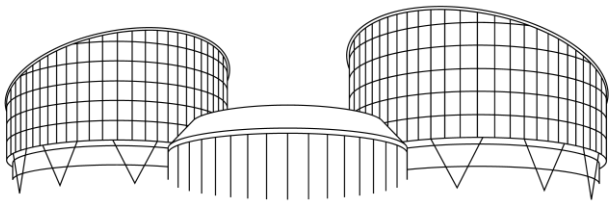

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABIDOV v. RUSSIA

(Application no. 52805/10)

This version was rectified on 25 July 2012
under Rule 81 of the Rules of Court

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

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

In the case of Abidov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 52805/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Kyrgyzstan, Mr Zhakhongir Minkhatovich Abidov ("the applicant"), on 27 August 2010.

2. The applicant was represented by Ms E. Davidyan and Mrs Ye. Ryabinina, lawyers practising in Moscow[1]. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his extradition on criminal charges to Uzbekistan would be in breach of Articles 3 and 13 of the Convention and that his detention pending extradition had raised issues under Article 5.

4. On 24 December 2010 the President of the Section, acting under Rules 39 and 41 of the Rues of Court, decided to indicate to the Russian Government that the applicant should not be extradited to Uzbekistan until further notice and to grant priority treatment to the application.

5. On 24 June 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

[1] Rectified on 23 July 2012, previously the text read "lawyers of the NGO EHRAC/Memorial Human Rights Centre, Moscow."

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lives in Novosibirsk.

A. The background to the case and the applicant's arrival in Russia

7. The applicant is an ethnic Uzbek, who lived in Osh, Kyrgyzstan, prior to his arrival in Russia.

8. Since 2001 the applicant has regularly travelled to Russia and South Korea for work-related purposes. In 2003 the applicant's brother-in-law and his Uzbek friends began living in the applicant's flat. It appears that criminal proceedings were initiated in Kyrgyzstan against the applicant's brother-in-law, who was suspected of being a member of an armed gang. In the meanwhile, the applicant left Kyrgyzstan for South Korea, passing through Uzbekistan. He returned to Kyrgyzstan in 2005 and was questioned as a witness in the criminal proceedings brought against his brother-in-law. In 2006 the latter was killed and the armed gang dismantled.

9. In November 2009 the applicant arrived in Novosibirsk, Russia, and applied to the department of the Federal Migration Service ("FMS") in the Novosibirsk Region ("the regional FMS") for Russian citizenship. Shortly thereafter he returned to Kyrgyzstan for family matters. In March 2010 the applicant was allegedly informed by the FMS that he had received Russian citizenship; however later this information had not been confirmed (see below). On 27 June 2010 the applicant returned to Novosibirsk.

B. Criminal proceedings against the applicant in Uzbekistan

10. On 8 December 2006 the investigation department of the National Security Service of Uzbekistan ("the investigation department") brought criminal proceedings against the applicant under Articles 159-1 (attempting to overthrow the constitutional order), 242-1 (setting up a criminal gang) and 244-2(1) (being a member of a religious extremist, separatist or other banned organisation) of the Uzbek Criminal Code ("the UCC"). The applicant was, in particular, suspected of setting up an extremist organisation, Kyrgyz Community (*kirgiz zhamoati*), in Novosibirsk, providing its members with accommodation and money, catering for them and facilitating their encounters with members of the Islamic Movement of Uzbekistan with a view to overthrowing the constitutional order in Uzbekistan.

11. On 19 January 2007 the investigation department issued two indictments in respect of the applicant. The documents differed in several aspects, such as accomplices' names, the name of the criminal gang in which the applicant had been involved and the degree of his personal involvement. One of the documents indicted the applicant under Article 159-3 of the UCC while the other one indicted him under Article 159-3 (a) and (b) of the UCC. Furthermore, one of the documents was neither signed by the head of the investigation department nor sealed by the Prosecutor's Office for the Novosibirsk Region.

12. On 19 January 2007 the investigation department indicted the applicant on the above-mentioned charges *in absentia*, ordered his detention and put his name on a wanted list.

C. Extradition proceedings

13. On 28 June 2010 the applicant was arrested by the police in Novosibirsk as a person wanted by the Uzbek authorities (see below).

14. On 23 July 2010 the Uzbekistan Prosecutor General's Office requested that its Russian counterpart extradite the applicant on criminal charges under Articles 159-3 (a) and (b), 242-1 and 244-2 (1) of the UCC. Relying on Article 66 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention"), the Uzbek authorities assured their Russian counterparts that: the applicant would not be extradited to a third country without the consent of the Russian Federation; no further criminal proceedings would be initiated against him; he would not be tried or punished for an offence which had not been the subject of the extradition request; and he would be able to leave Uzbekistan once the court proceedings had concluded and the punishment had been served.

15. It appears that, prior to that date, the Kyrgyz authorities had rejected a similar extradition request by the Uzbekistan Prosecutor General's Office.

16. On 30 September 2010 a Deputy Prosecutor General granted the extradition request. He referred to the charges brought against the applicant, according to which in 2003 he had set up Kyrgyz Community, a criminal gang, in Novosibirsk with the aim of overthrowing the existing Uzbek regime by creating an alternative Islamic State, disseminated radical Islamic ideology and subversive materials, and provided accommodation and financial assistance to gang members. The prosecutor decided to extradite the applicant on the basis of the charges of setting up a criminal group and being involved in it (Article 210-1 of the Russian Criminal Code ("the RCC")) and attempting to overthrow the existing regime and constitutional order (Article 278 of the RCC). He refused his extradition under Article 244-2 (1) because Kyrgyz Community was not banned in Russia. The prosecutor further noted that the statute of limitations for those offences

had not expired, either in Russia or in Uzbekistan. The prosecutor pointed out that, in line with the Minsk Convention and the Russian Code of Criminal Procedure, differences in the classification of the offences and their elements under Russian and Uzbek criminal law were not a sufficient basis to refuse extradition. Lastly, the prosecutor referred to information provided by the FMS to the effect that the applicant was a Kyrgyz national who had not applied for Russian citizenship. The prosecutor concluded that there were no obstacles to his extradition to Uzbekistan.

17. On 8 October 2010 the applicant was apprised of the above decision and appealed against it, citing fear of torture and inhuman and degrading treatment in the event of his extradition to Uzbekistan on political charges. The applicant and his lawyer underlined the poor human-rights situation in Uzbekistan, referring to a number of international reports, media publications and case-law of the European Court of Human Rights. They also alleged that the charges against the applicant were made-up, pointing out the inconsistencies in the indictments (see above).

18. On 29 November 2010 the Novosibirsk Regional Court ("the regional court") heard the applicant's case. The applicant's lawyer underlined that the applicant had never been prosecuted in Russia for the crimes allegedly committed on its territory.

19. On 8 December 2010 the regional court found the extradition decision lawful and rejected the applicant's appeal. The court established that the applicant had been aware of the charges brought against him and had therefore gone into hiding in Kyrgyzstan and applied for Russian citizenship. The Kyrgyz authorities had refused to extradite him to Uzbekistan on the same charges. According to the FMS, the applicant was a Kyrgyz citizen who had not acquired Russian citizenship. The court rejected the applicant's request for refugee status as irrelevant because it had been introduced after his arrest in Russia (see below). Lastly, the court relied on the guarantees issued by the Uzbek Prosecutor General's Office that the applicant would be treated in strict compliance with internal procedural norms and would not be persecuted on political grounds. As to the inconsistencies in the indictments, the court pointed out that they only concerned matters of style and the description of the events and were thus of a technical nature, which could not prevent the court from reaching a conclusion as to the applicant's indictment. Consequently, the court rejected the applicant's and his lawyer's allegation of ill-treatment in the event of extradition as unsubstantiated. The court did not address the issue raised by the applicant's lawyer at the hearing on 29 November 2010.

20. On 14 December 2010 the applicant's lawyer appealed. She stressed that the regional court had failed to analyse the applicant's ill-treatment argument, relying solely on the guarantees issued by the Uzbek authorities. She further pointed out that the regional court had not considered the fact

that the applicant had never been indicted in Russia for the crimes allegedly committed there.

21. On 23 December 2010 a district prosecutor's office in Novosibirsk informed the applicant's lawyer that the Russian authorities intended to extradite the applicant on 28 December 2010.

22. On 24 December 2010 the applicant's lawyer requested the Court to apply Rule 39 in respect of the applicant. On the same date the Court granted the lawyer's request and advised the Government accordingly.

23. On 31 December 2010 the Government informed the Court that the applicant would not be extradited until further notice.

24. On 1 February 2011 the Supreme Court of the Russian Federation ("the Supreme Court") quashed the decision of 8 December 2010, finding in particular that the inconsistencies relied upon by the applicant were fundamental to the classification of his actions. The court also drew attention to the potential differences in qualification of the criminal acts imputed to the applicant in Uzbekistan and those punishable under Russian law. The court remitted the case to the regional court for fresh consideration and extended the applicant's detention pending extradition until 1 March 2011.

25. On 31 January 2011 the Uzbek Prosecutor General's Office sent a letter to the Deputy Prosecutor General. It explained that the charges against the applicant had been brought under Articles 159-3 (a) and (b) of the UCC and contained further assurances to the effect that the Russian Federation's Consular staff in Uzbekistan would be able to visit the applicant in detention.

26. On 23 March 2011 the regional court reversed the Deputy Prosecutor General's decision of 30 September 2010 to extradite the applicant and ordered his release. The court noted the difference between the two indictments and concluded that this and other procedural deficiencies did not allow the authorities to understand the exact nature of charges against the applicant, as well as the dates of opening and the case file numbers of the criminal proceedings against him. The court noted differences between the formulations of criminal acts under the UCC and the corresponding Russian criminal law. Finally, the court referred to the European Court's previous judgments finding violations of Article 3 in cases of extradition to Uzbekistan and the insufficiency of diplomatic assurances in such situations.

27. On 18 May 2011 the Supreme Court upheld the decision of 23 March 2011 on appeal. It, too, stressed the differences between the qualification of criminal acts under Russian and Uzbek criminal law and concluded that the charges as presented in the indictments could not form a valid basis for extraditing the applicant.

28. On 15 August 2011 the Deputy Prosecutor General informed his Uzbek counterpart about the above court decisions, as well as about the

decision of the regional FMS to grant the applicant temporary asylum in Russia (see below). In view of these developments, as well as the continued application of the interim measure under Rule 39 of the Rules of Court, the applicant's extradition to Uzbekistan was no longer possible under Russian law.

D. Proceedings concerning the applicant's detention pending extradition

29. On 28 June 2010 the applicant was arrested by the police in Novosibirsk as a person wanted by the Uzbek authorities. He was placed in detention facility IZ-54/1, where he was held until his release on 23 March 2011 (see below).

30. On 30 June 2010 the Central District Court of Novosibirsk ("the district court") ordered the applicant's detention with a view to extradition to Uzbekistan.

31. On 9 August 2010 the district court extended the applicant's detention pending extradition until 28 December 2010.

32. The applicant did not appeal against the decisions of 30 June and 9 August 2010.

33. On 27 December 2010 the district court extended the applicant's detention until 28 March 2011.

34. On 29 December 2010 the applicant's lawyer lodged a statement of appeal against the above decision.

35. On 14 January 2011 the district court acknowledged receipt of the statement of appeal and informed the applicant's lawyer that it would be forwarded to the regional court for consideration on 21 January 2011.

36. On 26 January 2011 the regional court upheld the decision of 29 December 2010 on appeal. The court rejected the lawyer's arguments that the nature of the charges brought against the applicant in Uzbekistan had not been defined and that he had not been prosecuted for the crimes allegedly committed in Russia. The court found that the decision of 27 December 2010 had contained sufficient and weighty reasons for the extension of the detention order to nine months.

37. On 23 March 2011 in the course of proceedings related to the applicant's extradition the regional court ordered the applicant's immediate release. This decision became final on 18 May 2011 (see paragraphs 26 and 27 above).

E. Proceedings concerning the applicant's requests for Russian citizenship and refugee status

38. On 29 June 2010 the regional FMS rejected the applicant's application for Russian citizenship on the grounds that he was being prosecuted by the competent authorities of another State.

39. On 27 October 2010 the applicant sought refugee status before the regional FMS. He submitted that the Uzbek authorities had been prosecuting him on "made-up" charges linked to his alleged political and religious sympathies and that he could not seek effective protection in Kyrgyzstan. On 21 March 2011 the regional FMS rejected the applicant's claim.

40. On 24 March 2011 the applicant lodged a request to be granted temporary asylum. On 21 June 2011 the regional FMS concluded that the applicant's rights under Articles 3 and 6 of the European Convention on Human Rights might be infringed if he was to return to Kyrgyzstan or Uzbekistan.

41. On 28 July 2011 the General Prosecutor's Office asked the FMS for the Russian Federation to assess the lawfulness of the decision of the regional FMS. On 5 August 2011 the FMS for the Russian Federation confirmed the decision to grant the applicant temporary asylum.

II. RELEVANT DOMESTIC LAW AND PRACTICE

42. According to the Russian Criminal Code, foreign citizens and persons without citizenship residing in Russia who have committed a crime outside its borders can be extradited to a State seeking their extradition with a view to criminal prosecution or execution of sentence (Article 13 § 2).

43. According to the Russian Code of Criminal Procedure, Russia can extradite a foreign citizen or a person without citizenship to a State seeking their extradition with a view to criminal prosecution or execution of sentence if the impugned acts are considered criminal offences under Russian legislation or the legislation of that State (Article 462 § 1).

44. For a detailed summary of the remaining aspects of the relevant domestic law and practice on detention and extradition see *Dzhurayev v. Russia*, no. 38124/07, §§ 32-46, 17 December 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

45. The applicant complained that his detention pending extradition had been unlawful and that he had not been accorded a speedy review of the lawfulness of his detention, as provided for in Article 5 §§ 1 (f) and 4 of the Convention, which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (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.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ..."

46. The Government contested that argument.

A. Article 5 § 1 (f)

1. Admissibility

47. The Court first of all notes that the applicant failed to appeal against the detention order of 30 June 2010 and the extension of his detention on 9 August 2010, both orders being issued by the Central District Court of Novosibirsk. The Court thus finds that the complaint relating to the lawfulness of his detention in the period prior to 28 December 2010 should be dismissed for non-exhaustion of domestic remedies, in line with Article 35 § 1 of the Convention.

48. As to the lawfulness of the applicant's detention after 28 December 2010, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

49. Referring to the Court's previous judgments, the applicant argued that the provisions of Russian law governing detention of persons with a view to extradition were neither precise nor foreseeable in their application and fell short of the "quality of law" standard required under the Convention (*Nasrulloyev v. Russia*, no. 656/06, § 72, 11 October 2007; *Sultanov v. Russia*, no. 15303/09, § 86, 4 November 2010).

50. The Government reiterated that the applicant's detention had been lawful within the meaning of both domestic law and the Convention. They pointed out that the applicant's initial detention had been authorised by the Central District Court of Novosibirsk on 30 June 2010 and then extended on 9 August 2010. The applicant had failed to appeal against both those decisions. On 27 December 2010 the Central District Court had again extended his detention, and the applicant's appeal to the Novosibirsk Regional Court had been dismissed on 26 January 2011.

51. The Court observes that between 28 June 2010 and 23 March 2011 the applicant remained in detention with a view to his extradition to Uzbekistan, such detention therefore falling within the ambit of Article 5 § 1 (f) of the Convention. It has already found that the applicant's complaints related to the initial period of detention and the first extension are inadmissible (see para 47 above). It will therefore only take into account the period between 28 December 2010 and 23 March 2011.

52. It is true that in a number of previous cases concerning the lawfulness of detention of persons pending extradition in Russia the Court found a violation of the said provision of the Convention. In doing so, the Court had regard to the absence of clear legal provisions establishing a procedure for ordering and extending detention with a view to extradition and setting time-limits on such detention, as well as an absence of adequate safeguards against arbitrariness (see, for example, *Dzhurayev*, cited above, § 68, and *Sultanov*, cited above, § 86).

53. However, unlike the cases mentioned above, the applicant's detention in the present case was authorised by and extended by a competent domestic court. The extension orders contained time-limits, in line with the requirements of Article 109 of the Code of Criminal Procedure and the applicant was advised of the possibility of appealing.

54. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of the requirement that detention be lawful under Article 5 § 1 of the Convention, in contrast to the cases relied on by the applicant.

55. There has accordingly been no violation of Article 5 § 1 of the Convention.

B. Alleged violation of Article 5 § 4 of the Convention

56. The applicant argued that the delay between the lodging of his appeal on 29 December 2010 and the Novosibirsk Regional Court's review of the district court's order on 26 January 2011 had been in breach of the requirement of speedy review contained in Article 5 § 4 of the Convention.

57. The Government argued that there had been no violation of the said provision. They pointed out that the appeal against the decision of the Central District Court of 27 December 2010 had been lodged by the applicant's representative on 29 December 2010. 1 to 11 January 2011 were official holidays in the Russian Federation. On 13 January the district court sent a copy of the statement of appeal to the prosecutor and on 21 January 2010 it forwarded the appeal to the Novosibirsk Regional Court. On 26 January 2011 the Regional Court had rejected the appeal.

58. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for appeal, the appellate body must also comply with the requirements of Article 5 § 4, for instance as concerns the speediness of the review by appeal proceedings (see *Lebedev v. Russia*, no. 4493/04, § 96, 25 October 2007). At the same time, the standard of "speediness" is less stringent when it comes to the proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. Where detention is authorised by a court, subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention. Therefore, the Court would not be concerned, to the same extent, with the speediness of the proceedings before the court of appeal, if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and afforded to the detainee the appropriate procedural guarantees (ibid).

59. Although the number of days taken to conduct the relevant proceedings is obviously an important aspect of the overall speed of review, it is not necessarily in itself decisive for the question of whether a decision has been given with the requisite speed (see *Merie v. the Netherlands* (dec.), no. 664/05, 20 September 2007). What is taken into account is the diligence shown by the authorities, any delay attributable to the applicant and any factors causing delay for which the State cannot be held responsible (*Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000, and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000). The

question of whether the right to a speedy decision has been respected must thus be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

60. Turning to the circumstances of the present case, the Court notes that the delay between the lodging of the appeal and its review constituted twenty-eight days. The Court reiterates in that connection that Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to deportation or extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see, among others, *Liu v. Russia*, no. 42086/05, § 78, 6 December 2007).

61. First of all, the Court finds that the fact that part of the period in question fell on public holidays, as cited by the Government, cannot in itself serve as a valid reason for a delay such as in the present case. The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness (see *Al-Nashif and Others v. Bulgaria*, no. 50963/99, § 92, 20 June 2002). It is for the State to organise its judicial system in such a way as to enable the courts to comply with the requirements of Article 5 § 4 (see *Butusov v. Russia*, no. 7923/04, § 34, 22 December 2009). While some delay could be tolerated, exceptionally, on account of a public holiday, the Court considers that the requirement of diligence required the State to ensure expedite handling of pressing judicial issues - involving the right of liberty and security of persons - where the holidays lasted for eleven days.

62. It has not been substantiated that the applicant or his counsel contributed to the length of the appeal proceedings. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the appeal court. Neither was it argued that proper review of the applicant's detention had required, for instance, the collection of additional observations and documents pertaining to the applicant's personal circumstances. Apart from the issues discussed in the previous paragraph, no other exceptional circumstances have been relied on by the Government to justify the delay. Having regard to the above, the Court concludes that the delay in the present case cannot be considered compatible with the requirement of "speediness" laid down in Article 5 § 4.

63. There has therefore been a violation of Article 5 § 4 in the present case.

II. OTHER COMPLAINTS

64. In his initial application, the applicant also complained under Articles 3 and 13 of the Convention. However, in his observations on the admissibility and merits, in view of the decision not to extradite him to Uzbekistan and to grant him temporary asylum in the Russian Federation, he asked the Court not to proceed with the examination of these complaints. Therefore and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols which would require the continued examination of this part of the application, the Court considers that it is no longer justified to continue the examination of this part of the application within the meaning of Article 37 § 1 (c) of the Convention.

65. Accordingly this part of the application should be struck out.

III. RULE 39 OF THE RULES OF COURT

66. In view of the above findings in relation to Article 3, the Court finds it appropriate to lift the interim measure indicated to the Respondent Government under Rule 39 of the Rules of Court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage caused to him by his unlawful detention and the length of time taken by the domestic court to review his appeal.

69. The Government disputed the reasonableness of and justification for the amounts claimed.

70. The Court has found a violation of Article 5 § 4 of the Convention in the present case. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. The Court therefore awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicant also claimed EUR 5,802 for costs and expenses incurred before the domestic courts and the Court. He submitted a breakdown of the expenses incurred, which included 15.5 hours of work by Ms Ryabinina and 32 hours of work by Ms Davidyan at the hourly rate of EUR 100. He also claimed administrative and postal expenses in the amount of EUR 332.

72. The Government pointed to the absence of a legal representation agreement which would bind the applicant to pay the sums claimed.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and to the fact that no violation was found in respect of part of the application, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads (see *Fadeyeva v. Russia*, no. 55723/00, § 147, ECHR 2005-IV).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 5 § 1 and under Article 5 § 4 of the Convention in as far as they concern the period between 28 December 2010 and 23 March 2011, and the remainder of the complaints under Article 5 inadmissible;

2. *Decides* to strike out the complaints under Articles 3 and 13 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Decides* to lift the indication previously made to the Respondent Government under Rule 39 of the Rules of Court;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President