

4. On 3 July 2014 and 7 January 2016 notice of the application was given to the Government. The application was granted priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Moscow. He is a political activist, opposition leader, anti-corruption campaigner and popular blogger.

6. In 2011-12 the applicant ran an increasingly public anti-corruption campaign targeting high-ranking public officials (see *Navalnyy and Ofitserov v. Russia,* nos. 46632/13 and 28671/14, § 15, 23 February 2016). He organised and led a number of rallies (see, in particular, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018), including an assembly at Bolotnaya Square in Moscow on 6 May 2012 (see, among other sources, in *Frumkin v. Russia*, no. 74568/12, §§ 7-65, ECHR 2016 (extracts)).

7. At the beginning of 2012 the applicant investigated the off-duty activities of the chief of the Investigation Committee of the Russian Federation ("the Investigation Committee"), Mr Bastrykin. On 25 April 2012 the Investigation Committee, on the direct order of Mr Bastrykin, instituted criminal proceedings for embezzlement against the applicant (see *Navalnyy and Ofitserov*, cited above, hereinafter "the Kirovles case"). On 5 July 2012 Mr Bastrykin made a public statement expressing his determination to have the applicant prosecuted. On 26 July 2012 the applicant published an article about Mr Bastrykin, alleging in particular that his business activities and residence status in the Czech Republic were incompatible with the office he held, under the domestic law (ibid., §§ 30-31 and 118).

8. On 4 December 2012 the Investigation Committee decided to open a criminal file on suspicion that the applicant and his brother had committed fraud against the limited liability companies Multidisciplinary Processing ("MPK) and Yves Rocher Vostok and laundered the proceeds of illegal transactions. On 20 December 2012 charges of fraud and money laundering were brought against the applicant under Articles 159.4 and 174.1 § 2 (a) and (b) of the Criminal Code.

9. On 17 December 2012 the Investigation Committee ordered the applicant not to leave the city of Moscow pending the completion of the investigation to secure his appearance before the investigator. On the same date the investigator granted a request from the applicant to be allowed to travel to Moscow Region (outside the city of Moscow), subject to an obligation to inform the investigator. The investigator's ruling read, in so far as relevant, as follows:

> "The request by [the applicant's lawyer] to allow his client A.A. Navalnyy to travel to Moscow Region should be granted; the investigator must be informed about making [such] journeys."

10. On 18 July 2013 the Leninskiy District Court of Kirov found the applicant guilty of organising large-scale embezzlement in the Kirovles case and gave him a suspended prison sentence of five years. The Court subsequently found that those proceedings had been conducted in violation of Article 6 of the Convention (see *Navalnyy and Ofitserov*, cited above, §§ 102-21).

11. On 13 January 2014 the applicant informed the investigator that he had travelled to Moscow Region before and during the New Year holidays. On the same day the Investigation Committee cancelled his permit to travel to Moscow Region and ordered him to seek prior authorisation from the investigator for such travel. The applicant also received a warning for travelling to Moscow Region without proper authorisation from the investigator.

12. On 14 January 2014 the Investigation Committee rejected a new request from the applicant for permission to travel to Moscow Region.

13. On 31 January 2014 the applicant complained to the Basmannyy District Court of Moscow under Article 125 of the Code of Criminal Procedure about the travel ban. The examination of the complaint was postponed several times because of the absence of parties and the failure of the investigation body to present documents from the criminal case file.

14. On 24 February 2014 the applicant went to Zamoskvoretskiy District Court in Moscow to attend the public pronouncement of a verdict in a criminal case concerning the political rally on Bolotnaya Square on 6 May 2012, but he was arrested in front of the court building. He was arrested for a second time later the same day during a demonstration in the centre of Moscow against the criminal convictions in the aforementioned criminal case. He was accused of a breach of regulations for holding a demonstration and of an alleged failure to obey the lawful orders of the police and was found liable for those administrative offences under Articles 20.2 and 19.3 of the Code of Administrative Offences.

15. On 26 February 2014 the Investigation Committee asked the Basmannyy District Court to place the applicant under house arrest pending the completion of the criminal investigation. The applicant objected and referred to his complaint of 31 January 2014. He asked that the residence order be maintained or, in the alternative, that he pay bail of 500,000 roubles (RUB).

16. On 28 February 2014 the Basmannyy District Court ordered that the applicant be placed under house arrest until 28 April 2014 because of a risk that he might abscond, continue his criminal activity, threaten witnesses and other participants in the criminal proceedings, destroy evidence or otherwise obstruct the course of justice. The court also referred to his criminal record after the Kirovles case and his recent conviction for administrative offences (see paragraph 14 above). It imposed a number of conditions on the applicant for the period of his house arrest, in particular:

> "- [it is forbidden] to leave or change the [registered address] without authorisation by the investigator ...;
>
> - to communicate with anyone, except for immediate family, as defined by law, legal counsel representing him in the criminal case and [investigating officials];
>
> - to receive or send any correspondence, including letters, telegrams, parcels and emails;

- to use any means of communication or the Internet telecommunications network;

- to make statements, declarations, addresses or to give comments in connection with this criminal case in the media."

17. On 3 March 2014 the applicant was placed under the supervision of the Department for the Execution of Sentences. He was notified of the conditions of his house arrest and was tagged with an electronic tracking bracelet. The applicant stayed in his two-bedroom apartment, where he lived with his wife and two children, throughout the period of his arrest. He was not allowed to go to work, take walks, carry out errands or leave his apartment for any purpose other than to attend procedural acts in his criminal case and occasional medical appointments.

18. On 24 March 2014 the Moscow City Court dismissed an appeal by the applicant against his house arrest and upheld the restraint measure.

19. On 14 April 2014 the applicant's criminal case was submitted to the Zamoskvoretskiy District Court of Moscow.

20. On 21 April 2014 the Basmannyy District Court refused to examine the applicant's complaint about the ban on travel to Moscow Region. It declined jurisdiction in favour of the Zamoskvoretskiy District Court on the grounds that the criminal case had already been submitted there and terminated the proceedings. The applicant appealed against that decision.

21. On 24 April 2014 the District Court held a preliminary hearing and extended the applicant's house arrest until 14 October 2014, dismissing his appeal. The applicant did not appeal against the extension.

22. On 28 April 2014 the Zamoskvoretskiy District Court remitted the applicant's case for further investigation, a decision which was upheld by the Moscow City Court on 18 June 2014.

23. On 1 August 2014, after an application by the prosecutor to have the applicant placed in pre-trial detention, the Zamoskvoretskiy District Court reviewed the preventive measure. It held that the circumstances justifying house arrest, including the special restrictions, had remained unchanged and found no reason to order pre-trial detention. It rejected a request from the applicant to be allowed daily walks.

24. On 4 August 2014 the Moscow City Court upheld the Basmannyy District Court's decision of 21 April 2014 to terminate proceedings on the applicant's complaint about the travel ban.

25. On 14 August 2014 the Zamoskvoretskiy District Court began hearing the applicant's criminal case. On the same date it extended the applicant's house arrest, which the applicant did not appeal against.

26. On 21 August 2014 the Zamoskvoretskiy District Court changed the conditions of the applicant's house arrest as follows:

"The [applicant's] application should be granted and the ban on communication imposed when the order for his house arrest was issued [should] be lifted, [and] it should be made clear that [the applicant] is prohibited from communicating in any form with persons [given the status of] witnesses in this criminal case."

27. On 10 October 2014 the Zamoskvoretskiy District Court extended the applicant's house arrest after lifting the prohibition on "making statements, declarations, addresses or giving comments in connection with this criminal case in the media" on the basis that it was not in compliance with Article 107 of the Code of Criminal Procedure. At the same time it specified radio and television as being among the banned means of communication. It refused to allow the applicant to go to work, take walks or receive correspondence. The applicant appealed unsuccessfully.

28. On 30 December 2014 the applicant and his brother were found guilty of money laundering and of defrauding MPK and Yves Rocher Vostok, and were convicted under Articles 159.4 §§ 2 and 3 and 174.1 § 2 (a) and (b) of the Criminal Code. The applicant received a suspended sentence of three and a half years and a fine RUB 500,000 and had to pay damages to MPK. The court ordered that the applicant should remain under house arrest. On that day the court delivered only the introductory and operative parts of the judgment. Delivery of the judgment in full was adjourned until 12 January 2015.

29. The applicant appealed against the extension of his house arrest on 31 December 2014.

30. On 5 January 2015 the applicant issued a public statement that he refused to comply with the terms of his house arrest, citing in particular the fact that he had not been served with a written extension order, even though five days had elapsed since the court's decision. The applicant illustrated his statement with a photograph of his tracking bracelet having been cut open. No one stopped him or sanctioned him when he left his flat to go to his office.

31. On 14 January 2015 the Zamoskvoretskiy District Court refused to examine the applicant's complaint about the extension of his house arrest on 30 December 2014 on the grounds that the measure had been ordered in the judgment on the merits of the criminal case and had not been a procedural decision concerning pre-trial issues. The applicant appealed unsuccessfully.

32. On 17 February 2015 the Moscow City Court upheld the first-instance judgment, except for the part imposing a fine and awarding damages to MPK, which was quashed.

33. On 27 April 2015 the applicant lodged a cassation appeal.

34. On 26 June 2015 the Moscow City Court refused leave to lodge a cassation appeal.

II. RELEVANT DOMESTIC LAW

35. The Russian Code of Criminal Procedure, in force since 1 July 2002, provides, in addition to detention, the following measures of restraint or preventive measures: an undertaking not to leave a town or region, personal

surety, bail, house arrest, supervision by the military and the supervision of minors (Article 98).

36. Article 102 of the Code provides that a suspect or an accused can be released against a written undertaking not to leave a certain area (the place of permanent or temporary residence) without permission from the investigating authorities or a court or on an undertaking to respond to a summons from investigators and the court and to not interfere with the proceedings in the criminal case in question.

37. Article 107 of the Code provides that house arrest means the full or partial isolation of a suspect or an accused at his or her place of residence. A suspect or an accused can be put under house arrest on the grounds and in accordance with the procedure set out in the Code for being placed in custody, having due regard to the person's age, health, family status and other circumstances (Article 107 § 1). The initial period of detention must not exceed two months but it can be extended under the same conditions as a custody order (Article 107 §§ 2 and 3). Depending on the seriousness of the charges, the suspect or accused's character and the factual circumstances of the case, the court may apply one or more of the following restrictions during house arrest: (i) on leaving the premises, (ii) communicating with certain persons, (iii) sending and receiving correspondence by post or telegraph, and (iv) using any means of communication and the Internet (Article 107 §§ 7 and 8). A decision to place a suspect or an accused under house arrest must specify which restrictions have been imposed and designate a supervising authority to ensure that the restrictions are observed (Article 107 §§ 8-10). A judicial decision to place a person under house arrest may be appealed against to a higher court within three days under the same procedure as an appeal against custody. The higher court must decide the appeal within three days of the date on which the appeal is lodged (Articles 107 § 3 and 108 § 11).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

38. The applicant complained under Article 5 §§ 1 and 3 of the Convention about being placed under house arrest for ten months. He submitted that that decision had been arbitrary and unnecessary for the purposes of his criminal proceedings and had had the goal of keeping him out of public life and away from political activity. He also alleged that from 30 December 2014 the house arrest had been extended without any legal basis and without issuing a document that could serve as a basis for appeal. He also complained that he had been unable effectively to challenge the

lawfulness of the house arrest, in breach of Article 5 § 4 of the Convention. Article 5, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ..."

A. Admissibility

39. The Government alleged that the applicant had not exhausted domestic remedies in relation to his complaint about being held under house arrest, in particular because he had not appealed against two extension orders. The applicant objected that he had appealed against the original decision to place him under house arrest and that the Moscow City Court had dismissed his appeal on 24 March 2014. He had indeed not appealed against the first and second extension orders because of the risk that his house arrest could have been replaced by pre-trial detention. However, he had appealed against the third extension of 10 October 2014 and the following one of 19 December 2014, but both appeals had been dismissed. He had also appealed against the final extension of 30 December 2014, which had not been examined on the grounds that it had been ordered in the judgment on the merits rather than in a separate decision.

40. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus exempting States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic legislative system

provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available both in theory and practice at the relevant time, that is to say that the remedy was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, amongst many others, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Parrillo v. Italy* [GC], no. 46470/11, § 87, 27 August 2015).

41. That said, the application of the rule must make due allowance for the fact that it is being applied in the context of the machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, the Court has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to take into account the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others*, cited above, § 69; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 121, 11 January 2007; and *Hadžimejlić and Others v. Bosnia and Herzegovina*, nos. 3427/13, 74569/13 and 7157/14, § 45, 3 November 2015).

42. In the present case, the applicant appealed against his placement under house arrest using the procedure provided for by law and referred to by the Government as an effective remedy. He also used that procedure to appeal against two of the four extension orders, notably the two latest ones. His appeals were dismissed on the dates indicated in paragraph 39 above. The Court observes that the applicant was under house arrest for ten months, during which the grounds and reasons for it were examined by the competent courts at least ten times: five times when ordering and extending the house arrest, three times when examining the applicant's aforementioned appeals, and on at least two occasions when dealing with the investigating authorities' requests to replace house arrest with pre-trial detention. Moreover, the applicant brought up the same question during the judicial hearings on the merits. The Court considers that the applicant's decision not to appeal against the first two extension orders does not give sufficient grounds to reach a finding that he had failed to comply with the

rule of exhaustion of domestic remedies. In coming to this conclusion the Court takes into account the risk of replacing house arrest with detention, which was pertinent, as shown by the investigating authorities' requests. The Court therefore dismisses the Government's objection as to non-exhaustion of domestic remedies.

43. The Court notes that this part of application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

44. The Government contested the applicant's argument that house arrest had constituted a deprivation of liberty within the meaning of Article 5 of the Convention. They suggested that the measure should be examined as a restriction of freedom of movement under Article 2 of Protocol No. 4 to the Convention. In any event, they considered that the coercive measure had been justified in view of the prior breach of the applicant's residence order. They submitted that although the investigator's order to apply a written undertaking not to leave the city of Moscow, dated 17 December 2012, could be "interpreted in different ways", it did not absolve the applicant from obtaining prior authorisation from the investigator for travelling to Moscow Region. They maintained that the requirement of prior authorisation set out in Article 102 of the Code of Criminal Procedure had remained valid irrespective of the investigator's decision of 17 December 2012. They submitted that the cancellation of that decision by the investigator himself on 13 January 2014 corroborated their argument. They also pointed out that the applicant had not gone to the investigator's office to study the criminal case file on 19 December 2013.

45. The Government therefore alleged that on 19 December 2013, 2-8 January 2014 and 12 January 2014 the applicant had travelled to Moscow Region in breach of the preventive measure. For that reason, they argued that his house arrest had been justified by his own behaviour, his character and the nature of the charges against him.

46. To confirm that the applicant had indeed made those trips, the Government submitted police surveillance reports showing that the police had closely monitored his movements during the period of his residence order. They admitted to obtaining and storing information relating to his trips and those of his family, including hotel registration records, payment receipts, video and photographic material, as well as information collected by interviewing hotel staff and others.

47. The Government submitted that the proceedings to review the application of the preventive measure had complied with the principles of adversarial proceedings and the equality of arms. The applicant and his lawyer had been present during the proceedings and had been able to submit evidence and argue their case. As for the proceedings after the applicant's complaint of 31 January 2014, they had been postponed several times because of the absence of parties and failure by the investigation body to submit documents from the criminal case file. That complaint had been examined and dismissed on 21 April 2014, which decision had been upheld on appeal on 4 August 2014.

48. As regards the period of the applicant's house arrest following the delivery of the judgment on 30 December 2014, the Government submitted that the Code of Criminal Procedure did not limit the application of a house-arrest order after delivery of a first judgment, although such a prohibition was foreseen for detention (Article 311 of the Code). In the alternative, the Government argued that that period of detention should fall under Article 5 § 1 (a) of the Convention.

(b) The applicant

49. The applicant contested the Government's statement that being under house arrest had not constituted deprivation of liberty within the meaning of Article 5 § 1 of the Convention. He pointed out that under domestic law a period of house arrest counted towards someone's sentence if they were convicted. He also referred to the Court's case-law recognising house arrest as a form of deprivation of liberty. Moreover, the extent of the measure of restraint as applied to him personally had been particularly broad, given the refusal to allow him to leave his flat for walks or any business other than attending investigative acts or court hearings.

50. The applicant alleged that in his case house arrest had been ordered unlawfully and without giving relevant and sufficient reasons. He argued that the grounds indicated by the court had been unsubstantiated and factually wrong. In particular, the court had relied on his criminal conviction in another case, although it had taken place seven months previously and had been known at the time the first preventive measure – the undertaking not to leave Moscow – had been chosen. There had been no developments in relation to the first criminal case which had warranted reliance on that conviction in February 2014.

51. As regards the reference to the administrative offence, the relevant judgment had not yet entered into force at the time the court had ordered house arrest and it therefore could not have served as grounds for changing the preventive measure. Furthermore, he contested the finding that he had breached his undertaking not to leave Moscow. He pointed out that the investigator had authorised travel to Moscow Region, the only condition being that the investigator should be informed, which was done. He

contested the Government's allegation that the investigator's authorisation for travel to Moscow Region had not excused him from obtaining a separate, prior authorisation before every trip – otherwise the investigator would not have given him the authorisation in the first place. Finally, referring to the Government's point that he had failed to go to the investigator's office on 19 December 2013 to study the criminal case file, he pointed out that access to such files was an accused's right and not an obligation, and he had delegated studying the file to his defence counsel that day. Therefore his absence on that occasion could not be imputed to him as non-compliance with the investigator's order.

52. Furthermore, the applicant maintained his complaint about the failure of the courts to review the order to place him under house arrest on the grounds that they had failed to make an assessment of the arguments in favour of release and did not consider a more lenient preventive measure, in particular bail, which he had offered. One court, moreover, had refused to examine his complaint under Article 125 of the Code of Criminal Procedure, which had been relevant to the choice of the measure of restraint, referring the matter to the trial court in the criminal case.

53. As regards the period of house arrest following the delivery of the judgement on 30 December 2014, the applicant submitted that it had been arbitrary and unlawful. He pointed out that he had received a suspended sentence and it had therefore not been justified to apply a preventive measure that had involved restricting or depriving him of his liberty. The court had given no reasons for keeping him under house arrest pending the appeal and had issued no documents justifying the application of such a preventive measure. Furthermore, it had not been possible to challenge the order and the district court judge had returned his complaint on that point without examination. Finally, the preventive measure had been ordered to run concurrently with the suspended prison sentence, which had begun on the same date, 30 December 2014.

54. The applicant contended that the decisions to place him under house arrest had pursued the sole aim of isolating him from the public, of preventing him from taking part in opposition rallies and giving speeches, using the Internet for his public activities and otherwise influencing the country's political situation.

2. The Court's assessment

(a) General principles

55. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that

liberty in an arbitrary fashion. It is not concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4. Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012).

56. As a general principle, detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 69, ECHR 2008, and the cases cited therein). The condition that there be no arbitrariness further demands that both the order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1. There must in addition be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (ibid.) In the context of sub-paragraphs (b), (d) and (e) the notion of arbitrariness also includes an assessment of whether detention was necessary to achieve the stated aim; likewise, detention pursuant to Article 5 § 1 (c) must equally embody a proportionality requirement (see *Ladent v. Poland*, no. 11036/03, §§ 54-56, 18 March 2008).

57. According to the Court's case-law, house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 104, ECHR 2016 (extracts) and the cases cited therein). The Court held that this type of deprivation of liberty required relevant and sufficient reasons, just as with pre-trial detention. It specified that the notions of "degree" and "intensity" in the case-law, as criteria for the applicability of Article 5, referred only to the degree of restrictions on the liberty of movement, not to the differences in comfort or in the internal regime in different places of detention. Thus, the Court would

apply the same criteria for deprivation of liberty, irrespective of the place where the applicant was detained (ibid. §§ 113-14).

(b) Application of these principles in the present case

58. Having regard to the circumstances of the applicant's house arrest as described in paragraphs 16-17 above in the light of the case-law referred to in paragraph 57 above, the Court considers that subjecting him to those measures between 28 February 2014 and 5 January 2015, that is for over ten months, constituted a deprivation of liberty in the sense of Article 5 of the Convention.

59. The applicant's deprivation of liberty was justified only if it was lawful, in particular on condition that it was not arbitrary and that it complied with one of the permissible grounds for deprivation of liberty listed in sub-paragraphs (a) to (f) of Article 5 § 1, in this case presumably sub-paragraphs (b) or (c). The Court considers that the period of house arrest between 30 December 2014 and 5 January 2015 constituted a continuation of the house arrest applied as a provisional measure because of the court's definition of it as an extension of the "pre-trial detention". It cannot accept the Government's claim that this period fell under sub-paragraph (a) of Article 5 § 1 because the applicant was sentenced to a suspended prison term, which would normally entail release, and not to house arrest.

60. The Court observes that the house arrest was ordered primarily on the grounds that the applicant had breached the previous preventive measure, the undertaking not to leave Moscow during the investigation, presumably indicating the risk of absconding. Although the risks that he might influence witnesses, continue his criminal activity, destroy evidence and obstruct the course of the criminal proceedings were also listed among the grounds, the court did not indicate any specific facts which had not been identified in the previous fourteen months, showing the emergence of those risks. The Court, for its part, notes that the material in the case file discloses no pre-existing or new circumstances pointing to an intention by the applicant to try to influence witnesses or unduly obstruct the criminal proceedings, which were by that time at an advanced stage.

61. The Court notes that on 17 December 2012 the investigator issued a decision authorising the applicant to travel to Moscow Region, subject to an obligation to report any such trips to the investigator. The decision did not specify whether the trips had to be reported before or after they took place; nor did it require the applicant to seek further consent.

62. The Court further notes that throughout the fourteen months of the undertaking not to leave Moscow, the applicant regularly appeared before the investigator and participated in procedural acts whenever required. He took the initiative to notify the investigator of his trips to Moscow Region in late December 2013 and early January 2014 and nothing in the case file

indicates an intention to flee or to otherwise hamper the progress of the investigation by making those trips. The Court cannot overlook the intensity of the surveillance to which the applicant was subjected in the period before he was placed under house arrest. It appears from the Government's own submissions that the authorities were aware of his activities in considerable detail and kept thorough records (see paragraph 46 above). From the sample of the surveillance reports submitted to the Court, the impugned trips appear to be family outings, unrelated to the criminal case in question.

63. The Court sees no reasonable explanation as to why the Basmannyy District Court, in full knowledge of those circumstances, endorsed the view that the applicant had breached his undertaking or that his conduct had warranted a deprivation of liberty. In the light of all the material in the case file, the Court considers that the domestic courts had no criminal-process reasons which called for the undertaking to be converted into house arrest. The house arrest was therefore ordered against the applicant unlawfully. Noting that the reasons for the extension of the order for his house arrest, including the one granted in the judgment of 30 December 2014, were essentially the same as in the initial order, the Court considers that the unlawful situation pertained for the whole of the period of house arrest. The applicant's detention failed therefore to meet the requirements of "lawfulness" set out in the Court's case-law on the words "prescribed by law" in Article 5 § 1 of the Convention. In view of that finding, it is not necessary to examine whether the authorities advanced relevant and sufficient reasons to justify its length or whether they guaranteed the applicant a right to an effective review of that preventive measure.

64. The Court finds that there has been a violation of Article 5 § 1 of the Convention and holds that there is no need to examine the complaints under Article 5 §§ 3 and 4.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

65. The applicant complained that the decision to place him under house arrest, and in particular the restrictions imposed on him during that time, had been applied in order to prevent him from pursuing his public and political activities. He relied on Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of

national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

67. The Government argued that the applicant's freedom of expression had not been restricted during the period of his house arrest because he had still been able to exercise that right through his representatives and family members. They referred to a newspaper article written by the applicant, published in the *New York Times* on 20 March 2014, and to entries made on his behalf on various Internet media websites while he was under house arrest.

68. The Government submitted that the restrictions imposed on the applicant had been aimed at preventing him from commenting on the criminal case in the media. They explained that the ban on contacts with anyone other than close family members, counsel, investigators and the supervisory authority had ensured that the applicant had not been able, in particular, to give public comments on the pending criminal proceedings. That had been necessary for the proper conduct of the proceedings, namely to prevent the applicant from absconding and influencing witnesses and victims.

(b) The applicant

69. The applicant alleged that the restrictions on his freedom of expression imposed as a condition of his house arrest had been unlawful. He pointed out, in particular, that Article 107 § 7 of the Code of Criminal Procedure set out an exhaustive list of possible restrictions during house arrest, which did not include a ban on public comments. He argued that the ban on commenting on the particular criminal case had been excessive and contrary to the public interest, given the high profile of those proceedings. Moreover, the Investigation Committee had made numerous comments about the case in the media. According to the applicant, the restriction had

seriously impeded his public and professional activities, in particular his participation in the political debate, and had been imposed without any justification.

70. The applicant also alleged that the restriction on his use of the Internet had been a disproportionate measure because it had severely limited his access to information without pursuing any legitimate interest.

2. The Court's assessment

(a) General principles

71. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see among other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Ceylan v. Turkey* [GC], no. 23556/94, § 32, ECHR 1999-IV; *Editions Plon v. France*, no. 58148/00, § 42, ECHR 2004-IV; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 123, ECHR 2016 (extracts)).

72. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; *Korbely v. Hungary* [GC], no. 9174/02, §§ 72-73, ECHR 2008; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012).

73. The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 62, Series A no. 30). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the

Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports* 1997-VII).

(b) Application of these principles in the present case

74. The Court observes that on 28 February 2014 the Basmannyy District Court set conditions for the applicant's house arrest. It banned him from: (i) leaving his flat, (ii) communicating with anyone apart from his immediate family, (iii) using means of communication and the Internet, and (iv) making statements, declarations, or addresses to the public or commenting on the criminal case to the media (see paragraph 16 above). The ban on communication, on using the Internet and on making public statements on the criminal case undoubtedly restricted his ability to impart and receive information. It constituted an interference with his freedom of expression, irrespective of whether or not some other means of communication were still available to him, such as those suggested by the Government when they referred to an article he had published and blog entries made on his behalf. The Court will therefore proceed to examine whether that measure was "prescribed by law", pursued one or more of the legitimate aims listed in Article 10 § 2 and was "necessary in a democratic society".

75. The Court notes that the list of permissible restrictions contained in Article 107 § 7 of the Code of Criminal Procedure was exhaustive and courts had no authority to impose other conditions in connection with house arrest. The Court observes that the first and third of the aforementioned conditions were listed in that provision (see paragraph 37 above), while two other conditions were not. In particular, preventing contact with "anyone except for the immediate family" appears to significantly exceed the notion of "certain persons" referred to in that Article.

76. On 21 August 2014 the Zamoskvoretskiy District Court amended the conditions by stating that the applicant was only banned from communicating with "persons given the status of witnesses in this criminal case". The scope of the ban was thus narrowed sufficiently to fall under the head of "certain persons". On 10 October 2014 the same court lifted the prohibition on making public comments on the criminal case, noting that it was not in accordance with the law.

77. It may be concluded from the above that in the period before 10 October 2014 the restrictions on the applicant's freedom of expression were not in accordance with the law, which was, moreover, admitted by the District Court.

78. As regards the subsequent period, the Court notes that after removing the two unlawful restrictions the court imposed a new one – on

the use of radio and television, which it specified among the banned means of communication. The way the new condition was formulated left it unclear whether the applicant was prevented from watching television and listening to the radio, or whether he was only restricted from appearing on air. In any event, the scope of the new restriction was even wider than the previous ban on making public comments on the criminal case because it limited the applicant's access to broadcast media for making statements on any subject matter. Given the wording and the overall sense of Article 107 § 7, combined with the judicial decisions in this case, the Court doubts whether the ban on the use of television and radio was an appropriate extension of the restriction on the use of "means of communication". However, it is not required to rule on whether this restriction complied with domestic law because, as will be explained below, it did not pursue a legitimate aim.

79. The Court has found above (paragraph 60) that the formal reason for the applicant's house arrest was a risk of his absconding. The domestic courts and the Government referred also to the likelihood of his influencing witnesses and obstructing the course of justice, which could correspond to the same aim. However, as the Court has already established, those risks were entirely unsubstantiated and it does not appear that they played any role in the decision on the preventive measure (ibid.). Moreover, there was no link between the restrictions on the applicant's freedom of expression and the indicated risks. As to the risk of absconding, supposedly demonstrated by the trips to Moscow Region while the residence order was in force, it is difficult to see how even a genuine belief that the applicant was about to flee could be relevant to a ban on his use of radio and television as a means of communication. The applicant was confined to his flat; he was under strict surveillance and wore an electronic tracking device; he was not allowed to leave his flat, even to take walks. In those circumstances it was unlikely that an opportunity to issue a public statement via radio or television would have facilitated absconding. As to the possibility of the applicant using a public statement to influence witnesses or otherwise obstruct the investigation, it was referred to in the abstract and its relation with the use of radio and television remained equally tenuous.

80. The restrictions listed in Article 107 § 7 of the Code of Criminal Procedure may, in certain circumstances, be justified by the interests of pursuing a proper criminal investigation and thus fall under the aim of "prevention of disorder or crime" within the meaning of Article 10 § 2 of the Convention. In the present case, however, they were applied without any apparent connection with the requirements of the criminal investigation. The ban on the applicant's access to means of communication in the house-arrest order did not serve the purpose of securing his appearance before the investigator or at his trial, and, as with the decision to place him under house arrest, had no connection with the objectives of criminal justice.

81. The Court concludes that the applicant's freedom of expression was subjected to restrictions which were not in accordance with the law in the period up to 10 October 2014, and thereafter did not pursue any of the legitimate aims listed in Article 10 § 2 of the Convention.

82. Accordingly, there has been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

83. The applicant complained that he had been placed under house arrest for political reasons, alleging that his arrest had been driven by the authorities' determination to silence him and keep him out of the public eye. He relied on Article 18 of the Convention, which reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

84. According to the Court's case-law, Article 18 of the Convention has no independent existence; it can only be applied in conjunction with other Articles of the Convention, and a violation can only arise where the right or freedom concerned is subject to restrictions permitted under the Convention, such as, for example, the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11, which permit restrictions to those rights and freedoms (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 287-290, 28 November 2017).

85. In the present case, the allegations of improper reasons for placing the applicant under house arrest and imposing restrictions on him for the period of that arrest were lodged under Article 18 in conjunction with Articles 5 and 10 of the Convention. The Court has previously acknowledged its competence to examine allegations of political or other ulterior motives for pre-trial detention in so far as it may dissociate pre-trial detention from the criminal proceedings within which such detention was ordered (see *Lutsenko v. Ukraine*, no. 6492/11, § 108, 3 July 2012, and *Tymoshenko v. Ukraine*, no. 49872/11, § 297, 30 April 2013).

86. As regards the scope of examination, the Court takes cognisance of the nature of the allegations and the fact that the restrictions on the applicant's freedom of expression were imposed as part of the detention order; as such, they were indissociable from the applicant's house arrest. The Court considers it appropriate to examine the complaint under Article 18 in conjunction only with Article 5.

87. The Court notes that this part of application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

88. The Government contested the existence of any political motives behind the procedural decisions taken in the criminal case. The applicant's public activity notwithstanding, his prosecution had related to the common crime of commercial fraud which had been unconnected with any political factors and the investigation had followed the regular course for such cases. According to the Government, the applicant had not presented any proof that his house arrest had pursued the aim of removing him from the public space, and his allegations in that regard had remained rather general. Moreover, they contended that while under house arrest the applicant had continued to be politically active through members of his family and representatives.

89. The applicant maintained that his placement under house arrest had pursued political ends, had served to obstruct his participation in public life and to impede the publication of his investigations. The conditions of arrest, including the ban on public comments and on any use of the Internet, radio and television, had had no connection with the interests of a proper examination of his criminal case. He pointed out that the supervising authorities had been particularly strict about the enforcement of the ban on making comments in public: on a number of occasions when an article written by the applicant on matters of public interest, unrelated to the criminal case, had been published by a third party, the supervisory authority had requested that the court place him in pre-trial detention.

2. The Court's assessment

(a) General principles

90. The Court has recently elaborated on the general principles relating to Article 18 of the Convention in its judgment in the case of *Merabishvili* (cited above, §§ 287-317). The findings which are directly relevant to the present case are as follows (omitting the case citations):

> "290. ... a breach [of Article 18] can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention ...
>
> 291. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case ...

303. ... in relation to situations in which a restriction pursues more than one purpose ... [h]olding that the presence of any other purpose [which does not fall within the respective restriction clause] by itself contravenes Article 18 ... would be inconsistent with the object and purpose of Article 18, which is to prohibit the misuse of power. ...

305. ... a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose.

307. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law.

308. In continuing situations, it cannot be excluded that the assessment of which purpose was predominant may vary over time.

311. ... as a general rule, the burden of proof is not borne by one or the other party because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion. ...

314. ... the standard of proof before [the Court] is 'beyond reasonable doubt'. ... such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. ... the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake ...

315. ... the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it.

316. There is therefore no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations.

317. It must however be emphasised that circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts ... Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court ..."

91. The same principles were reiterated and applied in the case of *Navalnyy* (cited above, §§ 163-76).

(b) Application of these principles in the present case

92. The Court considers that in the present application the complaint under Article 18 represents a fundamental aspect of the case which has not been addressed above and merits a separate examination.

93. The Court has found above that the applicant's detention under house arrest was ordered unlawfully, and that the ban on his access to means

of communication did not pursue a legitimate aim (see paragraphs 63 and 81 above). In view of those conclusions, the Court may dispense with an assessment of the issue of plurality of purposes in respect of those measures and focus on the question whether, in the absence of a legitimate purpose, there was an identifiable ulterior one (see *Navalnyy*, cited above, § 166).

94. The request to have the undertaking not to leave Moscow replaced with house arrest was lodged on 26 February 2014, immediately following the applicant's two arrests on 24 February 2014 for taking part in unauthorised public gatherings; both arrests were found by the Court to be in breach of Articles 5 and 11 of the Convention, and one of them also in breach of Article 18 (see *Navalnyy*, cited above, §§ 71-72, 125-26, 138, 146 and 175). Moreover, the Court noted the pattern of the applicant's arrests and found that the grounds given for his deprivation of liberty had become progressively more implausible (see *Navalnyy*, cited above, §§ 167-68). It accepted the allegation that he had been specifically and personally targeted as a known activist (ibid., § 170). His deprivation of liberty in the present case must be seen in the context of that sequence of events.

95. The Court observes next that the applicant's house arrest, together with the restrictions on his freedom of expression, lasted for over ten months. This duration appears inappropriate to the nature of the criminal charges at stake; in particular, no such measures were applied to the applicant's brother, who was the main accused in the fraud case. The restrictions imposed on the applicant, especially the communication ban, which even the domestic courts considered unlawful (see paragraph 77 above), became increasingly incongruous over the course of that period, as their lack of connection with the objectives of criminal justice became increasingly apparent (see paragraph 80 above).

96. In *Navalnyy*, cited above, in its discussion of Article 18 of the Convention in connection with Articles 5 and 11, the Court relied on the converging contextual evidence that at the material time the authorities were becoming increasingly severe in their response to the conduct of the applicant and other political activists and, more generally, to their approach to public assemblies of a political nature (ibid., § 172). It also referred to the broader context of the Russian authorities' attempts to bring the opposition's political activity under control (ibid., § 173) and noted the applicant's role as an opposition politician playing an important public function through democratic discourse (ibid., § 174).

97. The Court considers that the evidence relied on in *Navalnyy* is equally pertinent to the present case and is capable of corroborating the applicant's allegations that his placement under house arrest with restrictions on communication, correspondence and use of the Internet pursued the aim of curtailing his public activity, including organising and attending public events.

98. In view of the above, the Court considers that the restrictions on the applicant's right to liberty in the present case pursued the same aim as in *Navalnyy*, namely to suppress political pluralism. This constituted an ulterior purpose within the meaning of Article 18, which moreover attained significant gravity (ibid., § 174).

99. There has accordingly been a violation of Article 18 taken in conjunction with Article 5 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 100,000 euros (EUR), or a sum to be determined by the Court, in respect of non-pecuniary damage.

102. The Government submitted that acknowledgement of a violation, if the Court found any, would constitute sufficient just satisfaction.

103. The Court has found multiple violations of the Convention in the present case and considers that, in the circumstances, the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, it awards EUR 20,000 to the applicant in respect of non-pecuniary damage.

B. Costs and expenses

104. The applicant claimed 200,000 Russian roubles (RUB) for the costs and expenses incurred before the Court. He provided a copy of a legal services agreement with Ms O. Mikhaylova but explained that he had not paid her under the agreement because his bank accounts were under an injunction in connection with the criminal case. He requested that the award, if any, be transferred to her bank account.

105. The Government contested the claims on the grounds that the contract of legal assistance had set fees irrespective of the amount of work to be performed under the contract. They contested the amount relating to legal fees as unmerited.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above-mentioned criteria, the Court considers it reasonable to award the amounts claimed in full. It awards EUR 2,665 in respect of costs and expenses, to be transferred to the bank account indicated by the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,665 (two thousand six hundred and sixty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 9 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Vincent A. De Gaetano
Registrar	President