

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 22 March 2005 No. 4-II

in the case concerning the review of the constitutionality of certain provisions of the Criminal Procedure Code of the Russian Federation, which regulate the procedure and the time limits of application of a restraint measure in the form of detention at the stages of criminal proceedings following the completion of the pre-trial investigation and transfer of the criminal case to court, in connection with a number of individuals' complaints.

Moscow, 22 March 2005

The Constitutional Court of the Russian Federation composed of Presiding Judge N. S. Bondar and Judges G. A. Gadzhiev, A. L. Kononov, L. O. Krasavchikova, Yu. D. Rudkin, V. G. Strekozov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of Yu. A. Biryuchenko and S. V. Brovchenko, attorneys A. V. Kruchinin, representative of M. N. Alekperov, R. N. Cheremchuk, representative of Yu. A. Biryuchenko, K. L. Kostromina, representative of S. V. Brovchenko, A. P. Novikov, representative of A. V. Yevstafyev, Ye. A. Baru, Ye. L. Liptser, Ye. Yu. Lvova, representative of P. L. Lebedev, S. V. Brovchenko, representative of V. A. Prikhodko, S. V. Mikhailova, representative of A. Yu. Reutov, S. V. Dudin, representative of A. S. Sinyakov; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina, and Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law,

pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4 of Article 3, Subsection 3, Section 2 of Article 22, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing, examined the constitutionality of certain provisions of the Russian Federation Criminal Procedure Code which regulate the procedure and time limits of application of a restraint measure in the form of detention at the stages of criminal proceedings following the completion of pre-trial investigation and transfer of the criminal case to court.

The reason for consideration of the case is complaints of M. N. Alekperov, Yu. A. Biryuchenko, S. V. Brovchenko, A. V. Yevstafyev, P. L. Lebedev, G. L. Oynas,

V. A. Prikhodko, A. Yu. Reutov, O. V. Ryabov, A. S. Sinyakov and Ye. A. Suvorov about a violation of their constitutional rights by the mentioned provisions of the Russian Federation Criminal Procedure Code.

Insofar as all the complaints concern essentially the same subject matter and by virtue of Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur A. L. Kononov, statements by the parties and their representatives, the expert opinion of I. B. Mikhailovskaya, PhD in Law, statements by T. L. Oksyuk for the Office of the Prosecutor General of the Russian Federation, who was invited to participate in the hearing, having considered the documents and other submitted materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Upon completion of the pre-trial investigations, the criminal cases against M. N. Alekperov, A. V. Yevstafyev, P. L. Lebedev, G. L. Oynas, V. A. Prikhodko, A. Yu. Reutov, A. S. Sinyakov and Ye. A. Suvorov were transferred to the court on the day before or on the day the period of the accused persons’ detention as set by the courts at the stage of pre-trial investigation expired. Within 5–14 days after the criminal cases were received by the court, and in a number of cases later, the judges, without a hearing, adopted decisions to keep the restraint measure unchanged, and the decisions were issued not as a separate act but were included in the decision on scheduling the preliminary or trial hearing.

It follows from the materials of Yu. A. Biryuchenko’s complaint that the issue of extending the period of his detention as set during the pre-trial investigation was examined by the court only after six months from the date when the criminal case was received by the court, since the court considered that on such occasions the period of the accused person’s detention is extended by the mere fact that the criminal case was received by the court. The courts and the prosecution authorities followed the same position while deciding on the restraint measure in the form of detention in the criminal cases against A. S. Sinyakov and G. L. Oynas.

Supervisory review instance courts annulled twice the judgments of conviction in the same criminal case against S. V. Brovchenko sentenced to deprivation of liberty and remitted the case for a new examination. Within one month after the second annulment of the judgment, the judge who received the case for examination rendered a decision on scheduling the trial in which he stated that the restraint measure in the form of detention should remain unchanged. At the same time, the supervisory review court which annulled the judgment did not make any decision

on the restraint measure. After one year, during which the period of S. V. Brovchenko's detention was extended by the court, the subsequent request of the prosecutor to extend the period of detention was rejected and the imposed restraint measure was replaced with a written undertaking not to leave a specific place.

The judge who received the criminal case against O. V. Ryabov for consideration of the imposition of compulsory medical treatment on him, kept the imposed restraint measure in the form of detention unchanged, as a result of which O. V. Ryabov was detained in the detention facility for five more months. The cassation appeal against unlawful application of the restraint measure was examined in his absence since, in the cassation instance court's opinion, the criminal procedure legislation does not provide that a person on whom compulsory medical treatment may be imposed shall participate in the hearing on the matter.

In their complaints lodged with the Constitutional Court of the Russian Federation, the individuals mentioned above challenge the constitutionality of the provisions of the Criminal Procedure Code of the Russian Federation which were applied in the criminal cases against them and which regulate the procedure and periods of application of a restraint measure in the form of detention at the stages of criminal proceedings following the completion of the pre-trial investigation and transfer of the criminal case to court.

1.1. M. N. Alekperov, S. V. Brovchenko, A. V. Yevstafyev, P. L. Lebedev, V. A. Prikhodko, A. Yu. Reutov, O. V. Ryabov, A. S. Sinyakov and Ye. A. Suvorov request to recognize the provisions of Articles 227 and 228 of the Criminal Procedure Code of the Russian Federation as non-conforming to the Constitution of the Russian Federation, and S. V. Brovchenko, P. L. Lebedev and A. Yu. Reutov also challenge Section 2, Article 229 of the Criminal Procedure Code of the Russian Federation, which is in normative unity with the mentioned provisions. In the applicants' opinion, the challenged norms provide for a possibility to keep accused persons in detention without a court decision for the period from the moment of completion of pre-trial investigation and transfer of the criminal case to court until the moment when the court renders a decision on scheduling the trial or the preliminary hearing. Such a possibility does not correspond to the constitutional guarantees of the applicant's rights to liberty and security of the person and to judicial protection of everyone's rights and freedoms.

On the same grounds M. N. Alekperov, S. V. Brovchenko, Yu. A. Biryuchenko, A. V. Yevstafyev, P. L. Lebedev, G. L. Oynas, V. A. Prikhodko, O. V. Ryabov and A. S. Sinyakov contest the constitutionality of Sections 2 and 3, Article 255 of the Criminal Procedure Code of the Russian Federation, which provide for a possibility to keep an accused person in detention without a court decision during six months after receipt of the criminal case by a court. S. V. Brovchenko, in addition, contests the constitutionality of Article 410 of the

Criminal Procedure Code of the Russian Federation, which, establishing the limits of the powers of the supervisory review instance court at the stage of annulment of the conviction, does not oblige the court to decide on the restraint measure in case of remanding a case to the trial court. The latter applicant also contests the provisions of Article 411 of the Criminal Procedure Code of the Russian Federation which stipulate that after a case is remanded for retrial it shall be considered under the same rules which are applicable to the initial consideration by a trial court, including the issue of application of a restraint measure in the form of detention.

Substantiating their allegations that Section 3, Article 255 of the Criminal Procedure Code of the Russian Federation, does not conform to the Constitution of the Russian Federation, Y. A. Biryuchenko, S. V. Brovchenko and V. A. Prikhodko point out that, providing for a possibility to repeatedly extend the period of detention (each time for no more than three months) upon expiration of a six-month period from the date of receiving the criminal case by a court, the mentioned provisions allow to keep the accused in detention for an unlimited period of time. In S. V. Brovchenko's opinion, the application of Sections 1 and 2 of Article 110, Section 7 of Article 410, and Section 1 of Article 411 of the Criminal Procedure Code of the Russian Federation leads to the same results, especially in cases of repeated annulments of the conviction in supervisory review proceedings and remitting the criminal case for a new examination.

S. V. Brovchenko, A. S. Sinyakov and O. V. Ryabov request to recognize as unconstitutional Section 10 of Article 108, Sections 10 and 11 of Article 109 and Section 1 of Article 255 of the Criminal Procedure Code of the Russian Federation, which provide for the court's power to adopt, upon its own motion, a decision on imposing a restraint measure in the form of detention at judicial stages of criminal proceedings. In their opinion, these provisions do not conform to the constitutional status of the court determined by Article 120 (Section 1) of the Constitution of the Russian Federation and the principle of adversary proceedings and equality of arms in criminal proceedings stipulated by Article 123 (Section 3) of the Constitution of the Russian Federation.

M. N. Alekperov, S. V. Brovchenko, V. A. Prikhodko, O. V. Ryabov and A. S. Sinyakov contest the constitutionality of the provisions of Sections 2 and 3 of Article 231 of the Criminal Procedure Code of the Russian Federation, and, in addition, S. V. Brovchenko contests the constitutionality of Articles 227 and 228 and Section 2 of Article 229 of the Criminal Procedure Code of the Russian Federation, and P. L. Lebedev the constitutionality of Article 477 (Annex No. 15) of the Criminal Procedure Code of the Russian Federation, which allow a judge to adopt a decision on the restraint measure in the absence of an accused person and his counsel at the

stage of preparing the criminal case for trial; thus, these provisions violate Article 123 (Section 3) of the Constitution of the Russian Federation.

1.2. In his complaint, S. V. Brovchenko also contests the constitutionality of Sections 5 and 6, Article 355 of the Criminal Procedure Code of the Russian Federation, which, in the applicant's opinion, do not allow to appeal against the trial court's decisions and decisions rejecting the motions to annul the restraint measure in the form of detention or motions for recusal of the judge, and thus unreasonably restrict the right to judicial protection.

In its Judgment of 2 July 1998 the case concerning the review of the constitutionality of certain provisions of Articles 331 and 464 of the Criminal Procedure Code of the RSFSR, which regulate appeals against the trial court's decisions, the Constitutional Court of the Russian Federation recognized these provisions as non-conforming to the Constitution of the Russian Federation to the extent that they did not provide for a possibility to appeal against and review on cassation court decisions and decisions involving the application of measures of procedural compulsion to the accused or *de facto* extension of the period of their application before the judgment in the criminal case is rendered; i.e. provisions affecting the constitutional rights and freedoms. Along with that, the Constitutional Court of the Russian Federation reached the conclusion that the criminal procedure legislation may provide for such an order of cassation review of the intermediate trial court's acts and decisions whereby judicial review of their lawfulness and reasonableness may be carried out after a judgment in the criminal case is rendered.

The mentioned Judgment remains in force and the legal opinion expressed in it shall be applicable to determining whether it is possible to appeal against a court decision to deny a motion to annul the restraint measure in the form of detention or to recuse a judge before the judgment in the criminal case or other final decision are rendered.

Taking into consideration this legal opinion, the provisions of Sections 5 and 6 of Article 355 of the Criminal Procedure Code of the Russian Federation, may not be considered as violating the applicant's constitutional rights and freedoms. Moreover, if the circumstances are established demonstrating that there are grounds to annul the restraint measure in the form of detention or disclosing the judge's partiality or bias in the criminal proceedings, the interested persons may file a respective motion or request recusal again.

Therefore, pursuant to subsections 2 and 3, Section 1 of Article 43 and Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the proceedings under the complaint of S. V. Brovchenko in the part requesting review of the constitutionality of Sections 5 and 6 of Article 355 of the Criminal Procedure Code of the Russian Federation, must be discontinued.

1.3. O. V. Ryabov requests to recognize the provisions of Section 1, Article 97, Section 1, Article 108, Article 128 and Sections 3 and 4, Article 376, of the Criminal Procedure Code of the Russian Federation non-conforming to the Constitution of the Russian Federation, as they, in his opinion, served as a legal basis for the court to extend the period of application of a restraint measure in the form of detention in his respect after he was found to be suffering from a mental disorder.

In the meantime, the challenged provisions, which regulate the conditions of application of a restraint measures to a suspect, an accused person, a defendant, the procedure of calculating the procedural time limits and regulating participation of the detained convicts in the hearing of the cassation instance court do not by themselves determine the law-enforcement procedures in the criminal case against O. V. Ryabov. The issue of application of measures of procedural compulsion to a person suffering from a mental disorder shall be resolved with regard to Chapter 51 (Articles 433–446) of the Criminal Procedure Code of the Russian Federation, which specifically regulates the proceedings on imposing compulsory medical treatment. In particular, pursuant to Article 435 of the Criminal Procedure Code of the Russian Federation, when it is established that a person, on whom a restraint measure in the form of detention has been imposed, suffers from a mental disorder, then, following the procedure stipulated in Article 108 of the Criminal Procedure Code of the Russian Federation, the court shall render a decision to transfer this person to a psychiatric in-patient institution.

Since O. V. Ryabov contests the constitutionality of Section 1 of Article 97, Section 1 of Article 108, Article 128 and Sections 3 and 4 of Article 376 of the Criminal Procedure Code of the Russian Federation, which may be reviewed in his case only in normative unity with Chapter 51, which he does not challenge, this part of his complaint may not be considered by the Constitutional Court of the Russian Federation pursuant to Subsections 1 and 2, Section 1, Article 43, and Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. As regards the law-enforcement decisions rendered in the criminal case against O. V. Ryabov they must be reviewed by the appropriate instance courts of general jurisdiction.

1.4. Therefore, the subject matter of the present proceedings at the Constitutional Court of the Russian Federation is the provisions of Section 10 of Article 108, Sections 10 and 11 of Article 109, Sections 1 and 2, Article 110, Articles 227 and 228, Section 2 of Article 229, Sections 2 and 3 of Article 231, Sections 1, 2 and 3 of Article 255, Articles 410 and 411, Article 477 (Annex No. 15) of the Criminal Procedure Code of the Russian Federation insofar as they regulate the application of a restraint measure in the form of detention in respect of an accused (defendant) after completion of the pre-trial investigation and transfer of the criminal

case to the court by the prosecutor with a bill of indictment or a decision to impose compulsory medical treatment, in the course of scheduling the trial and examination of the criminal case by the trial court, as well as upon remitting a case for a new examination in case of annulment of the conviction by the higher instance court.

2. In the Russian Federation, recognition, observance and protection of the rights and freedoms of man and citizen as the supreme value shall be a constitutional duty of the state (Article 2 of the Constitution of the Russian Federation). It follows from the interconnected provisions of Articles 10, 17 (Sections 1 and 2) and 18 of the Constitution of the Russian Federation that this duty predetermines the activities of the public authorities, including judicial authorities, which are obliged to guarantee inviolability and inalienability of the fundamental rights and freedoms of man and citizen.

2.1. The Universal Declaration of Human Rights declares that all human beings are born free and equal in dignity and rights (Article 1). The right to liberty and security of the person which belongs to everyone from birth is one of the fundamental human rights. Within the meaning of the Constitution of the Russian Federation, its Articles 17 (Section 2), 21 (Section 1) and 22 (Section 1), this right is the emanation of the most significant social benefit, which relying on the state's recognition of human dignity predetermines impermissibility of arbitrary interference with the person's sphere of autonomy, creates conditions for comprehensive development of both the individual and the democratic social order. That is why, providing for a heightened level of guarantees of everyone's right to liberty and security of the person, the Constitution of the Russian Federation provides for a possibility to restrict this right only to the extent necessary for the aims defined in it and only under a procedure prescribed by law (Section 3, Article 55 of the Constitution of the Russian Federation).

Statutory determination of a possibility to restrict the right to liberty and security of the person is therefore a result of legislative resolution of a conflict between everyone's right to liberty and the state's obligation to ensure protection of socially significant values through administration of justice. Its essential features are predetermined directly by the Constitution of the Russian Federation which stipulates that arrest, detention and remand in custody are permitted only on the basis of a court decision (Section 2, Article 22) and preclude the application of the mentioned measures in any other procedure from the moment of adoption of the Criminal Procedure Code of the Russian Federation (Subsection 6.2 of Part 2 of the "Concluding and Transitional Provisions").

2.2. The Constitutional Court of the Russian Federation, expounding on the issue of guarantees of judicial protection of the rights and freedoms of man and citizen, including upon application of a restraint measure in the form of detention, stated the following legal opinions.

Restraint measures, *inter alia* in the form of detention, may be applied only if there are grounds corresponding to the aims set by Article 55 (Section 3) of the Constitution of the Russian Federation; only in this case will their application conform to the constitutional meaning of this kind of measures of criminal procedural compulsion. Consequently, an inquirer, an investigator, a prosecutor, and a court, rendering a decision on imposing a restraint measure in the form of detention, on its annulment or alteration, and on its extension, in each particular case must substantiate that the decision in question corresponds to the constitutional aims (Decision No. 175-O of 23 June 2000 upon a complaint of V. A. Zherebenkov and Ye. S. Zhigalev against a violation of their constitutional rights by certain provisions of the Criminal Procedure Code of the RSFSR which concern the application of a restraint measure in the form of detention).

In cases related to the restriction of the right to liberty and personal security, guarantees of judicial protection are of exceptional significance. It is also recognized in international legal acts pursuant to which everyone arrested or detained on reasonable suspicion of having committed a criminal offence shall be entitled to trial within a reasonable time or to release pending trial (Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 9 § 3 of the International Covenant on Civil and Political Rights); restriction of liberty and security of the person for a prolonged period of time without judicial review is prohibited (Judgment of 14 March 2002 the case concerning the review of the constitutionality of Articles 90, 96, 122 and 216 of the Criminal Procedure Code of the RSFSR).

Judicial review is considered to be an effective remedy if it complies with the requirements of fairness and is based on the constitutional principles of adversarial proceedings and equality of parties. As far as decisions on application of a restraint measure in the form of detention are concerned, they require assessment of the factual and legal grounds for imposing and extension of the detention, providing the detainee with an opportunity to submit his arguments to the court in order to ensure that detention is not applied arbitrarily or on the basis of some formal conditions and that a court should rely on independent assessment of circumstances significant for such cases, submitted both by the prosecution and the defence (Judgments of 13 June 1996 in the proceeding on the review of the constitutionality of Section 5, Article 97 of the Criminal Procedure Code of the RSFSR, of 10 December 1998 in the case concerning the review of the constitutionality of Section 2 of Article 335 of the Criminal Procedure Code of the RSFSR, of 15 January 1999 in the case concerning the review of the constitutionality of the provisions of Article 295 of the Criminal Procedure Code of the RSFSR; Decisions No. 44-O of 6 February 2004 upon a complaint of V. N. Demyanenko against a violation of his constitutional rights by the provisions of Articles 56, 246, 278 and 355 of the Criminal Procedure Code of the Russian Federation, No. 132-O of 8 April 2004 upon a

complaint of A. V. Gorsky against a violation of his constitutional rights by Subsection 6, Section 2 of Article 231 of the Criminal Procedure Code of the Russian Federation).

The use of judicial mechanisms based on the constitutional principles of fairness, everyone's equality before the law and the court, adversarial proceedings and equality of parties ensures compliance with the principle of legal certainty for the protection of the rights and legal interests of the persons on whom a restraint measure in the form of detention is imposed (Judgments of 27 May 2003 in the case concerning the review of the constitutionality of the provisions of Article 199 of the Criminal Code of the Russian Federation, of 25 February 2004 in the case concerning the review of the constitutionality of Subsection 10 of Article 75 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", and Section 1 of Article 259 of the Civil Procedure Code of the Russian Federation, of 16 July 2004 in the case concerning the review of the constitutionality of certain provisions of Section 2, Article 89 of the Tax Code of the Russian Federation).

The mentioned legal opinions of the Constitutional Court of the Russian Federation correlate with the conclusions found in judgments of the European Court of Human Rights: the practice of keeping a person in detention without a specific legal basis, but because of lack of clear rules governing the detainee's situation, with the result that a person may be deprived of his liberty for an unlimited period without judicial authorization, is incompatible with the principles of legal certainty and protection from arbitrariness; the detention of a person for several months on the sole ground that the case has been transferred to the court cannot be considered "lawful" within the meaning of Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and is in itself incompatible with the principle of legal certainty, which is one of the common threads of the rule of law (see *Baranowski v. Poland*, no. 28358/95, §§ 54–57, ECHR 2000-III; and *Ječius v. Lithuania*, no. 34578/97, §§ 62 and 63, ECHR 2000-IX).

2.3. The mentioned requirements of the Constitution of the Russian Federation, the international legal acts and legal opinions of the Constitutional Court of the Russian Federation adopted on their basis extend over the legal regulation of application of a restraint measure in the form of detention regardless of the stage of the criminal proceedings at which the court renders these decisions. Nor may the judicial guarantees of liberty and security of the person be reduced or suspended during the period following the completion of the pre-trial investigation and transfer of the criminal case to the court. Any other interpretation of the mentioned provisions would not conform to the very essence of administration of justice ensuring direct effect of the rights and freedoms.

3. Relying on the fact that the norms of criminal procedure legislation are within the common system of constitutional and international regulation providing guarantees of everyone's right to liberty and security of the person, the federal legislator has articulated a number of rules in the Criminal Procedure Code of the Russian Federation which are the fundamental principles of criminal proceedings.

A defendant shall be presumed innocent until proven guilty of an offence pursuant to the procedure determined by the criminal procedure law and established by a court judgment that has taken legal effect (Section 1 of Article 14), and a court, a prosecutor, an investigator, or an inquirer shall expound to him as a person who is not recognized guilty his rights within the criminal proceedings and secure the exercise of these rights (Section 2 of Article 16), no one may be detained on suspicion of having committed an offence or remanded to custody without legitimate grounds established by the Code, and a court, a prosecutor, an investigator, an inquiry authority or an inquirer shall be obliged to release immediately any person illegally detained or deprived of liberty, or illegally placed to a medical or psychiatric in-patient institution, or kept in detention beyond the time limit prescribed by the Code (Sections 1 and 2 of Article 10).

3.1. The grounds and procedure of imposing a restraint measure on an accused or suspect are established by Articles 97, 99, 108 and 109 of the Criminal Procedure Code of the Russian Federation; it follows from them that this restraint measure shall be imposed, as a general rule, on a person suspected or accused of committing criminal offences for which the law prescribes a penalty in the form of deprivation of liberty for a period of more than two years, and when there are sufficient grounds to believe that he will evade an inquiry, pre-trial investigation or trial, may continue criminal activity, may threaten the participants in the criminal proceedings, destroy evidence, or otherwise interfere with the course of the criminal proceedings.

Both initiation and substantiation before a court of a decision to impose a restraint measure in the form of detention on a suspect or accused, the necessity to impose exactly this restraint measure and the impossibility to impose another one is entrusted to a prosecutor or, under his authorization, to an inquirer or an investigator. These powers are predetermined by the specific features of the prosecutor's functions as an official empowered within the competence established by the Criminal Procedure Code of the Russian Federation to exercise criminal prosecution in criminal proceedings in the name of the state and to exercise supervision over the inquiry and pre-trial investigation authorities (Article 37 of the Criminal Procedure Code of the Russian Federation, Section 2 of Article 1 of the Federal Law "On the Prosecutor's Office of the Russian Federation").

In case of necessity to impose a restraint measure in the form of detention a prosecutor shall lodge a relevant motion with a court or authorize an inquirer or an investigator to lodge the

motion. And it is the prosecutor who is obliged to exercise supervision of the lawfulness of keeping persons in preliminary detention facilities and of the observance of their rights and obligations established by the legislation of the Russian Federation (Article 32 of the Criminal Procedure Code of the Russian Federation, Section 2 of Article 1 of the Federal Law “On the Prosecutor’s Office of the Russian Federation”). A prosecutor supervising the period of detention shall ensure that the motions requesting to extend the period of detention are lodged with a court in due time if the grounds for application of the restraint measure are still in place, or shall release an accused person from detention if they have ceased to exist.

Within the meaning of the statute, lodging a motion to impose a restraint measure in the form of detention or to extend it if there are grounds established by the law is an obligation of the prosecutor at all stages of criminal proceedings, which does not exclude the court power to examine the issue on its own motion if the issue arises at the stage of judicial proceedings (Section 10, Article 108, Section 1, Article 255 of the Criminal Procedure Code of the Russian Federation).

Pursuant to Articles 10, 118 and 123 (Section 3) of the Constitution of the Russian Federation and Articles 15 and 243 of the Criminal Procedure Code of the Russian Federation concretizing them, a court is not a criminal prosecution authority and does not act on the side of the prosecution or the defence. Carrying out its tasks as an administration of justice authority, a court, at the same time, creates conditions necessary for proper performance of the parties’ obligations and exercise of their rights. For the purposes of protecting the rights and lawful interests of the participants in criminal proceedings and proper conduct of criminal proceedings within a reasonable time, a court, *inter alia* on its own motion, is obliged to examine the reasonableness of application of a restraint measures, including a restraint measure in the form of detention; to render necessary decisions in cases where the defendant evades appearance in court or otherwise interferes with the course of the criminal proceedings; and to ensure timely decisions on the extension of the detention before expiry of the term for which it was set by the previous court decision.

Raising the issue and deciding on imposing a restraint measure in the form of detention and extending its period on its own motion, the court, within the meaning of Article 108 of the Criminal Procedure Code of the Russian Federation, is not exempted from the obligation to examine the parties’ arguments, and the parties may not be deprived of an opportunity to submit their arguments to the court. This does not mean that the court performs the functions of the prosecution, since legal and factual grounds for imposing a restraint measure in the form of detention are related not to supporting the charges brought against the person and, moreover,

finding them reasonable, but to the necessity to ensure conditions for further criminal proceedings.

Any other interpretation of the provisions of Section 10 of Article 108, Sections 10 and 11 of Article 109 and Section 1 of Article 255 of the Criminal Procedure Code of the Russian Federation would lead to a violation of the rights of the participants in the criminal proceedings, guaranteed by Articles 22, 46 (Section 1) and 123 (Section 3) of the Constitution of the Russian Federation.

3.2. Article 22 (Section 2) of the Constitution of the Russian Federation provides that arrest, detention and remand to custody are permitted only on the basis of a court decision and, thus, precludes a possibility to deprive a person of his liberty without a court decision except for cases where a person is detained before a court decision for no longer than 48 hours. Consequently, if the period of detention as defined in the court decision expires, the court must decide on the extension of the detention, otherwise the accused person must be released.

That is why the law stipulates that the ground for detention of suspects and accused, on whom a restraint measure in the form of detention has been imposed, is a court decision rendered following a procedure established by the criminal procedure law (Section 2 of Article 5 of the Federal Law “On Detention of Suspects and Accused of Committing a Criminal Offence”). Also a court, a prosecutor, an investigator and an inquirer are obliged to release immediately everyone illegally detained or deprived of his liberty, or kept in detention beyond the time limit prescribed by the Criminal Procedure Code of the Russian Federation (Section 2 of Article 10 of the Criminal Procedure Code of the Russian Federation). If the relevant decision on the release of the suspect or accused or on the extension of the period of his detention or a notification of this decision are not received upon expiry of the period of detention as set by the law, the head of the detention facility shall release him by his decision (Section 3 of Article 50 of the Federal Law “On Detention of Suspects and Accused of Committing a Criminal Offence”).

These rules are common to all stages of criminal proceedings and cover the transition from one stage to another. This approach is predetermined by the fact that the normative grounds for application of a restraint measure in the form of detention, which are common to all stages of the criminal proceedings (Articles 97, 99 and 108 of the Criminal Procedure Code of the Russian Federation), may stay in place during the whole criminal proceedings, and consequently the transition of the case to another stage does not automatically put an end to the restraint measure applied at previous stages.

Therefore, when the case is transferred by the prosecution to the trial court, the restraint measure applied at the stage of pre-trial investigation may continue to apply until the expiry of the period for which it was set by the relevant court decision. And the judge who receives a

criminal case for examination is obliged to check whether the period of detention as set by the previous court decision has expired, whether there is proof of the factual circumstances on which the decision to impose a restraint measure in the form of detention has been rendered, and whether they remain to be sufficient for further extension of the detention.

The federal legislator followed the stated legal opinion by stipulating in Articles 227 and 228 of the Code of Criminal Procedure that a judge, after receiving the criminal case concerning the detained defendant, should within 14 days decide on the scheduling of a hearing and establish “whether the restraint measure applied should be annulled or altered”. This wording implies that the decision to detain the accused or extend his detention, taken at the pre-trial stage, may stand after the completion of the pre-trial investigation and transfer of the case to the court only until the end of the period for which the restraint measure was set.

The prosecution, in its turn, approving the bill of indictment and transferring the case file to the court, should check whether the period of detention is about to expire and whether it is sufficient to permit the judge to take a decision on whether there are grounds for further remand of the accused to custody during the court proceedings. If, by the time of transfer of the case file to the court, this term has expired or if it appears to be insufficient to allow the judge to take a decision on whether there are grounds for further remand of the accused to custody, the prosecutor pursuant to Articles 108 and 109 of the Code of Criminal Procedure shall request the court to extend the period of detention.

Articles 410 and 411 of the Criminal Procedure Code of the Russian Federation do not provide for a possibility to keep a person in detention without a court decision either. The absence of a direct indication in the mentioned above provisions that a supervisory review court shall decide on this restraint measure in case of remanding a case to the trial, appellate or cassation court for a new examination, does not exempt the court from the obligation to render this decision. At the same time the court should follow the general provisions of Articles 10, 108, 109 and 255 of the Criminal Procedure Code of the Russian Federation pursuant to which it shall bear in mind that the restraint measure imposed during criminal proceedings expires after the judgment becomes final. This measure does not automatically resume effect after the annulment of the judgment and in order to impose it again the court providing for the participation of the interested parties should establish if there are factual circumstances showing grounds for detention and giving due regard to the new stage of the criminal proceedings.

Therefore, the provisions of Articles 227 and 228, Section 2 of Article 255, Articles 410 and 411 of the Criminal Procedure Code of the Russian Federation do not violate the constitutional rights of the applicants since they do not provide for a possibility to keep an accused person in detention without a court decision after transfer of the criminal case to the

court for examination upon completion of the pre-trial investigation or after the annulment of the previously rendered judgment by a higher instance court.

3.3. Within the meaning of Articles 22, 46 (Section 1), 48, 118, 120 and 123 of the Constitution of the Russian Federation, in criminal proceedings a court shall ensure a fair procedure of rendering a decision to impose a restraint measure in the form of detention, relying on the equal nature and significance of judicial guarantees for the protection of the rights and lawful interests, when taking a decision related to deprivation of liberty and security of the person, regardless of the stage of the criminal proceedings. Such a procedure implies an obligation of the state, including bodies of judicial power, to secure the dignity of a person (Articles 21 and 45 of the Constitution of the Russian Federation) and to treat him not as a target of government actions, but as an equal player who should be able to defend his rights by any means not prohibited by law and enter in disputes with any authority representing the state (Judgment of the Constitutional Court of the Russian Federation of 3 May 1995 in the case concerning the review of the constitutionality of Articles 220¹ and 220² of the Criminal Procedure Code of the RSFSR).

As has been repeatedly stated by the Constitutional Court of the Russian Federation, a court decision on imposing such a restraint measure as detention may be rendered only if the grounds for detention have been found sufficient and under the condition that the parties are provided with an opportunity to submit their arguments to the court in order for it to be able to decide on detention on the basis of its own assessment of the case circumstances and not only on the arguments stated in the prosecution's motion or the previous decision on imposing this restraint measure. By extending the restraint measure or refusing to extend it a judge does not only agree or disagree with a decision on a person's detention, but renders the respective decision on the basis of examination of the whole complex of circumstances, including those related to the transition of the criminal proceedings from one stage to another, which may predetermine the appearance of new grounds to keep the restraint measure or replace it, and requires to provide the accused (defendant) with the right to participate in these court proceedings (Judgment of 13 June 1996 in the case concerning the review of the constitutionality of Section 5 of Article 97 of the Criminal Procedure Code of the Russian Federation, of 10 December 1998 in the proceedings on the review of the constitutionality of Section 2 of Article 335 of the Criminal Procedure Code of the RSFSR; Decisions No. 167-O of 25 December 1998 in the case concerning review of the constitutionality of Section 4, 5 and 6 of Article 97 of the Criminal Procedure Code of the Russian Federation, No. 164-O of 15 May 2002 in the proceedings under complaints of I. A. Moskalev, V. V. Solovyev and V. V. Stoyakin against a violation of their constitutional rights by Section 7 of Article 239¹ of the Criminal

Procedure Code of the RSFSR). The mentioned decisions of the Constitutional Court of the Russian Federation remain in force, and the legal opinions expressed in respect of the norms of the Criminal Procedure Code of the RSFSR shall apply to legal relationship regulated by Article 227, Section 2 of Article 228, Sections 2 and 3 of Article 231, Article 447 (Appendix 15) of the Criminal Procedure Code of the Russian Federation.

An analogous legal opinion was stated in Decision No. 132-O of 8 April 2004 upon a complaint of A. V. Gorsky in which the Constitutional Court of the Russian Federation pointed out the necessity to provide the defendant – if at the stage of preparation for the trial a court renders a decision to keep the restraint measure in the form of detention unchanged, i.e. on extending the detention – with the right to participate in the hearing on examination of the matter, to present his arguments and to submit confirming evidence pursuant to the procedure stipulated by Article 108 of the Criminal Procedure Code of the Russian Federation.

Since deprivation of liberty and security of the person is permissible only pursuant to a court decision taken at a hearing on the basis of examination of the specific circumstances of the criminal case and under the condition that the detainee has been provided with an opportunity to submit his arguments to the court, the prohibition on rendering a decision to impose a restraint measure in the form of detention without a hearing should apply to all court decisions, whether they concern the initial imposition of this restraint measure, or its confirmation.

The constitutional interpretation of the provisions which regulate the judicial procedure of imposing a restraint measure in the form of detention, established by the Constitutional Court of the Russian Federation, determine the content and application of the relevant norms of the Criminal Procedure Code of the Russian Federation at all judicial stages, including cassation and supervisory review proceedings and a new examination of the criminal case by a trial court after the annulment of the conviction, since the guarantees against arbitrary and excessive deprivation of liberty and security of the person must be ensured at any stage of criminal proceedings.

And only after the examination of the issue of application of a restraint measure under the condition of adversary proceedings and ensuring the rights of the participants in the criminal proceedings a court shall render a decision to impose a restraint measure in the form of detention or to extend the period of detention. This decision shall contain the factual circumstances examined in the hearing, regardless of the stage of the criminal proceedings and the form in which the decision is rendered (a separate decision or a part of a decision rendered on other issues, including scheduling of the trial, remand of a criminal case for a new examination).

Therefore, the provisions of Articles 227 and 228, Sections 2 and 3 of Article 231, Article 477 (Annex No. 15) of the Criminal Procedure Code of the Russian Federation stipulate the necessity to provide an accused with the right to participate in the court's examination of the

issue of imposing a restraint measure in the form of detention (separately or along with other issues), extension of the detention or keeping the restraint measure unchanged, and the right to present his arguments and submit confirming evidence.

3.4. Further the applicants raise the issue that the Criminal Procedure Code of the Russian Federation, in particular, its Article 110, Section 3 of Article 255, Section 7 of Article 410, Section 1 of Article 411, does not prescribe the maximum period of a defendant's detention and provide for a possibility to extend the detention of a person suspected and accused of having committed grave or especially grave criminal offences and thereby allows to deprive him of liberty for an indeterminate period of time in the course of the court proceedings. This issue requires examination and constitutional assessment of the mentioned norms taken in conjunction with the norms regulating judicial procedures of deciding on the application of a restraint measure, observance of which shall ensure the lawfulness and factual justifiability of the detention.

The lawfulness and reasonableness of the restraint measure imposed by a court decision are determined not only by the formally established period of its application, but by the factual and legal ground for its application established in the adversarial proceedings. And as follows from Article 55 (Section 3) of the Constitution of the Russian Federation there is a need to ensure proportionality of restrictions, related to the application of a restraint measure in the form of detention, to the gravity of the incriminated offence, the detainee's personality, his behaviour during the criminal proceedings, and to the punishment, which in case of finding him guilty of committing the offence may be imposed and may be actually served, taking into consideration the criminal legal institutions of release from serving sentence and mitigation of a sentence.

The fact that the federal legislator, taking into account different levels of complexity of criminal cases and other circumstances which may influence the length, including prolonged, of the criminal proceedings, has provided for a possibility – subject to compliance with the principle of reasonableness of this length – to extend the defendant's detention at the stage of court proceedings for more than six months, but each time no longer than for three months, may not be in itself considered as an excessive restriction of human rights and freedoms. On the contrary, the requirement on a court to return to the question of whether there are grounds for further detention (no less than three months each and regardless of whether there are any motions by the parties), ensures judicial review of the lawfulness and reasonableness of detention and its annulment, if there is no evidence that it is necessary anymore.

Therefore, the provisions of Sections 1 and 2 of Article 110, Section 3 of Article 255, Section 7 of Article 410, Section 1 of Article 411 of the Criminal Procedure Code of the Russian Federation, within their constitutional meaning do not provide for arbitrary, and uncontrolled by

the court, extension of the periods of the defendant's detention and do not exempt a court from its obligation to examine a criminal case within the reasonable time.

4. The recognition of the provisions of the criminal procedure legislation examined in the present proceedings as not violating the citizens' constitutional rights and freedoms within their constitutional interpretation and conforming to the Constitution of the Russian Federation does not preclude amendments by the federal legislator to the regulation on the procedure and periods of application of a restraint measure in the form of detention at the stages of criminal proceedings following the completion of the pre-trial investigation and transfer of the criminal case to the court, under the condition of compliance with the requirements of legal certainty, lucidity, and coherence of the legal norms implied in the principle of the rule of law state and taking into consideration the present Judgment.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provision of Section 10 of Article 108, Sections 10 and 11 of Article 109 and Section 1 of Article 255 of the Criminal Procedure Code of the Russian Federation, allowing the court to examine on its own motion the issue of imposing a restraint measure in the form of detention in respect of the accused person, as conforming to the Constitution of the Russian Federation to the extent that these provisions within their constitutional meaning do not provide for a court's possibility to adopt a decision on this issue without assessing the evidence submitted by the prosecution and the defence, establishing whether there are grounds for imposition of the restraint measure.

2. To recognize Articles 227 and 228, Section 2 of Article 229 of the Criminal Procedure Code of the Russian Federation, and Sections 2 and 3 of Article 255, Articles 410 and 411 of the Criminal Procedure Code of the Russian Federation, united with them by the normative content, as conforming to the Constitution of the Russian Federation to the extent that these provisions within their constitutional meaning in the system of the criminal procedural regulation in force do not provide for a possibility to keep an accused person in detention without a court decision after the case has been transferred by the prosecution or a higher instance court to the trial.

3. To recognize Sections 1 and 2 of Article 110, Section 3 of Article 255, Section 7 of Article 410, Section 1 of Article 411 of the Criminal Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation to the extent that these provisions within their constitutional meaning do not permit arbitrary extension, uncontrolled by a court, of

the period of the accused person's detention and do not relive a court of its obligation to consider a criminal case within a reasonable time.

4. To recognize Articles 227 and 228, Sections 2 and 3 of Article 231, Article 477 (Annex No. 15) of the Criminal Procedure Code of the Russian Federation, in what concerns the establishment of a procedure for the judge to decide on the restraint measure at the stage of preparation for the trial, as conforming to the Constitution of the Russian Federation to the extent that these provisions within their constitutional meaning imply the need to provide an accused person with the right to participate in the hearing in which a court decides on imposing a restraint measure in the form of detention, extension of detention or keeping the restraint measure unchanged, and the right to present his argument and submit confirming evidence.

5. Pursuant to Article 6 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the constitutional meaning of the provisions of Section 10 of Article 108, Sections 10 and 11 of Article 109, Sections 1 and 2 of Article 110, Articles 227 and 228, Section 2 of Article 229, Sections 2 and 3 of Article 231, Sections 1, 2 and 3 of Article 255, Articles 410 and 411, Article 477 (Annex No. 15) of the Criminal Procedure Code of the Russian Federation, established in the present Judgment is generally binding and precludes any other interpretation in the judicial practice, including examination of the criminal cases against the citizens who are the applicants in the present proceedings.

6. Pursuant to Article 68 of the Federal Constitutional Law "On Constitutional Court of the Russian Federation", to discontinue the proceedings upon the complaint of S. V. Brovchenko to the extent that it concerns the review of the constitutionality of Sections 5 and 6 of Article 355 of the Criminal Procedure Code of the Russian Federation, and upon the complaint of O. V. Ryabov to the extent that it concerns the review of the constitutionality of Section 1 of Article 97, Section 1 of Article 108, Article 128 and Sections 3 and 4 of Article 376 of the Criminal Procedure Code of the Russian Federation.

7. This Judgment shall be final and shall not be subject to appeal, it shall come into force immediately upon its pronouncement, shall and be directly applicable and does not require confirmation by other authorities and state officials.

8. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be published immediately in the Collection of Laws of the Russian Federation, *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation