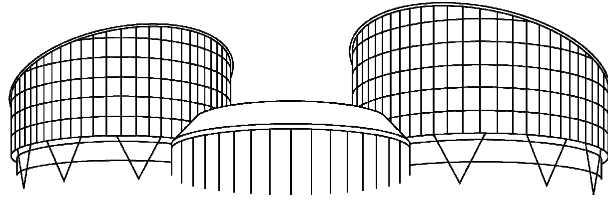

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 • 50 • 2009

FIRST SECTION

CASE OF DZHURAYEV v. RUSSIA

(Application no. 38124/07)

JUDGMENT

STRASBOURG

17 December 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dzhurayev v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 38124/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Uzbekistan, Mr Yashin Yakubovich Dzhurayev ("the applicant"), on 3 September 2007.

2. The applicant was represented by Ms M. Morozova, 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 4 September 2007 the President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Uzbekistan until further notice.

4. On 24 April 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application, as well as to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in Tashkent, Uzbekistan. He is currently residing in Moscow.

A. Proceedings in Uzbekistan

7. In January 2005, when the applicant was living in Uzbekistan, a district court in Tashkent convicted him of being a member of the Islamic religious organisation Tablighi Dzhamaat, prohibited in Uzbekistan. The court ordered him to pay a fine in an amount equal to sixty times the minimum monthly wage.

8. The applicant paid the fine and continued to reside in Uzbekistan. However, according to him, he felt constant pressure from the law-enforcement agencies, which required him to report on all his actions and movements and, in case of delay or failure on his part, threatened to arrest his elder son. So as not to put his family in danger, on 6 December 2005 the applicant left Uzbekistan for Moscow.

9. In the meantime the Supreme Court of Uzbekistan quashed the decision of January 2005 on the ground that the sentence was too mild and remitted the case for fresh examination.

10. On 9 January 2006 the Sobir Rakhimovskiy District Court of Tashkent ordered the applicant to be remanded in custody. On that basis a cross-border search warrant for the applicant was issued.

B. Proceedings in Russia

1. Extradition proceedings

11. On 26 January 2007 the applicant was arrested in Moscow on the basis of the cross-border search warrant.

12. On an unspecified date the Tashkent Department of the Interior sent the Meshchanskiy District Department of the Interior of Moscow a request to keep the applicant in custody and enclosed a copy of the Sobir Rakhimovskiy District Court's decision of 9 January 2006.

13. On 29 January 2007 the Meshchanskiy Inter-District Prosecutor's Office in Moscow issued a decision on application of a preventive measure and ordered that the applicant be placed in custody on the basis of the Uzbek court's decision of 9 January 2006. Article 61 of the Minsk Convention was cited as a legal source for application of the preventive

measure. The decision indicated that the applicant should remain in custody until the Prosecutor General's Office decided on his extradition; the term of the detention was not specified. It was not mentioned whether the decision could be appealed against. On the same day the applicant was placed in remand prison SIZO-77/4, Moscow.

14. On 12 February 2007 the applicant applied to the Russian Prosecutor General's Office. He asked it to refuse the request of the Uzbek Prosecutor General's Office for his extradition and to release him from custody since he was charged with a crime that did not constitute a criminal offence under Russian law.

15. On 28 February 2007 the Uzbek Prosecutor General's Office requested the Russian Prosecutor General's Office to extradite the applicant.

16. On 23 March 2007 the Russian Prosecutor General's Office informed the applicant that no final decision had been taken in respect of the extradition and there were therefore no grounds to change the preventive measure applied in his case.

17. On 29 June 2007 the Meshchanskiy Inter-District Prosecutor's Office issued a new decision to remand the applicant in custody pursuant to Article 466 § 2 of the CCP and Article 60 of the Minsk Convention. The decision indicated that the applicant should remain in custody until the Prosecutor General's Office decided on his extradition; the term of the detention was not specified. It was not mentioned whether the decision could be appealed against. Neither the applicant nor his counsel was provided with a copy of the decision. The applicant was not notified of it until 27 July 2007, in the remand prison, as confirmed by his signature on a copy of the decision.

18. On 23 August 2007 the Russian Prosecutor General's Office dismissed the request of the Uzbek Prosecutor General's Office for the applicant's extradition because the acts with which the applicant had been charged did not constitute a crime under Russian law.

19. On 28 August 2007 the Meshchanskiy Inter-District Prosecutor's Office received notification from the Russian Prosecutor General's Office that the Uzbek authorities' request for the applicant's extradition had been dismissed.

20. On 30 August 2007 the Meshchanskiy Inter-District Prosecutor's Office issued a decision authorising the applicant's release. The applicant was released from the remand prison.

2. *Expulsion proceedings*

21. On 30 August 2007, immediately after his release, the applicant was conveyed by policemen to the Meshchanskiy District Court of Moscow. At the hearing held on the same date, the court found the applicant guilty of an administrative offence: breach by a foreigner of the rules on entry and stay in the territory of the Russian Federation. The court imposed a fine of 5,000

Russian roubles on the applicant and ordered his expulsion. The court also ordered that pending his expulsion the applicant should be held in the centre for detention of foreign nationals of the Moscow Main Directorate of Internal Affairs. The applicant appealed.

22. On 4 September 2007 the Court indicated to the respondent Government that the applicant should not be expelled to Uzbekistan until further notice.

23. On 11 September 2007 the Moscow City Court quashed the decision of the Meshchanskiy District Court and the applicant was released.

3. Further developments

24. On 28 September 2007 policemen stopped the applicant in the Moscow underground in order to check his papers. It appeared that the applicant was still on the cross-border wanted list, and he was taken to a police station for a decision concerning his arrest. After his counsel arrived and clarified the applicant's situation, he was released. The applicant then applied to the Office of the Prosecutor General to be removed from the list.

25. On 1 October 2007 the Russian Prosecutor General's Office ordered the Ministry of the Interior to remove the applicant's name from the cross-border wanted list owing to the refusal to extradite him.

4. Asylum proceedings

26. On 2 February 2007 the applicant applied to the Moscow Department of the Federal Migration Service for asylum.

27. On 16 March 2007 officials of the Moscow Department of the Federal Migration Service questioned the applicant in the presence of his counsel.

28. On 26 March 2007 the Moscow Department of the Federal Migration Service dismissed the applicant's application on the ground that he did not meet the requirements provided for in domestic law for granting asylum. The applicant lodged a complaint with a court.

29. On 23 August 2007 the Zamoskvoretskiy District Court of Moscow dismissed the applicant's complaint. The applicant appealed.

30. On 18 October 2007 the Moscow City Court dismissed the appeal in the final instance.

31. On 13 November 2007 the applicant was recognised as a mandate refugee by the United Nations High Commissioner for Refugees.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Constitution of the Russian Federation of 1993

32. Everyone has a right to liberty and security (Article 22 § 1). Arrest, placement in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to obtaining such an order cannot exceed forty-eight hours (Article 22 § 2).

2. Code of Criminal Procedure

33. The term "court" is defined by the Code of Criminal Procedure (CCP) of 2002 as "any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code" (Article 5 § 48). The term "judge" is defined by the CCP as "an official empowered to administer justice" (Article 5 § 54).

34. A district court has the power to examine all criminal cases except for those falling within the respective jurisdictions of a justice of the peace, a regional court or the Supreme Court of Russia (Article 31 § 2).

35. Chapter 13 of the CCP governs the application of preventive measures. Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime punishable with at least two years' imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be examined by a judge of a district court or a military court of a corresponding level (Article 108 § 4). A judge's decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime cannot exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level (Article 109 § 2). Further extensions may be granted only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3).

36. Chapter 16 of the CCP lays down the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of

"parties to criminal proceedings" or of "hindering an individual's access to court" may be subject to judicial review (Article 125).

37. Extradition may be denied if the act that gave grounds for the extradition request does not constitute a crime under the Russian Criminal Code (Article 464 § 2 (1)).

38. Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or in custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

3. *The CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the 1993 Minsk Convention)*

39. When performing actions requested under the Minsk Convention, a requested official body applies its country's domestic laws (Article 8 § 1).

40. Upon receipt of a request for extradition the requested country should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible (Article 60).

41. The person whose extradition is sought may be arrested before receipt of a request for extradition, if there is a related petition. The petition must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or placed in detention before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

4. *Decisions of the Constitutional Court*

(a) Decision of the Constitutional Court no. 101-O of 4 April 2006

42. Verifying the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its constant case-law that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

43. In the Constitutional Court's view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms of Chapter 13 of the CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without respecting the procedure established in the CCP, or in excess of the time-limits fixed therein.

(b) Decision of the Constitutional Court no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

44. The Prosecutor General asked the Constitutional Court for an official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

45. The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific criminal-law provisions governing the procedure and time-limits for holding a person in custody with a view to extradition. That was a matter for the courts of general jurisdiction.

(c) Decision of the Constitutional Court no. 333-O-P of 1 March 2007

46. In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (f) AND 4 OF THE CONVENTION

47. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition had been unlawful. The relevant parts of Article 5 § 1 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

48. He also complained under Article 5 § 4 and Article 13 of the Convention that he had been unable to challenge the lawfulness of his detention in Russia before a court. Considering that Article 5 § 4 is *lex specialis* to Article 13, the Court will examine this complaint under 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."

A. The parties' arguments

1. The Government

49. The Government contested the applicant's arguments. They insisted that he had not exhausted the domestic remedies available to him because he had not lodged complaints about unlawful actions of a prosecutor to either a higher prosecutor or a court as he was entitled to do under Articles 124 and 125 of the CCP. In particular, he had not appealed against the decisions of the Meshchanskiy Inter-District Prosecutor's Office of 29 January and 29 June 2007. The Government disagreed with the applicant's assertion that Article 125 of the CCP had been inapplicable in his situation as it concerned only "parties to criminal proceedings". They referred in this respect to Article 123 of the CCP, under which not only "parties to criminal proceedings" but also "other persons" were entitled to complain about a prosecutor's actions.

50. The Government further submitted that the applicant's detention awaiting a decision on the extradition request was lawful under both Russian law and the Minsk Convention. The terms of detention pending extradition were regulated in part by the Minsk Convention and by Chapter 13 of the CCP, as had been clarified by the Ruling of the Russian Constitutional Court of 4 April 2006. The maximum term of detention could not exceed eighteen months. The applicant had spent about seven months in custody, which appeared to be a reasonable time.

2. The applicant

51. The applicant disagreed with the Government and emphasised that he had had no effective domestic remedies to exhaust in relation to his complaints. In fact on 12 February 2007 he had applied to the Prosecutor General's Office under Article 124 of the CCP, asking to be released from custody; on 26 March 2007 the Prosecutor General's Office had informed him that there were no grounds to change the preventive measure because the extradition request was still being examined. The applicant had not been notified of the ruling of 29 June 2007 until 27 July 2007 and had thus been deprived of an opportunity to challenge it before a higher prosecutor. The applicant further argued that he had been unable to complain to a court under Article 125 of the CCP because he had not been charged with any criminal offence in Russia.

52. The applicant asserted that Russian laws concerning detention pending extradition did not comply with the Convention criteria of quality of law. He also claimed that the length of his detention pending extradition had been excessive.

53. Lastly, the applicant asserted that his detention between 23 and 30 August 2007 had had no legal basis and had thus been arbitrary.

B. The Court's assessment

1. *Admissibility*

54. Turning to the Government's plea of non-exhaustion, the Court considers that the issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 4 of the Convention. Thus, the Court finds it necessary to join the Government's objection to the merits of this complaint. The Court further notes that the applicant's complaints under Article 5 §§ 1 and 4 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) Article 5 § 4 of the Convention

55. The Court will first examine the applicant's complaint under Article 5 § 4 of the Convention.

56. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Talat Tepe v. Turkey*, no. 31247/96, § 72, 21 December 2004).

57. The Court first notes that the applicant was detained pending extradition on the basis of two decisions of the inter-district prosecutor's office. Neither decision indicated that it was open to appeal (see paragraphs 13 and 17 above). The first decision, of 29 January 2007, stated that the applicant was being detained under Article 61 of the Minsk Convention, while the second one, of 29 June 2007, cited Article 466 § 2 of the CCP and Article 60 of the Minsk Convention as legal grounds for the detention.

58. The Court points out in this respect that domestic legal provisions should be applicable where actions are performed under the Minsk Convention (see paragraph 39 above). The Minsk Convention does not contain any rules on procedure for challenging a decision on placement in custody pending extradition under its Articles 60 and 61. Accordingly, the

applicant had no remedies deriving from that Convention to challenge the lawfulness of his detention pending extradition.

59. The Government emphasised that the inter-district prosecutor's office had based its decisions concerning the applicant's detention on the decision of the Sobir Rakhimovskiy District Court of Tashkent of 9 January 2006, pursuant to Article 466 § 2 of the CCP. The Court observes that it is clear that the applicant had no avenue to challenge the lawfulness of an arrest warrant issued by an Uzbek court before a Russian court and was thus unable to obtain a judicial review of the lawfulness of his detention on the basis of that warrant.

60. As to the Government's reference to Chapter 13 of the CCP, the Court points out that the only provision of this Chapter governing complaints about the lawfulness of custodial detention provides that a court's decision on placement in custody is appealable to a higher court (see paragraph 35 above). Chapter 13 remains silent when it comes to detention authorised by a prosecutor, not a court. Therefore, the applicant had no possibility to complain to a court about the inter-district prosecutor's office's decisions of 29 January and 29 June 2007 under the provisions of Chapter 13 of the CCP, as suggested by the Government.

61. As to the Government's assertion that the applicant could have complained about the unlawfulness of his detention to a prosecutor or a court under Articles 124 and 125 of the CCP, the Court observes that Chapter 16 of the CCP concerns the possibility for "parties to criminal proceedings" to challenge decisions taken in the course of a preliminary investigation, such as a decision not to initiate criminal proceedings or a decision to discontinue them. There is no indication that the applicant was a party to criminal proceedings within the meaning given to that phrase by the Russian courts (see *Muminov v. Russia*, no. 42502/06, § 115, 11 December 2008, and *Nasrulloyev v. Russia*, no. 656/06, § 89, 11 October 2007). Furthermore, the Government have provided no explanation as to how the applicant could have claimed to qualify as "other persons" within the meaning of Article 123 of the CCP to be able to challenge officials' acts and decisions "touching upon" his interests. Moreover, it is clear from the wording of Article 125 of the CCP that "other persons" within the meaning of Article 123 of the CCP do not have a right to complain before a court about officials' acts and decisions. Thus, the Court is not persuaded that the provisions of Chapter 16 of the CCP could have been applied in the applicant's case as suggested by the Government.

62. In such circumstances the Court concludes that the Government failed to show that the existence of the remedies invoked was sufficiently certain both in theory and in practice and, accordingly, that these remedies lack the requisite accessibility and effectiveness (see *A. and E. Riis v. Norway*, no. 9042/04, § 41, 31 May 2007, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). The Government's objection

concerning non-exhaustion of domestic remedies must therefore be dismissed.

63. It follows that throughout the term of the applicant's detention pending a decision on his extradition he did not have at his disposal any procedure for a judicial review of its lawfulness. There has therefore been a violation of Article 5 § 4 of the Convention.

(b) Article 5 § 1 of the Convention

64. 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 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008).

65. It is common ground between the parties that the applicant was detained as a person "against whom action is being taken with a view to deportation or extradition" and that his detention fell under Article 5 § 1 (f). The parties dispute, however, whether this detention was "lawful" within the meaning of Article 5 § 1 of the Convention,

66. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Erkalo v. the Netherlands*, 2 September 1998, § 52, *Reports* 1998-VI; *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII; and *Saadi*, cited above, § 67).

67. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should therefore review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III; *Ječius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX; and *Ladent v. Poland*, no. 11036/03, § 47, ECHR 2008-... (extracts)).

68. Turning to the circumstances of the present case, the Court observes that the applicant's initial placement in custody was ordered, on 29 January 2007, by the inter-district prosecutor's office on the basis of the provisions

of the Minsk Convention. The Court also notes that, although the decision of 29 January 2007 contained no reference to Article 466 § 2 of the CCP, the prosecutor's authority under domestic law to decide on the applicant's placement in custody without a Russian court order must have derived from that provision (see paragraph 38 above).

69. The Court points out that neither Article 61 of the Minsk Convention nor Article 466 § 2 of the CCP stipulate any rules on procedure to be followed when choosing a preventive measure in respect of a person whose extradition is sought, or any time-limits for his or her detention pending extradition.

70. The Court observes in this respect that by the time of the applicant's placement in custody the Russian Constitutional Court had already proclaimed that in extradition proceedings the right to liberty should be attended by the same guarantees as in other types of criminal proceedings. It unambiguously indicated that the application of preventive measures with a view to extradition should be governed not only by Article 466 but also by the norms on preventive measures contained in Chapter 13 of the CCP (see paragraph 43 above).

71. Furthermore, the Government confirmed that the applicant's detention pending extradition had been governed by Chapter 13 of the CCP, among other provisions.

72. In such circumstances the Court considers that, in order to be "lawful" within the meaning of Article 5 § 1 (f) of the Convention, the applicant's detention should be compatible not only with the requirements of Article 466 § 2 but also with the provisions governing application of a preventive measure in the form of placement in custody, namely Articles 108 and 109, which are included in Chapter 13 of the CCP.

73. Article 108 § 4 of the CCP expressly provides that an issue of placement in custody is to be decided upon by a judge of a district or military court in the presence of the person concerned. It follows from the wording of Article 5 § 48 and Article 31 § 2 of the CCP that a district court is a court authorised to act on the basis of the Russian Code of Criminal Procedure, which implies that the term "district court" refers to a court established and operating under Russian law. Accordingly, a judge of a district court is an official authorised to administer justice on the territory of the Russian Federation. Nothing in the wording of Article 108 § 4 of the CCP suggests that a foreign court may act as a substitute for a Russian district court when deciding on a person's placement in custody.

74. Accordingly, the fact that the applicant's placement in custody was not authorised by a Russian court is clearly in breach of Article 108 § 4 of the CCP.

75. Furthermore, even assuming that the applicant's initial placement in custody was compatible with domestic legal provisions, it would have ceased to be "lawful" after the lapse of the two-month period provided for

by Article 109 § 1 of the CCP. Article 109 § 2 of the CCP unequivocally stipulates that the two-month term of custodial detention can be prolonged up to six months only on the basis of a decision by a judge of a district court or a military court of corresponding level. In the absence of any Russian court decision to extend the applicant's custodial detention, the Court is bound to conclude that after 27 March 2007, that is, past two months from the date of his placement in custody, the applicant was detained in breach of domestic law.

76. The Court thus finds that the applicant's detention pending extradition cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. In these circumstances, the Court does not need to consider separately the applicant's additional arguments concerning the quality of domestic law, the length of his detention and his delayed release.

77. There has therefore been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

80. The Government considered the amount claimed to be excessive and observed that, should the Court find a violation of the Convention in respect of the applicant, the mere finding would suffice as just satisfaction.

81. The Court notes that it has found violations of two provisions of Article 5 in respect of the applicant. The Court thus accepts that he has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations and finds it appropriate to award the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant also claimed EUR 900 for the costs and expenses incurred before the domestic authorities and EUR 850 for those incurred before the Court. In support of his claims he submitted a copy of an agreement with his lawyer.

83. The Government did not comment on the applicant's claims for costs and expenses.

84. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,750 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest 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. *Decides* to join to the merits the Government's objection as to non-exhaustion of criminal domestic remedies and rejects it;

2. *Declares* the application admissible;

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

4. *Holds* that there has been a violation of Article 5 § 1 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, EUR 10,000 (ten thousand euros), in respect of non-pecuniary damage, and EUR 1,750 (one thousand seven hundred and fifty euros), in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts, to be converted into Russian roubles at the rate applicable at 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 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 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President