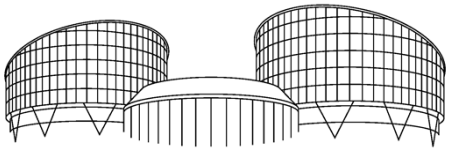

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YURIY DMITRIYEV v. RUSSIA

(Application no. 47934/17)

JUDGMENT

Art 5 § 3 • Reasonableness of pre-trial detention • Domestic courts' failure to provide relevant and sufficient reasons justifying the first period of the applicant's pre-trial detention
Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Legal assistance of own choosing • Appellate court's failure to demonstrate relevant and sufficient grounds for overriding the applicant's choice of counsel • Shortcomings during full appellate review, not remedied on cassation review, adversely affected the applicant's defence rights • Overall fairness of the proceedings undermined
Art 18 (+ Art 5 and Art 6) • Restriction for unauthorised purposes • Existence of ulterior purpose not established

Prepared by the Registry. Does not bind the Court.

STRASBOURG

31 March 2026

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

In the case of Yuriy Dmitriyev v. Russia,

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

Ioannis Ktistakis*, President*,
Peeter Roosma,
Lətif Hüseynov,
Andreas Zünd,
Mateja Đurović,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 47934/17) 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 Yuriy Alekseyevich Dmitriyev ("the applicant"), on 29 June 2017;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the alleged breach of Articles 5, 6 and 18 of the Convention by the length of the applicant's pre-trial detention, the unfairness of criminal proceedings against him and the alleged ulterior purpose of his detention and prosecution, and to declare inadmissible the remainder of the application;

the observations submitted by the applicant;

the decision of the President of the Section to treat as confidential all documents deposited with the Registry, excluding the application form (Rule 33 § 2 of the Rules of Court);

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 13 January and 3 March 2026,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns criminal proceedings brought against the former head of the Karelia Regional Branch of the Human Rights Centre Memorial, who was convicted of sexually assaulting a minor, his adopted daughter. He alleged a violation of his rights under Articles 5 and 6 of the Convention in connection with his pre-trial detention and the second set of criminal proceedings instituted against him. The applicant further contends that his pre-trial detention and prosecution were politically motivated on

account of his work and his affiliation with International Memorial, in breach of Article 18 of the Convention.

THE FACTS

2. The applicant was born in 1956 and, at the material time, lived in Petrozavodsk. He was represented by lawyers from the Memorial Human Rights Centre and by Mr Viktor Anufriyev, a lawyer practising in Moscow.

3. The Russian Government ("the Government") were represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant is a historian and human rights activist. Since 1988 he has worked to uncover mass graves of victims of Stalin's 'Great Terror' in Karelia and to identify both the victims and the perpetrators. In 1997 the applicant, together with members of the St Petersburg branch of Memorial, located Sandarmokh, the largest known execution site in the Republic of Karelia dating from 1937-1938, where approximately 6,000 people had been shot and buried. He subsequently identified and published several volumes listing those executed at Sandarmokh and indicating their burial sites. His work has received wide international recognition, including a Franco-German Prize for Human Rights and the Rule of Law (2020) and the Sakharov Freedom Award (2021).

6. Since 2014 the applicant has headed the Karelia Regional Branch of the Memorial Human Rights Centre. By a final decision of 5 April 2022, the First Court of Appeals upheld the dissolution of the Memorial Human Rights Centre and its regional branches for repeated violations of the "foreign agent" legislation (see *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, §§ 10-12, 14 June 2022).

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Preliminary inquiry

7. On 3 September 2008 the applicant, together with his former partner, adopted a three-year-old girl, N., from an orphanage. Between 29 June 2009 and 3 November 2016 custody officials conducted regular inspections of the applicant's flat in order to assess the child's health and living conditions. No concerns were recorded in respect of her upbringing or education.

8. On 29 November 2016 a precinct officer visited the applicant and directed him to come to the police station the following day. The applicant

spent several hours there. Upon his return home, he observed signs of unauthorised entry: his computer had been switched on and various belongings appeared displaced.

9. On 2 December 2016 the Petrozavodsk police department received an anonymous letter alleging that the applicant had been taking nude photographs of his eleven-year-old adopted daughter, N. The letter was accompanied by two such photos.

10. On 12 December 2016 the Deputy Head of the Ministry of the Interior of the Republic of Karelia ordered a preliminary inquiry into those allegations.

11. On 13 December 2016 an investigator conducted a search of the applicant's flat and seized his computer, on which several folders were found containing more than two hundred photographs of N. taken between 2008 and 2015. Some of the photographs depicted N. nude, standing upright with her arms raised or at her sides, while others showed her sleeping or sitting naked.

12. That evening the applicant was interviewed by the investigator in the context of the preliminary inquiry. He acknowledged having taken and stored the photographs of N. on his computer, explaining that they were intended to document her physical development for the custody officials and to demonstrate the absence of any signs of ill-treatment. He stated, however, that he had shown a nude photograph of N. to a custody official on only one occasion.

13. On the same day the investigator opened a criminal case on the charge of producing child pornography under Article 242.2 § 2 (c) of the Criminal Code of the Russian Federation. The applicant was subsequently arrested on those charges.

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

14. On 15 December 2016 the Petrozavodsk City Court ordered that the applicant be placed in pre-trial detention until 13 February 2017. In its reasoning, the court relied on the gravity of the charges involving a minor dependent on the applicant and on the applicant's multiple administrative convictions in the preceding year. It further considered that, given N.'s minor age and the fact that she lived with the applicant, there was a risk that he might exert pressure on her.

15. On 26 December 2016 the local administration decided to suspend the applicant from his duties as N.'s adoptive parent. Two days later N. was placed under the guardianship of her grandmother, Ms F., who lived in a village approximately 600 km from Petrozavodsk.

16. On 29 December 2016 the Supreme Court of the Republic of Karelia dismissed the applicant's appeal against the detention order.

17. On 9 January 2017 the Centre for Socio-Cultural Expertise issued an expert report of nine photographs depicting N. naked. It concluded that they contained pornographic elements.

18. On 6 February 2017 the applicant was additionally charged with committing indecent acts with a minor who has not attained the age of twelve, without the use of force, pursuant to Article 135 §§ 1 and 3 of the Criminal Code.

19. On 10 February 2017 the Petrozavodsk City Court extended the applicant's detention until 12 March 2017. No new reasons were advanced.

20. On 21 February 2017 the applicant was further charged with the illegal possession of firearm components, under Article 222 § 1 of the Criminal Code.

21. On 9 March and 10 April 2017 the Petrozavodsk City Court extended the applicant's detention until 12 April and 12 May 2017, respectively, relying on the gravity of the charges against him.

22. On 11 May 2017 the Petrozavodsk City Court began a preliminary hearing in the applicant's case. It extended the applicant's pre-trial detention until 28 October 2017. The applicant sought the application of a less severe preventive measure, submitting that he was unable to exert pressure on the victim, who was living with her grandmother outside Petrozavodsk. The court found, however, that the circumstances underlying the original detention order had not changed and that the applicant could still influence the victim, as he knew her whereabouts.

23. On 1 June 2017 the Petrozavodsk City Court began the trial on the merits. The applicant was charged with: (i) committing indecent acts with a minor who has not attained the age of twelve, without the use of force in relation to four photographs taken in January 2009 and four photographs taken in July 2010 (Article 135 §§ 1 and 3 of the Criminal Code); (ii) using a minor who has not attained the age of fourteen for the production of pornography in relation to a photograph taken in June 2012 (Article 242.2 § 2 (c) of the Criminal Code); and (iii) illegal possession of essential firearm components in relation to fragments of an "IZH-5" hunting rifle with a trimmed barrel (Article 222 § 1 of the Criminal Code).

24. On 5 June, 30 August and 29 November 2017 the applicant's lawyer sought the application of an alternative preventive measure, without success.

25. On 15 September 2017 the Petrozavodsk City Court, upon motions by both the prosecution and the applicant, ordered a further expert examination of 114 photographs of N., in particular to determine whether the nine photographs referred to in the charges (see paragraph 23 above) amounted to pornography.

26. On 11 October 2017 the Petrozavodsk City Court extended the applicant's detention until 28 January 2018, without advancing any new grounds.

27. On 25 October 2017 the Supreme Court of the Republic of Karelia upheld the extension order of 11 October 2017, but amended the end date of the detention period to 27 January 2018.

28. On 11 December 2017 a private forensic examination company in St Petersburg issued an expert report concluding that the nine photographs in question did not contain pornographic elements and could have been taken for medical purposes to compare the child's development at different ages. The experts stated that the applicant had no sexual intent when taking them but had documented N.'s physical development in order to monitor her health.

29. On 27 December 2017 the Petrozavodsk City Court ordered the applicant's release as of 28 January 2018, subject to an undertaking not to leave his place of residence without permission and to behave appropriately (*подписка о невыезде и надлежащем поведении*). The court considered that, in view of the length of the applicant's pre-trial detention and his assurances that he had no intention of absconding, its further extension was no longer justified. On the same day the applicant signed the relevant undertaking.

30. On 5 April 2018 the Petrozavodsk City Court found the applicant guilty of illegal possession of firearm components and sentenced him to two and a half years' restriction of liberty. He was acquitted of all charges relating to the production of child pornography, the court finding that the photographs had been taken to document the child's physical condition in the exercise of his adoptive parent's duties. The court declared inadmissible the expert opinion issued by the Centre for Socio-Cultural Expertise (see paragraph 17 above).

31. On 14 June 2018 the Supreme Court of the Republic of Karelia, following an appeal by the city prosecutor, quashed the judgment and remitted the case for reconsideration. The preventive measure applied to the applicant remained unchanged.

C. The applicant's pre-trial detention following charges of sexual offence and the second set of criminal proceedings

1. Investigation into sexual-assault charges and the first-instance trial

32. On 15 May 2018 the Children's Rights Commissioner of the Republic of Karelia sent a letter to the Investigative Committee in Karelia. In the letter, the Commissioner referred to the statements made by N. during a conversation with a psychologist indicating that she might have been sexually assaulted by the applicant. On the same day, the Investigative Committee requested the Centre for Children in Need of Psychological, Educational and Social Support to carry out an assessment of N. On 18 May 2018 the assessment concluded that N. had been subjected to sexual violence and had

been induced to pose for nude photographs, and that she had feelings of hatred and fear towards the applicant.

33. On 6 June 2018 the investigator received an oral statement from N.'s grandmother, Ms. F., who reported that N. had confided in her that the applicant had frequently touched her genitals when they were alone. Later that day, the investigator questioned N. in the presence of Ms. F. and a psychologist. N. confirmed that the applicant had directed her poses during the nude photoshoots, had asked her to sit on his lap and had touched her genitals on multiple occasions.

34. On 27 June 2018 the applicant, accompanied by a friend, went to visit a cemetery outside Petrozavodsk. Afterwards, they decided to travel to a monastery located 180 kilometres from the city, in the neighbouring Leningrad Region. On the way, at around 4 p.m., their car was stopped by the police and the applicant was taken to the police station.

35. The applicant was formally arrested on 27 June 2018 at 10.30 p.m. The arrest record stated that he was suspected of committing sexual assault against a minor under the age of fourteen, pursuant to Article 132 § 4 (b) of the Criminal Code.

36. On 28 June 2018 the Petrozavodsk City Court ordered the applicant's pre-trial detention until 26 August 2018. The court based its decision on a reasonable suspicion that the applicant had committed sexual assault against N. It also considered that the applicant had breached the conditions of the undertaking signed on 27 December 2017 by leaving his place of residence and intending to travel to a neighbouring region.

37. On 23 July 2018 the Supreme Court of the Republic of Karelia upheld the detention order, referring to the seriousness of the charges against the applicant and his attempt to leave his place of residence.

38. On 21 August 2018 the Petrozavodsk City Court extended the applicant's detention until 26 October 2018, without advancing any new grounds.

39. On 9 October 2018 the Petrozavodsk City Court held a preliminary hearing. It merged the earlier criminal case under Articles 135, 242.2 and 222 of the Criminal Code with the new case concerning sexual assault. The court extended the applicant's detention until 25 December 2018, finding that the circumstances underlying the original detention order had not changed.

40. On 18 December 2018 and 6 March 2019 the Petrozavodsk City Court extended the applicant's detention until 25 March and 25 June 2019 respectively. The court noted, in particular, that N. had not yet been questioned as a prosecution witness, which created a risk that the applicant might exert pressure on her. On 21 January and 1 April 2019 the Supreme Court of the Republic of Karelia upheld both extension orders.

41. On 19 June 2019 the Petrozavodsk City Court extended the applicant's detention until 25 September 2019. It acknowledged that, although N. had already been questioned during the trial and the prosecution

had concluded the presentation of its evidence, there remained a possibility of the applicant influencing N.

42. On 25 September and 13 December 2019, and 23 March 2020 the Petrozavodsk City Court extended the applicant's detention until 25 December 2019, 25 March and 25 June 2020 respectively.

43. On 16 June 2020 the Petrozavodsk City Court examined the prosecutor's request for a further extension of the applicant's detention. The applicant sought a less stringent measure of restraint, referring to the risk of contracting COVID-19 in detention. Although the court acknowledged the serious epidemiological situation and the delays it had caused, it considered that sanitary preventive measures in the detention facility were sufficient and therefore extended the applicant's detention until 25 July 2020.

44. On 22 July 2020 the Petrozavodsk City Court found the applicant guilty solely on the charge of sexual assault under Article 132 § 4 (b) of the Criminal Code. The court held that between 1 March 2012 and 13 December 2016 the applicant had on several occasions put his hand under N.'s clothing and touched her genitals, acts which impaired her physical, psychological and moral development. The applicant was acquitted of the remaining charges.

45. The applicant was sentenced to three years and six months' imprisonment. Taking into account the period already spent in pre-trial detention, he was to serve only a further four months in prison. The court ordered that the preventive measure in respect of the applicant be maintained until the judgment became final.

2. Appeal proceedings

46. On 31 July 2020 the prosecutor lodged an appeal against the judgment of the Petrozavodsk City Court. On 1 August 2020 the applicant's lawyer, Mr Anufriyev, who had represented him at first instance, also lodged an appeal.

47. On 16 September 2020 the appeals were scheduled to be examined by the Supreme Court of the Republic of Karelia. On 15 September 2020 Mr Anufriyev requested that the hearing be adjourned, noting that he was on sick leave until 28 September. He enclosed an order of the Chief Sanitary Doctor for the South-Western District of Moscow of 15 September 2020 placing him in a fourteen-day quarantine as a person with COVID-19.

48. On 16 September 2020 the judge of the Supreme Court of the Republic of Karelia requested the President of the Regional Bar Association to appoint another lawyer to represent the applicant at the hearing scheduled for 22 September 2020.

49. On 20 September 2020 Mr Anufriyev lodged a further request for the adjournment of the hearing pending the end of his isolation, referring to the emergency epidemiological situation. He submitted that the criminal case file comprised nineteen volumes containing complex material and that the newly

appointed lawyer would have only three days to study it, which would be insufficient to provide effective legal assistance.

50. On 22 September 2020 the Supreme Court of the Republic of Karelia held the appeal hearing with the applicant participating via video link and represented by the newly appointed lawyer, Mr Ch. The applicant challenged the latter's participation on the grounds of lack of trust and insufficient time for preparation. Mr Ch. supported the challenge, noting that the applicant had another contracted lawyer who had been handling the case since the first-instance trial. The court dismissed the challenge, observing, in particular, that the newly appointed lawyer had had three days to acquaint himself with the case file. The applicant also requested to participate in person, referring to his hearing impairment, but the court confined its examination to verifying the quality of the video link connection and rejected the request.

51. On the same date the Supreme Court of the Republic of Karelia ordered a new expert examination to determine whether the nine photographs of N. in which she appeared naked contained pornographic elements, in view of the contradiction between the expert reports of 9 January 2017 (see paragraph 17 above) and of 11 December 2017 (see paragraph 28 above). The applicant objected to the ordering of the new expert report.

52. On 26 September 2020 a group of experts based in Petrozavodsk issued a new expert opinion concluding that the nine photographs in question contained pornographic elements.

53. On 29 September 2020 the Supreme Court of the Republic of Karelia held a further appeal hearing, with the applicant participating via video link. The applicant again sought an adjournment on the grounds that Mr Anufriyev's sick leave had been extended, and he reiterated his challenge to the participation of Mr Ch. on the basis of lack of trust. Mr Ch. supported the challenge, but the court dismissed it, referring to Article 50 of the Code of Criminal Procedure, which allows the appointment of counsel where the contracted lawyer has not appeared within five days and the accused has not engaged another lawyer.

54. By its judgment of 29 September 2020 the Supreme Court of the Republic of Karelia quashed the judgment of 22 July 2020. It found the applicant guilty of sexually assaulting N. and sentenced him to thirteen years' imprisonment in a penal colony, together with one and a half years' restriction of liberty. Relying, in particular, on the new expert opinion of 26 September 2020, the appellate court remitted the remaining part of the case concerning the charges under Articles 135 §§ 1 and 3, 222 § 1 and 242.2 § 2 (c) of the Criminal Code to the Petrozavodsk City Court for re-examination by a newly composed bench. The appellate court also extended the applicant's pre-trial detention for a further two months, until 28 November 2020, without adducing any new grounds.

55. On 28 October 2020 a medical examination established that the applicant had chronic hearing loss of the first degree, corresponding to approximately 30% loss.

56. The applicant lodged a cassation appeal against the appeal judgment. On 16 February 2021 the Third Court of Cassation upheld the judgment. The applicant's arguments concerning the lack of effective legal assistance and the refusal of his request to attend the appeal hearing in person were dismissed without further reasoning.

57. On 12 October 2021 the Supreme Court of the Russian Federation dismissed the applicant's further cassation appeal. The conviction for the sexual assault of N. thereby became final.

58. In the third round of proceedings, on 27 December 2021 the Petrozavodsk City Court convicted the applicant on the remaining charges and imposed a cumulative sentence of fifteen years' imprisonment. This judgment was upheld by the appellate and cassation courts on 15 March 2022 and 17 January 2023 respectively.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

59. For the relevant provisions and domestic practice concerning pre-trial detention, see *Zherebin v. Russia*, no. 51445/09, §§ 16-25, 24 March 2016.

60. Article 50 of the Code of Criminal Procedure entitles a defendant to choose and retain a lawyer as paid counsel. An investigator, prosecutor or court should provide a suspect or accused with counsel upon request or, failing that, a counsel may be appointed under Article 51 of the Code. In particular, Article 50 § 3 of the Code, as in force at the relevant time, provided that if the retained defence counsel failed to appear within five days of the request to invite counsel, the investigator, inquiry officer or court was entitled to propose that the suspect or accused invite another defence counsel. If he refused, measures could be taken to appoint a defence counsel in accordance with the procedure established by the Council of the Federal Chamber of Advocates.

II. RELEVANT INTERNATIONAL AND EUROPEAN MATERIAL

A. United Nations

61. In their statement of 1 February 2021, several UN human rights experts published a joint statement expressing serious concern that the criminal proceedings against the applicant were politically motivated and aimed at silencing and discrediting his work on uncovering Stalin-era mass executions, particularly after he was compelled to replace his chosen lawyer

with a State-appointed counsel. They called on the Russian authorities to ensure that the charges were examined in good faith and in full compliance with fair-trial guarantees, including the right to legal assistance of one's own choosing.

B. Council of Europe

62. On 30 September 2020 the Commissioner for Human Rights of the Council of Europe made a statement expressing serious concern that the thirteen-year sentence imposed on the applicant, following his earlier acquittal on the same charges and delivered in the absence of his chosen legal counsel, raised serious doubts as to the credibility of his prosecution and fairness of the proceedings. The Commissioner considered that the judgment illustrated judicial harassment aimed at discrediting the applicant for his legitimate human rights and historical work and called on the Russian authorities to ensure full compliance with fair-trial guarantees in his case.

C. European Union

63. In a statement issued on 30 September 2020, the European Union stated that the judgment of 29 September 2020 increasing the applicant's sentence to thirteen years' imprisonment, after he had already spent more than three years in detention, raised serious concerns and was linked to his human rights work and research on Soviet-era repression. It described the judgment as "unsubstantiated and unjust" and called for the applicant's immediate and unconditional release, including on humanitarian grounds.

THE LAW

I. PRELIMINARY ISSUES

64. The Court observes that the applicant's pre-trial detention and the first and second sets of criminal proceedings, which gave rise to the alleged violations of the Convention, occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), no. 2134/23 and 6 others, §§ 60-70, 6 June 2023).

65. The Court further notes that the Government, by failing to submit any written observations in the present case, manifested an intention to abstain from participating in its examination. However, the cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's

failure to engage in the proceedings cannot constitute an obstacle to the examination of these cases (Rule 44C of the Rules of Court; see also *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 25-27, 28 April 2023; *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023; and *Glukhin v. Russia*, no. 11519/20, §§ 42-43, 4 July 2023).

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

66. The applicant complained that his arrest and pre-trial detention had not been based on a "reasonable suspicion" that he had committed criminal offences, in breach of Article 5 § 1 (c). He also complained that the domestic courts had failed to provide "relevant and sufficient reasons" for the duration of his pre-trial detention, contrary to Article 5 § 3 of the Convention. Article 5 of the Convention, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Alleged breach of Article 5 § 1 of the Convention

67. The applicant alleged that his initial detention in December 2016 on charges of producing child pornography was not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention. He argued that the photographs of N. had been taken solely to document her physical development for custody officials, did not depict sexualised poses, and involved no sexual abuse. In his view, he could not reasonably have foreseen criminal liability for such conduct, as the decisive element distinguishing pornographic images of a child from non-pornographic ones was the sexual purpose of their production, which he maintained was absent in his case.

68. The Court reiterates that the requirement of a "reasonable suspicion" under Article 5 § 1 (c) does not entail proof that an offence has been committed, nor does it require that the authorities be able, at the time of the

arrest, to determine with certainty the correct legal classification of the facts. It presupposes the existence of facts or information capable of satisfying an objective observer that the person concerned may have committed an offence. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 314-15, 22 December 2020, with further references).

69. In the present case, the applicant's arrest followed the opening of a criminal case after the police had received an anonymous letter alleging that he had taken nude photographs of his minor daughter, accompanied by two such photographs. In the course of the ensuing preliminary inquiry, a search of the applicant's flat and the seizure of his computer revealed a large number of photographs of the child, some of which depicted her naked. The applicant did not dispute having taken and stored those photographs (see paragraphs 9-12 above).

70. Having regard to the quantity and nature of the material discovered, the age of the child, and the fact that the photographs were taken and retained by a person exercising parental authority, the Court considers that the authorities had at their disposal objective elements capable of giving rise to a reasonable suspicion that the facts in question had indeed occurred and could reasonably be regarded as falling within the scope of the relevant criminal provisions, namely Article 242.2 of the Criminal Code (see paragraphs 13 and 14 above; compare *Yaygin v. Turkey* (dec.), no. 12254/20, § 46, 16 February 2021). At this preliminary stage, the existence of a reasonable suspicion did not depend on a definitive assessment of the applicant's intent to take photographs for sexual purposes or on a final determination of whether the images were pornographic in nature. The facts giving rise to suspicion were not required to reach the level necessary to justify charges or a conviction; it was sufficient that they were capable of satisfying the threshold that the arrested person was reasonably suspected of having committed the alleged offence (see *Selahattin Demirtaş*, cited above, § 319).

71. Accordingly, the Court finds that, in the circumstances of the present case, the applicant's arrest and initial detention were based on a reasonable suspicion within the meaning of Article 5 § 1 (c) of the Convention. This part of the complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged lack of relevant grounds justifying pre-trial detention under Article 5 § 3 of the Convention

1. Admissibility

72. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) **Submissions by the applicant**

73. The applicant submitted that during both periods of detention (from December 2016 to January 2018 and from June 2018 to September 2020) the domestic courts had failed to provide "relevant and sufficient" reasons. In his view, the courts merely repeated abstract references to the gravity of the charges and the risks of absconding or exerting pressure on N., without identifying concrete circumstances supporting those risks. Moreover, the courts did not give proper consideration to alternative measures of restraint, such as house arrest.

74. As regards the second period of detention, the applicant contended that the domestic courts' reliance on his alleged breach of the undertaking not to leave his place of residence as a ground for placing him in detention rendered those decisions arbitrary, as they were not based on clear domestic rules. He argued, in particular, that Article 102 of the Code of Criminal Procedure did not clearly specify the situations in which a person was required to seek prior permission before travelling, thereby making the restriction unforeseeable.

75. Lastly, the applicant submitted that the domestic authorities had acted in bad faith, referring in particular to the expert opinion of 9 January 2017 (see paragraph 17 above), which was later excluded from evidence at trial. He argued that his continued detention based on such evidence was arbitrary.

(b) **The Court's assessment**

76. The relevant principles concerning the length and the justification of pre-trial detention under Article 5 § 3 of the Convention are set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 87-91, 5 July 2016), and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222-25, 28 November 2017).

77. In particular, the authorities must provide "relevant and sufficient" reasons for continued detention and display "special diligence" in the conduct of proceedings (see *Romanova v. Russia*, no. 23215/02, § 125, 11 October 2011). The gravity of the charges cannot in itself serve as a justification for lengthy detention (see *Khudoyorov v. Russia*, no. 6847/02, § 180, ECHR 2005-X (extracts)). The authorities must also consider less intrusive

measures, and their failure to do so weighs against the justification for continued detention (see *Idalov v. Russia* [GC], no. 5826/03, §§ 140 and 148, 22 May 2012).

(i) The first period of pre-trial detention

78. The applicant was arrested on 13 December 2016 and released under the undertaking not to leave his place of residence on 28 January 2018. The period under consideration therefore amounts to one year and one and a half months (see *Kovyazin and Others v. Russia*, nos. 13008/13 and 2 others, § 75, 17 September 2015).

79. The Court has already found that the applicant's arrest and initial detention were based on a reasonable suspicion within the meaning of Article 5 § 1 (c) of the Convention, and it accepts that such suspicion persisted throughout the first round of the criminal proceedings leading to his conviction (see *Kovrov and Others v. Russia*, nos. 42296/09 and 4 others, § 91, 16 November 2021). However, while the persistence of reasonable suspicion remains a necessary condition for continued detention, it is not in itself sufficient; once the authorities review the detention, they must also give other "relevant and sufficient" grounds to justify its prolongation. Those other grounds may include, in particular, a risk of flight, a risk of pressure being brought to bear on witnesses or of evidence being tampered with, a risk of collusion, or a risk of reoffending. It is essentially on the basis of the reasons set out in the decisions of the national judicial authorities concerning the applicant's pre-trial detention, and of the arguments made by the applicant in his requests for release or appeals, that the Court is called upon to decide whether there has been a violation of Article 5 § 3 of the Convention (see *Merabishvili*, cited above, §§ 222-25).

80. The Court will now examine the decisions extending the applicant's detention, after the initial decision to place the applicant in pre-trial detention was taken by the Petrozavodsk City Court (see paragraph 14 above). In those decisions, the domestic courts relied on three grounds: the gravity of the charges, the applicant's administrative convictions, and the risk of his exerting pressure on the victim (see paragraphs 21, 22 and 26 above). The courts did not identify any specific facts supporting a real risk of absconding or interference with the investigation.

81. As to the alleged risk of exerting pressure on the victim, the Court notes that N. had been removed from the applicant's care shortly after his arrest and placed with her grandmother some 600 kilometres away (see paragraph 15 above). The domestic courts did not assess whether, in these circumstances, the applicant had any realistic means or intention to influence her.

82. As regards the applicant's administrative convictions, the domestic courts did not specify what offences he had committed or explain how these minor infractions increased the risks of absconding or reoffending in the

context of criminal proceedings. While previous convictions may, in certain circumstances, be relevant to the assessment of the risk of reoffending (see *Shenoyev v. Russia*, no. 2563/06, § 50, 10 June 2010), the courts failed to demonstrate how the applicant's administrative record justified his continued detention (see *Aleksey Makarov v. Russia*, no. 3223/07, § 51, 12 June 2008).

83. Furthermore, the extension orders relied on standard formulae and did not reflect an individualised assessment of the applicant's situation or a genuine reassessment of whether his continued detention remained necessary. The domestic courts did not engage with the evolution of the proceedings, including the completion of the key investigative steps, and confined themselves to reiterating the grounds relied upon at the outset. Their decisions do not disclose any analysis as to whether detention continued to serve a legitimate aim at the later stages of the proceedings. Moreover, despite the defence's repeated requests, the courts did not examine whether less intrusive measures, such as house arrest, could have sufficed (see paragraphs 22 and 21 above). Such automatic reasoning falls short of the requirements of Article 5 § 3 (see *Buzadji*, cited above, § 122). Accordingly, the domestic courts failed to provide "relevant and sufficient" reasons to justify the applicant's continued detention.

84. There has therefore been a violation of Article 5 § 3 of the Convention in respect of the detention from 13 December 2016 to 28 January 2018.

(ii) The second period of pre-trial detention

85. The applicant was arrested on 27 June 2018 on charges of sexual assault and remained in custody until 29 September 2020, when the Supreme Court of the Republic of Karelia delivered the appeal judgment convicting him. The Court notes that the applicant did not raise a complaint concerning the alleged lack of "reasonable suspicion" in connection with this second period, but challenged the quality of the domestic courts' reasoning in their decisions to order and extend his detention (see paragraphs 73 and 74 above). This complaint falls to be examined under Article 5 § 3. Having found above a violation of that provision in respect of the detention from 13 December 2016 to 28 January 2018, the Court considers it unnecessary to examine separately whether the applicant's detention during the subsequent period also complied with the requirements of Article 5 § 3 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

86. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that the overall fairness of the second round of the criminal proceedings had been impaired. In particular, he alleged that he had been unable to participate effectively in the appeal hearing conducted by video link

or to challenge the evidence presented, and that he had been deprived of effective legal assistance of his own choosing during that hearing. Article 6 of the Convention in the relevant parts reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing ..."

A. Admissibility

87. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the applicant

88. The applicant submitted that the appointment of Mr Ch., designated by the appellate court to replace his chosen lawyer, resulted in ineffective legal assistance. He emphasised that Mr Anufriyev had represented him since 2016 and was thoroughly familiar with the case. By contrast, Mr Ch. had only a few days to study a complex case file comprising nearly twenty volumes, which he reportedly reviewed within twenty-two hours. The applicant further noted that Mr Ch. had never visited him in the pre-trial detention facility and that, at the hearing, his submissions were limited to endorsing the applicant's objections rather than providing an informed analysis of the evidence.

89. Secondly, the applicant argued that he was unable to participate effectively in the appeal hearing. He suffered from a 30% hearing loss, and the sound quality of the video transmission was poor. His repeated requests to appear in person were dismissed without reasons, despite the pre-trial detention facility being located only a short distance from the courthouse. During the hearing he had to ask the judges to repeat their statements, as their masks and the transmission impeded his ability to hear.

90. Lastly, the applicant maintained that he could not effectively challenge the appellate court's decision to obtain an additional expert report of its own motion. He contended that he was not given adequate time to study the new report and that Mr Ch. failed to request the experts' attendance for examination. The new report contradicted an earlier expert opinion finding no pornographic elements in the nine photographs and was relied upon by the appellate court as the basis for remitting the charges of producing pornography for fresh examination.

2. The Court's assessment

(a) **General principles**

91. The relevant general principles and the applicable test concerning the right to a lawyer of one's own choosing were recently summarised in *Elif Nazan Şeker v. Turkey*, no. 41954/10, §§ 42-45, 8 March 2022.

In particular, the right to be defended by a lawyer of one's own choosing is an important safeguard of a fair trial, but it is not absolute and may be subject to limitations. Such limitations are permissible only where the authorities demonstrate "relevant and sufficient" reasons for overriding the accused's preference, failing which the Court must assess whether the restriction adversely affected the overall fairness of the proceedings. In making that assessment, the Court may have regard to the nature of the proceedings and the applicable professional requirements; the circumstances of counsel's designation and any opportunity to challenge it; the effectiveness of the assistance provided; the accused's age and other relevant factors (ibid.).

(b) **Application of the principles to the present case**

92. The Court observes at the outset that the appeal proceedings before the Supreme Court of the Republic of Karelia were of decisive importance for the applicant. The appellate court, empowered to review the case, ultimately quashed the first-instance judgment, ordered a new expert examination, and replaced the sentence of three and a half years imposed by the first instance court with a term of thirteen years' imprisonment, together with a period of restriction of liberty (see paragraph 54 above). In these circumstances, the guarantees of Article 6 §§ 1 and 3 (c) were fully applicable at the appellate level and assumed particular weight (see *Twalib v. Greece*, 9 June 1998, § 46, *Reports of Judgments and Decisions* 1998-IV, and *Volkov and Adamskiy v. Russia*, nos. 7614/09 and 30863/10, § 53, 26 March 2015).

93. The Court notes that the applicant was represented throughout the first-instance proceedings and at the initial stage of the appeal by the lawyer of his choice, Mr Anufriyev, who was familiar with the voluminous case file (see paragraphs 46 and 49 above). In September 2020 Mr Anufriyev submitted medical documents demonstrating that he was on sick leave and subject to a period of mandatory isolation due to COVID-19. He twice requested an adjournment, emphasising both the complexity of the case and the impossibility for any replacement lawyer to prepare effectively within the limited time available (see paragraphs 47 and 49 above).

94. Instead of adjourning the hearing as requested, the judge applied Article 50 of the Code of Criminal Procedure and asked the Regional Bar Association to appoint another lawyer (see paragraphs 48 and 50 above). The Court observes, however, that the conditions for the appointment of defence counsel, as set out in the Code of Criminal Procedure (see paragraph 60 above), were not complied with. Mr Anufriyev did not "fail to appear" but

requested the appellate court to postpone the hearing for two weeks in view of his sick leave and mandatory isolation. Despite that request, the court appointed Mr Ch., who had only a few days to review nineteen volumes of case material and had never met the applicant. Both he and the applicant challenged his participation on grounds of lack of trust and insufficient preparation time, yet the Supreme Court of the Republic of Karelia dismissed the challenge in a purely formal manner, referring only to Article 50 and to the fact that Mr Ch. had had three days to acquaint himself with the case file.

95. The Court is not convinced that, in such circumstances, overriding the applicant's choice of counsel was necessary in the interests of justice, as several relevant factors were not taken into account. First, the domestic court failed to take into account the unprecedented and highly sensitive context, in which States were required to adopt urgent measures to mitigate the impact of the pandemic, such as mandatory isolation of positive-tested persons (see, *mutatis mutandis*, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 162-63, 27 November 2023, and *Terheş v. Romania* (dec.), no. 49933/20, §§ 43-45, 13 April 2021). Second, the court disregarded the applicant's explicit objections based on lack of trust in the newly appointed lawyer, which were exacerbated by the fact that he participated in the hearing remotely and could communicate with his lawyer only via video link, an arrangement which itself required heightened safeguards (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 102-04, 2 November 2010). Third, the domestic court did not consider the applicant's repeated references to his hearing impairment, a factor which was clearly relevant to the effectiveness of his communication with the counsel in a remote setting.

96. Moreover, the appellate court did not consider any alternative measures, such as adjourning the hearing until the end of Mr Anufriyev's isolation period. This is particularly striking, given that the court itself had ordered an additional expert examination and was obliged to await its results before proceeding. Accordingly, the Court concludes that the appellate court did not demonstrate relevant and sufficient grounds for overriding the applicant's choice of legal representation. It must therefore consider whether the proceedings, viewed as a whole, remained fair.

97. The Court attaches particular weight to the fact that the Supreme Court of the Republic of Karelia ordered a fresh expert examination of the photographs and later relied on that expert report as part of the basis for quashing the first-instance judgment and remitting the charges on producing pornography, on which the applicant had earlier been acquitted, for fresh examination (see paragraphs 51-54 above). At this decisive moment, the applicant was not represented by his chosen lawyer, who possessed detailed knowledge of the case, but by a replacement counsel who had extremely limited time to prepare and whose involvement appears to have been largely formal. Moreover, the expert report was produced only two days before the

final appeal hearing, leaving the applicant with very little time to study it and prepare his defence.

98. Furthermore, the applicant participated in both appeal hearings by video link despite suffering from medically documented hearing loss of approximately 30%. He brought his hearing difficulties to the attention of the appellate court (compare and contrast *Grigoryevskikh v. Russia*, no. 22/03, § 86, 9 April 2009). Yet his requests to appear in person were rejected without reasons, even though the pre-trial detention facility was located in the same city as the courthouse. No special arrangements were made to compensate for his impairment, which was further aggravated by the obligatory mask-wearing requirement for the judges during the hearing.

99. These shortcomings, which occurred at a decisive stage, when the appellate court fully reviewed the case, and fundamentally altered the applicant's legal position, and which were not remedied on cassation review (see paragraphs 56-57 above) adversely affected the applicant's defence rights to such an extent as to undermine the overall fairness of the criminal proceedings (see *Dvorski v. Croatia* [GC], no. 25703/11, § 82, ECHR 2015).

100. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

101. As regards the applicant's complaint concerning the conduct of the appeal hearing by video link, it largely overlaps with the complaint concerning the lack of effective legal assistance at the appeal hearing. Given the finding above that there has been a breach on account of the latter, the Court does not consider it necessary to examine separately the question whether the applicant's participation in the appeal hearing by video link complied with Article 6 of the Convention (see *Ichetovkina and Others v. Russia*, nos. 12584/05 and 5 others, § 45, 4 July 2017).

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 5 AND 6

102. The applicant alleged that his pre-trial detention and prosecution were politically motivated and pursued the ulterior purpose of punishing him for his work and involvement with International Memorial. 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

103. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the applicant

104. The applicant argued that he had been prosecuted on account of his professional activities aimed at uncovering "Russia's bitter past", in particular the atrocities and State-sponsored terror committed against its own citizens. He submitted that, for the past two decades, the authorities had sought to downplay the scale of Soviet-era repressions, including by attempting to attribute the Sandarmokh executions to the Finnish army, whereas his public stance contradicted the official narrative.

105. The applicant maintained that the criminal proceedings formed part of a broader campaign to eliminate Memorial, its members and employees, as well as other international and domestic NGOs perceived as disloyal to the Russian authorities. He further submitted that, following the full-scale invasion of Ukraine in 2022, the crackdown on human rights groups had intensified, with the apparent aim of eradicating public dissent.

106. Furthermore, the applicant relied on public statements by UN human rights experts, the Commissioner for Human Rights of the Council of Europe and the European Union, who expressed serious concern about the fairness of the proceedings against him and suggested that his prosecution was linked to his human rights and historical work (see paragraphs 61-63 above). He further referred to the fact that Memorial recognised him as a political prisoner in 2017.

2. The Court's assessment

(a) **General principles**

107. The Court refers to the general principles concerning the interpretation and application of Article 18 of the Convention as set out by the Grand Chamber in *Merabishvili* (cited above, §§ 287-317) and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018).

(b) **Application of the principles to the present case**

108. Turning to the circumstances of the present case, the Court notes at the outset that the applicant perceived his prosecution and continued pre-trial detention as politically motivated. However, the Court applies its usual approach to proof when dealing with complaints under Article 18 of the Convention and reiterates that the Convention does not confer a right as such not to be criminally prosecuted (see *Merabishvili*, cited above, §§ 310 and 320). In the present case, the Court has found above that although the applicant's initial detention was based on a "reasonable suspicion" in the meaning of Article 5 § 1 (c), there have been violations of Article 5 § 3 in respect of the lack of relevant grounds justifying his continued detention

throughout the first set of criminal proceedings and of Article 6 of the Convention on account of the breach of the applicant's right to legal assistance of his own choosing.

109. It is also true that, where allegations of an ulterior purpose behind a criminal prosecution are raised, it is hard to divorce the pre-trial detention from the criminal proceedings in which it occurs (see *Merabishvili*, cited above, § 320). The Court further emphasises that, in its examination under Article 6, it was not called upon to determine whether the criminal proceedings themselves pursued any ulterior purpose; that question falls to be examined in the context of the present complaint. The Court must therefore assess whether the factors which, according to the applicant, indicated that his pre-trial detention and criminal trial were intended to punish him for his active membership in Memorial and human rights work are sufficient, whether considered individually or cumulatively, to establish the allegation that there was an identifiable ulterior purpose.

110. In this connection, the Court observes that, at the initial stages of the proceedings, the investigation materials, such as the photographs of N., the applicant's statements, the expert report of January 2017 and other evidence, were capable of supporting a reasonable suspicion, within the meaning of Article 5 § 1 of the Convention, that the applicant had committed the alleged offences. As established by the Court in its assessment under Article 5 § 1, that suspicion was not based on mere conjecture or abstract allegations but concrete evidentiary elements available to the investigating authorities and reviewed by the domestic courts (see paragraph 70 above). Having regard to the nature of the charges, which appeared genuine and not overtly political, the Court does not discern elements suggesting that the proceedings were instituted for a purpose unrelated to the prosecution of ordinary criminal offences (see *Ugulava v. Georgia*, no. 5432/15, § 130, 9 February 2023). The domestic courts examined several distinct sets of charges, ordered further expert examinations, and repeatedly reviewed the lawfulness of the applicant's pre-trial detention. Taken as a whole, these procedural steps reflected the ordinary conduct of a criminal investigation and judicial review.

111. More importantly, the Court notes that the domestic courts, albeit in concise terms, relied on grounds recognised under Article 5 § 3, such as possibility of pressure being exerted on N. at a time when she had not yet been questioned (see paragraphs 14 and 40 above). They also examined newly submitted expert materials, including the expert report of September 2020, and altered the legal characterisation of the acts following the appeal hearing of 29 September 2020 (see paragraph 54 above). The Court finds no indication that these judicial decisions were driven by an ulterior purpose rather than by considerations linked to the examination of the criminal case.

112. The applicant relied heavily on the overall duration of his detention and on what he viewed as insufficient reasoning by the domestic courts. However, even if the Court has identified shortcomings in the domestic

courts' justification for extending the detention under Article 5 § 3 (see paragraph 84 above), this does not automatically imply that the authorities acted with an improper motive. In particular, the Court reiterates that deficiencies in the reasoning of detention orders, or even a finding of a violation of Article 5, do not in themselves suffice to establish a breach of Article 18. The material before the Court does not disclose a pattern of conduct comparable to situations in which the criminal justice system was used to silence or neutralise individuals (see, for example, *Ukraine v. Russia (*re *Crimea)* [GC], nos. 20958/14 and 38334/18, § 1375, 25 June 2024; *Kavala v. Turkey*, no. 28749/18, §§ 220-32, 10 December 2019; *Navalnyy* [GC], cited above, § 172; and *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 137-44, 22 May 2014). Applying its usual approach to the assessment of evidence, the Court cannot conclude that the applicant's arrest and detention pursued an ulterior purpose incompatible with Article 5 (see *Merabishvili*, cited above, §§ 309-17, and *Melia v. Georgia*, no. 13668/21, § 140, 7 September 2023).

113. The Court further notes that the case file contains no statements or interference by high-ranking public officials that would suggest an ulterior motive behind the applicant's detention or criminal conviction (compare *Sytnyk v. Ukraine*, no. 16497/20, § 153, 24 April 2025, and *Kutayev v. Russia,* no. 17912/15, § 140, 24 January 2023). The absence of such direct political involvement weighs against the applicant's allegation that the authorities sought to punish him for publicly contradicting the official narrative regarding Stalin-era repressions.

114. It is true that the applicant's detention and criminal prosecution prompted international bodies and observers to express concern and to suggest that the proceedings against him were politically motivated, in view of his well-known historical research and human rights activities. Those reactions were articulated against the broader background of a restrictive environment for civil society and independent historical inquiry in the respondent State, including the forced dissolution of Memorial-related organisations on the basis of minor and essentially formal violations (see *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, § 96, 22 October 2024). However, the Court must base its assessment on "evidence in the legal sense", in accordance with the criteria set out in *Merabishvili* (cited above), and on its own examination of the specific facts of the case (see *Kavala*, cited above, § 217). Accordingly, while the expressions of concern and criticism relied on by the applicant attest to the sensitivity of the context and to the perceptions held by certain observers, they do not, in the absence of concrete and converging factual elements, suffice to establish that a political or retaliatory purpose was pursued by the authorities with regard to the applicant's detention or prosecution (see *Melia*, cited above, § 140).

115. In sum, although certain aspects of the judicial reasoning regarding the applicant's pre-trial detention gave rise to a breach of Article 5, and some

shortcomings affecting the fairness of the proceedings were identified under Article 6 in respect of the appeal proceedings of September 2020, the various factors relied upon by the applicant do not form a sufficient basis for the Court to conclude that his detention or criminal trial pursued a purpose not prescribed by the Convention (compare *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 246, 13 April 2021).

116. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 18 of the Convention taken in conjunction with Article 5 or Article 6.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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."

118. The applicant claimed compensation for non-pecuniary damage in an amount to be determined by the Court. He did not claim compensation in respect of costs and expenses.

119. The Government did not submit comments.

120. In light of the circumstances of the case, and making its assessment on an equitable basis as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT

1. *Holds,* unanimously, that it has jurisdiction to deal with the applicant's complaints and that the Government's failure to participate in the proceedings presents no obstacles to the examination of the case;

2. *Declares*, unanimously, the complaints under Article 5 § 3, Article 6 §§ 1 and 3 (c), and Article 18 of the Convention taken in conjunction with Articles 5 and 6 admissible, and the remainder of the application inadmissible;

3. *Holds*, unanimously, that there has been a violation of Article 5 § 3 of the Convention in respect of the first period of the applicant's pre-trial detention;

4. *Holds*, unanimously, that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the breach of the applicant's right to legal assistance of his own choosing;

5. *Holds*, unanimously, that there has been no violation of Article 18 of the Convention taken in conjunction with Articles 5 and 6 of the Convention;

6. *Holds*, by six votes to one, that there is no need to examine separately the remaining complaints under Articles 5 § 3 and 6 § 1 of the Convention;

7. *Holds,* unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 31 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Hüseynov is annexed to this judgment.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE HÜSEYNOV

1. There are two reasons that have prompted me to write this separate opinion. First, I respectfully disagree with the majority's finding that there is no need to examine the applicant's complaint under Article 5 § 3 of the Convention in respect of the second period of his pre-trial detention. Second, I adopt a different line of reasoning when examining the complaint under Article 18 of the Convention.

2. As regards the complaint under Article 5 § 3, it is apparent from the case file that the applicant was placed in pre-trial detention during two distinct periods, on different charges:

(a) First period (15 December 2016 – 28 January 2018)

The applicant was placed in pre-trial detention primarily on charges of producing child pornography, pursuant to Article 242.2 § 2 (c) of the Criminal Code of the Russian Federation ("the Criminal Code"). He was released on the last-mentioned date subject to an undertaking not to leave his place of residence without permission.

(b) Second period (28 June 2018 – 29 September 2020)

The applicant was placed in pre-trial detention on reasonable suspicion of having committed sexual assault against a minor under the age of fourteen, pursuant to Article 132 § 4 (b) of the Criminal Code, *and* on account of his breach of the above-mentioned undertaking.

3. In his application to the Court, the applicant explicitly complained of a violation of Article 5 § 3 in respect of *both periods of pre-trial detention*, submitting that in both instances the domestic courts had failed to provide relevant and sufficient reasons. Having found a violation of that provision in respect of the first period of pre-trial detention, the majority, relying on the so-called "*Câmpeanu* formula", have "consider[ed] it unnecessary to examine separately whether the applicant's detention during the subsequent period also complied with the requirements of Article 5 § 3 of the Convention" (see paragraph 85 of the judgment).

4. I find it difficult to see any reasonable justification for this approach. As I emphasised above, the applicant's complaints under Article 5 § 3 concern two different periods of pre-trial detention which were based on different criminal charges. Furthermore, the second period of pre-trial detention raised a distinct legal issue, namely whether the applicant's non-compliance with the undertaking not to leave his residence constituted a sufficient reason to justify his continued detention, which lasted for over two years.

5. If one were to "transpose" the majority's approach and logic, for example, to a complaint under Article 3 of the Convention concerning inadequate conditions of detention in different detention facilities, it would then suffice for this Court to limit its assessment to only one of those facilities, and to conclude that, having found a violation in respect of the conditions in that facility, there was no need to examine the conditions in the remaining facilities. I have no doubt that such an outcome would be at odds with the Court's duty to examine individual applications and to take a final decision in relation to them.

6. Having said that, I, of course, accept that the Court may, in certain circumstances, decide not to examine certain complaints. I do not intend to develop that point further here. For the purposes of the present case, it suffices to note that, owing to the particular circumstances outlined above, the case can readily be distinguished from those in which the Court may decide "not to examine complaints which fully, or to some extent, overlap with complaints which it has already examined because they relate to the same facts, and concern issues which are part of – and are thus absorbed by – the broader issues already examined" (see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, § 225, 11 December 2025).

7. Thus, and for the reasons set out below, I consider that there has also been a violation of Article 5 § 3 in respect of the second period of the applicant's pre-trial detention.

8. This period of the applicant's detention was extended several times and lasted all together for two years and three months. When prolonging it, the domestic courts relied mainly on the gravity of the charges and on general references to the risks of absconding or exerting pressure on the victim. As regards the risk of absconding, the domestic courts repeatedly referred to the applicant's initial unauthorised journey, without explaining why or how that factor continued to pose a real risk throughout the ensuing two years. They did not assess the applicant's personal circumstances or his conduct after his arrest (see *Becciev v. Moldova*, no. 9190/03, § 58, 4 October 2005), and their reasoning remained purely formal and unsubstantiated.

9. As regards the alleged risk of pressure on the victim, the Court has previously accepted that such a risk may exist at the early stages of the proceedings but diminishes as they progress and statements are taken (see *Merčep v. Croatia*, no. 12301/12, § 89, 26 April 2016). In the present case, this ground may have been relevant in extending the applicant's detention on 18 December 2018 and 6 March 2019, when N., his adopted daughter, had not yet been questioned at trial (see paragraph 43 of the judgment). However, once she had given her statements, that risk became progressively less pertinent, and the domestic courts failed to explain how the applicant could realistically have influenced her thereafter.

10. In sum, when prolonging the applicant's detention during the second period, the domestic courts did not carry out any meaningful reassessment of

the necessity of his continued detention. They did not engage with the evolution of the case, including the fact that the key investigative steps had already been completed, and confined themselves to reiterating the grounds relied upon at the outset. Their decisions do not disclose any analysis as to whether the continued detention still served a legitimate aim at the later stages of the proceedings. In addition, although the defence repeatedly requested the application of less restrictive measures, the courts did not explain why alternatives such as house arrest would not have been adequate.

11. The above considerations are sufficient to conclude that, although the applicant's initial detention in June 2018 may have been justified, the domestic courts failed thereafter to advance relevant and sufficient reasons for its continuation and did not examine the possibility of less restrictive measures.

12. As far as the applicant's complaint under Article 18 is concerned, I accept that, in the light of the material before it, the Court is unable to find a violation of that provision in conjunction with Article 5 or 6. However, I respectfully disagree with the manner in which the majority has reached that conclusion.

13. In *Merabishvili v. Georgia* ([GC], no. 72508/13, § 292, 28 November 2018), when dealing with the interpretation and application of Article 18, the Court noted that a Convention right could be restricted solely for a purpose which was not prescribed by the Convention, but a restriction could also be applied both for an ulterior purpose and a purpose prescribed by the Convention; in other words, it might pursue a plurality of purposes. In the latter scenario, the Court distinguished between cases in which the prescribed purpose was the one that truly actuated the authorities, though they also wanted to gain some other advantage, and cases in which the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts (ibid., § 303).

14. In my view, the examination of the applicant's complaint under Article 18 should have proceeded on the basis that the restriction pursued a plurality of purposes. Unlike the majority, I consider that alongside the purpose prescribed by the Convention (namely, the existence of a reasonable suspicion), the evidence in the case file suggests that the restrictions of the applicant's liberty and his fair-trial rights were also applied for an ulterior purpose, that is, to punish him for his work and involvement with International Memorial, and in particular, for his professional activities uncovering in Sandarmokh, in the Republic of Karelia, mass graves of victims executed during the Stalin regime.

15. In that connection, it is of relevance that the applicant has headed the Karelia Regional Branch of the Memorial Human Rights Centre since 2014. The applicant's detention and criminal prosecution cannot be seen in isolation but must be viewed as part of the broader campaign in Russia against

Memorial and civil society in general. Notably, several Memorial-related organisations have been designated as "foreign agents" and forcibly dissolved (see *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, § 96, 22 October 2024; see also *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022).

16. It cannot be overlooked that in January 2017, just a few weeks after the applicant's arrest, the State-funded television channel Russia24 broadcast a documentary about International Memorial. The programme aired photographs of the applicant's adopted daughter, taken from his criminal case file, and suggested that Memorial's staff were immoral individuals involved in disseminating child pornography. In his observations to the Court, the applicant submitted that he had been called "a paedophile" and that the complaint about the publication of the photographs along with the request to launch an investigation into using materials from a closed criminal case had been dismissed.

17. The applicant also submitted that the Russian authorities had tried to distort the historical realities by claiming that it was not victims of Stalin's "Great Terror", but rather Soviet prisoners of war who had been executed by the Finnish Army during the Second World War and buried in Sandarmokh. Furthermore, a large campaign had been organised in State-controlled media with the aim of instilling that idea.

18. Having said that, I am of the view that there is insufficient evidence before the Court to establish that the above-mentioned ulterior purpose was the predominant purpose for the restrictions of the applicant's right to liberty and right to a fair trial, and that the applicant's pre-trial detention and criminal prosecution were chiefly intended to punish him for his activities (see, *mutatis mutandis*, *Merabishvili*, cited above, § 332).