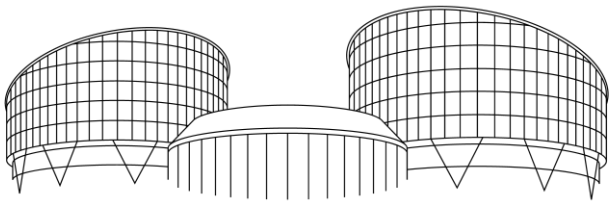

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RAKHMONOV v. RUSSIA

(Application no. 50031/11)

JUDGMENT

STRASBOURG

16 October 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 Rakhmonov v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 50031/11) 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 an Uzbekistani national, Mr Abdusami Abdusamatovich Rakhmonov ("the applicant"), on 10 August 2011.

2. The applicant was represented by Ms R. Magomedova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 11 August 2011 the President of the First Section, acting upon a request by the applicant of 10 August 2011, decided to apply Rules 39 and 41 of the Rules of the Court, indicating an interim measure to the Government under which the applicant should not be extradited to Uzbekistan until further notice and granting priority to the application.

4. On 14 November 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Moscow.

6. According to the applicant, on 19 July 2010 he arrived in Moscow from Uzbekistan with a view to finding a seasonal job and marrying. He soon learnt that his brothers had been arrested and charged with participation in an extremist religious organisation. He also learnt that he was suspected by the Uzbekistani authorities of having founded an extremist religious organisation himself.

A. Application for asylum and refugee status

7. On 18 October 2010 the applicant lodged a request with the Moscow Division of the Federal Migration Service (the FMS) seeking refugee status in Russia. On 21 January 2011 the FMS refused to grant refugee status to the applicant. The applicant appealed.

8. On 14 April 2011 the FMS quashed the decision of 21 January 2011 and remitted the matter for fresh consideration to its division in Moscow.

9. On 6 July 2011 the FMS refused by a *de novo* decision to grant the applicant refugee status. The applicant appealed. It appears that the appeal proceedings are still pending.

B. Arrest and detention pending extradition

10. On 16 September 2010 the Bukhara Town Court of the Republic of Uzbekistan ordered the applicant's arrest pending the criminal investigation against him.

11. On 3 February 2011 the applicant was arrested at the FMS's office where he had gone to receive the copy of the decision in his case. The Moscow police informed the Uzbekistani authorities of the applicant's arrest. On the same day they received a copy of the arrest order of 16 September 2010 and documents confirming that the applicant had been put on the wanted persons' list.

12. On 4 February 2011 the Izmailovskiy District Court of Moscow authorised the applicant's detention pending extradition. The applicant was also advised of his right to appeal against the extension of his detention within three days of the adoption of the relevant decision. In particular, the court noted as follows:

> "Having heard the parties to the proceedings, and having studied the extradition materials submitted in respect of [the applicant], the court finds that the [prosecutor's] request should be granted. The court has established that [the applicant's] detention is lawful and justified under international treaties and the Russian Code of Criminal Procedure. [The applicant's] name is on the wanted persons' list in connection with a crime he committed in the Republic of Uzbekistan. He has not been recognised as a refugee. Nor have any other circumstances preventing [the applicant's] extradition been identified.

> The court has received a decision by the Bukhara Town Court dated 16 September 2010 authorising the [applicant's] remand in custody which mentions that [the applicant] has absconded.
>
> Regard being had to the fact that the documents submitted to the court are in compliance with the requirements set forth in the rules of criminal procedure, the court finds that the [prosecutor's] request should be granted. In view of the evidence submitted (the documents from the Republic of Uzbekistan) confirming that [the applicant] was charged with serious offences ... that his name was on the wanted persons' list and that he had been remanded in custody, the court believes that if released, [the applicant] might continue his criminal activities or abscond, or otherwise interfere with administration of justice."

13. On 5 February 2011 the applicant lodged an appeal against the decision of 4 February 2011. He addressed it to the Moscow City Court, which received it on 21 February 2011. On 22 February 2011 the City Court forwarded the applicant's appeal to the District Court for processing. The District Court received the appeal statement on 28 February 2011. On 1 March 2011 the District Court fixed the appeal hearing for 16 March 2011 and informed the applicant and his counsel accordingly.

14. On 11 March 2011 the General Prosecutor's Office of the Republic of Uzbekistan requested the applicant's extradition.

15. On 16 March 2011 the Moscow City Court upheld the decision of 4 February 2011 on appeal.

16. On 24 March 2011 the District Court extended the applicant's detention until 3 August 2011, noting as follows:

> "[The applicant's] detention should be extended given that he is charged with [serious offences] committed on the territory of the Republic of Uzbekistan.
>
> These offences ... carry a custodial sentence exceeding one year. [The applicant] is not a refugee. There are no circumstances preventing his extradition [to Uzbekistan].
>
> Regard being had to the above, the court finds that the request should be granted given that the information in respect of the [applicant's] character leads the court to consider that, if released, he might abscond or interfere with the establishment of the truth.
>
> The court takes into account that the applicant's remand in custody was lawful and justified. There are no new circumstances in favour of its change or annulment."

17. On 3 August 2011 the Izmailovskiy Inter-District Prosecutor ordered the applicant's release on account of the expiry of the maximum period of detention pending extradition and under his undertaking not to abscond. On the same day he was arrested for his alleged failure to comply with the administrative rules governing residence of foreigners in Russia.

18. On 17 August 2011 the General Prosecutor's Office of the Russian Federation gave a decision refusing to extradite the applicant to Uzbekistan.

C. Arrest and detention with view to expulsion

19. On 5 August 2011 the District Court found the applicant's stay in Russia to be in contravention of the Russian Administrative Code and ordered his expulsion. The applicant was to remain in custody pending the execution of the judgment. The applicant appealed.

20. On 14 September 2011 the City Court quashed the decision of 5 August 2011 and ordered the applicant's release.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Russian Constitution

21. The Constitution guarantees the right to liberty (Article 22):

> "1. Everyone has the right to liberty and personal integrity.
>
> 2. Arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

B. The European Convention on Extradition

22. Article 16 of the European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

> "1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
>
> ...
>
> 4. Provisional arrest may be terminated if, within eighteen days of arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed forty days from the date of that arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

C. The 1993 Minsk Convention

23. The CIS Convention on legal aid and legal relations in civil, family and criminal matters (the 1993 Minsk Convention), to which both Russia

and Uzbekistan are parties, provides that a request for extradition must be accompanied by a detention order (Article 58 § 2).

24. A person whose extradition is sought may be arrested before receipt of the request for his or her extradition. In such cases a special request for arrest, containing a reference to the detention order and indicating that a request for extradition will follow, must be sent. A person may also be arrested in the absence of such a request if there are reasons to suspect that he or she has committed, on the territory of the other Contracting Party, an extraditable offence. The other Contracting Party must be immediately informed of the arrest (Article 61).

25. A person arrested under Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

D. The Code of Criminal Procedure (the "CCrP")

26. Chapter 13 of the Russian Code of Criminal Procedure ("Preventive Measures") governs the use of preventive measures (*меры пресечения*), which include, in particular, placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if the person is charged with an offence carrying a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be used (Article 108 §§ 1 and 3). The period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period to six months (Article 109 § 2). Further extensions to twelve months, or in exceptional circumstances eighteen months, may be granted only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). Beyond eighteen months no extension is permissible and the detainee must be released immediately (Article 109 § 4). The detention order is amenable to appeal within three days following its adoption (Article 108 § 11). The statement of appeal must be lodged with the court which delivered the decision subject to appeal (Article 355 § 1).

27. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with the established procedure (Article 466 § 1). A person who has been granted asylum in Russia because of possible political persecution in the State seeking his extradition may not be extradited to that State (Article 464 § 1 (2)).

28. An extradition decision made by the Prosecutor General may be challenged before a court. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the

extradition order was made in accordance with the procedure set out in the relevant international and domestic law (Article 463 §§ 1 and 6).

E. Ruling no. 22 of 29 October 2009 by the Supreme Court of the Russian Federation

29. Ruling No. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("the directive decision of 29 October 2009"), stated that, pursuant to Article 466 § 1 of the CCrP, only a court could order the placement in custody of a person in respect of whom an extradition request was pending and the authorities of the country requesting extradition had not submitted a court decision to place him or her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following a prosecutor's request to place that person in custody. In deciding to remand a person in custody, a court was to examine if there existed factual and legal grounds for applying that preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor could remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCrP.

F. Ruling no. 245-O-O of 20 March 2008 by the Constitutional Court of the Russian Federation

30. In ruling no. 245-O-O of 20 March 2008, the Constitutional Court of the Russian Federation noted that it had reiterated on several occasions (rulings nos. 14-P, 4-P, 417-O and 330-O of 13 June 1996, 22 March 2005, 4 December 2003 and 12 July 2005 respectively) that a court, when taking a decision under Articles 100, 108, 109 and 255 of the Russian Code of Criminal Procedure on the placement of an individual into detention or on the extension of a period of an individual's detention, was under an obligation, *inter alia*, to calculate and specify a time-limit for such detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that, because of his religious beliefs, his extradition/expulsion to Uzbekistan would expose him to a real risk of torture and ill-treatment in contravention of Article 3 of the Convention, which reads as follows:

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

32. The Government contested that argument. With reference to the General Prosecutor's decision of 17 August 2011 refusing the applicant's extradition to Uzbekistan, they considered that the applicant was not at any risk of ill-treatment.

33. The applicant considered that the Russian authorities had failed to duly consider his claim and that he continued to be exposed to a risk of ill-treatment in the event of his extradition or expulsion to Uzbekistan.

34. The Court notes that on 17 August 2011 the Prosecutor General of the Russian Federation refused the request for the applicant's extradition to Uzbekistan. It further notes that on 14 September 2011 the City Court quashed the lower court's decision ordering the applicant's arrest with a view to expulsion, and ordered his release.

35. It appears that the above-mentioned decisions remain in effect at present, and that the applicant is no longer subject to an extradition or expulsion order which can be executed. Thus, it must be concluded that the factual and legal circumstances which were at the heart of the applicant's grievance before the Court are no longer operative. Therefore, the Court considers that the applicant is no longer subjected to the risk of removal to Uzbekistan and, accordingly, is no longer at risk of treatment in breach of Article 3 of the Convention.

36. 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.

37. The above findings do not prevent the applicant from lodging a new application before the Court and from making use of the available procedures, including the one under Rule 39 of the Rules of Court, in respect of any new circumstances, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Dobrov v. Ukraine* (dec.), no. 42409/09, 14 June 2011).

II. RULE 39 OF THE RULES OF COURT

38. The Court considers that the interim measure indicated to the Government under Rule 39 of the Rules of Court (see paragraph 3 above) must be lifted.

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

39. The applicant complained that his remand in custody on 4 February 2011 and the extension of his detention pending extradition on 24 March 2011 had not been lawful. In particular, he submitted that the court order of 4 February 2011 had failed to specify a time-limit for his detention pending extradition, and that the subsequent extension of his detention had not rectified the situation. He relied on Article 5 § 1 (f), 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:
>
> ...
>
> (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."

40. The Government considered that the applicant's detention pending extradition had been carried out in strict compliance with the law. The applicant's detention and its extension had been duly authorised by the court orders of 4 February and 24 March 2011 respectively. The applicant had been represented by counsel and advised of his rights. In their view, initially the applicant had been remanded in custody for two months and his detention had subsequently been extended for another four months, that is, in strict compliance with the procedure prescribed by domestic law, in particular Article 109 § 1 of the Code of Criminal Procedure. As regards the extension of the applicant's detention on 24 March 2011, the Government pointed out that the applicant had not appealed against the relevant court order and, accordingly, had failed to exhaust the effective domestic remedies, as required by Article 35 § 1 of the Convention.

41. The applicant maintained that his detention had not been in accordance with the procedure set out in domestic law.

A. Admissibility

1. Detention from 4 February to 24 March 2011

42. 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. Detention from 24 March to 3 August 2011

43. As regards the Government's argument that the applicant failed to exhaust effective domestic remedies in respect of his detention from 24 March to 3 August 2011, that is, he did not appeal against the court order of 24 March 2011, the Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. The rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24). At the same time, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

44. Turning to the circumstances of the present case, the Court observes that, unlike in some other previous Russian cases concerning detention with a view to extradition (see, for example, *Dzhurayev v. Russia*, no. 38124/07, § 68, 17 December 2009), the applicant's detention was ordered by a Russian court rather than a foreign court or a non-judicial authority. The applicant was represented by professional counsel whose competence was not questioned by the applicant either in the domestic proceedings or before the Court. Both the applicant and his counsel were advised of the right to appeal against the court order extending the applicant's detention.

45. The Court also notes that the general procedure governing the lodging and consideration of appeals against detention orders is clearly defined in domestic law and that the applicant did not claim otherwise. The Court further notes that the applicant, indeed, followed the prescribed procedure and appealed against the initial detention order of 4 February

2011. He did not furnish any argument as to why he did not do so in respect of the second detention order of 24 March 2011.

46. Having regard to the above, the Court accepts the Government's objection that the applicant did not appeal against the court order of 24 March 2011 and therefore did not afford the Russian authorities an opportunity to address the issue and, if appropriate, remedy the situation.

47. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. General principles

48. The Court reiterates at the outset that Article 5 enshrines a fundamental human right, namely, the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports of Judgments and Decisions* 1996-VI). The text of Article 5 makes it clear that the guarantees it contains apply to "everyone" (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 162, ECHR 2009). Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (ibid, § 163).

49. The Court also reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, and notably the courts, to interpret domestic law, and in particular, rules of a procedural nature (see *Toshev v. Bulgaria*, no. 56308/00, § 58, 10 August 2006). However, the words "in accordance with a procedure prescribed by law" in Article 5 § 1 do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (*see Stafford v. the United Kingdom* [GC], no. 46295/99, § 63, ECHR 2002-IV). Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see, among others, *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II).

2. Application of the principles in the present case

50. Turning to the circumstances of the present case, the Court observes that on 4 February 2011 the District Court authorised the applicant's

detention with a view to extradition. Its decision was subject to review by the City Court.

51. The Court accepts that on 4 February 2011 the District Court acted within its powers in deciding to remand the applicant in custody pending extradition proceedings. However, the Court cannot but notice that the District Court failed to indicate a time-limit for the applicant's detention. The Government argued that a time-limit was indicated implicitly and that the applicant was to be detained for two months, that is, the maximum period of initial placement in custody provided for in Article 109 of the Russian Code of Criminal Procedure. The Court observes that this argument contradicts the interpretation of the relevant national legislation given by the Russian Constitutional Court, which has emphasised on several occasions that the national courts are under an obligation to set a time-limit when ordering an individual's placement in, or extending the period of, pre-trial detention at any stage of criminal proceedings (see paragraph 30 above). It is therefore clear that, by omitting to specify such a time-limit, the District Court failed to comply with the applicable rules of domestic criminal procedure.

52. The Court further reiterates that defects in a detention order do not necessarily render the underlying detention as such "unlawful" for the purposes of Article 5 § 1; the Court has to examine whether the flaw in the order against an applicant amounted to a "gross and obvious irregularity" such as to render the underlying period of detention unlawful (see *Mooren v. Germany* [GC], no. 11364/03, § 84, 9 July 2009, and *Kolevi v. Bulgaria*, no. 1108/02, § 177, 5 November 2009).

53. In the present case, the court order of 4 February 2011 was deficient because of a failure to specify the period during which the applicant's custodial measure should remain in place. The Court notes the Government's argument that the Russian Code of Criminal Procedure clearly provides that an initial period of pre-trial detention may not exceed two months. It also takes into account the fact that the applicant did not claim that he had not been aware of that provision. The Court, however, is not persuaded that the maximum time-limit provided for in Article 109 of the Russian Code of Criminal Procedure should be applied implicitly each time an individual's placement in custody is authorised by a domestic court. It is true that this period, in itself, does not appear unreasonably long and can be justified by the need for the authorities to ensure the proper conduct of various investigative actions. Nevertheless, the Court notes that the Russian Constitutional Court ruled that the period of one's detention should be clearly defined by a domestic court, this being an essential guarantee against arbitrariness. With this in mind, the Court considers that the absence of any specific time-limit in the District Court's decision of 4 February 2011 amounted to a "gross and obvious irregularity" capable of rendering the applicant's detention pursuant to that order arbitrary and therefore

"unlawful" within the meaning of Article 5 § 1. Accordingly, there has been a violation of that provision as regards the lawfulness of the applicant's detention from 4 February to 24 March 2011.

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

54. The applicant complained that he had not been able to obtain a speedy review of his detention pending extradition authorised by the court order of 4 February 2011. He relied on Article 5 § 4 of the Convention, which reads as follows:

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

55. The Government contested that argument. They submitted that the delay in the appeal proceedings was attributable to the applicant, who had been required to lodge his statement of appeal with the District Court. Instead, he had submitted the statement of appeal to the City Court, which had to forward it to the District Court for processing purposes.

56. The applicant maintained his complaint. In his view, no delay in the appeal proceedings was attributable to him.

A. Admissibility

57. 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.

B. Merits

58. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to persons detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). The question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII).

59. Turning to the circumstances of the present case, the Court observes that on 4 February 2011 the District Court authorised the applicant's detention with a view to extradition on grounds of the gravity of the charges

against him and the danger of his absconding. In the appeal lodged on 5 February 2011 the applicant contested those grounds. In the Court's opinion, this was a straightforward matter, and it has not been argued by the Government that the case in itself disclosed any complex features.

60. The Court further observes that the appeal hearing took place on 16 March 2011, that is, thirty-nine days after the appeal was lodged. In this connection, the Court takes into account the Government's argument that the applicant contributed to a certain extent to the length of the appeal proceedings. He sent his statement of appeal to the appeal court while he was required by law to send it to the court of first instance for processing purposes. The appeal court had to resend the document to the court of first instance, which, undoubtedly, caused a delay in the scheduling and preparing of the appeal hearing. Nevertheless, despite that omission on the applicant's part, the Court is not convinced that the review of the applicant's detention was speedy. The Government have not provided any explanation as to the length of time it took for the delivery of correspondence between courts located within the boundaries of the same city. It notes that it took the authorities sixteen days on one occasion and six days on another to deliver documentation from one court to the other and back. In the Court's view, it was those delays that significantly protracted the appeal proceedings. The fact that the correspondence delivery system between the courts did not function effectively cannot serve to justify the deprivation of the applicant of his rights under Article 5 § 4 of the Convention: it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of that provision (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 78, ECHR 2003-IV).

61. Having regard to the above, the Court considers that the time taken to review the applicant's detention cannot be considered compatible with the "speediness" requirement of Article 5 § 4. There has therefore been a violation of that provision.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed to have incurred non-pecuniary damage as a result of the violation of his rights set out in the Convention, leaving the amount of the award to the Court's discretion.

64. The Government submitted that there had been no violation of the applicant's rights and considered that no award should be made to the applicant. Alternatively, they suggested that a finding of a violation would constitute in itself sufficient just satisfaction.

65. The Court considers that the applicant must have sustained anguish and suffering resulting from his unlawful detention and the lack of a speedy review in this regard, and that this would not be adequately compensated by the finding of a violation alone. Making its assessment on an equitable basis and having regard to the particular circumstances of the case, it awards him 1,000 euros (EUR) under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

66. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

67. 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 complaints concerning the lawfulness and review of the applicant's detention with a view to extradition as authorised by the court order of 4 February 2011 admissible and the remainder of the application inadmissible;

2. *Decides* to lift the interim measure indicated to the Government under Rule 39 of the Rules of the Court;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 4 February to 24 March 2011;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a speedy review of the applicant's detention as authorised by the court order of 4 February 2011;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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.

Done in English, and notified in writing on 16 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President