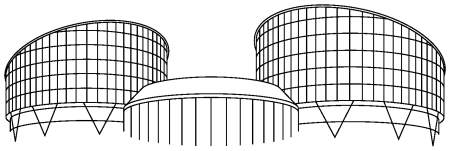

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PODESCHI v. SAN MARINO

(Application no. 66357/14)

JUDGMENT

STRASBOURG

13 April 2017

FINAL

18/09/2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Podeschi v. San Marino,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Ledi Bianku,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 66357/14) against the Republic of San Marino lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a San Marinese national, Mr Claudio Podeschi ("the applicant"), on 29 September 2014.

2. The applicant was represented by Mr A. Annetta, a lawyer practising in Florence, Italy. The San Marinese Government ("the Government") were represented by their Agent, Mr Lucio L. Daniele and their Co-Agent Mr Guido Bellatti Ceccoli.

3. The applicant alleged that he had suffered a violation of Articles 3 and 5 §§ 3 and 4 of the Convention in connection with his pre-trial detention.

4. On 10 July 2015 the complaints concerning Article 3 and Article 5 §§ 3 (trial within a reasonable time or release pending trial) and 4 (equality of arms) were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

5. The applicant was born in 1956 and lives in San Marino. He is a politician.

6. The applicant was the subject of an investigation related to two sets of criminal proceedings (nos. 769/12 and 184/14) which were eventually joined, in connection with the crimes of, *inter alia*, conspiracy and various acts of money laundering.

7. By a decision of 25 October 2012, relying on Articles 4 and 5 of Law no. 93 of 2008, the inquiring judge ordered that investigation file no. 769/12 be classified because that the existing representation of facts required further investigative steps, including urgent measures which could be prejudiced if the documents were not kept secret.

8. By a decision of 23 June 2014 the *Commissario della Legge*, in his capacity as inquiring judge, described over twenty-five pages the circumstances resulting from the investigations and informed the applicant (along with other suspects) of the charges against him. The charges were, (i) conspiracy (in connection with crimes related to money laundering) under Article 287 of the Criminal Code; (ii) various instances of money laundering in participation with others (Articles 50, 73 and 199 *bis* of the Criminal Code) for the movement of money through the San Marino Foundation For the Promotion of the Economy and Finances; and (iii) various instances of money laundering in participation with others for the movement of money between B. (a Swiss company) and C. (a company based in San Marino).

9. It appeared from the investigations that the applicant (and others) had illegally acquired large sums of money which they had transferred into certain named accounts, sometimes in cash or by cheque and sometimes through fictitious intermediary companies, in order to hide the money's criminal origins. The sums were then withdrawn and distributed to other entities, all traceable to the applicant. Furthermore, in order to hide the illicit origins of the money, other sums were transferred, hidden and replaced through other named companies, only to eventually be transferred to the applicant (and others) personally. The inquiring judge noted that those instances formed the basis of the second and third charge of money laundering. In particular, the factual circumstances, *inter alia*, suggested that there existed a criminal organisation made up of politicians, civil servants, entrepreneurs and bankers. The applicant appeared to have had a key role as a politician who had served in various posts and in the inquiring

judge's view he was particularly well placed to accumulate money which he then concealed behind various companies located in San Marino and abroad.

10. According to the inquiring judge the San Marino Foundation for the Promotion of the Economy and Finances (hereinafter "the Foundation"), which could be traced back to the applicant and was run by a person the applicant trusted, had been created specifically to further the aims of the criminal organisation. More than eleven million euros had been deposited but no trace of it could be found in the accounts. Discretion in the exercise of decision-making by political powers, as well as bureaucracy, gave the opportunity to "investors" to pay millions of euros in bribes to the Foundation in order for it to allow, for example, construction in areas identified by local plans as zones where development was forbidden. The investors knew the money would eventually get to the applicant, who was in a position to influence the approval of such projects, which could only come about by bending the rules. The inquiring judge observed that further investigations were necessary to understand the reasons behind a transfer into the Foundation of three million euros by a certain A.S., one million of which reached the applicant in cash.

11. The inquiring judge ordered that the applicant be arrested and detained on remand (*misura cautelare personale*) owing to a risk of his reoffending and tampering with evidence. The judge noted the substantial flow of money managed by the applicant, which was not compatible with his income. In view of the various evidentiary elements he concluded that it could be held with reasonable certainty that the financial transfers had been made in connection with the relations the applicant had with the co-accused, as a result of and during the time he had been a State representative. The evidence suggested that he had the ability to organise and benefit from adequate support to facilitate a further dispersion of funds, as a result of a mutual covering up with other associates, by means of the direct or indirect acquisition of the management of economic activities and of positions in public office in order to obtain unjust profit and advantage. The seriousness of the applicant's particular conduct indicated his specific role in the organised criminal group. In addition, the speed with which certain transfers of millions of euros had taken place demonstrated the network of mutual assistance from which the applicant and the criminal organisation benefited and continued to benefit within the institutional and economic system in San Marino. According to the inquiring judge, the danger presented by the applicant had not diminished simply because he had quit public office. Indeed, in 2013 the applicant had sold an apartment, which had already been subject to leasing and payment for which had been made (*accreditati*) from Foundation funds, which showed that his contacts with the relevant entities remained in place. Furthermore, the inquiring judge considered that the systematic concealment of funds through fictitious payment descriptions

(*causali fittizie*), the use of frontmen (*prestanome*) and of shell companies (*societa schermo*) rendered the risk of tampering with evidence a real one. According to the inquiring judge, that risk persisted, given the evidence existing both in San Marino and abroad, because of the wide support network. That meant that less restrictive measures could not be considered as appropriate when trying to make sure that the applicant (and his co-accused) did not commit further acts of money laundering.

12. On the same day at 2.50 pm the applicant was taken to prison and placed in detention.

13. The applicant was informed on 24 June 2014 that he would appear for questioning before the inquiring judge on 25 June 2014 at 4 pm and that he could meet his legal representatives on the latter date at 3 pm.

14. On 24 June 2014, after requesting access to the relevant files, the applicant's legal representatives learnt that file no. 769/12 was partially classified and thus partially subject to non-disclosure. File no. 184/14 was entirely classified and could not be disclosed at all. The applicant noted that the index showed that the classified documents in file no. 769/12 which had been removed included (i) the initial notification by the Agency for Financial Information (hereinafter "the AIF"); (ii) a note by the same agency and explanatory documents; and (iii) pages 7-54 of Annex A to the AIF's initial notification.

15. Following a decision of the same day, the above-mentioned unclassified material in connection with file no. 769/12 was submitted to the applicant's representatives on the morning of the day of questioning. According to the applicant the information provided did not give sufficient grounds to substantiate the need for his detention.

16. On 25 June 2014 during questioning before the inquiring judge (*interrogatorio di garanzia*) the applicant availed himself of his right to remain silent. He complained of not being able to examine the investigative material, the short length of time he had been able to consult with his lawyer and of the delay in appearing before the judge.

B. The first set of decisions on the applicant's challenges

1. Proceedings before the Commissario (inquiring judge)

17. On the same day the applicant, *inter alia*, challenged his detention and complained that the term provided by law (six months which can be extended by another three months) for maintaining the secrecy of the investigation had expired because investigation file no. 769/12 had been classified on 25 October 2012. He asked the court to release him or to, at least, order a less restrictive measure and to declassify the relevant documentation.

18. On 26 June 2014 the inquiring judge rejected the applicant's requests. He considered that the fact that the applicant had not been allowed to consult some of the material related to the investigation before the end of the period of secrecy had not breached his rights. The expiry of the terms of Article 4 of Law no. 93/2008 (see relevant domestic law at paragraph 75 below) could also not result in the nullity of an order for detention on remand which had been duly justified and reasoned on the basis of the object of the proceedings pending against the applicant. Further, the relevant requirements and reasons justifying keeping him in detention remained, in particular the risk that the illegally acquired assets would be dispersed.

19. As to the applicant's inability to access all the relevant material, the judge noted that the decision ordering his detention had contained all the relevant information justifying the lawfulness of and the need for such detention. The need for secrecy served the interests of justice and had to be balanced against the applicant's interests. However, the applicant had been informed of the reasons for his detention in a way which enabled him to challenge it through the available means. Furthermore, access to further material was possible through other procedures that were available.

2. Proceedings before the Judge of Criminal Appeals

20. On 27 June 2014 the applicant reiterated his above-mentioned complaints and requests by means of an appeal (*reclamo*) under Article 56 of the Code of Criminal Procedure. He relied on various Articles of the Convention, and *inter alia* asked the court to take its decision solely on the basis of the documents which had been made available to him as the accused.

21. By an interim decision of the Judge of Criminal Appeals (*Giudice delle Appellazioni Penali*) of 30 June 2014, notified to the applicant's representatives on 1 July 2014, the court upheld the applicant's complaints in part.

22. It upheld the complaint about the non-disclosure of the documents, the content of which had served to justify his detention on remand given that the time-limit for classification of the file had expired. In connection with both files, in the text of its judgment the court considered that the applicant must be allowed access to such documents with the limited aim of allowing the applicant to be fully aware of the evidence already collected, especially that as a result of which the inquiring magistrate had ordered the applicant's arrest and detention. The operative part of the judgment did not refer to any limitations. The court set a five-day time-limit from that date for the submission of observations.

23. As to the applicant's ancillary complaint of a lack of relevant requirements for his detention, namely a reasonable suspicion against him (*insussistenza dei presupposti e delle condizioni richieste per l'applicazione della misura*), the court considered that the earlier decision had explained

the relevant facts which had shown the applicant's involvement in the crimes at issue. It also noted that a criminal origin for the sums at issue could be presumed owing to the methods used for their transfer. The latter was sufficient *fumus delicti* to justify the detention order, which was to be kept in place. It dismissed the remainder of the applicant's complaints and upheld the findings of the first-instance court.

24. Following the Judge of Criminal Appeal's decision, on 1 July 2014 the inquiring judge ordered the release to the applicant's legal representatives of certain specified documents and evidence collected in connection with files nos. 184/14 and 769/12. According to the applicant, on the same day, upon a request made by him to the court registry, he learnt that despite the appeal judge's order the relevant files had remained classified (file no. 184/14 had been partially declassified before the appeal judge's decision). According to the applicant none of the publicly available content in file no. 184/14 could in any way demonstrate the crime of conspiracy under Article 287, with which he had been charged. The Government submitted that it had been the legal representatives who had failed to find the relevant documents in the case file.

25. On 6 July 2014 the applicant submitted observations by the time-limit set by the Judge of Criminal Appeals in connection with the above claims. In particular, he reiterated his complaints under Articles 5 and 6 of the Convention in so far as he had not had full disclosure of the documents and evidence collected despite the court's order of 30 June 2014 (see paragraph 22 above) and argued that there was no reasonable basis to justify his detention on remand.

26. By a decision of 18 July 2014, notified to the applicant's legal representatives on 22 July 2014, the Judge of Criminal Appeals upheld the order of 30 June 2014 and dismissed any further claims. He found that no new elements had emerged since the interim decision of 30 June 2014. It further noted that the order of 30 June 2014 had not ordered a total declassification but solely the disclosure of documents related to the continued detention, referring to the words with "the limited aim of" "*ancorche al limitato fine*". It considered that such secrecy could be justified for the purpose of the proper administration of justice and the effectiveness of the investigation, and was subject to the inquiring judge's discretion which the court of appeal did not want to interfere with - without prejudice to a further appeal against such decision before the third instance judge.

3. Proceeding before the Third Instance Judge

27. On 23 July 2014 the applicant appealed to the Third Instance Judge in Criminal Matters (*Terza Istanza Penale*) (hereinafter "the third-instance judge"), focusing on the inability to access various documents and the lack

of a justification for his detention based on a lack of the relevant requirements. He also complained of procedural irregularities.

28. After a hearing, where oral and written submissions were made by the applicant and the Attorney General, the third-instance judge on 8 September 2014 dismissed the applicant's complaints. The judge also upheld the lawfulness of the orders of 23 and 30 June 2014 and the lawfulness of the inquiry and the detention order. The court noted that its competence at third instance concerning detention on remand extended to confirming the existence of reasonable suspicion and other factors making detention necessary. Thus, it was for the judge to examine the stage of the investigation, as well as the correctness of the facts established and the lawfulness of the procedural steps undertaken, and the persistence of the charges against the accused, falling short of making any findings on the criminal responsibility of the accused.

29. As to the non-disclosure of some of the material, it noted that while under San Marino law an accused was granted the right to access and copy all the material in the investigation file and imposed on the judge a duty to inform the accused of the factual and legal circumstances surrounding the charges against him, the same procedural law also limited those rights for the sake of the proper administration of justice, while bearing in mind the procedural safeguards emanating from the right to a fair trial. Even the case-law of the European Court of Human Rights provided for exceptions to the rule of disclosure. In the present case the secrecy imposed on certain of the documents, although not all of them had been necessary in view of a search for the truth and to avoid any risk of tampering with evidence.

30. It further noted that the applicant had had access to a lawyer before his questioning and that the order of 23 June 2014 had been detailed and had clearly identified the elements justifying the detention. It could thus not be said that the applicant had not been aware of the reasons for his arrest, the charges, or the nature and content of the evidence adduced. Indeed, more information than that strictly required had been communicated to the applicant and the judicial communication at issue had been exemplary, both in respect of the quantity and the clarity of the information provided.

31. In relation to the requirements justifying the applicant's detention, the third-instance judge examined the matter in connection with each of the charges and noted that the appeal court had adequately replied to the applicant's complaints. Referring extensively to the report of the inquiring judge, the third-instance judge found that it was necessary to keep the applicant in detention.

32. In the third-instance judge's view, the factual evidence and relevant legal considerations indicated that the applicant could reasonably be considered as guilty of the charges against him. Furthermore, it was necessary to ensure the effectiveness of further investigations by avoiding any risk of tampering with evidence.

C. Requests for access to specific material

33. In the meantime, on an unspecified date the applicant lodged an application for the release of hard copies or electronic versions of documents which had been saved on equipment seized from him, or the possibility to make copies of them.

34. By a decision of 17 July 2014 the inquiring judge dismissed that application in part. The court noted that the investigation file had not yet included a detailed list of its contents. In any event such a request could only be accepted if it was specific enough to locate the documents referred to. It ordered that a list of the file's contents be made and that the applicant have access to documents he could specify in terms of their form, content, date and origin.

35. On 15 July 2014 the applicant had also applied for access to information held by the court concerning P.W.S. (San Marino's ambassador to Montenegro) which he considered relevant to disprove the alleged fictitious nature of the operations linked to Company B. and thus that there had been money laundering in that connection.

36. By a decision of 25 July 2014, the inquiring judge dismissed that application on the grounds that the reasons put forward by the applicant to access the documents were not deemed convincing by the court. According to the inquiring judge such a request could be accepted, at the relevant time, if it was made in connection with specific facts that were subject to debate, that had not yet been established, and which were pertinent to the ongoing investigation.

37. According to the applicant a further request to examine witnesses remained unheeded.

D. The second set of decisions on the applicant's challenges

38. On 15 September 2014 the applicant asked the inquiring judge to revoke the detention order or impose a less strict measure.

39. On 18 September 2014 the inquiring judge dismissed the application. He considered that the original detention order and its continuation were reasoned in fact and in law. The basis for such a detention order did not need to be any more detailed, particularly given the continued risk of tampering with evidence if the applicant was put on a less strict regime. Contrary to the applicant's assertions, the existence of this risk remained. The inquiring judge considered that the results of the investigation as well as the behaviour of the applicant, both during the interviews and while in detention, confirmed that view. He noted that the applicant's co-accused had tried to make contact with other people, namely, a private doctor, on the pretext of being ill, even though state doctors had not found any signs of illness. Furthermore, both of the accused had attempted to involve relatives

in interfering with and altering documents. The inquiring judge referred to the applicant's ability to create *ad hoc* documents which looked real, with the intention of having them admitted as evidence. He also highlighted the applicant's participation in the manipulation of the truth and the artificial reconstruction of facts and the dissimulation of the real functions of the accused. According to the inquiring judge, such factors meant that the court could not exclude that there would be attempts to tamper with evidence. Indeed, such tampering would be a repeat of the acts with which the applicant had been charged, which included manipulating the truth and the artificial reconstruction of economic and commercial dealings to hide their real aims.

40. The applicant appealed. He requested release from detention or at least the application of a less restrictive measure. He further asked the court to annul the decision appealed against, and if not, he asked the court to exhibit the evidence in connection with the facts and circumstances on which the decision of 18 September 2014 (to keep him in detention) had been based.

41. By a decision of 13 October 2014, the Judge of Criminal Appeals upheld the applicant's appeal in part.

It ordered that the two investigations files be declassified in part, as to allow the applicant to have access to the files and evidence collected in the further investigations on which the inquiring judge had based his decision to dismiss the applicant's bail application in favour of keeping him on remand. The court ordered the disclosure of the material and set a five-day time-limit from that date for the submission of observations.

It further considered that the first-instance court had been correct in maintaining the detention order on the basis of the behaviour of the co-accused. It was evident that the co-accused's mistrust of state doctors was a pretext to consult her private doctors, which had been part of a predetermined plan agreed on between the two co-accused. That had been shown through recordings of their conversation (intercepted by a third party) over walkie-talkies provided to them by a policeman (M.) to enable them to agree on the same line of defence and to tamper with evidence. Similarly, the first-instance court's finding on the attempt to involve third parties in tampering with evidence had been based on the fact that the applicant had transferred property into his daughter's name and the apparent complicity of M. (against whom proceedings had been instituted) who owed allegiance to the applicant in exchange for favours he had received. Such matters would be better explained once the documents had been declassified, as ordered above. The fact that the applicant had been able to plan the above-mentioned acts while in detention showed that his intention and possibility to tamper with evidence would be greater if he was released.

42. In consequence, by a decision of the inquiring judge of 16 October filed in the relevant registry on 20 October 2014, further documents were released.

43. After viewing them, the applicant considered that the copious documentation that had been made available to him (accounts of companies traceable to him and a series of bank transfers) only concerned the charges against him and not the alleged behaviour which had led the inquiring judge to decide to dismiss his application for bail. On 24 October 2014 the applicant therefore lodged a new appeal, arguing that despite the court's order he had again not had access to the relevant documentation to challenge his detention as the declassified information did not include any evidence to substantiate the alleged behaviour that had led to his application for release to be denied, namely the alleged falsification of documents, the alleged collusion with family members, the alleged simulation of his co-accused's illness, and most importantly the alleged walkie-talkie conversations. Moreover, despite the relevant time-limits having expired both files remained classified, and the applicant could not have knowledge of the further evidence collected and whether it supported suspicions against him, or the contrary.

44. By a decision of 6 November 2014 the Judge of Criminal Appeals upheld the detention order, considering that evidence had already been presented to support the decision to keep the applicant in detention. Dismissing the applicant's arguments, the court found that it was therefore not necessary to repeat the earlier factual basis for the order or to give new reasons, as requested by the applicant, because the previous reasons were still valid, as also confirmed at various levels of jurisdiction. Furthermore, in so far as the applicant had claimed that the decision of 18 September 2014 had been based on elements (concerning his behaviour) that had not been found in the file, the court noted that a judge could *ex officio* take factors into consideration which had occurred after the issuance of the detention order. Indeed, in the present case, to make sure that there were no reasons to warrant a change in the applicant's pre-trial conditions, the judge had used information which, although having come to his knowledge by other means, was also found in the public domain (in the press and in publicly available judicial documents concerning the proceedings against M.). He further noted that the requirements of adversarial proceedings at the pre-trial stage, such as the non-disclosure and publication of documents, were different from those in a trial since pre-trial proceedings required a level of secrecy that enabled further investigations if necessary, including international assistance. While equality of arms had to be respected in connection with the debate concerning the measure imposed, the applicant could not obtain the declassification of documents by reiterating the same arguments. That was all the more so when the detention order had to a large extent been based on the fact that there was a risk of tampering with

evidence. The applicant's request had to be seen in the light of the need to preserve the evidence as well as the proper administration of justice. The necessity to maintain the classification of certain information was all the more important when that information concerned crimes for which charges had not yet been brought. It followed that the applicant's detention could not be revoked nor could further information be declassified. The court also noted that in 2009 Article 5 of law no. 93/2008 had been amended to include a suspension of the time-limit in the case of requests for letters rogatory. In the case at hand requests for judicial assistance had been made, thus in view of the applicable suspension the time-limits had not yet expired.

E. A further set of decisions

45. On 4 March 2015 the applicant asked to be released on the basis that the testimony of a certain P. had been retracted in the proceedings against M. It had been P. who had previously stated that he had seen M. give the applicant a walkie-talkie to communicate with his co-accused. He argued that this meant that the evidence of the alleged misbehaviour on which the prolongation of his detention had been based no longer existed.

46. On 6 March 2015 the inquiring judge dismissed the application. He held that there had been various grounds for the applicant's detention, not just the attempts to communicate with others inside and outside the prison. The matters that had been brought to light could not alter the grounds listed and explained in detail in previous decisions.

47. On 16 March 2015 the applicant challenged that decision, arguing that if the decision to keep him in detention had been based on testimony given in proceedings against M., then such a decision had to be altered once that testimony had been withdrawn.

48. By a decision of 20 March 2015 the Judge of Criminal Appeals dismissed the applicant's appeal. The court noted that the detention order of 23 June 2014 had stated that the reasons for considering detention necessary had been the fear of the applicant's reoffending and tampering with evidence, which had been justified by the role played by the applicant in the organisation and by the complex and effective network he could benefit from. The order of 18 September 2014, apart from relying on the evidence in the proceedings against M., had been based on other, more significant and relevant reasons. The impugned decision of 6 March 2015 had stated that the reasons to deny his application "also" included his attempts to communicate with others. The decision of 13 October 2014 had also stated that the measure had been justified by much more important reasons. Lastly, the decision of 6 November 2014 had also referred to other grounds for his detention. It followed that none of the decisions in question had been based solely on the supposed collaboration of M. Thus, the retraction of P.'s

testimony did not render nugatory the fear of the applicant's tampering with evidence, based on the fact that there had been various, more relevant considerations given in the previous decisions on the matter, and reiterated in a decision of 9 March 2015 (below).

F. Prolongation of the applicant's detention

1. The Commissario (inquiring judge)

49. By a decision of 9 March 2015, by which time further charges of money laundering had been brought against the applicant, the inquiring judge prolonged the applicant's detention. He noted that the proceedings were based on the results of the investigation by the anti-fraud unit and on the analysis of financial operations by the applicant and other people involved in politics (directly or through the use of a plurality of individuals and legal persons). Added to those factors were other elements collected through investigations of suspicious financial operations, as well as witness testimony resulting from questioning and the large amount of documents that had been seized. The investigation as a whole concentrated on the overlap between political and economic activity and criminal activity. Referring to various evidentiary conclusions the court considered that in relation to the further charges of money laundering against the applicant, the evidentiary scenario was robust and exhaustive. It amply demonstrated that the applicant (with others) had participated in the transfer and concealment of funds generated from crimes committed in San Marino or elsewhere.

50. The risk of reoffending could be presumed given the ease with which huge amounts of money had already been transferred, and the strong support network of which both co-accused could benefit. That meant that less severe measures would not prevent the applicant and his co-accused from re-establishing contact with other people who had facilitated the illegal acts. The fear of flight was all the more realistic given the weakening link between the applicant and San Marino following the incident in question. It was therefore feared that the applicant would seek refuge in jurisdictions with which San Marino had no extradition treaties. It had already been established that one of the foreign accomplices (P.W.S.) had made use of a diplomatic passport to avoid precautionary measures issued against him.

51. Moreover, video surveillance images showed that the accused had received favourable treatment while in detention, with the director of the prison providing him with company, support and information, and even arranging meetings between the co-accused. That further went to show the status the accused continued to benefit from, which indicated the impossibility of envisaging more lenient measures.

52. The seriousness of the elements on which the suspicion against the applicant was based (*quadro indiziario*), the facts and the means by which

the crimes had taken place, as well as the dense network of personal relations, the involvement of family members, professionals, State representatives and government personnel who were still in service, led to the conclusion that there was a real risk that evidence, namely documentary evidence, would be tampered with and that pressure would be put on people who had knowledge of the events at issue. Moreover, the accused could still continue to hide the illicit origins of funds through the very complex and ingenious methods already applied.

2. The Judge of Criminal Appeals

53. On 11 and 12 March 2015 the applicant had access to further documentation, concerning particularly letters rogatory, witness statements and interviews.

54. The applicant appealed against the decision of the inquiring judge of 9 March 2015.

55. By a decision of 23 April 2015 filed in the relevant registry on 29 April 2015 the Judge of Criminal Appeals upheld the first-instance decision. The judge noted that San Marino law did not impose a time-limit on the duration of pre-trial detention, and considered that the subsequent charges against the applicant had been brought as a result of further investigations. They had shown further money transfers between clearly identified people (including the applicant), as well as the origin of the funds and were connected to the facts behind the first set of accusations. In so far as the applicant had claimed that there had been no proof of conspiracy or of the illicit origin of the funds, and thus that there had been no substantiation of the charge of money laundering, the court held that the original decision of 23 June 2014 had highlighted the existence of a general agreement with permanent effects (constituting the *pactum sceleris*) between representatives of the State and the business world, as well as the details of its aims and functionalities. It further noted that final judgments confirming that a crime had generated certain funds were not needed to establish money laundering, but that it was enough to have a number of factual elements indicating the supposed crime which generated those funds. In other words the burden of proof to be satisfied was one where the illicit origin of the funds emerged from a logical and coherent interpretation of the evidence. The first-instance decision, based on the transfer of huge amounts of money, through the creation of *ad hoc* offshore companies and the dispersion of such sums in parcelled and undetectable amounts had therefore been reasonable.

56. The appeal judge considered that house arrest would not be appropriate given the seriousness of the crimes at issue, the enormous sums laundered, as well as the conduct of the accused during the interrogation and detention period. He noted that the reasons for the applicant's detention on remand, namely his contacts with other accused persons and the networks

he had access to which could facilitate further money laundering and the dispersal of funds, remained relevant.

57. He dismissed a further application by the applicant for the declassification of the case files on the basis that the only things still classified related to the letters rogatory, which were still ongoing, and other material which was still subject to ongoing investigations.

G. Most recent decisions before the applicant's release

58. Following a further request by the applicant, by a decision of 4 May 2015 the inquiring judge released further documentation in light of the fact that the needs of the investigation had diminished. The secrecy regime was however maintained, in part, in connection with certain documents concerning both proceedings at issue as well as other documents and evidence yet to be collected following this decision.

59. By a decree of 11 May 2015 the applicant was issued with an indictment.

60. On 14 May 2015 the inquiring judge revoked the decision of 23 June 2014 to keep him in detention in relation to the charges in the indictment of 11 May 2015 as the investigation related to those charges had been concluded. However, he was kept in detention based on a decision of 9 March 2015 in relation to two recently added charges that were still under investigation.

61. On 28 May 2015 the applicant lodged a challenge to the constitutional legitimacy of the decision of 23 April 2015 by the Judge of Criminal Appeals and the decision of the Commissario of 9 March 2015 in connection with his defence rights at the trial.

62. By an interlocutory decision of 2 July 2015, the third-instance judge suspended the order for the applicant's detention on remand and ordered that he be put under house arrest until a decision on the merits of the constitutional challenge had been issued. In the judge's view such a decision was necessary in order to respect the rights of the defence, particularly the principle of equality of arms, which was to prevail during the trial. He ordered the inquiring judge to set bail and other relevant conditions, as well as the penalties in the event of a breach of such conditions.

63. On 3 July 2015 the inquiring judge ordered the applicant to be put under house arrest under the following conditions: the applicant could not leave his house, have visits from or communicate with anyone (including by telephone) except for family members living in the house, descendants and ascendants (as well as their spouses or partners), siblings and legal counsel. Medical visits were allowed subject to notification. The applicant was ordered not to communicate with his co-accused (Mrs B.) and had to submit his travel documents to the authorities, in line with a travel ban which was being imposed concurrently.

64. By a judgment of 15 October 2015 the third-instance judge confirmed the validity of the decisions of 23 April 2015 filed in the relevant registry on 29 April 2015 by the Judge of Criminal Appeals and the decision of the inquiring judge of 9 March 2015. It reiterated its previous findings as to the various and detailed evidence which had been presented and concluded that the same applied in respect of the last two charges against the applicant, which had been the basis for the impugned decision of 9 March 2015. It noted that there existed a huge amount of data, some of which was convincing evidence (*dati probanti*), some highly indicative (*fortemente indizianti*), and some merely illustrative yet useful, which together formed an adequate framework of relevant and sufficient evidence on which to base precautionary measures. It followed that the decision to place the applicant in pre-trial detention had at the time been appropriate in view of the material available. It also confirmed its interlocutory decree of 2 July 2015 that detention should cease and that the applicant be put under house arrest for the purposes of ensuring his defence rights in all the proceedings against him, without prejudice to any decision by the inquiring judge on an eventual release.

65. By an order of 16 October 2015, the inquiring judge revoked the order for the applicant's house arrest and imposed a travel ban on him, considering that that measure would suffice. It further maintained the classified status of certain acts in the interests of the investigation and the ongoing international judicial assistance.

H. The applicant's detention

66. The applicant was detained from 23 June 2014 in the San Marino prison known as the *Carcere dei Cappucini*.

67. According to the applicant, from 8 August 2014 he was detained under a regime in which he was kept isolated for twenty-two hours a day. The applicant alleged that he had not had access to other parts of the prison which would have allowed him to have some form of activity and that he could only shower once a week. Furthermore, for certain periods he had had no access to sanitary facilities and had had to relieve himself in his cell in a container.

68. The applicant stated that the conditions at the detention facility were inhumane and referred to the reports of the Committee for the Prevention of Torture ("the CPT") of 2005 on the matter. He noted in particular that the CPT had since 1992 reiterated the need to refurbish and upgrade the facility but that virtually no steps had been taken to that effect.

69. On 30 June 2014 the applicant filed a complaint about his conditions of detention with the CPT.

II. RELEVANT DOMESTIC LAW

A. The Constitutional law

70. Article 2 of the Constitutional law no. 144/2003, provides that the Attorney General (*Procuratore del Fisco*) is a *Magistrato requirente*. The latter term is understood in legal theory as referring to an inquiring magistrate, whose role is to put forward questions to a judge (be it inquiring or on the merits) in order to safeguard and guarantee the rights of the public as well as those of all the parties to the proceedings.

B. Criminal Code

71. Articles 2, 20 and 21 of the Criminal Code, read as follow:

Article 2

"The Criminal action is public and brought about *ex officio* although in certain cases it might require the complaint of the injured party for it to commence. The action is brought by the *Commissario della Legge* of his own motion, by means of an inquisitorial procedure the aim of which is the search for the truth."

Article 20

"The inquiry is the diligent and conscientious search for the author of a crime, held by the inquiring judge, as soon as he is notified of a criminal report."

Article 21

"The inquiry can be instituted on request of the injured party, who becomes the complainant or on a report lodged by any citizen, or on the report of the Police, or by any other means through which the inquiring judge becomes aware of the crime committed."

72. Articles 199 *bis* and 287 of the Criminal Code, in so far as relevant read as follows:

Article 199 *bis* (money laundering)

"(1) A person is guilty of money laundering, where, except in cases of aiding and abetting, he or she conceals, substitutes, transfers or co-operates with others to do so, money which is known or should be known was obtained as a result of crimes not resulting from negligence or contraventions, and with the aim of hiding its origins.

(2) or whosoever uses, or cooperates or intervenes with the intention of using, in the area of economic or financial activities, money which is known or should be known was obtained as a result of crimes not resulting from negligence or contraventions."

Article 287 (Conspiracy)

"An association of three or more persons, with the intention of executing a planned criminal activity, constitutes a crime punishable with imprisonment."

C. The Code of Criminal Procedure

73. Article 56 of the Code of Criminal Procedure reads as follows:

> "The decisions concerning personal or patrimonial coercive measures or seizures and their subsequent validation, may be challenged, before the Court of Criminal Appeal, by the accused or by the Attorney General within ten days from the notification or the enforcement of the measure..."

D. Law no. 55/2003

74. Law no. 55 of 25 April 2003 provides for the procedure related to challenges to the legitimacy of precautionary measures such as pre-trail detention. According to its Article 24 (in the light of Article 3 of Constitutional Law no. 144 of 2003), the third-instance judge is competent to decide such challenges and such a challenge does not suspend the enforcement of the measure. According to its Article 25 such a challenge may be lodged by the detained person or the Attorney General within thirty days from when the decision to detain has been notified to both parties. Following that, the request is sent to the relevant body, who will allow both parties to make submissions within ten days.

E. Law no. 93/2008

75. Law no. 93/2008 concerning criminal procedural rules and the confidentiality of criminal investigations, in so far as relevant read as follows:

Article 3 (right to defence)

> "Except in the cases mentioned in Article 5 below, the inquiring judge carries out all the inquiring activity in general, as well as that related to the collection of evidence and particularly its acquisition (*formazione*), while safeguarding the rights of the accused and the prerogatives of the Attorney General (*Procuratore del Fisco*) as well as the rights of private parties as protected by criminal law.
>
> The accused, assisted by a legal representative, as well as the Attorney General, have the right to present their defence, by means of submissions and pleas. They may also examine, and make copies of all the acts in the proceedings, including the report of the crime. The inquiring judge must ensure that the parties can participate or be represented at each stage of the investigation proceedings."

Article 4 (judicial notice)

> "(1) Within thirty days of the crime report ..., save for the exceptions mentioned in Article 5 below, the inquiring judge must personally inform the accused and the Attorney General of the legal and factual elements of the crime in respect of which proceedings are being carried out ..."

Article 5 (investigation and acts and results of inquiry in connection with the temporary secrecy/classification regime or the urgency regime)

"(1) Where there are specific reasons of an exceptional nature which may lead one to consider that the whole investigation may only be carried out successfully if carried out under a regime of secrecy/classification, the inquiring judge may order by means of a reasoned decision that the regime of temporary secrecy be applied, thus derogating from the provisions of Article 3 and 4 above.

(2) The same procedure applies when only some of the acts should be subject to a temporary secrecy regime, or when the necessity of such a regime emerges subsequently.

(3) The temporary secrecy regime applied to the investigation and the acts of inquiry ... may extend only to the time strictly necessary for the performance of the relevant acts; it in any event may not exceed six months from the registration of the crime report, which may be extended only once, by a period of another three months maximum, if there exist serious reasons for so doing.

(4) In cases where the secrecy regime is applied to the investigation, the time limits for the judicial notice re-start to run after the cessation of such regime.

(5) When the secrecy regime applies only in part, the judge, through the registrar, provides for the reserved custody of such documents as well as the order providing for such regime in a separate file, until they are completed (*completamento degli atti).*

(6) In the event of acquisition of evidence in urgency, to which the secrecy regime does not apply, and in respect of which notification of the parties is mandatory, the inquiring judge must notify the judicial notice to the accused and the Attorney General in the event that this has not already been done ...

(7) In the event of a secrecy regime being applied to the investigation, wherein the inquiring judge has called for judicial assistance from foreign authorities, the time limit for a regime of the kind mentioned in paragraph 3, is suspended from the day the letter rogatory is sent, until the reply has been received."[1]

F. Law no. 44/97

76. Article 23 of the prison regulations Law no. 44/97 reads as follows:

"The regime of continuous isolation within the prison facility shall be allowed:

(i) When it is necessary for sanitary reasons.

(ii) Where according to the judicial authority, a person charged with an offence should be detained during the stage of the compilation of evidence (*istruttoria*).

(iii) For serious disciplinary reasons indicated by the judge responsible for execution.

A period of judicial isolation shall not exceed ten days."

1. Amendment introduced by means of Law no. 104 of 30 July 2009

III. RELEVANT INTERNATIONAL MATERIAL

A. United Nations Instruments

77. The UN Convention against Transnational Organized Crime (also known as the Palermo Convention) was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations. It was ratified by San Marino on 20 July 2010.

B. Council of Europe Conventions

78. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141) entered into force in 1993. It has been ratified by all Council of Europe member states. The Convention asks State parties to:

- adopt the necessary legislative and other measures to identify, trace and confiscate illicit property of any kind prevent any dealing in, transfer or disposal of such property
- empower its authorities to order that – where criminal activity is suspected – bank, financial or commercial records be made available without regard to bank secrecy
- legalise the use of special investigative techniques like monitoring, observation, interception of telecommunications, access to computer systems and orders to produce specific documents when criminal activity is suspected

Furthermore, the State parties are asked to make punishable under their domestic law laundering offences such as concealing or disguising the true nature, origin, location, disposition, movement, or ownership of illicit property; the acquisition, possession or use of such property; assisting any person who is involved in any of these illegal actions to evade the legal consequences.

All Parties to the Convention are obliged to co-operate with each other and to afford each other, upon request, the widest possible measure of assistance in the identification, tracing and confiscating of illicit property.

79. On 16 May 2005 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No.198) opened for signature. On 1 November 2010 it was ratified by San Marino. This new Convention is the first international treaty covering both the prevention and the control of money laundering and the financing of terrorism. State parties to the Convention are asked to adopt legislative and other measures in order to assure that they are able to search, trace, identify, freeze, seize and confiscate property, of a licit or illicit origin, used or allocated to be used for

the financing of terrorism; and to provide co-operation as well as investigative assistance to each other.

C. CPT Reports

80. In February 2005 the CPT visited the *Carcere dei Cappucini* and on 26 February 2008 published a report, drawn up only in French, which in so far as relevant reads as follows:

> « **2. Conditions matérielles**
>
> 25. La situation, s'agissant des conditions matérielles de détention, n'a pratiquement pas changé depuis la dernière visite en 1999. Les travaux envisagés, tant pour la salle polyvalente que pour les cellules du premier étage, n'ont toujours pas été réalisés, alors qu'une décision de commencer ces travaux avait été adoptée en septembre 2004.
>
> Il est clair qu'un très faible taux de détentions, ces dernières toujours pour de courtes périodes, peut expliquer le manque d'intérêt des autorités politiques pour ce dossier. Cela dit, en l'état de la législation pénale actuelle, il n'est pas exclu que des détentions de longue durée soient effectuées à la Prison des Capucins.
>
> Le CPT recommande que des mesures soient prises, sans autre délai, afin de mettre en oeuvre le programme de restructuration de la prison, annoncé depuis 1992.
>
> **3. Régime**
>
> 26. Aucun progrès n'est également intervenu s'agissant du régime d'activités proposé aux détenus, qu'ils soient prévenus ou condamnés. Il convient de rappeler à cet égard que le rapport établi à la suite de la visite du CPT en 1999 soulignait déjà le décalage, d'une part, entre le riche éventail d'activités prévu par la Loi pénitentiaire et, d'autre part, le régime d'activités effectivement proposé aux détenus et qu'un manque d'activités motivantes est préjudiciable à tout détenu (*a fortiori* s'il s'agit d'un mineur).
>
> Le CPT recommande que les mesures nécessaires soient prises afin que tout détenu puisse passer un temps raisonnable hors de sa cellule, occupé à des activités motivantes ; en cas de détention de longue durée, ces activités devraient être variées. La mise en œuvre du programme de restructuration dont question au paragraphe précédent et, en particulier, la création de la salle polyvalente, devrait représenter un pas important dans ce sens. »

81. On 11 December 2014 the CPT published a report on its January/February 2013 visit to San Marino, together with the response of the San Marino authorities. During the visit, the CPT delegation paid particular attention to conditions of detention at *Carcere dei Cappucini*. The delegation noted the good general condition of the prison, but also its small size. The report recommended that the necessary measures be taken to enable a greater number of inmates to participate in activities. On the subject of health care in the prison, the authorities had to, amongst other things, organise nursing care and ensure that medical confidentiality was respected. The relevant parts of the report, which exists only in French, read as follows:

« **2. Conditions de détention**

23. Lors de la visite, la délégation a pu constater le bon état général de la prison et des conditions matérielles de détention offertes mais aussi l'exigüité de l'établissement. La prison dispose, au rez-de-chaussée, d'une cellule, d'environ 8 m², séparée par une porte d'une pièce/cellule plus grande - 16 m² - qui donne directement sur une salle de bain séparée. Une autre cellule sert d'entrepôt. Au premier étage, se trouvent six cellules individuelles ainsi que des installations sanitaires au milieu du couloir pouvant servir à tous les détenus de cet étage.

Au rez-de-chaussée, se trouve également la salle « multi-usages » qui sert à la fois pour les visites (des avocats comme des familles / proches), de bibliothèque et de salle de sport.

En 2010, des travaux de rénovation ont été réalisés pour mettre en conformité le système électrique des cellules et y installer de nouveaux équipements de sécurité. Un système de vidéosurveillance a été également installé aux abords de la prison ainsi que dans les couloirs, la salle de visite et une cellule d'observation du premier étage. Ces travaux ont permis de réhabiliter les cellules et les installations sanitaires de la prison.

3. Régime

24. Comme indiqué au paragraphe 20, un seul prisonnier était détenu à la prison au moment de la visite. Dès lors, le détenu concerné était *de facto* soumis à un régime similaire à l'isolement. Dans un tel contexte, il est essentiel d'offrir à ce prisonnier un programme d'activités ainsi que des contacts humains appropriés.

Le détenu était placé dans la cellule du rez-de-chaussée où il pouvait librement utiliser la salle attenante à sa cellule, qui lui servait d'atelier et de salle de télévision. Il bénéficiait d'un travail rémunéré (empaquetage de différents objets). Pendant six heures trente par jour, il pouvait également accéder librement à une des deux aires de promenade. De plus, il avait l'opportunité d'échanger quotidiennement avec le personnel pénitentiaire et recevait la visite de l'éducatrice judiciaire jusqu'à trois fois par semaine. Il bénéficiait d'une visite hebdomadaire de sa famille et pouvait recevoir sans contraintes des appels téléphoniques et en passer au moyen d'une carte rechargeable.

Le CPT se félicite des mesures entreprises par la direction et le personnel de la prison à l'égard de ce détenu.

25. D'une manière plus générale, il est d'importance pour le CPT que tout détenu puisse passer un temps raisonnable hors de sa cellule, occupé à des activités motivantes. La réglementation pénitentiaire de Saint-Marin prévoit un large éventail d'activités (culturelles, sportives et récréatives, études y compris universitaires) et favorise le travail.

La délégation a été informée que, sauf demande explicite pour les besoins de l'enquête, les portes des cellules sont ouvertes jour et nuit afin de faciliter l'association entre les détenus (et permettre un libre accès aux installations sanitaires au premier étage). Le CPT s'en félicite.

Toutefois, la structure actuelle de la prison ne permettrait pas l'organisation d'un programme d'activités motivantes si plusieurs personnes venaient à être détenues en même temps et pour des durées prolongées. D'ailleurs la détention depuis le mois de février 2013 de deux détenus condamnés à plusieurs années d'emprisonnement risque d'engendrer des difficultés dans l'organisation de la prison et l'exercice des droits des détenus. En effet, une seule pièce sert à la fois de salle de visite, de sport et de

bibliothèque et il n'existe pas d'espace adapté pour accueillir un atelier où travailleraient plusieurs personnes.

Dans leur réponse de 2005, les autorités avaient indiqué au Comité leur intention de construire dans la plus grande aire de promenade un bureau pour la direction ainsi qu'une nouvelle salle polyvalente pouvant servir pour le travail et le sport. Huit ans après, ces travaux n'ont toujours pas commencé. La délégation a été informée qu'un budget avait été alloué pour ceux-ci mais qu'ils n'auraient pu être mis en oeuvre à la suite du classement de la ville au patrimoine mondial de l'UNESCO en 2008. Par une décision du 15 janvier 2013, le Gouvernement de Saint- Marin a créé un nouveau groupe de travail concernant la prison qui doit notamment évaluer la faisabilité du projet de transformation. Ce groupe de travail devrait remettre son rapport le 30 juin 2013.

Le CPT recommande aux autorités de Saint-Marin de mettre en oeuvre les travaux prévus de longue date ou de trouver une solution alternative (par exemple, en construisant un établissement pénitentiaire en dehors de la ville historique). Dans ce contexte, le Comité souhaiterait recevoir le rapport du groupe de travail ainsi que les décisions prises pour permettre à un plus grand nombre de détenus de participer à des activités. »

5. Autres questions relevant du mandat du CPT

30. Concernant les contacts avec le monde extérieur, la législation permet aux détenus de recevoir des visites d'une heure par semaine de la part des proches. Sauf décision d'une autorité judiciaire, la correspondance n'est pas soumise à des limitations et n'est pas censurée. Les communications téléphoniques sont permises quotidiennement pendant dix minutes, un juge peut décider de prolonger cette durée. Le Comité se félicite de ce qu'en pratique les contacts entre le détenu et le monde extérieur sont plus fréquents (voir paragraphe 23) que ce que prévoit la loi.

Si la délégation n'a recueilli aucune plainte concernant les échanges avec le monde extérieur, il apparait qu'une restriction normative demeure. Le Règlement pénitentiaire, tel que modifié par la Délibération gouvernementale du 15 janvier 2013, prévoit qu'une autorisation d'un juge (pour les prévenus) ou du Directeur de la prison (pour les condamnés) est nécessaire pour toute visite, correspondance ou communication téléphonique. Comme indiqué dans les précédents rapports, le CPT considère que, par principe, les détenus devraient pouvoir avoir des contacts avec leurs familles et leurs proches. Des exceptions peuvent être prévues mais elles devraient être strictement limitées aux exigences de la cause et les plus brèves possibles. Le Comité recommande, une nouvelle fois, aux autorités de Saint-Marin de revoir la législation applicable à la lumière de ces remarques.

31. La Loi pénitentiaire 30 de Saint-Marin prévoit l'isolement comme seul type de sanctions disciplinaires. Selon l'article 23, un détenu peut être placé à l'isolement - pour une durée maximale de dix jours - sur la base d'une décision du juge de l'exécution en raison « d'actes disciplinaires graves ».

D. Financial Action Task Force Recommendations

82. The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF

Recommendations set out a framework of measures which countries should put in place in order to combat, *inter alia*, money laundering. They are considered as an international standard, which countries should implement through measures adapted to their particular circumstances.

THE LAW

I. PRELIMINARY ISSUES

83. The Government submitted that the application was abusive as the applicant was attempting to have the merits of his case decided by this Court. They noted that the applicant had given false information to the press in so far as in various interviews and press releases his legal representative had alleged that the application had already been declared admissible by the Court, which was clearly untrue. They considered that the applicant was using the Court to apply pressure and influence and lengthen the domestic proceedings against him – in the latter respect he had also requested that the domestic courts suspend the proceedings pending a judgment by the Court, a request which had been rejected by the domestic courts. Relying on the Court's case-law the Government noted that completely irresponsible behaviour by applicants or their lawyers was clearly contrary to the true mission of the Court and may lead to the dismissal of the application as being abusive. They thus requested that the Court declare the application inadmissible as being abusive under Article 35 of the Convention.

84. Article 35 § 3 (a) of the Convention reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application;"

85. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention if it was knowingly based on untrue facts (see, among others, *Jian v. Romania* (dec.), no. 46640/99, and *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006) or if incomplete and therefore misleading information was submitted to the Court (see, among others, *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006, and *Basileo v. Italy* (dec.), no. 11303/02, 23 August 2011). Similarly, an application can be rejected as abusive if applicants – despite their obligation under Article 47 of the Rules of Court – fail to inform the Court about new, important developments regarding their pending applications given that such conduct prevents the Court from ruling on the matter in full knowledge

of the facts (see *Bekauri v. Georgia* (dec.), no. 14102/02, §§ 21-23, 10 April 2012).

86. The notion of abuse of the right of application is not limited to the above-described situation and in general any conduct by an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009).

87. Lastly, the Court reiterates that it cannot be its task to deal with manifestly abusive conduct by applicants or their authorised representatives, which creates gratuitous work for the Court, incompatible with its real functions under the Convention (see *Petrović v. Serbia* (dec.), no. 56551/11 and 10 others, 18 October 2011, and *Bekauri*, cited above, § 21).

88. The Court notes that while the observations made by the parties went beyond the purpose of the specific questions set at communication it cannot be said that the quality of the observations in itself constituted abusive conduct. As to the fact that the applicant or his legal representatives disseminated false information to the press, while the Court considers this to be highly regrettable, it cannot speculate as to the real reasons for such actions. The Court cannot exclude the possibility that it was the result of a misunderstanding by the applicant or his representatives who might well be inexperienced in the Court's procedure. The Court notes that by a letter of 7 October 2014 sent by the Registry the applicant's legal representatives were only informed that a file had been opened and that they would be informed of any decision taken by the Court. At that stage it could only be said that the application had not been rejected on administrative grounds for failing to comply with the requirements set out in Rule 47 of the Rules of Court, which is totally different from the admissibility of an application governed by Article 35 of the Convention. Nevertheless, the Court cannot rule out that the dissemination of false information was a result of an error in good faith.

89. The Court thus dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. The applicant complained under Article 3 about the conditions of his detention. The provision reads as follows:

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

A. Admissibility

1. The Government's preliminary objection

91. The Government submitted that the complaint was inadmissible as under Article 35 § 2 (b) the Court could not deal with an application which was substantially the same as a matter that had already been examined by the Court or which had already been submitted to another procedure of international investigation or settlement and contained no relevant new information. The applicant had in fact complained to the CPT about the conditions of his detention.

92. The applicant submitted that the CPT was a non-judicial body with preventive functions, and his report to them could not be considered as precluding the possibility of complaining before the Court.

2. The Court's assessment

93. Article 35 § 2 (b) of the Convention reads as follows:

> "The Court shall not deal with any application submitted under Article 34 that
>
> (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

94. The Court reiterates that Article 35 § 2 (b) seeks to avoid a plurality of international proceedings relating to the same case (see *Calcerrada Fornieles and Cabeza Mato v. Spain*, no. 17512/90, Commission decision of 6 July 1992, Decisions and Reports (DR) 73; *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006; and *Smirnova v. Russia* (dec.), nos. 46133/99 and 48183/99, 3 October 2002). Under the Convention, the Court cannot therefore deal with any application which has already been investigated or is being investigated by such an international procedure (see *Celniku v. Greece*, no. 21449/04, § 39, 5 July 2007). The term "another procedure" refers to judicial or quasi-judicial proceedings similar to those set up by the Convention (see *Lukanov v. Bulgaria*, no. 21915/93, Commission decision of 12 January 1995, DR 80-A, p. 108). The Court must therefore determine whether the nature of the supervisory body, the procedure followed thereby and the effects of its decisions are such that Article 35 § 2 (b) precludes the Court's jurisdiction (see, in respect of the "1503 procedure" before the United Nations Commission on Human Rights, *Mikolenko v. Estonia* (dec.), no. 16944/03, 5 January 2006, and *Celniku*, cited above, §§ 39-41; for other United Nations bodies see the decisions in *Folgerø and Others*, cited above; *Smirnova*, cited above; and *Malsagova and Others v. Russia* (dec.), no. 27244/03, 6 March 2008).

95. The Court has already held that the CPT is not a judicial or quasi-judicial body and that its role is preventive and that therefore a

procedure before the CPT cannot be compared to the right of individual petition under the Convention (see *Zagaria v. Italy* (dec.), no. 24408/03, 3 June 2008, and *De Pace v. Italy*, no. 22728/03, §§ 25-27, 17 July 2008).

96. It follows that the Government's objection is dismissed.

3. Conclusion

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

B. Merits

1. The parties' observations

(a) The applicant

98. The applicant submitted that he had been kept in conditions that were contrary to Article 3 of the Convention. In particular he was in a *de facto* isolation regime, which had not been ordered by a judge and which had gone beyond the maximum duration of ten days prescribed by law. He noted that at the time of the CPT visit in 2013 there had only been one detainee. Even so, the CPT had noted that that detainee had been subject to a regime similar to isolation, and that in such a context it would be essential for such a prisoner to be offered a programme of activities and appropriate human contact. The CPT had also highlighted that the law provided for an isolation regime only for a maximum period of ten days.

99. The applicant submitted that he had been kept in the cell for twenty-two hours a day and that the sanitary conditions had been poor. He had not been allowed access to areas where he could undertake activities such as watching television or reading, except to attend authorised meetings. As his detention had been prolonged and other detainees had been incarcerated, his conditions had worsened. He alleged that from 8 August 2014 he had been kept in the worst cell in the prison and that not only had he been prohibited from communicating with his co-accused, Mrs B., but also with other detainees and the personnel. At that stage, he had only been allowed to shower once a week, and had been denied access to the toilet for security reasons. The applicant argued that most of the CPT's remarks in the 2005 report had been ignored by the authorities and the situation had not improved. Relatives' visits took place under the surveillance of the personnel, who upon the order of the courts would interrupt the conversation every time it related to the criminal proceedings. While meetings with his lawyers were not supervised, he had been unable to consult them together in one go.

100. Lastly, the applicant noted that the prison director, referred to by the Government had testified that "upon the order of the Commissioner the applicant (and others) are shut in their cells for the full day and night, pursuant to the precautionary detention regime and with a prohibition on communicating amongst themselves, such a condition, even though it is deemed inhumane, has been prescribed by the Commissioner".

(b) The Government

101. The Government referred to the Court's case-law concerning conditions of detention. They submitted that the applicant had not been kept in overcrowded conditions. He had also not been denied light and ventilation, sanitation, hygiene and cleanliness, outdoor exercise or medical care, factors which usually lead to a violation of Article 3. They argued that the applicant had not been subjected to treatment that was any worse than that normally involved in pre-trial detention.

102. In respect of the applicant's complaint concerning his *de facto* isolation, the Government noted that the judicial authority had imposed a ban on his communicating with other suspects involved in the same proceedings to avoid tampering with evidence, but that no restrictions had been imposed in relation to other inmates, if there had been any. There were also no restrictions on his communicating with the prison guards.

103. As to access to other areas of the prison, while that had been limited to avoid contact with other suspects in the same proceedings, the applicant had still benefited from two to three hours a day of activity in the open air or indoors, which had included access to a television, books and newspapers as well as gym equipment such as bikes and treadmills. His visiting times had also not been limited, and he had had ongoing access to his family, a priest, his lawyers and the commander of the Gendarmerie, as well as a regular health check, which had shown he was in good health. They also noted that his cell had been much larger than the minimum set by the CPT.

104. Contrary to the applicant's allegation, he had been able to access the shower room freely and unrestrictedly. While he had to request a prison guard to accompany him, he was then left alone in the bathroom. As to access to sanitary facilities, while that had been restricted for two or three nights, that had been in order to coordinate custodial staff during the night owing to the presence of other detainees. However, the applicant had requested, for his convenience, to have a bedpan in addition to and not as a replacement for access to the toilets.

105. As to the general conditions at the prison, while previous CPT reports dating back to 1999 had been critical, the reports as the years had gone by had welcomed the significant improvements that had been made. In the recent 2014 report the Committee had noted the good general state of the prison and the material conditions of detention. The Government

submitted a DVD containing images from the surveillance system in August 2014 to substantiate its statement about the general conditions in the prison. They also noted that the food in the prison was provided by a renowned restaurant in the historic centre of the town which ensured that the food was of a very high quality.

106. The Government further specified that the supervision of family visits had been ordered by a judge since according to the prosecution the applicant had registered real estate (purchased by third parties with the proceeds of crime) in the name of family members. As to the meetings with the lawyers, the applicant had never requested to have joint meetings.

2. The Court's assessment

(a) General principles

107. Under Article 3, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

108. More generally, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Muršić v. Croatia* [GC], no. 7334/13, § 101, ECHR 2016 and *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). Quite apart from the necessity of having sufficient personal space, other aspects of material conditions of detention are relevant for the assessment of whether they comply with Article 3. Such elements include access to outdoor exercise, natural light or air, the availability of ventilation, the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 149 et seq, 10 January 2012). The length of time a person is detained in particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

109. In assessing whether solitary confinement falls within the ambit of Article 3, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Lorsé and Others v. the Netherlands*, no. 52750/99, § 63, 4 February 2003; *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005; and *Piechowicz v. Poland*, no. 20071/07, § 163, 17 April 2012). In that connection the length of the period in question requires careful examination by the Court as to its justification, the need for the measures taken and their

proportionality with regard to other possible restrictions, the guarantees offered to the applicant to avoid arbitrariness and the measures taken by the authorities to satisfy themselves that the applicant's physical and psychological condition allowed him to remain in isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 136, ECHR 2006-IX).

(b) Application to the present case

110. The Court notes that quite apart from the "*de facto* isolation" regime complained of, the first allegation of sufficient seriousness raised by the applicant is related to hygiene, namely the fact that he was only allowed one shower per week, and that he could not make use of the bathrooms available as he was confined to his cell and thus had to see to his needs therein.

111. The Court reiterates that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining inmates' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (See *Ananyev and Others*, cited above, § 114, and the references therein).

112. Turning to the present case, as regards access to toilets, the Court notes that the applicant has not given details as to the duration of his restriction on using such facilities, nor has he explained in what way denying him such access temporarily, with the alternative of having access to a bed-pan in his cell, caused him any particular suffering. He does not mention that it was an issue of privacy (compare *Aleksandr Makarov v. Russia*, no. 15217/07, § 97, 12 March 2009, and *Kalashnikov v. Russia*, no. 47095/99, § 99, ECHR 2002-VI). In that regard the Court reiterates that in cases which concern conditions of detention, applicants are expected in principle to submit detailed and consistent accounts of the facts complained of and to provide, as far as possible, some evidence in support of their complaints (see *Dougoz*, cited above, § 46, and *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010, with further references). The Court notes that the applicant's statement in this respect was not accompanied by any information as to the dates when it had occurred or any explanation as to the circumstances that led to such an alleged situation (compare *Story and Others v. Malta*, nos. 56854/13, 57005/13 and 57043/13, § 110, 29 October 2015). Indeed the Court notes that the Government stated that the applicant had access to the toilets accompanied by a guard, and that certain limitations, which did not exceed two or three nights, had only been due to security reasons to prevent the co-accused from having contact with each other.

113. Also pertaining to the domain of hygiene, the Court observes that the applicant complained that he could only access the shower once a week, which the Government denied. Again, the applicant has failed to give any details as to when he was allowed a shower and over what period, or as to how many times he requested to use the shower and was refused. Indeed the Government submitted that the applicant could access the shower room freely and unrestrictedly. In those circumstances the Court finds no basis for the conclusion that in a prison with so few inmates the applicant's access to the showers was restricted more than was necessary for the security reasons claimed by the Government (see, *mutatis mutandis*, *Story and Others*, cited above, § 122 and see, by contrast, *Iacov Stanciu*, cited above, § 173; *Čuprakovs v. Latvia*, no. 8543/04, § 44, 18 December 2012; and *Varga and Others v. Hungary*, nos. 14097/12 et seq., §§ 32 and 90, 10 March 2015).

114. As to the structural conditions of the prison, the Court cannot but note that the CPT's report of 2014, which is relevant to the period shortly before the applicant's detention, stands in contrast to his claims, which are mostly based on a CPT report of almost a decade earlier (see paragraph 80 above). Bearing that report in mind, as well as the materials submitted by the Government, the Court cannot but note that the cells and structural conditions in the *Carcere dei Cappucini* are significantly better than many detention facilities previously found wanting by this Court.

115. Furthermore, the Court reiterates that, other than sufficient personal space, of the other elements relevant for the assessment of the conditions of detention special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. The Prison Standards developed by the CPT make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities (see *Ananyev and Others*, cited above, § 150). The Court notes that by the applicant's own admission he had such access as he was kept out of the cell for two hours a day (see paragraphs 67 and 99 above). It follows that the CPT standards have been fulfilled.

116. Lastly, as to his complaint of *de facto* isolation, as already acknowledged by him, the applicant's complaint that he could not talk to anyone else, was the result of a *de facto* situation, not a *de jure* one. He was not subject to the regime of isolation as intended in law (see paragraph 76 above) pursuant to an intentional decision by the authorities. Rather, the situation was the consequence of concomitant circumstances. Indeed, the limitation on the applicant's contact with the outside world only concerned his co-accused, and the fact that he could not, in practice, speak to anyone else (except for guards or visitors) was merely the result of the fact that there were no other detainees (save for his co-accused). While that situation

may have affected the applicant to a certain extent, it was sufficiently attenuated by the possibility of contact with other persons and other activities available to him (see paragraph 103 above). In particular, he was allowed family visits and visits by his lawyer, as well as a priest and a doctor. The Court notes that any restrictions on the conditions in which those visits took place (see paragraph 99 *in fine*), in the circumstances of the present case, have no bearing on his complaint of conditions of detention. In the Court's view the restriction imposed on the applicant, namely to avoid contact with his co-accused, was circumscribed. While it lasted over a number of months, there was no intention to punish the applicant who could still have contact with the guards, family members and his lawyers (contrast with *Lorsé and Others*, cited above, § 63 et seq.). Moreover, according to the applicant's medical visits he does not appear to have suffered any physical or psychological consequences from this *de facto* situation.

117. Having regard to the preceding paragraphs, the Court finds that the overall conditions of detention did not subject the applicant to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, § 94).

118. It follows that there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

119. The applicant complained that he had remained in detention for an unlimited period of time given that the law did not provide for a time-limit, and that proceedings during his detention had taken an unreasonably long time, during which he had not been released. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

1. The Government's preliminary objection

120. The Government submitted that when the applicant had made his application to the Court his application for release had still been pending before the domestic courts on appeal. He had therefore not exhausted the available domestic remedies before applying to the Court.

121. The applicant noted that in connection with pre-trial detention remedies were considered to be exhausted after a negative outcome of a first

decision on the matter. In the present case, such a decision had been delivered and eventually also appealed against. Further challenges had been made at a later stage when new circumstances had arisen. Consequently there was no doubt that the available remedies had been exhausted.

2. The Court's assessment

122. The Court notes that the applicant was arrested on 23 June 2014 and remained in detention in prison until 14 May 2015. This was followed by a period of house arrest until 16 October 2015 (see paragraph 63 above). On various dates the applicant lodged complaints with the domestic courts concerning his detention and pursued the relevant appeals, some of which concerned periods after the application was brought before the Court. In fact the applicant came to the Court a few days after the completion of his first round of challenges (a three-tier remedy before the domestic courts). He lodged his application on 29 September 2014, following the decision of 8 September 2014 of the Third Instance Judge in Criminal Matters to reject the applicant's appeals, confirming the lawfulness of the orders of 23 June 2014 and 30 June 2014 and the lawfulness of the investigation and detention (see paragraph 28 above). Subsequently, he continued to pursue the remedies available to him and kept the Court informed as requested by the Court.

123. The Court notes that the applicant did not complain of an isolated act but rather of a situation in which he had been for some time and which was to last until he was released. It would be excessively formalistic to demand that an applicant denouncing such a situation should file a new application after each final decision rejecting a request for release or, as the case may be, after each further order extending his detention. The Court finds, moreover, that it should hold itself competent to examine facts which occurred during the proceedings and constitute a mere extension of the facts complained of at the outset (see *Khayletdinov v. Russia*, no. 2763/13, § 82, 12 January 2016; *Novokreshchin v. Russia*, no. 40573/08, § 16, 27 November 2014; *Stögmüller v. Austria*, 10 November 1969, § 7, Series A no. 9; and *Neumeister v. Austria*, 27 June 1968, § 7, Series A no. 8).

124. In view of the above the Court considers that the Government's objection of non-exhaustion of domestic remedies must be dismissed, and that the Court is competent to consider the complaint until the time of the applicant's release.

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

B. Merits

1. The parties' observations

(a) The applicant

126. The applicant complained that he had been in pre-trial detention from 23 June 2014 to 6 July 2015, and had subsequently remained under house arrest until 17 October 2015 (after which a ban on his leaving San Marino had been imposed). He submitted that he had been detained without any reasonable suspicion, contrary to the provisions of the Convention and San Marino law. Neither in the orders of 23 June 2014 and 9 March 2015, nor in the indictment order of 11 May 2015, or in any other document disclosed to him, had there been enough elements described or identified which indicated his involvement in any crime, particularly that of conspiracy, with which he had also been charged.

127. According to the applicant, the lack of elements on which to base a detention order was obvious because of the fact that the decision of April 2015 had lifted the measure in full in connection with the crimes he had been charged with on 23 June 2014, and the decision to keep him in pre-trial detention had only remained in force in connection with lesser charges which had been raised at a later date. Moreover, three months after, in July 2015, the third-instance judge had revoked that measure and replaced it with house arrest.

128. As to the reasons for which his detention on remand had been deemed necessary, the applicant noted that there was no indication that he had had any wealth which he could have easily moved around if a more lenient measure had been applied. He further argued that his detention should not have been based on a fear of tampering with evidence on the basis of a reference to his national and international network of contacts because no details or specific information had been given about that network. Nor could it be said that the measure had been urgently needed solely on the basis that in 2013 an apartment had been sold for funds that had allegedly come from illicit origins. As to the risk of flight, the applicant argued that while it was true that he had been acquainted with various important businessmen, no illicit transaction with any of them had been shown to have taken place.

129. The applicant submitted that it had taken the authorities a year to realise that his detention had been based on very poor grounds. He stated that the judicial authorities had not sought the truth but only a means unjustifiably to prolong his detention. He further submitted that subsequent appeal jurisdictions had simply upheld the decisions of the inquiring judge, assuming them to be fair and legitimate, and had ignored the evidence he had presented.

(b) The Government

130. The Government noted that the decision of 23 June 2014 had highlighted the existence of huge flows of money which had been directly or indirectly managed by the applicant and which had been incompatible with his income. According to the inquiring judge the evidence had shown the applicant's clear ability to organise and benefit from the necessary support and to encourage further activities in the dispersion of funds, with the help of other suspects. The speed with which operations transferring millions of euros had been carried out showed the extent and strength of the network which the applicant and his criminal association could rely on. Thus the Government reiterated that holding the applicant in detention had been connected to the risk of reoffending and tampering with evidence, which had remained even after he had ceased to be a minister or parliamentarian, as his contacts with other politicians, officials at banks and financial companies and so forth had been maintained. A less severe measure would therefore not have sufficed to ensure that the applicant refrained from committing other offences of money laundering, including through third parties. The Government noted that pre-trial detention had been decided on as part of a complex investigation carried out by the judicial authority over a period of ten years into the conduct of some senior public officials, as a result of which twenty-one individuals and six legal persons had been indicted.

131. According to the Government, the applicant's detention began on 23 June 2014 and lasted until 14 May 2015 - the date when the inquiring judge revoked the decision of 23 June 2014 to keep the applicant in detention in relation to the charges in the indictment of 11 May 2015 (see paragraph 60 above). In the decree of 9 March 2015 the inquiring judge had highlighted and confirmed the considerable amount of evidence collected in relation to the offences the applicant had been charged with and the risk of his reoffending in the light of his connections.

132. The Government highlighted that the considerable amount of evidence gathered and its serious nature, the way in which the offences had been committed, the seriousness of the facts, the extensive network of personal relations and the involvement of family members, professionals and representatives of state institutions, had shown that there was a real risk that evidence could be altered and that pressure could possibly be put on people informed of facts which were still being established. Moreover, as time had gone by, other facts had come to light which had only reinforced the conviction of the need to keep the applicant in detention, given his intent to tamper with the investigation and to discredit the judiciary. The Government also noted that the decisions ordering or maintaining his detention had been upheld in various rulings, including on appeal.

133. Noting that the applicant had been in pre-trial detention for one year and nine days as a result of two different precautionary measures

relating to different criminal offences, the Government noted that the risk of tampering with evidence was particularly high in relation to organised crime offences. In that respect, they referred to the Court's case-law, in particular, *Łaszkiewicz v. Poland* (no. 28481/03, 15 January 2008) and *Kučera v. Slovakia* (no. 48666/99, 17 July 2007).

134. In view of the domestic courts' detailed decisions, the Government was of the opinion that relevant and sufficient reasons had been given for detaining the applicant. They further argued that the authorities had acted with due diligence and there had been no periods of inaction. The Government submitted that the investigation had been enormous, had included dozens of interviews, examinations of witnesses, searches and seizures, as well as hundreds of banking relationships, financial movements and business operations amongst persons residing in at least twelve different countries; it had contained dozens of letters rogatory transmitted to ten other countries and several accounting, IT and hand-writing checks. In all, thousands of documents and records had been gathered. Yet, notwithstanding the enormity of the investigations the authorities had still acted with due diligence, even though a certain amount of time had been needed for translation work. Further, the inquiring judge had dealt promptly with each issue raised by the parties.

2. The Court's assessment

(a) General principles

135. While paragraph 1 (c) of Article 5 sets out the grounds on which pre-trial detention may be permissible in the first place, paragraph 3, which forms a whole with the former provision, lays down certain procedural guarantees, including the rule that detention pending trial must not exceed a reasonable time, thus regulating its length (see, as most recent authority, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 86, ECHR 2016 (extracts).

136. According to the Court's established case-law under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices: the Court must then establish (1) whether other grounds cited by the judicial authorities continue to justify the deprivation of liberty and (2), where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings (see, among many other authorities, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012 and *Buzadji*, cited above, § 87). The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative means of ensuring his or her appearance at trial

(ibid.). The requirement on the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji*, cited above, § 102).

137. Justifications which have been deemed "relevant" and "sufficient" reasons (in addition to the existence of reasonable suspicion) in the Court's case-law, have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see *Buzadji*, cited above, § 88, with further references).

138. However, the presumption is always in favour of release. The second limb of Article 5 § 3 – that is release pending trial – does not give the judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. It is the provisional detention of the accused which must not be prolonged beyond a reasonable time; even if the duration of the preliminary investigation is not open to criticism, that of the detention must not exceed a reasonable time. Until conviction, he or she must be presumed innocent, and the purpose of the provision under consideration is essentially to require his or her provisional release once his or her continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X and *Buzadji*, cited above, § 89).

139. The question of whether a period of time spent in pre-trial detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV; *Kudła*, cited above, §§ 110 et seq. and *Buzadji*, cited above, § 90).

140. It primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, among other authorities, *Kudła*, cited above, § 110; *Idalov*, cited above, § 141; and *Buzadji*, cited above, § 91).

(b) Application to the present case

(i) The period to be taken into consideration

141. The Court notes that while further charges were brought against the applicant at a later stage, those fresh charges, as noted by the domestic court, were connected to the original ones (see paragraph 55 above). Thus, the Court sees no reasons to examine the periods separately.

142. In determining the length of detention under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day he is released or when the charge was determined, even if only by a court of first instance (see *Idalov*, cited above, § 112).

143. According to the Court's case-law (see *Buzadji*, cited above, § 103 and references therein) house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention (see *Buzadji*, cited above, § 104). Given the conditions of the house arrest in the present case (see paragraph 63 above), the Court considers that the period the applicant spent in house arrest constituted a deprivation of liberty. It follows that in the present case the period to be considered under Article 5 § 3 lasted from 23 June 2014 to 16 October 2015 i.e. one year three months and twenty-three days.

(ii) Reasonable suspicion

144. The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will, however, depend upon all the circumstances (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182).

145. The Court notes that in their written submissions the parties entered into a detailed assessment of evidence rebutting each other's arguments in relation to the existence of a reasonable suspicion against the applicant. However, the Court has no doubt that in view of all the material referred to by the domestic courts in their decisions, there existed a reasonable suspicion that the applicant had committed the alleged offences, and that such a suspicion persisted throughout his entire detention.

(iii) Relevant and sufficient grounds

146. It remains to be ascertained whether the domestic authorities provided relevant and sufficient reasons for the duration of the detention.

147. The Court notes that in their various decisions the judicial authorities relied on the allegation that the applicant had been a member of

an organised criminal gang. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of an applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention (see *Celejewski v. Poland*, no. 17584/04, § 37, 4 August 2006). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task (see *Raducki v. Poland*, no. 10274/08, § 39, 22 February 2011). In those circumstances, the Court considers that the need to obtain voluminous evidence from many sources, including from abroad, and to determine the facts and degree of alleged responsibility of each of the co-accused, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation.

148. The Court is mindful of the seriousness of the charges brought against the applicant and the difficulties the domestic authorities faced in investigating his case, involving as it did charges against multiple defendants allegedly part of a complex criminal group. In this connection the Court notes that the judicial authorities at multiple levels of jurisdiction gave details of why and to what extent the grounds which justified the initial detention remained unchanged, in particular highlighting the network which persisted, as shown by new facts on different occasions (contrast *Qing v. Portugal*, no. 69861/11, § 66, 5 November 2015).

149. Moreover, the Court considers that in cases such as the present one concerning alleged organised criminal gangs, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-suspects, or otherwise obstruct the proceedings, is by the nature of things often particularly high (see, *inter alia*, *Celejewski*, cited above, § 95). In the present case therefore, the risk of tampering with evidence, which was the main risk relied on by the judicial authorities throughout the proceedings, as well as that of pressure being brought to bear on other persons, also relied on by the courts, were also relevant and sufficient.

150. With regard to the extension of the applicant's detention on the grounds of the risk of reoffending, the Court notes that the domestic courts referred to the dealings the applicant had which showed the continuation of the work of the organisation, and indicated that, according to the information available at the time of their decisions, attempts at further improper dealings were going on even during the pre-trial detention (see paragraphs 39 and 41 above). Thus the domestic courts pointed to aspects of the applicant's behavior to justify their conclusion that he presented such a risk (see, *a contrario*, *Šoš v. Croatia*, no. 26211/13, § 95, 1 December 2015).

151. With particular regard to the risk of absconding, consideration must be given to the character of the person involved, his or her morals, assets, links with the State in which he or she is being prosecuted and the person's international contacts (see *Neumeister*, cited above, § 10). While such a danger usually diminishes with the passing of time (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7), in the present case it was only at a later stage that that reason was invoked by the domestic court. Nevertheless, the Court notes that, in the present case, the reasoning given for the existence of that risk, namely that the applicant's link to San Marino was diminishing, as well as the actions of one of the alleged international accomplices (see paragraph 50 above), cannot be considered unreasonable in the context of money laundering on an international scale given the connections of the applicant, which the courts repeatedly found to have persisted throughout.

152. Lastly, the Court notes that the domestic courts repeatedly examined the possibility of applying another, less severe measure of restraint but that during the relevant period they were not satisfied that such a step would be appropriate given the above-mentioned risks (see paragraphs 11, 39 and 50). Nevertheless, the Court takes note of the fact that shortly after the indictment on the first five charges, the relevant domestic court discontinued the applicant's detention on remand in connection with those charges, and that he remained in detention only in connection with further charges which were still being investigated and for which detention remained necessary for the reasons already invoked. The Court considers that the reasons in the ensuing decision, namely that of 15 October 2015 (see paragraph 64 above), which reiterated the basis of the decision of 9 March 2015, albeit in relation to the remaining charges, were also relevant and sufficient.

153. The foregoing considerations allow the Court to conclude that the various grounds given for the applicant's pre-trial detention at the different stages of the proceedings were "relevant" and "sufficient" to justify holding him in custody for the entire period in question, that is one year, three months and twenty-two days (compare *Łaszkiewicz*, cited above, § 60). Further, while certain reasons persisted all throughout the relevant period, it cannot be said that the applicant's challenges were rejected using the same formula. While the various jurisdictions referred to the previous decisions refusing bail they gave details of the grounds for the decisions in view of the developing situation and whether the original grounds remained valid despite the passage of time (see, *a contrario*, *Mikalauskas v. Malta*, no. 4458/10, § 120, 23 July 2013).

(iv) "Special diligence"

154. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings.

In this regard, the Court observes that the investigation was of considerable complexity owing to the number of suspects, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. As noted by the authorities, the investigation was additionally complicated by the need to obtain evidence from abroad since the applicant and other accomplices had operated in a number of countries (see paragraphs 9 and 11 above). Despite this complexity, the applicant was brought to trial in connection with some of the charges less than a year and a half after the charges were issued. From the information available, the Court cannot identify any periods of inactivity in the proceedings other than those occasioned by the need to gather evidence by way of letters rogatory. For those reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with relative expedition.

(v) Conclusion

155. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

156. The applicant further complained of the fact that he had repeatedly not had access to the relevant documentation to challenge his detention. He relied on Article 5 § 4 of the Convention which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

158. The applicant submitted that the evidence upon which he had been detained had been classified, meaning that he could not contest the

lawfulness of his detention, in particular the grounds and elements on which the charges were based. He claimed that the evidence in question had remained classified up to the date of the introduction of the application, and other evidence had remained classified even up to the date of his submissions.

159. He noted, in connection with the first period of his detention, that until September 2014 file no. 769/12 remained partly classified despite the relevant time-limit having expired (six months extendable by three months), as confirmed by the judge of appeals in the decision of 30 June 2014. Thus, he could not view the evidence substantiating the illicit origin of the funds. In connection with case file no. 184/14, he argued that it had only contained accounting documents about financial transactions, without any indication that such funds had had an illicit origin. Similarly, as to file no. 769/12 concerning the investigation in connection with a wire transfer of 2.5 million euros (EUR), the applicant noted that while the declassification of documents had taken place gradually, none of the newly disclosed information had suggested that the funds had had a criminal origin. He further argued that the files related to the charge of conspiracy had been disclosed only on 4 May 2015, and that the information available previously in files no. 184/14 and 769/12 had not contained any such information.

160. The applicant added that San Marino law provided that the time-limit for the classification of documents was six months, which could be extended by another three months by a decision of a court, however, no such decision had been made. In fact the judge of appeals in his decision of 30 June 2014 had also upheld that argument, although the inquiring judge had not followed suit.

161. He maintained that that the reasons for dismissing his application for release on 18 September 2014, mainly related to his behaviour (on which the judge had based his fear of the applicant tampering with evidence), had not been included in the case file, and therefore had not been accessible to him.

162. It was only on 11 March 2015 that he had had access to certain materials in connection with the need to keep him in detention. In his submissions the applicant also emphasised the fact that he had remained unaware of the information related to his detention in connection to the period following the decision of 14 May 2015 since it had been based on documents which were totally classified.

163. Lastly, the applicant submitted that quite apart from not disclosing relevant information by refusing him access despite his specific requests (see Section C in the facts part), the authorities had totally disregarded the evidence and arguments he had presented which had discredited the evidence that had been collected and the conclusions that had been made on the basis of that evidence.

(b) The Government

164. The Government submitted that the documents related to the proceedings had gradually been made available to the applicant who immediately after the decision to detain him had had access to all the evidence used to support the measure applied. The Government noted that the documents in file no. 769/12 had been declassified on the same day as the precautionary measure had been ordered, namely 23 June 2014. The Government noted that the AIF's intelligence had remained classified to later dates to avoid compromising ongoing investigations, however, the AIF report had not been used to justify the applicant's detention.

165. The documents in file no. 184/14 continued to be classified in compliance with Article 5 of Law no. 93/2008. The Government noted that according to the law the time-limit for the secrecy regime ran from the date of the *notitia criminis*, which in respect of the accused was 16 May 2014. In any event the duration of that regime could be extended in the case of a particularly complex investigation, as had happened in the present case on 6 November 2014.

166. Acknowledging the importance of disclosure for the purpose of the rights of defence, the Government reiterated that that had to be balanced against the needs of an investigation, particularly in money-laundering cases.

167. In any case, on 1 July 2014 the judge of appeals had granted the applicant access to the relevant documents in connection with his detention, and had allowed him time to present his submissions. Subsequent requests for further disclosure had been rejected as the applicant had been made aware of the reasons for his detention through the inquiring judge's detailed decisions and the supplementary material disclosed by the order of 1 July 2014. However further documents had been released by means of a decision of 16 October 2014. Secrecy had therefore been maintained in relation to evidence referring to additional facts that had not yet been under investigation and to evidence acquired after 23 June 2014. However, the secrecy regime had been reduced over time.

168. Further requests for the disclosure of all the evidence, following March 2015, had also been rejected because of the nature of the measures planned by the investigators, such as surprise measures and actions in connection with international letters rogatory, the purpose of which would have been defeated if the applicant or his accomplices had known about them. The reports of the police authorities were also kept secret since they contained references to the investigative activity being carried out. The Government noted that at times the applicant had even requested access to documents which had not yet been available to the judge ruling on his detention as they had not yet been transmitted by the AIF, and noted that after March 2015 the applicant had reiterated his request for documents

even though, in the meantime, all documents and elements at the basis of the measure had been declassified.

169. The Government referred to the Court's case-law, and noted that the legitimate aim of ensuring the proper course of justice without the risk of tampering with evidence could only be pursued at the expense of substantial restrictions on the rights of the defence if information essential to verify the lawfulness of the detention was made available. The latter had been made available to the applicant, both through detailed decisions and through access to parts of the declassified file. That was made evident by the fact that as the secrecy regime had diminished, the arguments made by the applicant to contest his detention had remained the same as at the start of his detention.

2. The Court's assessment

(a) General principles

170. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009 with further references to the Court's case-law and *Sher and Others v. the United Kingdom*, no. 5201/11, § 147, ECHR 2015 (extracts)).

171. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties. Moreover, in remand cases, since the persistence of a reasonable suspicion that the accused person has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, the detainee must be given an opportunity effectively to challenge the basis of the allegations against him (see *Becciev v. Moldova,* no. 9190/03, §§ 68-72, 4 October 2005). This may require the court to hear witnesses whose testimony appears prima facie to have a material bearing on the continuing lawfulness of the detention (ibid., §§ 72-76, and *Ţurcan v. Moldova*, no. 39835/05, §§ 67-70, 23 October 2007). It may also require that the detainee or his representative be given access to documents in the case file which form the basis of the prosecution case against him (see *Włoch v. Poland*, no. 27785/95, § 127, ECHR 2000-XI; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151; *Fodale v. Italy*, no. 70148/01, ECHR 2006-VII; and *A. and Others*, cited above, § 204).

172. The Court has held nonetheless that, even in proceedings under Article 6 for the determination of guilt on criminal charges, there may be restrictions on the right to a fully adversarial procedure where strictly necessary in the light of a strong countervailing public interest, such as national security, the need to keep secret certain police methods of investigation or the protection of the fundamental rights of another person. There will not be a fair trial, however, unless any difficulties caused to the defendant by a limitation on his rights are sufficiently counterbalanced by the procedures followed by the judicial authorities (see, for example, *A and Others*, cited above, § 205, and the cases cited therein).

173. Thus, while the right to a fair criminal trial under Article 6 includes a right to disclosure of all material evidence in the possession of the prosecution, both for and against the accused, the Court has held that it might sometimes be necessary to withhold certain evidence from the defence on public-interest grounds. In a number of cases where the competing public interest entailed restrictions on the rights of the defendant in relation to adverse evidence, relied on by the prosecutor, the Court has assessed the extent to which counterbalancing measures can remedy the lack of a full adversarial procedure (ibid., § 206-207).

174. In particular in *A and Others*, cited above, the Court considered that in the circumstances of that case, and in view of the dramatic impact of the lengthy – and what appeared at that time to be indefinite – deprivation of liberty on the applicants' fundamental rights, Article 5 § 4 had to import substantially the same fair-trial guarantees as Article 6 § 1 in its criminal aspect (ibid., § 217). It was essential that as much information about the allegations and evidence against each applicant was disclosed as was possible without compromising national security or the safety of others. Where full disclosure was not possible, Article 5 § 4 required that the difficulties this caused were counterbalanced in such a way that each applicant still had the possibility effectively to challenge the allegations against him (ibid., § 218).

175. The disclosure of evidence must take place in good time, giving access to the relevant elements of the file prior to the applicant's first appearance before the judicial authorities (see *Lamy*, cited above, § 29, and *X.Y. v. Hungary*, no. 43888/08, § 50, 19 March 2013).

176. The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Thus, information which is essential for the assessment of the lawfulness of detention should be made available in an appropriate manner to the suspect's lawyer (ibid., § 42).

(b) Preliminary considerations

177. The Court notes that, traditionally, under its case-law the concept of equality of arms is one between the parties, namely the prosecutor and the detained person. However, the Court notes that differently from other criminal systems - where requests for holding a person in detention or objections to a request for release are made by the public prosecutor, and a court is competent to decide on the application of the measure - in San Marino, which has an inquisitorial system, it is the inquiring judge who decides on the measure without the request of the prosecutor (Attorney General *Procuratore del Fisco* in the San Marinese context). Indeed the latter has the role of a *magistrato requirente* (see paragraph 70 above) who may at any stage of the proceedings make submissions and pleas (see Law no. 93/2008) and may lodge a challenge before the appeals court and the third-instance court (see paragraphs 73 and 74 above), if he deems fit, but does not act as a "prosecutor" as understood in continental legal systems. In this specific scenario the inquiring judge thus holds two roles, and may be considered a hybrid figure between a judge and a public prosecutor.

178. The Court has examined a number of cases under Article 6 § 1 in which the fear of partiality arose on account of the public prosecutor's absence from the court hearings (see, for example, *Thorgeir Thorgeirson v. Iceland*, §§ 46-54, 25 June 1992, Series A no. 239; *Ozerov v. Russia*, no. 64962/01, §§ 47-58, 18 May 2010; *Krivoshapkin v. Russia*, no. 42224/02, §§ 44-45, 27 January 2011; and more recently, *Karelin v. Russia*, no. 926/08, 20 September 2016). In *Ozerov* (§ 53 of the judgment) the Court found that by examining the case on the merits and convicting the applicant without the prosecutor the District Court confused the roles of prosecutor and judge and, thus, gave the grounds for legitimate doubts as to its impartiality. In *Krivoshapkin* (§ 44 of the judgment) the Court also considered that the trial court had not preserved the guarantees of the adversary nature of the criminal proceedings and had confused the functions of prosecutor and judge: it had taken up the prosecution's case, examined the issues, determined the applicant's guilt and imposed a sanction. Drawing inspiration from the above, the Court considers that in a system such as that of San Marino, where at pre-trial stage, for the purposes of whether an accused person should or should not be kept in detention, the judge assumes to a large extent also the role of the prosecutor, it cannot be said *a priori* that the principle of equality of arms between the parties, in so far as it concerns the disclosure of documents, does not come to play. On the contrary the Court considers that an accused in such circumstances must in principle have access to the evidence relied on by the judge deciding or confirming such measures.

(c) Application of the above principles to the present case

179. Turning to the circumstances of the present case, as to the time-limits applicable to the secrecy regime applied to the investigation, the Court notes that the parties are in disagreement as to the actual dates and relevant calculation of its expiry. Be that as it may and irrespective of whether or not that time-limit had elapsed, it suffices for the Court to establish whether the applicant had access to information which was essential for the assessment of the lawfulness of his detention (see, *mutatis mutandis*, *A. and Others*, cited above, § 218) and whether such information was available in an appropriate manner to his lawyer (see, *mutatis mutandis*, *Garcia Alva v. Germany*, no. 23541/94, § 42, 13 February 2001, and *Ovsjannikov v. Estonia*, no. 1346/12, § 77, 20 February 2014). If this was not the case, the Court must examine whether the difficulties this caused, were counterbalanced in such a way that the applicant still had the possibility effectively to challenge the allegations against him (see paragraph 174 above with reference to *A. and Others*, cited above, § 218).

180. It is not disputed that in the present case certain materials were classified, that some of them were eventually released, and others remained classified to the date of the parties' observations. As argued by the Government and held by the domestic courts, the reason for such classification was the need to further the investigation and not to compromise measures planned by the investigators, in the context of a suspected money laundering racket.

181. The Court considers that there is no doubt that money laundering directly threatens the rule of law as is also evident by the action of the Council of Europe and other international bodies in this field (see paragraphs 77-79 and 82 above). In particular the Council of Europe Conventions on the matter have bound States to criminalise the laundering of the proceeds of crime and have provided for various forms of investigative assistance, including, the assistance in procuring evidence, transfer of information to another State, adoption of common investigative techniques, and lifting of bank secrecy (see paragraphs 78 and 79 above). These measures are aimed at having a strong criminal policy to combat this growing national and international phenomenon the complexities of which are unprecedented.

182. Thus, drawing inspiration from its case-law under Article 6 and Article 5 § 4 (see *A. and Others*, and *X.Y. v. Hungary*, respectively, both cited above), the Court accepts that the need to keep secret certain police methods as well as the need for criminal investigations to be conducted efficiently, particularly in the field of money laundering which threatens the protection of society, is a matter of strong public interest. This constitutes by itself sufficient justification for the imposition of some restrictions on the adversarial nature of proceedings in connection with Article 5 § 4 (compare

Sher and Others, cited above, § 150, in connection with an imminent terrorist attack).

183. Against this background the Court will examine the counterbalancing factors available in the San Marino system, and whether procedural safeguards sufficed to make up for any difficulties in relation to his ability to challenge the lawfulness of his detention.

184. The Court notes, first, the extensive reasoning of the decision of the inquiring judge of 23 June 2014, which explained in relevant detail the transfers of money at issue as well as the applicant's role (see paragraphs 9 and 10 above). Such detail gave the applicant sufficient knowledge concerning the basis of the prosecution case against him, allowing him to challenge the reasonable suspicion against him, as he in fact did (see paragraphs 17 and 23 above). Subsequent decisions of the inquiring judge, such as that of 18 September 2014, which focused *inter alia*, on the risk of tampering with evidence, and that of 9 March 2015, were also extensive and thorough, giving the applicant sufficient factual elements to challenge the grounds of his detention (see paragraphs 39 and 49-52 above). Furthermore, the inquiring judge himself could declassify material with the passage of time, in light of relevant factors, had he considered it to be appropriate (see, for example, paragraph 58 above).

185. Secondly, the applicant had the possibility (see paragraph 73 above) to challenge each of the decisions of the inquiring judge before the Judge of Appeals who could supplement, amend, or modify the reasons forming the basis of the inquiring judge's decision. This independent judicial authority could examine all the relevant evidence, both closed and open, and was well placed to ensure that no material was unnecessarily withheld from the detainee (see *A. and Others*, cited above, § 219). Subsequently, if necessary, such decision could also be appealed before the third-instance judge (see paragraph 74 above). Thus, the applicant benefited from a three-tier assessment in relation to his challenges concerning disclosure. The applicant in the present case repeatedly took these courses of action, and the respective judicial authorities confirmed the previous decisions and at times ordered the release of further documentation (see, for example, paragraphs 24 and 41 above). In this connection the Court cannot but note that documents were declassified with the passage of time, as the interests of protecting the investigation diminished in relation to certain aspects. In consequence, the effectiveness of these appeal procedures was not only one in law but also in practice.

186. Under Article 5 § 4, the authorities are required to disclose adequate information to enable the applicant to know the nature of the allegations against him and have the opportunity to lead evidence to refute them. They also must ensure that the applicant or his legal advisers are able effectively to participate in court proceedings concerning continued detention (see *Sher and Others*, cited above, § 149). It must be noted that in

the present case the applicant or his legal advisers were able effectively to participate in court proceedings concerning the continued detention and repeatedly made submissions at different levels of jurisdiction.

187. Turning to the law in question, the Court is mindful of the fact that the law concerning the classification regime is circumscribed (see paragraph 75 above). In particular that law provides for such a regime only if there are reasons of an "exceptional nature". Moreover, such regime may extend only to the time strictly necessary and is limited to a maximum of nine months, unless there has been a call for judicial assistance - as happened in the present case. The Court considers that, while it is unlikely that alone it could be considered to be a sufficient safeguard, it nonetheless provides for a regulatory framework intended to prevent any abuse (compare *Sher and Others*, cited above, § 151).

188. Accordingly, in the light of strong countervailing public interest in combatting money laundering, the Court cannot find that the safeguards in place where *a priori* insufficient.

189. In particular, the Court observes that the applicant's main complaint is directed towards the fact that the evidence disclosed to him, and on which the courts based their conclusion that there was a reasonable suspicion, was not in fact sufficient as the elements of the crimes with which he was charged could not be established – particularly the illicit origin of the funds (see paragraph 159 above). However, as the domestic courts explained, it was not necessary to have confirmation of the illicit origins of the funds in order to suspect money laundering, but that it was enough to have a number of factual elements indicating the supposed crime which generated those funds, such as in the present case, the information relating to the entire scenario, in particular the substantial flows of money received and managed by the applicant, which was not compatible with his income (see paragraph 11 and 55 above). The information summarised in those decisions was also enough to bring into play the charges of conspiracy (see paragraph 55 above). Although the applicant argued that information about the crime of conspiracy was only disclosed in May 2015, the Court is ready to accept the domestic court's explanation that the previous information disclosed, seen in context, was sufficient to enable the applicant to challenge his detention.

190. Most importantly, it does not appear obvious that in their decisions the courts based themselves on essential documentation which was not available to the applicant. While it is possible that the judges in the case made general conclusions based on a wider evidential background than that provided to the applicant, it does not emerge from the facts that any of the elements not disclosed to the applicant formed the basis of the domestic courts' decisions in relation to their reasonable suspicion or were specifically referred to in those decisions. It follows that the applicant could still challenge the existence of reasonable suspicion against him, in

particular the grounds and elements on which the charges were based, on the basis of the information in his possession, as he did on various occasions.

191. As to the two corollary grounds on the basis of which his detention was maintained, in particular the Court notes that no documents were provided in relation to the decision of the inquiring judge of 18 September 2014 confirmed on appeal about the applicant's behaviour in connection with a particular incident which had been, amongst other things, the basis of the persistent fear that the applicant would tamper with evidence or reoffend (see paragraph 42). In that connection the domestic courts held that it sufficed for a judge to take into consideration matters in the public domain (see paragraph 44). The Court considers that while it may be acceptable for courts to base decisions on general knowledge, in the present case the domestic courts, on two occasions (see paragraph 39 and 41), based their decisions on elements found in the case file of separate proceedings (against M.). While it is true that the case file may have been public, the domestic court itself in its decision of 13 October 2014 considered that such matters would be clarified once the documents had been declassified (see paragraph 41 above). None of that material had been specifically included in the applicant's file, or provided in any other way to him. However, the Court observes that the facts mentioned by the domestic court in its decision (see paragraph 39 above) were sufficiently detailed to enable the applicant to contest them as being a basis for his detention.

192. Furthermore, the Court notes that, the fear of tampering with evidence was not solely based on the applicant's behaviour while he was in detention, but also on his prior behaviour and his capacity to manipulate the truth (see paragraph 39 *in fine*). The Court can accept that in the complex and serious crimes related to money laundering - which implies an ability to conceal funds of illegal origin and subsequently to surreptitiously reintroduce them into the legal financial system - there may exist a general risk of tampering with evidence, or reoffending, flowing from the very nature of organised crime (see paragraphs 147 and 149 above). Further, the reference to the applicant's behaviour while in detention - the evidence of which was not disclosed to the applicant - was only a supplementary argument to a corollary ground of detention, unrelated to the unabated reasonable suspicion (see paragraphs 148 – 150 above). In view of the foregoing the fact that in the decision of 18 September 2014 the authorities partly relied on elements, which were not included in the applicant's case-file, does not suffice in itself to find a breach of Article 5 § 4

193. Accordingly, there has been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 4 of the Convention.

Done in English, and notified in writing on 17 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Linos-Alexandre Sicilianos
Registrar	President