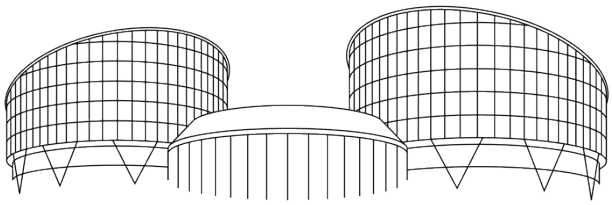

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 39549/02
Venyamin Leonidovich BENIASHVILI
against Russia

The European Court of Human Rights (First Section), sitting on 13 March 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Nona Tsotsoria,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 October 2002,

Having regard to the observations submitted by the respondent Governments and the absence of those of the applicant in reply,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Venyamin Beniashvili, is a Russian national who was born in 1975 and is currently detained in a strict-regime prison in Rybinsk (ФГУ ИК-2), the Russian Federation. He was represented before the Court by Mr V. Yakovlev, a lawyer practising in Rybinsk. The Russian Government were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights. The

Georgian Government were represented by their former Agent, Mr D. Tomadze of the Ministry of Justice.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Extradition proceedings

3. On 23 August 1998 criminal proceedings were initiated with regard to a murder committed the same day in Moscow.

4. On 23 November 1998 the applicant, whose whereabouts were unknown at that time, was charged *in absentia* with the above offence, imposed with the measure of detention on remand, and declared wanted by resolutions of the Moscow city prosecutor's office. The criminal proceedings were stayed pending the search for the applicant.

5. On 10 December 2000 the applicant was arrested by the Georgian police in Tbilisi on the basis of Article 61 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993 (see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 266, ECHR 2005-III) in relation to the criminal proceedings pending against him in Russia and for the consequent purpose of his extradition there. As disclosed by a record of his apprehension, the applicant was duly explained the reasons for his international search and arrest. He was then placed in the short-term remand prison of the Tbilisi Central Police Department ("the CPD").

6. According to the applicant, he was subjected to psychological pressure by several police officers during his detention in the CPD, who were allegedly requesting money in exchange for his release.

7. On 31 March 2001 the applicant was transferred from the CPD to Tbilisi prison no. 5.

8. In April 2001 the applicant filed several complaints with the Ministry of Justice, the authority in charge of the custodial institutions in Georgia, and the General Prosecutor's Office of Georgia, challenging the lawfulness of the extradition proceedings and the quality of the material conditions of his detention in Tbilisi prison no. 5. As confirmed by the case file, he did not raise the issue of his alleged harassment by the police officers in the CPD. All those complaints went unanswered.

9. On 7 May 2001 the applicant was extradited to Russia. He was escorted from the Tbilisi international airport by a Russian law-enforcement agent, an officer of the Russian penitentiary authority, who allegedly gave the applicant several sedative injections and cuffed his hands to the seat during the flight to Moscow.

2. Criminal proceedings in the Russian Federation

10. On 18 May 2001 the applicant, who was assigned by the Russian authorities a public lawyer due to his and his family's financial inability to hire a private one, was formally informed, in that lawyer's presence, of the details of the charge against him. According to the applicant, the investigator in charge of the case, Mr S., then demanded money from him in exchange for the discontinuation of the criminal case. Those demands were allegedly reiterated by the investigator throughout the entire period of the applicant's detention pending investigation.

11. On 23 October 2001 the applicant dismissed his lawyer, requesting that leave be granted to his girlfriend instead, who did not possess any legal background, to represent his interests during the trial. The prosecution authority rejected the request on the same day, explaining that, pursuant to Article 47 § 5 of the Russian Code of Criminal Procedure, only a court could authorise relatives or other close persons who were not qualified lawyers to act as legal counsels in a criminal case.

12. On 23 October 2001 the prosecution authority contacted the applicant's mother, inviting her to hire a private lawyer for her son. Citing financial difficulties, she refused the offer and asked the authorities to assign another public lawyer for the applicant.

13. On 29 October and 1 November 2001 the applicant complained to the Moscow city prosecutor's office about the facts of extortion of money by investigator S. Those complaints were rejected as unsubstantiated by the prosecution authority on 23 November 2001.

14. On 5 November 2001 the Russian authorities assigned another public lawyer for the applicant. The applicant did not object to that assignment. As confirmed by the applicant's and his new lawyer's signatures on the relevant receipt paper, which document was then added as evidence to the criminal case file, both of them studied the case materials in their entirety (on 232 pages) between 6 and 8 November 2001.

15. The applicant's trial started on 21 March 2002 at the Tushinskiy District Court. The bill of indictment was based on the statements of numerous witnesses, including the two persons who had directly incriminated the applicant in the murder ("the witnesses for the prosecution"), and the results of numerous crime detection examinations, all of which had been collected by the investigative authority in 1998. At the beginning of the trial, the applicant requested leave to have the witnesses for the prosecution examined in court and that criminal proceedings be instituted against investigator S. for the alleged extortion of money. He also complained that he had not been given an opportunity to study the criminal materials in full and requested leave for his girlfriend to act as his legal counsel and to have their civil marriage registered.

16. By a ruling of 22 March 2002, the Tushinskiy District Court granted the applicant's request for the examination of the witnesses for the

prosecution, summoning them for trial. However, as those persons failed to appear within the following week, the District Court then decided, on 28 March 2002, after having obtained the applicant's and his lawyer's explicit consent to that end, to finalise the trial without the witnesses' participation by reading out the statements which they had given to the investigators in 1998. The fact of the applicant's and his lawyer's unambiguous consent to the reading out of the witnesses' pre-trial depositions was duly recorded in the minutes of the hearing of 28 March 2002.

17. As regards the applicant's other requests, the District Court dismissed all of them by its ruling of 22 March 2002 for various reasons. Thus, the court stated that, lacking the necessary powers of investigation and prosecution under the domestic law, it could not initiate criminal proceedings against investigator S. As to the applicant's complaint about the inability to study the case materials, the court dismissed it as manifestly ill-founded, referring to the applicant's own signature on the receipt paper which confirmed his full acquaintance with the file. As regards the issue of the applicant's representation by his girlfriend, the court dismissed that request, noting that she lacked the necessary legal qualifications and that the applicant had already been assigned a qualified lawyer. Lastly, the court rejected the applicant's request for the registration of the marriage, stating that such an issue was wholly irrelevant to the criminal proceedings at stake.

18. By a judgment of 29 March 2002, the Tushinskiy District Court convicted the applicant of murder, sentencing him to thirteen years in prison. The conviction was based on the statements of numerous witnesses, including the two witnesses for the prosecution, and the results of the forensic examinations which, having been conducted upon discovery of the victim's body in August 1998, confirmed the existence of the applicant's fingerprints and blood samples on the body and on the site of the crime.

19. On 22 May 2002 the applicant appealed against the judgment of 29 March 2002, challenging the Tushinskiy District Court's findings of fact. As confirmed by a copy of his statement of appeal, the applicant did not complain about the inability to examine the witnesses for the prosecution during the trial at first instance.

20. On 3 June 2002 the Moscow Regional Court, dismissing the applicant's appeal, finally upheld the conviction of 29 March 2002. Subsequently, the applicant was placed in the strict-regime prison located in Rybinsk ("the Rybinsk prison").

B. Relevant Russian domestic law

21. Pursuant to Article 10 of the Family Code and section 27 § 7 of a Federal Law of 15 November 1997 on Civil Registration Acts (Федеральный закон от 15 ноября 1997 г. № 143-ФЗ "Об актах

гражданского состояния"), detained persons, both those detained pending trial and those who serve sentences after convictions, can marry. For a marriage to take legal effect it must be recorded in the Civil Register. The official registration of a detainee's marriage shall be conducted on the premises of the relevant custodial institution, and under the direct supervision of the Governor of that institution, by the Head of the relevant local Civil Registry office.

COMPLAINTS

A. Complaints against Georgia

22. Relying on Articles 3, 4, 5 §§ 1 (f), 2 and 4 and 6 § 1 of the Convention, the applicant complained about the material conditions of his detention in the CPD and Tbilisi prison no. 5 and about the unlawfulness of the extradition proceedings.

B. Complaints against the Russian Federation

1. As regards the period preceding the applicant's conviction

23. Under Article 3 of the Convention, the applicant complained that the Russian law-enforcement agent had effectuated his extradition on 7 May 2001 in a degrading manner and that the investigator in charge of his criminal case, Mr S., had been pressurising him with the aim of bribe extortion during his detention pending investigation.

24. Relying on Article 5 § 1 (f) of the Convention, the applicant claimed that the Russian State should be held responsible for the arbitrary extradition proceedings in Georgia. Under Article 5 § 2 of the Convention, he further complained that the Russian investigative authority had informed him of the nature of the criminal charge against him as late as on 18 May 2001, that is with a delay of eleven days after his extradition to Russia had taken place on 7 May 2001.

25. Under Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, the applicant complained that the Tushinskiy District Court had not allowed him to study the criminal case materials, to have his girlfriend appointed as his legal counsel and to examine the witnesses for the prosecution during the trial. Relying on Article 12 of the Convention, he further complained that the District Court had not allowed him to register his civil marriage with his girlfriend. Lastly, Articles 7, 13 and 14 of the Convention were also

invoked, without any coherent explanation, with respect to the criminal proceedings against the applicant.

2. As regards the period subsequent to the applicant's conviction

26. Relying in substance on Articles 3, 8 and 34 of the Convention, the applicant complained, without giving any factual description, about the quality of the material conditions of his detention after his conviction and about the control of his correspondence with his family, lawyer and the Court by the administration of the Rybinsk prison. In particular, he contested that the prison administration refused to mail his letters to the Court at its own expense.

PROCEDURE

27. On 10 January 2008 the Court decided to give notice of the application to the respondent Governments. The applicant was informed thereof on the same day.

28. On 3 March 2008 the applicant informed the Court of his wish to withdraw the part of the application concerning the period of his detention after his conviction, in the Rybinsk prison.

29. By a letter of 10 April 2008, the Court informed the respondent Governments of the applicant's partial withdrawal of his application.

30. On 6 June 2008 the respondent Governments' observations on the admissibility and merits of the case were transmitted to the applicant, who was invited to submit his observations in reply by 18 July 2008. However, no response followed.

31. On 19 March 2009 the Court sent the applicant a reminder about his obligation to submit observations, on pain of striking out his application under Article 37 § 1 (a) of the Convention. The reminder was sent both to the applicant's and his representative's addresses.

32. On 30 August 2010 the Court received a handwritten letter from the applicant. The Court concluded from the content of that letter that the applicant remained interested in having his case adjudicated. However, the applicant did not submit any additional arguments on the admissibility and merits of the relevant complaints.

33. On 18 October 2010 the Court informed the applicant, in reply to his letter of 30 August 2010, that it would proceed with the examination of the case on the basis of the file as it stood at hand.

THE LAW

A. The violations alleged with respect to Georgia

34. In the part of his application directed against Georgia, the applicant complained, invoking various provisions of the Convention (see paragraph 22 above), about the unlawfulness of the extradition proceedings and the poor quality of the material conditions of his associated detention during the period between 10 December 2000 and 7 May 2001.

1. The parties' submissions

35. As regards his complaint about the extradition proceedings, the Georgian Government submitted that the applicant had not exhausted domestic remedies, contrary to Article 35 § 1 the Convention. Notably, referring to various provisions of the Georgian Code of Criminal Procedure, they suggested that the applicant could have challenged the lawfulness of his forthcoming extradition to Russia before a domestic court. Alternatively, if the objection of non-exhaustion were not to be accepted, the Government asked the Court to reject the complaint for failure to comply with the six-month rule. As to the applicant's complaint about the poor conditions of his detention in the Georgian prisons, the Government submitted that the applicant had failed to substantiate his allegations by material evidence.

36. The applicant did not submit any comments in reply to the Georgian Government's objections.

2. The Court's assessment

37. The Court recalls that the relevant Georgian law and practice did not provide for an effective domestic remedy in extradition cases, contrary to the respondent State's obligations under Article 13 of the Convention, at the material time (see *Shamayev and Others*, cited above, §§ 258 and 462-466). Furthermore, as regards the compatibility of the material conditions of the applicant's detention with the requirements of Article 3 of the Convention, the Court already found such complaints to have been conditioned by general, structural problems in the penitentiary sector of Georgia, against which no effective remedy lay at that time (cf., *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 27 June 2007; and *Aliev v. Georgia*, no. 522/04, § 62, 13 January 2009).

38. Consequently, in the absence of an effective domestic remedy for either of the above-mentioned issues raised by the applicant, the Court considers that the six-month time-limit laid down in Article 35 § 1 of the Convention started to run from the moment the factual situation constitutive of the alleged violations ceased to exist (see, amongst many others,

Panjikidze and Others v. Georgia (dec), no. 30323/02, 30 June 2006). That situation ended on 7 May 2001, when the applicant's extradition from the Georgian jurisdiction to the Russian one was finally and irrevocably effectuated. However, as the present application was lodged with the Court on 3 October 2002, the part of the application directed against Georgia is thus belated and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. The violations alleged with respect to the Russian Federation

1. As regards the period preceding the applicant's conviction

(a) The complaints under Article 3 of the Convention

39. The applicant first claimed that the manner of his extradition by the Russian law-enforcement officer on 7 May 2001 had been incompatible with Article 3 of the Convention. Relying on the same provision, he further complained that, subsequent to the extradition and during the period his pre-trial detention in Russia, the investigator in charge of his criminal case had been demanding a bribe from him. Article 3 of the Convention reads as follows:

Article 3

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

i. The parties' submissions

40. The Russian Government submitted that the applicant's complaints under Article 3 of the Convention were manifestly ill-founded, reproaching him for his failure to submit any material evidence in support of his allegations. As regards the applicant's complaint concerning the extortion of a bribe by the investigator, the Government added that the domestic authorities had already duly examined that issue and rejected it as unsubstantiated.

41. The applicant did not submit any arguments in reply to the Government's objection.

ii. The Court's assessment

42. With respect to the applicant's first complaint under Article 3 of the Convention, the Court, having due regard to the documents available in the case file, notes that he never filed a complaint with the aim to hold the law-enforcement officer in charge of his extradition criminally liable for the alleged abuse of power, which would have been the only effective domestic

remedy in the circumstances (see, amongst many others, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003 and *Medvedev v. Russia* (dec.), no. 26428/03, 1 June 2006). Consequently, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

43. As regards the second complaint, the Court considers that the investigator's allegedly intimidating behaviour aimed at bribe extortion cannot, as scarcely described by the applicant, attain a minimum level of severity to fall within the scope of Article 3 of the Convention (compare, amongst many others, with *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004 and *Kositsyn v. Russia* (dec.), no. 69535/01, ECHR 19 October 2006). This complaint is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) The complaints under Article 5 of the Convention

44. Relying on Article 5 § 1 (f) of the Convention, the applicant claimed that the Russian Federation should be held responsible for the unlawfulness of his detention pending extradition. As regards the subsequent period of his detention pending trial, the applicant complained, under Article 5 § 2 of the Convention, that the Russian authorities had been too late in providing him on 18 May 2001 with the information about the nature of the criminal charge against him. The invoked provisions read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

i. The parties' submissions

45. The Russian Government submitted that the applicant's complaint under Article 5 § 1 (f) of the Convention could not be held imputable to the Russian Federation as his detention pending extradition had been regulated and supervised exclusively by the Georgian legislation and law-enforcement agents. As to the complaint under Article 5 § 2 of the Convention, the Government stated that, as well as being belated within the meaning of Article 35 § 1 of the Convention, the complaint was also manifestly ill-founded in the light of the relevant circumstances of the case. Notably, the Government referred to the fact that the applicant had learnt of the

nature of the criminal charge against him right upon his arrest in Georgia on 10 December 2000.

46. The applicant did not comment on the Government's submissions.

ii. The Court's assessment

47. In so far as the complaint under Article 5 § 1 (f) of the Convention about the arbitrariness of the extradition proceedings is concerned, the Court finds that nothing in the case file indicates that the Russian State could arguably be held responsible for the legality of those proceedings which took place within the exclusive jurisdiction of Georgia (compare, for instance, with *Wedler v. Poland* (dec.), no. 44115/98, 27 May 2003).

48. As regards the applicant's complaint under Article 5 § 2 of the Convention, the Court notes that the case materials, as supplemented by the respondent Governments after the communication of the case, show that he was first informed of the nature of the criminal proceedings pending against him in Russia right upon his arrest in Georgia on 10 December 2000 (see paragraph 5 above). In the course of the subsequent extradition proceedings, he learnt many other details about those criminal proceedings. Consequently, by the time of his transfer to the jurisdiction of the Russian Federation, the applicant obviously knew the reasons for his international search, arrest and continued detention and possessed sufficient details about the charge of murder which had been brought against him in 1998 (compare, for instance, with *Ryabikin v. Russia* (dec.), no. 8320/04, ECHR 10 April 2007 and *Batalov v. Russia* (dec.), no. 30789/04, 15 November 2005).

49. It follows that the applicant's complaints under Article 5 §§ 1 (f) and 2 of the Convention directed against the Russian Federation are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) The complaints under Article 6 of the Convention

50. Relying on Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention, the applicant complained that the Tushinskiy District Court had not allowed him to study the case materials, to have his girlfriend appointed as a legal counsel and to examine the witnesses for the prosecution during the trial. These provisions read as follows:

Article 6

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal. ...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself ... through legal assistance of his own choosing ...;

(d) to examine or have examined witnesses against him ...”

i. The parties' submissions

51. The Russian Government submitted that the applicant's complaints under Article 6 §§ 1 and 3 (b), (c) and (d) were manifestly ill-founded in the light of the relevant circumstances of the case. Notably, with respect to the first complaint, the Government submitted a copy of the receipt paper bearing the signatures of the applicant and his lawyer in confirmation of the fact of their full acquaintance with the criminal case materials which had taken place between 6 and 8 November 2001 (see paragraph 14 above). As to whether or not the applicant's girlfriend should have been allowed to act as his legal counsel in the proceedings, the Government referred to the fact that she had not possessed any legal background whatsoever and that the applicant had already benefited from the services of the qualified public lawyer at that time. Lastly, the Government submitted that the domestic court had done everything possible to summon the impugned witnesses for the trial so the applicant could examine them in person. However, given the objective inability to secure those persons' presence, the Tushinskiy District Court then offered and the applicant agreed himself to have those witnesses' pre-trial depositions read out in their absence and then never challenged the legality of that procedural decision before the appellate instance.

52. The applicant did not submit any comments in reply.

ii. The Court's assessment

53. Firstly, as regards the complaint about the inability to study the criminal case materials, the Court observes that the case file, as supplemented by the Russian Government and left uncontested by the applicant after the communication of the case, proves the contrary. Thus, the relevant receipt paper confirms that in the period between 6 and 8 November 2001 both the applicant and his lawyer acquainted themselves with all the 232 pages of the criminal case materials (see paragraph 14 above).

54. Secondly, as to the participation of the applicant's girlfriend in the trial, the Court reiterates that the right to be defended by counsel of one's own choosing is not absolute (see *Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B). The question of whether or not a limitation of this right has amounted to a violation of the above-mentioned provision of the Convention must be assessed not as an isolated element but, on the

contrary, against the fairness of the proceedings taken as a whole (see *Gorodnichev v. Russia* (dec.), no. 52058/99, 3 May 2005).

55. The Court, sharing the Government's argument, considers that the Tushinskiy District Court cannot be reproached for not having allowed the applicant's girlfriend, a person without any legal knowledge whatsoever, to act as his counsel in the situation when he already benefited from the services of a qualified lawyer. As to the professional quality of that public lawyer, who had been assigned by the authorities due to the applicant's and his family's financial inability to hire a private one, nothing in the case file can arguably suggest that the participation of that lawyer impaired the fairness of the proceedings in any manner (cf., *Sarıkaya v. Turkey*, no. 36115/97, § 64, 22 April 2004). It is to be noted that the applicant himself never objected to the appointment of that lawyer nor contested the latter's professional aptitude before the domestic courts.

56. Thirdly, in so far as the applicant's inability to examine the witnesses for the prosecution during the trial is concerned, the Court recalls that the use in evidence of statements obtained at the stage of the investigation is not in itself inconsistent with Article 6 § 3 (d) of the Convention, provided that the rights of the defence have been respected. On the contrary, it may prove necessary in certain circumstances to refer to statements made before the trial (see *Belevitskiy v. Russia*, no. 72967/01, § 117, 1 March 2007). Furthermore, a defendant's right to examine or have examined witnesses against him or her is not an absolute one but, on the contrary, can be waived. Such a waiver, however, must be made in an unequivocal manner (see *Bonev v. Bulgaria*, no. 60018/00, § 40, 8 June 2006). In particular, whenever a defendant has voluntarily and knowingly agreed to have witnesses' pre-trial depositions read out during the trial in their absence, such a conduct could be accepted as a waiver of the above-mentioned right (see, for instance, *Vozhigov v. Russia*, no. 5953/02, § 57, 26 April 2007; and also *Andandonskiy v. Russia*, no. 24015/02, § 54, 28 September 2006).

57. Returning to the circumstances of the present case, the Court observes that the Tushinskiy District Court duly granted, at the outset, the applicant's request to examine the two witnesses for the prosecution, by summoning them for trial. However, as those witnesses failed to appear, the District Court, as disclosed by the record of the hearing of 28 March 2002, then enquired with the applicant and his lawyer whether they considered it possible to proceed with the trial in the absence of the witnesses in question. The applicant and his lawyer replied that they had no objections and agreed to the reading of the witnesses' pre-trial depositions (see paragraph 16 above). The Court also notes that neither in his statement of appeal lodged with the Moscow Regional Court did the applicant complain that the absence of the witnesses for the prosecution during the trial had infringed his rights of a defendant (see paragraph 19 above). In such circumstances,

the Court considers that the applicant can reasonably be considered to have waived his right to confront the witness for the prosecution in the proceedings in question (compare with *Ozerov v. Russia* (dec.), no. 64962/01, 3 November 2005; *Andandonskiy*, cited above, §§ 53 and 54; and contrast with *Vladimir Romanov v. Russia*, no. 41461/02, § 98, 24 July 2008).

58. In the light of the foregoing findings, the Court thus concludes that the applicant's complaints under Article 6 §§ 1 and 3 (a), (b) and (c) of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(d) The complaint under Article 12 of the Convention

59. The applicant also complained to have been denied the right to have the civil marriage with his girlfriend registered, in breach of Article 12 of the Convention. This provision reads as follows:

Article 12

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

i. The parties' submissions

60. The Russian Government submitted that the applicant had never requested the registration of his marriage in detention in accordance with the only relevant legal procedure envisaged to that end by the Russian legislation. They explained to the Court that, in order for a detainee in Russia to have his or her civil marriage registered, he or she must, pursuant to Article 10 of the Family Code and section 27 § 7 of the Federal Law of 15 November 1997 on Civil Registration Acts, apply to the administration of the prison and to the relevant Civil Registry office. Only when, and if, such a request was rejected by the above-mentioned authorities, the detainee could then challenge their refusal in court by bringing separate administrative-legal proceedings (see paragraph 21 above). As to the fact that the applicant had requested leave to marry during his trial, the Government stated that, pursuant to the relevant provisions of the Russian Code of Criminal Procedure defining the scope of the jurisdiction of trial courts, that request could not have been addressed by the Tushinskiy District Court during the examination of the applicant's criminal case.

61. The applicant did not comment in reply to the Government's arguments.

ii. The Court's assessment

62. Having due regard to the relevant domestic law on the matter and to the materials available in the case file, the Court observes that, indeed, the

applicant never applied either to the penitentiary authority or to the Civil Register, the only two national authorities competent to make a decision in that respect under the domestic law (see paragraphs 21 and 60 above), with a request for leave to marry his girlfriend in prison. That omission could not have been compensated by the applicant's having raised the issue of his marriage before the Tushinskiy District Court during the trial, which was a wholly inappropriate course of action in the proceedings exclusively limited to the determination of the criminal charge against him (cf., *Lebedev v. Ukraine* (dec.), no. 42484/02, 2 September 2008). It is to be noted that the trial court itself advised the applicant that his request for leave to marry was irrelevant to the criminal proceedings at stake.

63. The Court considers therefore that the applicant's complaint under Article 12 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(e) The remaining complaints

64. Lastly, as regards the applicant's unsubstantiated complaints under Articles 7, 13 and 14 of the Convention similarly related to the criminal proceedings against him, the Court, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. As regards the period subsequent to the applicant's conviction

65. As to the applicant's complaints under Articles 3, 8 and 34 of the Convention concerning the period of his detention subsequent to his conviction, the Court notes the applicant's own request for the withdrawal of this part of the application, which was made in a clear and unambiguous manner (see paragraph 28 above). It thus considers that the applicant no longer wishes to pursue the relevant complaints, within the meaning of Article 37 § 1 (a) of the Convention.

66. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of this part of the application.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in so far as it relates to the period of the applicant's detention after his conviction;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President