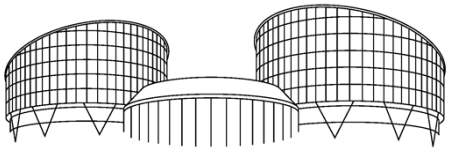

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SERGEY CHEBOTAREV v. RUSSIA

(Application no. 61510/09)

JUDGMENT

STRASBOURG

7 May 2014

FINAL

07/08/2014

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

In the case of Sergey Chebotarev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Paulo Pinto de Albuquerque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 61510/09) 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 Gennadyevich Chebotarev ("the applicant"), on 29 October 2009.

2. The applicant was represented by Mr O. Borisov, a lawyer practising in Orenburg. 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, in particular, that the conditions of his detention in a temporary detention facility had been appalling, and that he had been detained unlawfully and in the absence of an effective and speedy review of his detention.

4. On 16 May 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and lives in Orenburg.

A. Criminal proceedings against the applicant: his detention

6. During the night of 14 September 2008 the applicant had an altercation with Ms K. in a local bar. He repeatedly slapped her across the face in response to her allegedly insulting behaviour. Ms K. called the police, complaining that she had been beaten up and robbed of two gold rings. Criminal investigation was instituted following the complaint.

7. According to the applicant, he went to the Leninskiy District police department the following day and submitted a written statement explaining the events of the previous night. He denied having robbed Ms K. but admitted to hitting her a number of times in the course of a heated argument. An officer on duty immediately wrote a report informing the head of the Leninskiy District police department that the applicant intended to abscond and to intimidate the victim and witnesses. In response, the head of the police department prepared a memorandum, which read as follows:

> "The Operative Search Division of the Leninskiy District police department in Orenburg is in possession of information that [the applicant] ... is an accomplice to a number of serious criminal offences committed in Orenburg and has been arrested on a number of occasions on suspicion of having committed criminal offences. However, he avoided criminal liability owing to his connections with organised criminal groups. In November 2007 a stolen car was found in [the applicant's] garage, and number plates from stolen cars were discovered in his house during the search. However, [the applicant] was released on his own recognisance. During that period witnesses were intimidated and threatened, and subsequently changed their statements. [The applicant] was not charged with the crime. It is known that [the applicant] is a member of an organised criminal group, 'Marmony', [and] that he enjoys authority within the criminal community despite his young age."

8. Having received the written statement from the applicant, a police investigator authorised the applicant's arrest. He noted that both the victim and eyewitnesses had identified the applicant as the robber.

9. On 17 September 2008 the applicant was charged with armed robbery. The police investigator asked the Leninskiy District Court of Orenburg to order the applicant's remand in custody for seventy-two hours. On the same day the District Court accepted the investigator's request for an extension of the detention for seventy-two hours. It noted that the decision to arrest the applicant was lawful and well-founded given the reasonable suspicion, confirmed by statements by the victim and eyewitnesses, that he had committed a serious criminal offence.

10. On 19 September 2008 the police investigator released the applicant on his own recognisance.

11. In January 2009 the applicant was served with the final version of the bill of indictment, charging him with aggravated armed robbery. He was committed to stand trial before the Leninksiy District Court.

12. In the course of the trial proceedings, Ms K. amended her statements to say that she doubted that the applicant had taken her two gold rings. She

accepted the possibility that the rings could have been lost during the altercation with the applicant.

13. On 10 March 2009 the District Court dismissed the charge of aggravated armed robbery. It reclassified the offence committed by the applicant as an aggravated disorderly act performed in a public place with the use of objects resembling a weapon, and sentenced him to two years' imprisonment. The applicant was immediately taken into custody. On 16 April 2009 the Orenburg Regional Court upheld that judgment on appeal, endorsing the District Court's reasoning.

14. The applicant and his lawyer sought a supervisory review of the conviction. Following a round of unsuccessful complaints, their request was accepted. On 14 August 2009 the Registry of the Orenburg Regional Court sent letters to the applicant and his lawyer informing them that a hearing had been scheduled before the Presidium of the Regional Court on 31 August 2009. The letters indicated that the parties were free to attend the hearing, but that their absence did not preclude the examination of the matter. The Registry also forwarded to the applicant's correctional colony a copy of a printed statement which was to be signed by him and returned to the court as soon as possible. The statement, in so far as relevant, read as follows:

> "I, Chebotarev Sergey, have been informed that my supervisory review complaint [will be] examined on 31 August 2009.
>
> I have been informed of my right to legal aid.
>
> Delete where not applicable:
>
> 1. [I] want the court to appoint legal aid counsel.
>
> 2. I refuse legal aid, and my refusal is not connected to my financial status.
>
> It has been explained to me that by virtue of Article 132 of the Russian Code of Criminal Procedure a court may order a defendant to bear the costs and expenses related to legal aid counsel's participation in the proceedings."

The applicant signed the statement on 14 August 2009 and it was immediately transferred to the Regional Court by fax. He also circled point no. 2 of the statement.

15. On 31 August 2009 the Presidium of the Orenburg Regional Court, acting in response to a complaint made by the applicant's lawyer, Mr Borisov, and by way of supervisory review proceedings, quashed the judgments of 10 March and 16 April 2009 and ordered a retrial. It reasoned as follows:

> "By virtue of Article 252 § 2 of the Russian Code of Criminal Procedure, the legal reclassification of a charge is possible in the course of a court hearing if such a reclassification does not place the defendant in a worse legal position and does not violate his defence rights.
>
> As it appears from the decision to indict [the applicant] and the bill of indictment, [the applicant] was charged with [the following]: on 14 September 2008, at 12.25

a.m., in a bar ... he sought to steal another's property; using an object resembling a weapon he threatened the life and limb of Ms K.; he threatened [Ms K.] with violence; and he openly stole gold objects ... At the same time, he used violence that did not pose a threat to the life and limb of the bar manager, Mr L., who had tried to stop [the applicant's] unlawful actions; that is, [he] was charged with the criminal offence described in Article 162 § 2 of the Russian Code of Criminal Procedure.

In the course of the trial the court amended the charges, having found [the applicant] guilty of a criminal offence laid down by Article 213 § 2 of the Russian Criminal Code, namely disorderly conduct – a serious disturbance of public order exhibited in flagrant disrespect of society, carried out with an object resembling a weapon [and] in connection with resistance against a person seeking to put an end to the public disorder.

Having provided reasons for its decision to reclassify the actions of the defendant, the trial court noted in the judgment that [the applicant's] intention to commit a robbery had not been proven at the court hearing; during the altercation [the applicant] had not ordered the victim to hand over the gold objects but had acted on a rowdy impulse while pursuing other goals.

[The applicant] was not charged with disorderly conduct and he did not have an opportunity to defend himself against the new charge ...

The reclassification of [the applicant's] offence in the course of the trial from Article 162 § 2 to Article 213 § 2 of the Russian Criminal Code is in violation of the law and led to the limitation of his right to defend himself guaranteed by the Russian Code of Criminal Procedure."

16. By the same decision the Presidium ordered the applicant's remand in custody, without citing any reasons or setting a time-limit. The applicant, who at the material time was serving his sentence in a correctional colony, was not taken to the supervisory review hearing, but his lawyer attended.

17. On 2 September 2009 the applicant's lawyer lodged an appeal with the Supreme Court of the Russian Federation. He argued that the Presidium's decision ordering the applicant's remand in custody was manifestly ill-founded and unlawful. The lawyer further submitted that his client was not likely to abscond or re-offend as he had been released on his own recognisance before, he had not violated the conditions of his release, and he had had permanent places of work and residence before his conviction.

18. Two weeks later, the Supreme Court sent a letter to the applicant's lawyer, asking him to submit copies of all court judgments bearing the courts' stamps. On 9 October 2009 the lawyer complied with the requirement and sent duly certified copies of all judgments issued by the Leninskiy District and Orenburg Regional Courts and the Presidium in respect of the applicant. He did not receive any decision following his appeal.

19. In the meantime, on 28 September 2009 the Leninskiy District Court of Orenburg scheduled the first trial hearing and extended the applicant's detention, having noted the gravity of the charges against him and the lack of any evidence that he was not fit to remain in custody.

20. It appears from the District Court's decision of 26 October 2009 that after the Regional Court had sent the case file back to the trial court, the prosecutor's office amended the charges against the applicant to aggravated disorderly conduct instead of robbery.

21. On 5 November 2009 the Leninskiy District Court found the applicant guilty of aggravated disorderly conduct and sentenced him to two years' imprisonment. During the trial the applicant and his lawyers built a line of defence against the charges of both robbery and disorderly conduct. They argued that the applicant was guilty of neither of the two crimes and that he had merely hit the victim a couple of times, and had thus committed battery.

22. On 22 December 2009 the Regional Court upheld the conviction, noting that both the applicant and his lawyer had had time to prepare their defence against the charge of aggravated disorderly conduct as the prosecutor's office had brought the new charge before the trial had commenced. In the Regional Court's opinion, the applicant had effectively pursued his line of defence against the new charge.

B. Conditions of detention in facility IZ-56/1

1. The applicant's version

23. The applicant complained that on 22 September 2009 he had been transferred to facility no. IZ-56/1 in Orenburg where he had remained until 26 January 2010. He supported his submissions with a handwritten statement of an inmate who had been detained in the same facility between 2008 and 2010. The applicant described the conditions of his detention as inhuman: there was severe overcrowding, with less than two square meters of personal space afforded to inmates. He argued that given the number of persons and bunks in the cells, the conditions had been particularly cramped.

24. The applicant further submitted that he had been kept in cells measuring between 20 and 45 square metres and housing eight to sixteen inmates. He stressed that the number of detainees in the cells had never dropped below eight. For the first ten days after his admission to the facility on 22 September 2009, he was held in a cell measuring five metres by nine metres with fourteen sleeping places and accommodating sixteen inmates. Inmates had to take turns to sleep because of the shortage of sleeping places. Save for the first ten days of his detention, the applicant had an individual sleeping place at all times. He further complained that the bedding had been changed only twice during his entire stay in the facility. The cell window, located slightly below the ceiling, was 50 cm wide and 50 cm long. Metal plates had been installed outside the windows, which significantly reduced the amount of daylight that could penetrate the cells. The windows could

not be opened to allow access to fresh air. In order to open them, inmates had to remove the glass from the window frames. Lighting in the cells was produced by a 100-watt bulb, which was turned on day and night. The applicant was unable to sleep well with the lighting turned on. He suffered from severe headaches and exhaustion. The cells were in a deplorable sanitary condition and infested with insects, cockroaches and bedbugs.

25. The applicant further submitted that the cells had been equipped with a sink, a tap for cold running water and a lavatory pan. The lavatory pan was placed in a corner of the cell and separated from the living area by a metre-high brick partition. The applicant argued that the partition had afforded no privacy, as it had only been installed on one side. Inmates using the lavatory could still be observed by other inmates and warders. The applicant had been able to take a shower once a week.

26. Food – mostly cabbage, soya products, cereals and potatoes – had been served in paltry quantities. Detainees had drunk water from the cell tap, as no drinking water had been provided.

2. The Government's version

27. Relying on certificates issued by the director of facility IZ-56/1 on 30 June 2011, extracts from the inmate population logs for three dates in September 2009, eight dates for each month of October and November 2009 and January 2010 and nine dates in December 2009, and a cell register (a card recording the applicant's movements between the cells), the Government claimed that between 22 September 2009 and 26 January 2010 the applicant had stayed in six different cells measuring between 15 and 17.4 square metres. The Government further argued that two smaller cells measuring 15 and 16 square metres respectively, had contained six sleeping places and housed three other inmates. The remaining cells had eight sleeping places and had accommodated four inmates. The Government also provided the Court with handwritten affidavits of facility warders to confirm the number of sleeping places in each of the cells. They stressed that the applicant had had an individual sleeping place at all times.

28. The Government stated that each cell where the applicant had been held had a window measuring approximately one square metre. The windows had not been covered with metal plates or shades which could have blocked access to natural light or fresh air. The windows had been glazed. Inmates had also been able to open a small casing in the window. The Government further confirmed the applicant's submission related to the lighting arrangement. They clarified that a 100-watt bulb had been turned off after 10 p.m. and that a 40-watt bulb installed above the cell door had ensured security lighting in the cell at night. The cells had been equipped with a properly functioning ventilation system.

29. A lavatory pan had been installed in the corner of the cell 2 metres away from the dining table and 1.5 metres away from the closest bunk. The

Government insisted that the lavatory pan had been separated from the living area by a ceiling-high brick partition. A door had been installed on another side, forming a cubicle with a lavatory pan and a sink inside.

30. Inmates were able to take a shower once a week for at least fifteen minutes. The bedding was changed once a week, after inmates had taken a shower. The cells were also cleaned once a week.

31. The Government supported their description of the lighting and ventilation arrangements and the sanitary conditions with handwritten statements by facility personnel. Lastly, they stated that food had been served to inmates three times a day. The quantity and quality of the food had been checked daily by the medical personnel of the facility. The results of the checks had been recorded in the facility log.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

32. The Russian legal regulations for detention are explained in the judgments of *Isayev v. Russia* (no. 20756/04, §§ 67-80, 22 October 2009) and *Pyatkov v. Russia* (no. 61767/08, §§ 48-62, 13 November 2012).

33. The relevant provisions of domestic and international law on conditions of detention are set out, for instance, in the Court's judgment in the case of *Gladkiy v. Russia* (no. 3242/03, §§ 36 and 38, 21 December 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that the conditions of his detention in facility IZ-56/1 in Orenburg from 22 September 2009 to 26 January 2010 had breached Article 3 of the Convention, which reads as follows:

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

A. Submissions of the parties

35. The Government argued that given that the applicant had had no less than four square metres of personal space and an individual sleeping place at all times, and that the other conditions of his detention had been satisfactory, there had been no violation of Article 3 of the Convention on account of his detention in facility IZ-56/1.

36. The applicant maintained his complaints and disputed the veracity of the Government's submissions. He insisted that their submissions had not been supported by any evidence.

B. The Court's assessment

1. Admissibility

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

2. Merits

38. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 92-94, ECHR 2000-XI).

39. Turning to the circumstances of the present case, the focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The applicant claimed that he had been detained in particularly cramped conditions. He argued that less than two square metres of personal space had been afforded to inmates (see paragraph 23 above). The Government disputed the applicant's submissions, stating that he had had four square metres of personal space throughout his detention in the facility. They supported their submissions with certificates prepared by the director of the facility, handwritten affidavits by the facility staff members, selected pages from the inmate population logs and the applicant's cell register (see paragraph 27 above).

40. The certificates from the facility director were issued on 30 June 2011, long after the applicant had been transferred to another facility. The Court has repeatedly declined to accept the validity of similar certificates on the grounds that they could not be viewed as sufficiently reliable, given the lapse of time involved and the absence of any supporting documentary

evidence (see *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007; *Sudarkov v. Russia*, no. 3130/03, § 43, 10 July 2008; *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009; *Kozhokar v. Russia*, no. 33099/08, § 95, 16 December 2010; *Idalov v. Russia* [GC], no. 5826/03, §§ 99-100, 22 May 2012; and *Zentsov and Others v. Russia*, no. 35297/05, § 43, 23 October 2012). For the same reasons the Court has never been prepared to attribute substantial evidentiary value to handwritten statements by warders (see, for similar reasoning, *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007; *Guliyev v. Russia*, no. 24650/02, § 39, 19 June 2008; and *Grigoryevskikh v. Russia*, no. 22/03, § 57, 9 April 2009).

41. By contrast, the Court is satisfied that the extracts from the inmate population logs and the applicant's cell register were the original documents which had been prepared during the period under examination and which showed the number of sleeping places in the cells where the applicant had stayed and the actual number of inmates who had been present in those cells on those dates. The Court considers it regrettable that the extent of the Government's disclosure was restricted to the extracts only referring to thirty-six days out of the four months that the applicant had spent in the facility. However, even in the absence of similar documents covering other dates, useful information about the situation in other prison cells and the overall prison population may be deduced from the extracts submitted. It appears that facility IZ-56/1 was not plagued with the overcrowding problem, because no other cell had been filled beyond its design capacity.

42. Having assessed the evidence presented by the parties in its entirety, the Court lends credence to the primary documents produced by the Government and rejects the applicant's allegation of overpopulation during the period of his detention. It finds that there was no shortage of sleeping places in the cells and that the applicant disposed of at least four square metres of personal space. It cannot be said that the overall dimensions of his cells were so small as to restrict the inmates' freedom of movement beyond the threshold tolerated by Article 3 (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 134, 17 January 2012).

43. In the light of the parties' submissions and the legal and normative regulations regarding the regime in Russian remand prisons, as applicable at the material time (see paragraph 33 above), the Court also considers the following to be established. The applicant was allowed a one-hour period of outdoor exercise daily. Windows were not fitted with metal shutters or other contraptions preventing natural light from penetrating into the cell. Where available, a small window pane could be opened for fresh air. Cells were additionally equipped with artificial lighting and ventilation.

44. As regards sanitary and hygiene conditions, it is noted that both the dining table and the lavatory pan were located inside the applicant's cells, sometimes as close to each other as one and a half or two metres. A ceiling-

high brick partition separated the toilet on one side; a door was installed on another side, having formed a cubicle and thus completely shielding an inmate inside it from view. Cold running water was normally available in cells and detainees had access to showers once every seven days.

45. The Court acknowledges that the conditions of detention of the applicant fell short of the Minimum Standard Rules for the Treatment of Prisoners, the European Prison Rules and the recommendations of the Committee for the Prevention of Torture in some aspects, including in particular an insufficient frequency of hot showers and restricted out-of-cell activities. Nevertheless, taking into account the cumulative effect of those conditions and in particular the brevity of the applicant's stay in facility IZ-56/1, the Court does not consider that the conditions of the applicant's detention, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (see, for similar reasoning, *Fetisov and Others,* cited above, §§ 137-138).

46. The Court therefore concludes that there has been no violation of Article 3 of the Convention in respect of the conditions of the applicant's detention in facility IZ-56/1 in Orenburg from 22 September 2009 to 26 January 2010.

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

47. The applicant complained that his detention from 31 August to 5 November 2009 had been unlawful. He relied on Article 5 § 1 of the Convention, which provides 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

48. The Government argued that following the quashing of the applicant's conviction by way of a supervisory review on 31 August 2009, the subsequent decision extending his detention had been issued on 28 September 2009. The applicant had not appealed, although it appears from a copy of that decision that he had been informed of his right to appeal. The Government insisted that the applicant had failed to exhaust the domestic remedies available to him.

49. The applicant maintained his complaints. He argued that there had been no grounds for continuing to hold him in custody in the absence of any reasons cited by the Presidium and in view of the latter's failure to set a time-limit for his detention.

B. The Court's assessment

1. Admissibility

50. The Court observes at the outset that the applicant's complaint only refers to a particular period of his detention, that is from 31 August 2009 - when the Presidium of the Orenburg Regional Court quashed the conviction of 10 March 2009, as upheld on appeal on 16 April 2009, and authorised his continued detention – to the date of the new conviction on 5 November 2009. The Court further notes the Government's submission, which was not contested by the applicant, that the latter had failed to appeal against the order extending his detention from 28 September to 5 November 2009 (see paragraphs 19 and 21 above).

51. In this connection, the Court points out that the applicant was represented by counsel of his own choosing. No explanation has been offered for the failure to lodge, or advise the applicant to lodge, a judicial appeal against the detention order issued on 28 September 2009. The Court therefore accepts the Government's objection of non-exhaustion and considers that the part of the applicant's complaints concerning the detention order issued on 28 September 2009 and authorising his detention from that date until his conviction on 5 November 2009 must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Belov v. Russia*, no. 22053/02, § 74, 3 July 2008, *Matyush v. Russia*, no. 14850/03, § 63, 9 December 2008 and *Avdeyev and Veryayev v. Russia*, no. 2737/04, § 39, 9 July 2009).

52. The Court further notes that the complaint concerning the unlawfulness of the applicant's detention from 31 August to 28 September 2009 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

53. The Court 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. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court

must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

54. The Court must, moreover, ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law are clearly defined and that the law itself is foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III, and *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX).

(b) Application of the general principles to the present case

55. The Court notes that on 31 August 2009 the Presidium of the Orenburg Regional Court quashed the judgment of 10 March 2009 by which the applicant had been convicted, and ordered that he should remain in custody. On 28 September 2009 the Leninskiy District Court again extended the applicant's detention.

56. The Court observes that on 31 August 2009 the Presidium gave no reasons for its decision to authorise the applicant's continued detention. Nor did it set a time-limit for the continued detention or for a periodic review of the preventive measure. Leaving aside the concurrent developments in the applicant's case, it transpires that for approximately a month the applicant remained in a state of uncertainty as to the grounds for his detention from 31 August to 28 September 2009, when the District Court re-examined the detention issue.

57. The Court has already found violations of Article 5 § 1 (c) of the Convention in a number of cases against Russia concerning a similar set of facts (see, for example, *Vladimir Solovyev v. Russia*, no. 2708/02, §§ 95-98, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 65-68, 28 June 2007). In particular, the Court has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see also *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002, and *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a

provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov v. Russia,* no. 6847/02, § 142, ECHR 2005-X).

58. The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 31 August 2009 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the "lawfulness" of the detention within the meaning of Article 5 § 1.

59. The Court therefore finds that there was a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 31 August to 28 September 2009.

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

60. The applicant complained that he had not benefited from a speedy and effective examination of the detention issue on 31 August 2009, when the Presidium of the Orenburg Regional Court had extended his detention. In particular, he argued that he had not attended the hearing on 31 August 2009 and that his appeal against the detention decision issued on that day had never been considered. He relied on Article 5 § 4 of the Convention, which 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 ..."

61. The Government disputed the applicant's arguments.

62. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

63. At the same time, in the circumstances of the case and in view of the Court's earlier finding that the applicant's detention from 31 August to 28 September 2009 has been unlawful, the Court does not consider it necessary to examine separately the applicant's grievances under Article 5 § 4 of the Convention (see, for similar reasoning, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 211, ECHR 2009, and, more recently, *Nasakin v. Russia*, no. 22735/05, § 87, 18 July 2013).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

64. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as those complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

67. The Government stated that the sum claimed was excessive and unsubstantiated.

68. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he has sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further considers that the applicant's suffering and frustration caused by his having been detained in the absence of a proper legal order cannot be compensated for by a mere finding of a violation. However, the actual amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicant also claimed 20,000 Russian roubles (RUB) for the costs and expenses incurred before the domestic courts in relation to the extension of his detention on 31 August 2009 and RUB 66,000 for those incurred before the Court. He supported his claims with copies of contracts for his representation, in both the domestic and the Strasbourg proceedings, and invoices showing that the sums mentioned in the contracts and claimed had in fact been paid.

70. While not disputing the applicant's claim in respect of the costs and expenses incurred before the Court, the Government stated that the applicant should not be compensated RUB 20,000 as his lawyer had followed incorrect procedure.

71. 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, the applicant provided the Court with copies of the contract for legal representation for both the domestic proceedings and the proceedings before the Court. He also submitted copies of invoices showing that the payments had been effected in full. It is clear from the length and detail of the pleadings submitted by the applicant to the Court that a great deal of work was carried out on his behalf. A similar conclusion can be made in respect of the lawyer's work before the Presidium of the Orenburg Regional Court, where he had represented the applicant's interests. Having regard to the documents submitted and the rates for the lawyer's work, the Court is satisfied that those rates are reasonable. The Court considers it reasonable to award the applicant the sum claimed in full, together with any tax that may be chargeable to him.

C. Default interest

72. 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 conditions of the applicant's detention from 22 September 2009 to 26 January 2010, the unlawfulness of his detention from 31 August to 28 September 2009 and the lack of effective and speedy review of the detention decision of 31 August 2009 admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds*, that there is no need to examine the complaint under Article 5 § 4 of the Convention;

5. *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 7,500 (seven thousand and five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(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;

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

Done in English, and notified in writing on 7 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President