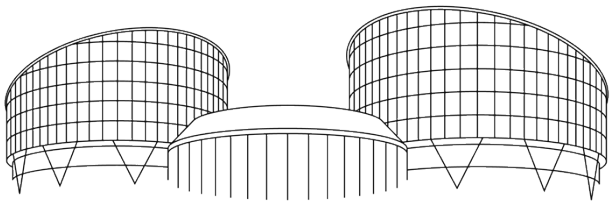

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SERGEY SOLOVYEV v. RUSSIA

(Application no. 22152/05)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

11/02/2013

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

In the case of Sergey Solovyev v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 22152/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Sergey Yuryevich Solovyev ("the applicant"), on 30 May 2005.

2. The applicant was represented by Mr V. Klimashin, a lawyer practising in Volgograd. 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 complained, in particular, under Article 5 of the Convention that he had been unlawfully detained.

4. On 29 January 2009 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 (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 and lives in Volgograd.

A. Proceedings concerning the applicant's detention

6. On 10 March 2003 the applicant was arrested on suspicion of involuntary manslaughter. On an unspecified date he retained private counsel, A.B.

7. On 11 March 2003 the Krasnoarmeyskiy District Court of Volgograd (hereinafter "the District Court") ordered the applicant's detention on remand with reference to Articles 97-101 and 108 of the Russian Code of Criminal Procedure (hereinafter "the CCP").

8. On 19 March 2004 the criminal case against the applicant was sent for trial to the District Court, following which that court extended his detention on several occasions.

9. By a decision of 21 December 2004 the District Court extended the applicant's detention until 20 March 2005.

10. On an unspecified date in March 2005 the prosecution applied to the District Court seeking a further extension of the applicant's detention on remand; the related hearing was fixed for 17 March 2005.

11. By a decision of 17 March 2005 the District Court adjourned the hearing on the extension of the applicant's detention because his lawyer, although duly notified about the hearing, had failed to attend, without providing any reasons. The new hearing was scheduled for 22 March 2005. The applicant was present at the hearing of 17 March 2005.

12. At noon on 21 March 2005 the applicant's lawyer was notified of the new hearing date, time and venue, against his signature.

13. By a decision of 22 March 2005 the District Court extended the applicant's detention until 20 June 2005. The decision stated, among other things, that the term of the applicant's detention authorised by the decision of 21 December 2004 had expired on 20 March 2005. According to the hearing record, the applicant's lawyer did not attend and had not informed the court of the reasons for his absence. The applicant, when asked by the court whether he objected to the examination of the issue in the absence of his counsel, stated that he had no objections.

14. On an unspecified date the applicant complained to the Volgograd Regional Court (hereinafter "the Regional Court") that his detention between 20 and 22 March 2005 had been unlawful because it had not been covered by a court decision. He also complained that on 22 March 2005 the District Court had examined the issue of his detention in the absence of his lawyer. There is no indication that the applicant also complained about the District Court's alleged failure to appoint legal-aid counsel for him or to adjourn the hearing.

15. On 26 April 2005 the Regional Court dismissed the complaint. It held that the applicant's arguments concerning the gap between the detention orders and the examination of the detention issue in the absence of his lawyer were "insignificant" ("*не являются существенными*"), and that

the District Court had not breached the relevant provisions of the criminal procedure in extending his detention. As regards the lawyer's absence, the court noted that A.B. had been duly notified of the hearing of 22 March 2005 against his signature and had not requested that it be postponed, and that, accordingly, the District Court had correctly decided to proceed with the examination of the case.

B. The applicant's acquittal and the related compensation proceedings

16. On 16 March 2006 the District Court acquitted the applicant of all charges and ordered his release. The judgment stated, among other things, that the applicant had a right to seek compensation for any pecuniary and non-pecuniary damage caused by his criminal prosecution.

17. On an unspecified date in 2007 the applicant brought proceedings seeking compensation for his criminal prosecution and for unlawful detention. He claimed, in particular, 736,000 Russian roubles (RUB) in respect of non-pecuniary damage, and RUB 177,355 in respect of pecuniary damage.

18. By a judgment of 6 March 2007 the District Court partly granted the applicant's claims, awarding him RUB 137,377 in respect of pecuniary damage and RUB 400,000 in respect of non-pecuniary damage, to be recovered from the Federal Treasury. The court's judgment, in so far as relevant, reads as follows:

> "...
>
> Bearing in mind that [the applicant] was acquitted, that is, found not guilty of the particularly serious crime of which he had been charged ... the court finds that [the applicant] was unlawfully prosecuted and unlawfully held in detention ... and ... sustained, as a result, pecuniary damage because of loss of salary, and non-pecuniary damage on account of mental suffering in the form of continuing stress because of being held in a detention facility, ... a special institution with a strict regime; [and because of] the restriction of his right to freedom of movement and anxiety about his future ...
>
> ...
>
> Having regard to the fact that [the applicant's] criminal prosecution resulted in an acquittal, the court considers it obvious and not requiring any additional proof that the plaintiff sustained non-pecuniary damage because, as a result of unlawful acts by State officials, he was deprived of his right to freedom of movement and his right to choose his place of residence was circumscribed.
>
> In assessing the amount of the monetary compensation, the court takes into account the intensity of [the applicant's] mental suffering related to [the fact of his] detention, including the unavoidable contact with the prison population, the restrictions connected to the particular regime of the detention facility [and] the length of [his]

> detention on remand (over 24 months)[, which took place] while [the applicant] was of a young age.
>
> At the same time, the court takes account of the fact that the [applicant's] arrest [and] placement in custody and the extension of [his] detention were carried out in accordance with the law of criminal procedure [*в рамках, предусмотренных уголовно-процессуальным законом*], there being sufficient grounds to suspect and charge [him] of having committed a particularly serious crime entailing the deprivation of life of the victim; during the criminal proceedings [the applicant's] defence rights were secured; it has not been established that there were faulty unlawful acts on the part of the investigating authorities, the detention facility or the courts."

19. On an unspecified date in 2007 the respondent appealed against the judgment of 6 March 2007 to the Regional Court.

20. By a judgment of 24 May 2007 the Regional Court granted the appeal in part. In particular, whilst endorsing the trial court's reasoning, the Regional Court considered that "the requirements of Article 1101 of the Civil Code concerning reasonableness and justice in determining the amount of compensation for non-pecuniary damage", as well as "the specific circumstances of the case", called for a reduction of the amount of the award to RUB 100,000. The court upheld the first-instance judgment in the remaining part.

21. On 27 August 2007 the Presidium of the Volgograd Regional Court examined the case by way of supervisory review, set aside the courts' findings in respect of the award concerning pecuniary damage, and terminated the proceedings in that part. In that regard, the court held that, pursuant to Article 135 of the CCP, claims for compensation for pecuniary damage arising out of an unlawful prosecution fell within the competence of the criminal courts and were to be examined under the rules of criminal procedure.

22. It appears that the applicant was paid the compensation in respect of non-pecuniary damage without delay. There is no indication that he applied to the criminal courts with a view to obtaining compensation in respect of pecuniary damage, as directed by the Presidium of the Volgograd Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions concerning detention on remand

23. The Russian Constitution of 12 December 1993 establishes that a judicial decision is required before a defendant can be detained or his detention extended (Article 22).

24. According to the Russian Code of Criminal Procedure (hereinafter "the CCP"), a decision ordering or extending detention on remand in respect of a suspect or an accused is taken by a district or town court on the basis of a reasoned request by a prosecutor, supported by appropriate evidence (Articles 108 §§ 1, 3-6 and 109 § 2).

B. Right to compensation for unlawful criminal prosecution

1. The CCP

25. Chapter 18 of the Code regulates the so-called "right to rehabilitation" (*право на реабилитацию*), which includes, among other things, the right for an individual to obtain from the State full compensation for pecuniary and non-pecuniary damage sustained as a result of criminal prosecution, irrespective of any fault of the investigating authorities, prosecutors or courts (Article 133 § 1).

26. The right to compensation arises in the case of acquittal and also a number of other situations where the criminal prosecution is terminated on so-called "rehabilitation" grounds (*реабилитирующие основания*), that is, for example, where the prosecution has dropped the charges or where criminal proceedings have been terminated owing to a lack of *corpus delicti* or because the person was not involved in the criminal act (Article 133 § 2). However, no right to compensation arises where the prosecution is terminated on "non-rehabilitation" grounds, such as in the case of an amnesty or where the prosecution has become time-barred (Article 133 § 4).

27. Article 133 § 3 specifically provides that any person on whom a measure of restraint has been unlawfully imposed in connection with a criminal prosecution has a right to compensation under the rules of Chapter 18.

28. In a judgment acquitting an individual a court has to mention explicitly that he has the right to "rehabilitation" (Article 134). A claim for compensation of pecuniary damage is to be lodged with the same authority which issued the decision to acquit or the decision to terminate the criminal prosecution (Article 135 § 2), whereas any claims for monetary compensation of non-pecuniary damage are to be lodged with civil courts and examined under the relevant provisions of the Code of Civil Procedure (Article 136 § 2).

2. The Civil Code

29. The Civil Code of the Russian Federation provides as follows:

Article 1070: Responsibility for damage caused by unlawful acts of investigating authorities, prosecuting authorities and courts

"1. Damage caused to a citizen as a result of unlawful conviction, unlawful criminal prosecution, ... [or] unlawful detention on remand ... shall be compensated at the expense of the Treasury of the Russian Federation, and in the instances provided for by law, at the expense of the Treasury of the subject of the Russian Federation ... in full, irrespective of the fault of the officials of the agencies ..."

Article 1100: Grounds for compensation for non-pecuniary damage

"Compensation for non-pecuniary damage shall be made irrespective of the fault of the person having caused the damage when:

... the damage has been caused to a citizen as a result of his unlawful conviction, unlawful criminal prosecution, [or] unlawful detention on remand ..."

3. Case-law of the Constitutional Court and the Supreme Court of Russia

30. In its ruling (*определение*) no. 242-O of 21 April 2005 the Constitutional Court held, *inter alia*, as follows:

" ... Article 133 of the [CCP] ... does not limit an individual's right to obtain compensation in connection with a criminal prosecution only to situations of rehabilitation of a suspect or an accused ...

Accordingly, in providing that pecuniary and non-pecuniary damage sustained by a citizen as a result of, among other things, unlawful ... detention, is to be compensated for irrespective of the fault of the relevant officials, Articles 1070 § 1 and 1100 § 3 of the Civil Code of the Russian Federation do not make the issuing of such decisions conditional upon the existence of a judgment acquitting the citizen ...

Hence, the legislation in force ... does not exclude that a court can also issue a decision to compensate a citizen for pecuniary and non-pecuniary damage sustained as a result of unlawful prosecution and ... unlawful detention in cases where an investigating authority, a prosecutor or a court did not take a decision on the full rehabilitation [*решение о полной реабилитации*] of a suspect or an accused..."

31. In its ruling no. 47-O-O of 18 January 2011 the Constitutional Court reiterated that Article 133 of the CCP and the related provisions of the Code of Civil Procedure did not make an award of compensation in respect of pecuniary or non-pecuniary damage conditional upon an acquittal and that the relevant provisions did not exclude the possibility for courts to make such an award in respect of damage sustained as a result of criminal prosecution in other situations, account being taken of the particular circumstances of the case.

32. The Constitutional Court specifically noted in its ruling no. 1583-O-O of 17 November 2011 that, pursuant to Article 133 § 3 of the CCP, any person who was unlawfully held in detention in connection with

his criminal prosecution had a right, under the rules of Chapter 18 of the CCP, to compensation for the damage sustained.

33. In its resolution (*постановление*) no. 17 of 29 November 2011, the Plenary of the Supreme Court of Russia provided clarifications on the application by the courts of the provisions concerning compensation for pecuniary and non-pecuniary damage sustained as a result of unlawful criminal prosecution. It noted, among other things, that in assessing claims for compensation of non-pecuniary damage the domestic courts were to take into account the level and nature of the physical and mental suffering and the individual characteristics of the person who had sustained the damage, and other circumstances, such as the length of the proceedings against him, the length and conditions of his detention on remand, and the type of penitentiary institution where he had served his sentence, as well as considerations of justice and reasonableness. The courts were also directed to set out those circumstances in their decisions awarding damages.

34. On the notion of "unlawfulness" of criminal prosecution and detention, as interpreted by the Russian courts, see *Trepashkin v. Russia* (no. 36898/03, § 62, 19 July 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

35. The applicant complained under Articles 5 and 6 of the Convention that his detention between 20 and 22 March 2005 had been unlawful. The Court considers that this complaint falls to be examined under Article 5 § 1 (c) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

A. Submissions by the parties

36. The Government argued that the applicant could no longer claim to be a "victim" of the alleged breach of Article 5 of the Convention because the domestic courts had declared his detention on remand unlawful and had awarded him compensation of RUB 100,000. They stated, in particular, that the courts had found unlawful the entire period of the applicant's detention on remand, which, in the Government's submission, was to be understood as also covering the time span between 20 and 22 March 2005 in respect of which the applicant had complained to the Court. The Government concluded that the domestic authorities had not only acknowledged the breach of the applicant's rights but had also afforded him appropriate redress.

37. The applicant stressed that the domestic courts had declared his detention on remand unlawful only after his acquittal, and that when he had complained to the Regional Court that his detention between 20 and 22 March 2005 had been unlawful, it had dismissed his submissions, stating that the irregularity in question was "insignificant". The applicant therefore considered that he retained "victim" status.

B. The Court's assessment

1. Admissibility

38. Having regard to the parties' submissions, the Court has first to assess whether the applicant has ceased to be a "victim" of the alleged breach of Article 5, as argued by the Government.

39. In this regard the Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. At the same time, a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010, with further references).

40. The Government submitted that the domestic courts' findings in the compensation proceedings to the effect that the applicant's detention had been unlawful were to be regarded as covering the entire period of his detention, including the impugned time span between 20 and 22 March 2005.

41. In this connection, the Court notes at the outset that it has already had an opportunity to examine similar arguments by the Government in a number of cases involving "rehabilitation proceedings" where the Russian courts found the applicants' detention on remand unlawful following their

acquittal (see, for example, *Trepashkin v. Russia*, cited above, §§ 69-70, and *Shcherbakov v. Russia*, no. 23939/02, §§ 55-63, 17 June 2010).

42. In particular, in its *Trepashkin* judgment the Court pointed out that although the domestic courts' findings concerning the unlawfulness of the applicant's detention resulted from his acquittal and the courts had not analysed in detail his specific submissions under Article 5 concerning the irregularities in his detention, it was prepared to assume that the relevant decisions contained, at least in substance, an acknowledgment of a breach of his rights under Article 5. Emphasising that it would not adopt an approach of excessive formalism, the Court reasoned that the "unlawfulness" ascertained by the domestic courts was of a more general character than the "unlawfulness" referred to by the applicant (see *Trepashkin*, cited above, §§ 69-70).

43. Having regard to the cases mentioned above and to the relevant provisions of the domestic law, as construed by the national courts (see paragraphs 25-32 above), the Court reaffirms, on a more general level, that it cannot be excluded that an acquitted applicant who is no longer detained under Article 5 § 1 (c) and who has duly pursued compensation proceedings and has been awarded damages under the above-mentioned provisions, may cease to be a "victim" of the alleged breach of his rights under Article 5 § 1(c), provided that the relevant decisions of the domestic courts comply with the requirements of acknowledgment and redress, as set down in the Court's case-law. In this regard it also takes note of the decisions of the Constitutional Court, which appear to suggest that an opportunity to seek damages in connection with the unlawfulness of one's detention is, moreover, not limited to situations of acquittal (see, in particular, paragraphs 30-32 above).

44. In any event, the Court reiterates that its task is not to review the compatibility of the relevant law and practice with the Convention *in abstracto* (see, for example, *Brogan and Others v. the United Kingdom*, 29 November 1988, § 53, Series A no. 145-B), but to determine, as has been pointed out above, whether the applicant in the present case can still claim to be a "victim" of the alleged breach of his rights under Article 5 § 1 of the Convention.

45. Turning to the circumstances of the case, and having regard to the parties' submissions and the decisions of the domestic courts, the Court finds that it cannot accept the Government's argument as convincing for the following reasons.

46. As regards the acknowledgment of the alleged breach of the applicant's rights, the Court reiterates that the gist of the applicant's complaint is the alleged unlawfulness of his detention between 20 and 22 March 2005, owing to the lack of judicial authorisation for it. It is further pointed out that the applicant duly brought his grievance to the attention of the Regional Court when challenging the decision of 22 March 2005 on

appeal (see paragraph 14 above), and it follows from the District and the Regional Courts' decisions that both authorities had no doubts about the existence of the impugned gap between his detention orders (see paragraphs 13 and 15 above).

47. However, the Regional Court dismissed the applicant's arguments as "insignificant", finding that the District Court had not breached the applicable rules of criminal procedure in extending his detention (see paragraph 15 above). In other words, it remains unclear if the Regional Court acknowledged the alleged breach of the applicant's rights on account of the gap between the detention orders.

48. The Court further observes that in the compensation proceedings which followed the applicant's acquittal the District Court found that his prosecution had been unlawful and also noted that he had been "unlawfully held in detention" (see paragraph 18 above). At the same time and in the same judgment the court held that "the [applicant's] arrest [and] placement in custody and the extension of [his] detention were carried out in accordance with the law of criminal procedure" (ibid.).

49. Having regard to what has been stated above, the Court considers that the findings of the domestic courts in the detention and compensation proceedings are unclear and ambiguous, as regards the acknowledgment of the alleged breach of the applicant's rights. The Government failed to explain why, in their view, the Court in its assessment should prefer the findings of the courts in the compensation proceedings over those in the detention proceedings and also provided no explanation for the discrepancies in the District Court judgment of 6 March 2007 mentioned above. In this connection the Court specifically notes that the present case has to be distinguished from the *Trepashkin* case mentioned above, where the domestic courts had unequivocally established the unlawfulness of the impugned period of the applicant's detention before he was acquitted and awarded damages in the compensation proceedings (see judgment cited above, § 12). Therefore it has serious doubts as to whether the domestic authorities can be said to have acknowledged, even in substance, the alleged breach of the applicant's rights in the present case.

50. In any event, even assuming that they did so, the Court is not persuaded that the applicant was afforded adequate redress.

51. In this connection the Court reiterates that it is prepared to accept that monetary compensation for damage can constitute "appropriate" redress for an applicant who, by the time he is awarded it, is no longer in detention (see *Trepashkin*, cited above, § 72, with further references).

52. It remains to be ascertained whether the redress afforded to the applicant can be considered "sufficient" (see *Shilbergs v. Russia*, no. 20075/03, §§ 72-74, 17 December 2009)

53. In this regard the Court points out that after the decisions of the courts in the compensation proceedings had been set aside in the part

concerning compensation for pecuniary damage, it was open to the applicant to seek those damages in the criminal courts, but there is no indication that he availed himself of that possibility (see paragraphs 21 and 22 above). Nor did he raise this specific issue in his submissions to this Court.

54. As to the award in respect of non-pecuniary damage, the Court notes that it is unable to assess whether it was "sufficient". In particular, when applying for compensation the applicant did not specifically complain about the gap between the detention orders (see, by contrast, *Trepashkin*, cited above, § 12), which the Court does not find unreasonable, given that the Regional Court, by a final decision, had already dismissed those submissions duly raised by the applicant when he was still in detention. Hence, whilst in *Trepashkin* the applicant's complaint to the courts in the compensation proceedings about a specific period of his detention enabled the Court, among other things, to accept that he had been awarded damages on that account, it cannot reach a similar conclusion in the present case. Moreover, while in the present case the domestic courts referred to the applicant's detention when making their award, the gist of their findings appears to have concerned mostly the unlawfulness of the applicant's criminal prosecution.

55. In sum, having regard to what has been stated above, the Court dismisses the Government's argument and holds that the applicant may still claim to be a "victim" of the alleged breach of his rights under Article 5 § 1 of the Convention.

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

2. Merits

57. The Court notes, and this was not disputed by the parties, that there was no valid judicial authorisation for the applicant's detention on 21 March and until the new detention order was issued on 22 March 2005.

58. In this regard it reiterates that for detention to meet the standard of "lawfulness" it must have a basis in the domestic law (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 149, ECHR 2005-X (extracts)).

59. In examining the applicant's complaint the Regional Court found that his arguments concerning the lack of judicial authorisation for his detention on 21 March 2005 were "insignificant". The Court will not dwell upon the exact meaning of that statement, which remains rather unclear. It notes, however, that both the District and the Regional Courts acknowledged that there had been a gap between the applicant's detention orders.

60. It further observes that the Government did not refer to any legal provisions permitting an accused to continue to be held in custody once the authorised period of his detention had expired (see ibid.) Moreover, it follows from the relevant provisions of the domestic law that the power to extend the detention of an accused in criminal proceedings is vested in courts and that no exceptions to that rule are permitted or provided for, no matter how short the duration of the detention (see paragraphs 23 and 24 above; *Khudoyorov*, cited above, § 149; *Lebedev v. Russia*, no. 4493/04, § 59, 25 October 2007; compare *Nikolov v. Bulgaria*, no. 38884/97, § 85, 30 January 2003; *Salayev v. Azerbaijan*, no. 40900/05, §§ 46-48, 9 November 2010). Accordingly, having regard to the fact that during the relevant period of time there was no judicial decision authorising the applicant's detention, the Court concludes that his detention on 21 March 2005 and until the new detention order was issued on 22 March 2005 was "unlawful" (see also *Starokadomskiy v. Russia*, no. 42239/02, §§ 62-64, 31 July 2008).

61. It follows that there has been a violation of Article 5 § 1 (c) of the Convention.

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

62. The applicant further complained under Articles 5 and 6 of the Convention that on 22 March 2005 the District Court had examined the prosecution's request for the extension of his detention in the absence of his counsel, and that it had not considered appointing legal-aid counsel for him or adjourning the hearing. The Court will examine this complaint under Article 5 § 4 of the Convention (see *Khodorkovskiy v. Russia*, no. 5829/04, § 203, 31 May 2011, and *Sokurenko v. Russia*, no. 33619/04, §§ 94-95, 10 January 2012). Article 5 § 4 provides:

> "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."

63. The Court notes that in the detention proceedings the applicant was represented by a private counsel and that on 17 March 2005 the District Court decided to postpone the hearing on the applicant's detention because of his lawyer's absence. It follows from the relevant court decision (see paragraph 11 above) – and this was not contested by the applicant – that his counsel was duly apprised of the hearing of 17 March 2005 and did not request that it be postponed, or otherwise refer to any reasons preventing him from attending. It can furthermore be seen from the material available to the Court that the applicant's lawyer failed to attend the rescheduled hearing of 22 March 2005, despite the fact the he had been notified of it against his signature the day before (see paragraph 12 above). According to

the hearing record, the applicant, when duly consulted by the District Court, confirmed that he had no objections to the examination of the detention issue in the absence of his counsel (see paragraph 13 above).

64. The Court reiterates that detention proceedings require special expedition and Article 5 does not contain any explicit mention of a right to legal assistance in this connection. The difference in aims explains why Article 5 contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness. Therefore, as a rule, the judge may decide not to wait until a detainee avails himself of legal assistance, and the authorities are not obliged to provide him with free legal aid in the context of detention proceedings (see *Lebedev v. Russia*, cited above, § 84).

65. Having regard to what has been stated above, the Court concludes that the applicant's complaint about the domestic courts' examination of the detention issue in his counsel's absence is manifestly ill-founded and should be dismissed pursuant to Article 35 §§ 1 and 3 (a) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 1,000,000 Russian roubles (RUB) in respect of non-pecuniary damage in connection with his unlawful criminal prosecution and detention.

68. The Government argued that they did not consider that the applicant's rights had been violated and submitted that, should the Court find a breach of the Convention, the finding of a violation would constitute sufficient just satisfaction.

69. The Court reiterates that the amount of compensation to be awarded for non-pecuniary damage is assessed with a view to providing "reparation for the anxiety, inconvenience and uncertainty caused by the violation" (see, for example, *Ramadhi and Others v. Albania*, no. 38222/02, § 99, 13 November 2007, and *Shtukaturov v. Russia* (just satisfaction), no. 44009/05, § 13, 4 March 2010).

70. It further notes that, in so far as the applicant may be understood to claim compensation for non-pecuniary damage in connection with the criminal proceedings against him, his criminal prosecution is not the subject

of the present application. Accordingly, his claims in this regard should be dismissed.

71. At the same time, the Court observes that it has found a violation of Article 5 § 1 of the Convention on account of the unlawfulness of the applicant's detention on 21 March 2005 and until the issuing of a new detention order on 22 March 2005. The Court considers that the breach of the Convention established in the case cannot be compensated solely by the finding of a violation and accordingly awards the applicant 500 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

72. The applicant made no claims in respect of costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

73. 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* the complaint under Article 5 § 1 concerning the unlawfulness of the applicant's detention on 21 March 2005 and until a new detention order was issued on 22 March 2005 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

3. *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, EUR 500 (five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian Roubles at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President