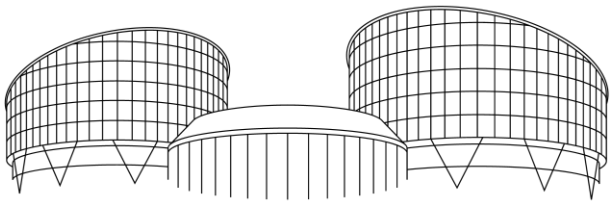

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHIMOVOLOS v. RUSSIA

(Application no. 30194/09)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

28/11/2011

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 30194/09) 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 Mikhaylovich Shimovolos ("the applicant"), on 5 November 2008.

2. 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 police collected personal data about him, in particular information about journeys made by him, and subjected him to repeated identity checks, questioning and an arrest.

4. On 19 October 2009 the President of the First Section decided to give notice of the application to the Government. He decided to give the application priority treatment (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Nizhniy Novgorod. He is the head of the Nizhniy Novgorod Human Rights Union.

A. Background information and the events of 13 and 14 May 2007

6. It transpires from a certificate issued by an official of the Volgo-Vyatskiy Interior Department of Transport on 17 April 2008 that on 23 March 2007 the applicant's name was registered in a so-called "Surveillance Database" *("Сторожевой контроль"*). An extract from the list of persons registered in that database shows that the applicant's name is mentioned in the section entitled "Human Rights Activists".

7. The Surveillance Database contains information about skinheads, human rights activists and other persons allegedly involved in extremist activities. Whenever a person mentioned in the database purchases a train or aeroplane ticket the Interior Department of Transport receives an automatic notification.

8. An EU-Russia Summit was scheduled for 17 and 18 May 2007 in Samara.

9. On 10 May 2007 the Volgo-Vyatskiy Interior Department of Transport sent a telex to its local branches informing them that protest rallies by several opposition organisations were planned for 18 May 2007. To prevent unlawful and extremist acts it was necessary, in accordance with the Suppression of Extremism Act and Order no. 47, On certain measures intended to strengthen the fight against extremism, issued by the Interior Ministry on 14 April 2005, to detect and stop all members of those organisations travelling to Samara between 8 and 20 May 2007. In particular, it was necessary to separate the travellers and dissuade them from going to Samara.

10. On an unspecified date the applicant bought a train ticket to Samara for 13 May 2007 and a return ticket for 16 May 2007.

11. On 13 May 2007 the Volgo-Vyatskiy Interior Department of Transport sent a telex to its local branches informing them that the applicant intended to travel to Samara in connection with the EU-Russia Summit. It also communicated his train reservation details. Another telex sent on the same day by the Samara Interior Department of Transport indicated that the applicant was travelling to Samara to take part in the opposition rally "March of dissent" and might be carrying extremist literature.

12. On the same day, as soon as the applicant mounted the train at Nizhniy Novgorod station, three policemen entered his compartment, checked his identity documents and asked him questions about the purpose of his trip.

13. At Saransk station (the Mordoviya Republic) another identity check was conducted and the applicant was again questioned about the purpose of his trip. The policemen ordered the applicant to leave the train and follow them to the police station, but the applicant refused to comply. In the early morning of 14 May 2007, immediately after the train entered the Samara region, the applicant's identity documents were checked for a third time.

14. When the applicant got off the train in Samara he was stopped by the police. The policemen checked his identity documents and took him to the police station, saying that it was necessary to look up his name in the police databases. They threatened to use force if the applicant refused to comply with their order.

15. The police drew up an attendance report, using a standard template entitled "Attendance report in respect of a person who has committed an administrative offence". The phrase "who has committed an administrative offence" was struck through by the police officer who filled in the template. The report indicated that the applicant was brought to the police station on 14 May 2007 at 12.15 p.m. It was mentioned that he had been stopped on account of information received in telexes nos. TP 1149 and 26/4-T-2021 of 13 May 2007. He was questioned about the purpose of his trip and his acquaintances in Samara. He was released on the same day at 1 p.m.

16. It follows from the submissions by the police officer who escorted the applicant to the police station that he had received information from his superiors that the applicant intended to participate in an opposition rally and might be carrying extremist literature. He had stopped the applicant and escorted him to the police station in order to prevent him from committing administrative and criminal offences. He had warned the applicant that if he refused to comply, force would be used. He had asked the applicant questions about the purpose of his visit to Samara. The applicant had denied involvement in any extremist activities. He had not been searched because he had no luggage and it was clear that he was not carrying any extremist materials.

B. The applicant's complaints to prosecutors

17. The applicant lodged complaints with the prosecutor's offices of Nizhniy Novgorod, Mordoviya Republic and Samara Region.

18. On 15 June 2007 the Nizhniy Novgorod Transport Prosecutor's Office refused to initiate criminal proceeding against the policemen who had questioned the applicant in Nizhniy Novgorod, finding that the applicant had voluntarily submitted to the identity check and questioning.

19. On 12 July 2007 the Ruzayevka Transport Prosecutor's Office (the Mordoviya Republic) refused to initiate criminal proceedings against the policemen who had allegedly questioned the applicant at Saransk station. It found that on 13 May 2007 the Ruzaevka police station had received telex no. 26/4-T-2021 from the Volgo-Vyatskiy Interior Department of Transport, containing information that the applicant was going to Samara by train with the intention of taking part in an opposition rally and that he was suspected of carrying extremist literature. The police had searched the train but could not find the applicant.

20. On 23 July 2007 the Kuybyshevskiy Transport Prosecutor's Office refused to open criminal proceedings against the policemen who had

stopped the applicant in Samara. The prosecutor's office found that the policemen had acted lawfully, in accordance with sections 2 and 10 of the Police Act (see paragraph 33 below). In particular, they had received information (telex no. 26/4-T-2021) about the applicant's intention to participate in an opposition rally. There had therefore been reasons to believe that he might be involved in the commission of administrative offences, and it had been necessary to stop him and bring him to the police station.

C. Court actions

1. First set of proceedings

21. On 24 May 2007 the applicant brought an action against the Volgo-Vyatskiy Interior Department of Transport before the Kanavinskiy District Court of Nizhniy Novgorod. He claimed that the telexes sent by the Volgo-Vyatskiy Interior Department of Transport to the local offices, requiring them to stop the applicant, check his identity documents and question him, had been unlawful for the following reasons:

- There had been no reason to check his documents or question him, as the police already had information about his identity, and the date and time of his arrival in and departure from Samara;

- There could be no suspicion of his intention to engage in any unlawful activities as, firstly, the rallies in Samara had been duly authorised by the town council and, secondly, he had planned to leave Samara before the date scheduled for the rallies;

- His name had been entered in the police database unlawfully, without prior judicial authorisation.

22. He further complained about his allegedly unlawful arrest and one-hour detention at the police station in Samara. He claimed that all the above actions had violated his right to respect for private life and his right to liberty and security, and had interfered with his human rights activities.

23. The Kanavinskiy District Court declared the application inadmissible, finding that the applicant had failed to submit supporting documents. This decision was subsequently quashed by the Supreme Court and the case was remitted to the Kanavinskiy District Court.

24. At the hearing the representative of the Volgo-Vyatskiy Interior Department of Transport testified that the applicant's name had been registered in the Surveillance Database following an order from the Interior Department of the Nizhniy Novgorod Region. The police had therefore been entitled to take measures against him as specified in the Police Act and the Operative-Search Act. As to the identity checks in the Mordovia Republic and Samara Region, the Volgo-Vyatskiy Interior Department of Transport had no territorial jurisdiction over these local police offices.

25. At the applicant's request the Interior Department of the Nizhniy Novgorod Region was joined as a co-respondent to the proceedings. Its representative informed the court that commission of criminal or administrative offences by a person was not a prerequisite for inclusion of his name in the Surveillance Database. The applicant's name had been registered in that database on the basis of confidential information.

26. On 29 May 2008 the Kanavinskiy District Court dismissed the application. It found that section 11 § 4 of the Police Act and sections 2, 5, 6 and 7 §§ 2 (b) and 4 of the Operative-Search Act (see paragraphs 34 to 38 below) gave the police powers to check documents and question citizens in certain cases. In the applicant's case the identity checks and the questioning had been justified by the fact that his name was registered in the Surveillance Database. The applicant had voluntarily replied to the questions asked by the police officers. No force or coercion had been used against him by the police officers in Nizhniy Novgorod. The Volgo-Vyatskiy Interior Department of Transport was not liable for the measures taken against the applicant by the police officers in the Mordoviya Republic and Saransk Region [the domestic court apparently meant Samara region], as it had no territorial jurisdiction over those regions. Finally, the court rejected the applicant's request for an injunction to the Volgo-Vyatskiy Interior Department of Transport to delete his personal data from the police databases. The court found that the applicant's personal data had been collected by the Interior Department of the Nizhniy Novgorod Region rather than by the Volgo-Vyatskiy Interior Department of Transport.

27. The applicant appealed, complaining in particular about insufficient reasoning. He submitted that the District Court had failed to give detailed answers to all his arguments.

28. On 7 October 2008 the Nizhniy Novgorod Regional Court upheld the judgment on appeal, endorsing the reasoning of the District Court.

2. Second set of proceedings

29. On 8 December 2008 the applicant challenged the decision to register his name in the Surveillance Database before the Nizhegorodskiy District Court of Nizhniy Novgorod. He alleged, in particular, that that decision interfered with his right to respect for private life because it permitted the police to collect information about his trips. He was also regularly questioned by the police about the purpose of his trips, his income, his acquaintances and his political opinions. That interference was not necessary in a democratic society. Firstly, the Interior Ministry's orders governing the creation and functioning of the Surveillance Database had not been published. Society did not know the procedures for its operation. According to the media, the database contained the names of more than 3,800 persons, the majority of whom were members of human rights and opposition groups. Secondly, the decision to register his name in the database had been arbitrary. He had never been suspected of any criminal or

administrative offences, had never been involved in extremist activities and had never supported or called for violence. The registration of his name in the database was apparently connected with his human rights activities and his participation in opposition rallies. He also complained of a violation of his right to liberty. He had been unlawfully stopped by the police several times on the sole ground that his name was registered in the Surveillance Database.

30. On 22 April 2009 the Nizhegorodskiy District Court dismissed the applicant's claims. It noted that the applicant's name had been deleted from the database in September 2007. It continued as follows:

> "The court considers that the Interior Department of the Nizhniy Novgorod Region had grounds for registering [the applicant's] name in the Surveillance Database. It follows from [the] letter by a deputy head of the Department for Maintaining Order on Transport of the Interior Ministry of Russia that the Surveillance Database pursues the aim of collecting information about the purchase by the persons listed in it of travel tickets to places [where] mass events [are planned]. Thus, the Surveillance Database does not interfere with the private lives of those listed as [the database] contains only data on their trips in connection with their professional or public activities. The registration of a person's name in the Surveillance Database cannot be considered as breaching his/her rights or freedoms or hindering the exercise of such rights and freedoms or imposing an unlawful obligation or liability.
>
> ... [the applicant] is the representative of the Moscow Helsinki Group, a public activist and the head of the Nizhniy Novgorod Human Rights Union. He organises round tables and seminars for human rights activists. In connection with his public activities he travels to many Russian towns. Thus, in May 2007 he travelled to Samara with the aim of investigating the restrictions on public assemblies during the G8 summit in the Samara region. The court considers that, taking into account [the applicant's] public activities, the Interior Department of the Nizhniy Novgorod Region was entitled to register his name in the Surveillance Database because, in accordance with section 11 § 4 of the Police Act, when discharging their duties the police may require citizens and officials to provide explanations, information or documents..."

II. RELEVANT DOMESTIC LAW

A. The Administrative Offences Code

31. The Administrative Offences Code provides that a police officer may escort an individual to the police station by force for the purpose of drawing up a report on the administrative offence provided that it is impossible to do it at the place where that offence has been detected. The individual must be released as soon as possible. The police officer must draw up an "attendance report" or refer to the fact of escorting the individual to the station in the report on the administrative offence. The individual concerned must be given a copy of that report (section 27.2 §§ 1 (1), 2 and 3).

32. In exceptional cases a police officer may arrest an individual for a short period if it is necessary to ensure a correct and prompt examination of the administrative case and secure enforcement of the eventual penalty (Article 27.3 § 1 of the Code). The duration of such administrative arrest must not normally exceed three hours (Article 25.5 §§ 1 of the Code). The arresting officer must draw up "an administrative arrest report" (Article 27.4 of the Code).

B. The Police Act

33. The Police Act of 18 April 1992 (No. 1026-I) provides that the tasks of the police are, *inter alia*, the prevention and suppression of criminal and administrative offences and protection of public order and public safety (section 2). Their duties include the prevention and suppression of criminal and administrative offences, detection of circumstances conducive to commission of offences and taking measures to obviate such circumstances (section 10 § 1).

34. Section 11 of the Police Act provides that when discharging their duties the police may, in particular:

§ 2. check citizens' identity documents if there are sufficient grounds to suspect that they have committed a criminal or administrative offence or have fled from justice; and search citizens and their belongings if there are sufficient reasons to believe that they possess weapons, ammunition, explosives or drugs;

§ 4. require citizens and officials to provide explanations, information or documents;

§ 5. arrest persons suspected of administrative offences or persons who have unlawfully entered or attempted to enter a secure area;

§ 7. arrest persons suspected of a criminal offence or persons who have been remanded in custody by a judicial order;

§ 8. arrest persons who have fled from justice;

§ 9. arrest persons who have evaded compulsory medical treatment or educational supervision;

§ 10. arrest minors suspected of criminal or administrative offences;

§ 11. arrest persons in a state of alcoholic intoxication if they have lost their ability to walk unaided or could cause harm to others or to themselves (section 11).

C. Operational-Search Activities Act

35. The Operational-Search Activities Act of 12 August 1995 (no. 144-FZ) provides that the aims of operative search activities are: (1) the detection, prevention, suppression and investigation of criminal offences and identification of persons conspiring to commit, or committing, or having committed a criminal offence; (2) finding fugitives from justice and

missing persons; (3) obtaining information about events or activities endangering the State, military, economical or ecological security of the Russian Federation (section 2).

36. State officials and organs performing operational-search activities are to show respect for the private and family life, home and correspondence of citizens. It is prohibited to perform operational-search activities to attain aims or objectives other than those specified in this Act (section 5).

37. Operational-search activities include, *inter alia*, questioning and identity check (section 6).

38. Section 7 of the Operational-Search Activities Act provides that operational-search activities may be conducted, *inter alia*, on the following grounds:

(1) pending criminal proceedings;

(2) receipt by the police of information

(a) that a criminal offence has been committed or is ongoing, or is being conspired, and about persons conspiring to commit, or committing, or having committed a criminal offence, if this information is insufficient to open criminal proceedings; (b) about events or activities endangering the State, military, economical or ecological security of the Russian Federation;

(c) about fugitives from justice;

(d) about missing persons or unidentified bodies;

...

(4) receipt of a request from another State agency which is performing operational-search activities on the grounds specified in this section (section 7).

D. The Suppression of Extremism Act

39. The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002) requires State agencies to take preventive measures against extremism to detect and eliminate causes of, and conditions for, extremist activities, as well as measures to detect, prevent and suppress extremist activities conducted by non-profit and religious organisations and persons (section 3).

E. Legal provisions governing the police databases

40. Order no. 980, On measures for enhancement of the automatic information system used by the interior departments of transport, issued by the Interior Ministry on 1 December 1999 (unpublished, a copy was submitted by the Government), directed that a software database code-named "Search-Highway" *("Розыск-Магистраль")* be created and installed. Its purpose was to facilitate discovery of those suspected of criminal offences whose names were on the wanted persons' list. It was to

be linked to the databases of the railway and airline companies, so that whenever any of the persons listed bought a train or airplane ticket an automatic notification was sent to the police, thereby allowing the police to arrest that person.

41. Order No. 1070, On installing the software database "Search-Highway" in the interior departments of transport, issued by the Interior Ministry on 22 December 1999 (unpublished, a copy was submitted by the Government) provided that the database be installed in the first half of 2000. The appendix to that Order established the procedure for its operation. In particular, it established that the following persons should be included in the database: (1) persons on the Interpol Wanted Fugitives list; (2) foreign nationals or stateless persons whose names were put on the wanted persons' list in connection with criminal offence committed on the territory of the Russian Federation; (3) foreign nationals whose entry into the Russian Federation was prohibited or restricted; (4) persons suspected of the following serious or especially serious offences: unlawful transportation of arms, ammunition or explosives; criminal explosions; unlawful traffic of antiques or their smuggling out of the Russian Federation; premeditated murders; terrorist acts; drug trafficking; financial crimes; (5) leaders of ethnic communities; leaders and active members of organised criminal groups.

42. Order no. 47, On certain measures intended to strengthen the fight against extremism, issued by the Interior Ministry on 14 April 2005 (unpublished), directed that a database of potential extremists be created as a part of the "Search-Highway" database. It was code-named "Surveillance Database" *("Сторожевой контроль")*.

43. According to Mr Sh., an officer from the Volgo-Vyatskiy Interior Department of Transport whose affidavit was submitted by the Government, the decision to register a person's name in the "Surveillance Database" is taken by the Interior Ministry or its regional departments on the basis of confidential information.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

44. The applicant complained that his arrest and one-hour detention at a police station in Samara on 14 May 2007 had been unlawful. He relied on Article 5 § 1 of the Convention, which provides:

> "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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(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."

A. Admissibility

45. 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

46. The applicant submitted that on 14 May 2007 he had been "deprived of his liberty" within the meaning of Article 5. The police officer had threatened to use force against him if he refused to proceed to the police station and he was not allowed to leave the police station without an explicit permission from the police. His detention was arbitrary and unlawful because he had not been suspected of any offence. Moreover, in view of the unclear legal basis for his arrest he had been deprived of all procedural guarantees.

47. The Government submitted that the applicant had been arrested in accordance with section 11 §§ 5 and 7 of the Police Act (see paragraph 34 above) and that his arrest had been necessary to prevent him from committing "offences of an extremist nature". A record of the arrest had been drawn up and the length of the arrest had not exceeded three hours, as required by the domestic law (see paragraph 32 above). His arrest had therefore been lawful.

48. The Court notes, firstly, that the length of time during which the applicant was held at the police station did not exceed forty-five minutes. It

therefore considers that the first issue to be determined is whether the applicant was "deprived of his liberty" within the meaning of Article 5 of the Convention.

49. The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting-point must be the concrete situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, §§ 92 and 93, and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX). Article 5 of the Convention may apply to deprivations of liberty of even of a very short length (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010-... (extracts), where the applicants were stopped for a search which did not exceed 30 minutes; see also *X. v. Austria*, no. 8278/78, Commission decision of 3 December 1979; and *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008).

50. Turning to the circumstances of the present case, the Court notes that the Government did not contest the applicability of Article 5 to the applicant's situation. The applicant was brought to the police station under a threat of force and he was not free to leave the premises without the authorisation of the police officers. The Court considers that there was an element of coercion which, notwithstanding the short duration of the arrest, was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Gillan and Quinton*, cited above, § 57, and *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008). In these circumstances the Court finds that the applicant was deprived of his liberty within the meaning of Article 5 § 1.

51. The Court must next ascertain whether the applicant's deprivation of liberty complied with the requirements of Article 5 § 1. It reiterates in this connection that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, among many others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV).

52. The Court notes that the applicant's deprivation of liberty clearly did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 of Article 5. Nor was it covered by sub-paragraph (b), since there is no evidence of the applicant's failure to comply with any lawful court order or to fulfil any

obligation prescribed by law. Indeed, he complied with the statutory obligations to show his identity documents at the request of the police officer, to reply to the officer's questions and to obey the officer's orders (see, by contrast, *Vasileva v. Denmark*, no. 52792/99, §§ 36-38, 25 September 2003). It remains to be determined whether the applicant's deprivation of liberty fell within the ambit of sub-paragraph (c).

53. It is significant in this connection that the applicant was not suspected of "having committed an offence". According to the Government, he was arrested for the purpose of preventing him from committing "offences of an extremist nature" (see paragraph 47 above). The Court will therefore examine whether the applicant's arrest could be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c).

54. It transpires from the domestic judgments that police measures, such as identity checks, questioning and escorting to the police station, were taken against the applicant during his trip to Samara because his name was registered in the Surveillance Database. The only reason for the registration of his name in that database of "potential extremists" was that he was a human rights activist (see paragraphs 26 and 30 above). The Court reiterates in this connection that Article 5 § 1 (c) does not permit a policy of general prevention directed against an individual or a category of individuals who are perceived by the authorities, rightly or wrongly, as being dangerous or having propensity to unlawful acts. It does no more than afford the Contracting States a means of preventing a concrete and specific offence (see *Guzzardi*, cited above, § 102).

55. The Court observes that neither the domestic authorities nor the Government mentioned any concrete and specific offences which the applicant had to be prevented from committing. In the Court's opinion, the Government's vague reference to "offences of an extremist nature" is not specific enough to satisfy the requirements of Article 5 § 1 (c) (see, *mutatis mutandis*, *Ciulla v. Italy*, 22 February 1989, § 40, Series A no. 148). The domestic documents relating to the applicant's arrest are no more specific in that respect. It follows from the attendance report that the applicant had been brought to the police station on the basis of information contained in two telexes. The perusal of those telexes reveals that an opposition rally was planned in Samara and that the Interior Department considered it necessary to stop members of certain opposition organisations from taking part in that rally in order to prevent them from committing "unlawful and extremist acts" (see paragraph 9 above). No concrete and specific offences were referred to.

56. The only specific suspicion against the applicant mentioned in the telexes was the suspicion that he might be carrying extremist literature (see paragraph 11 above). However, the Government did not provide any facts or information which could satisfy an objective observer that that suspicion was "reasonable". The Court notes with concern that the suspicion was

apparently based on the mere fact that the applicant was a member of human rights organisations. In its opinion, such membership cannot in any case form a sufficient basis of a suspicion justifying the arrest of an individual. Moreover, that suspicion was dispelled, according to the testimony by the escorting police officer, due to the fact that the applicant did not have any luggage with him (see paragraph 16 above). The Court concludes from the above that the applicant's arrest could not be "reasonably considered necessary to prevent his committing an offence" within the meaning of Article 5 § 1 (c).

57. It follows that the applicant's arrest did not have any legitimate purpose under Article 5 § 1 and was accordingly arbitrary. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained under Article 8 of the Convention about the registration of his name in the Surveillance Database and the consequent collection of personal data about him by the police. Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

59. 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

1. Submissions by the parties

60. The applicant submitted that the registration of his name in the Surveillance Database had interfered with his private life because it had permitted the police to collect information about his trips. That interference had been unlawful because the ministerial orders governing the creation and maintenance of the database had never been published. Moreover, the interference had not been necessary in a democratic society. There had been no reason to register his name in the database as he was a law-abiding

citizen and had never been suspected of any criminal or administrative offences. According to the applicant, the Surveillance Database contained information on more than 3,800 persons, the majority of whom, like the applicant himself, had been included in that database because of their public and human rights activities.

61. The Government submitted, firstly, that the registration of the applicant's name in the Surveillance Database and the identity checks and questioning to which he had been subjected during his trip to Samara had not interfered with his private life. The applicant had been travelling to Samara for professional reasons and he had been questioned by the police about his professional and public activities. He had not been asked any questions about his private life.

62. The Government conceded, secondly, that the ministerial orders governing the creation and maintenance of the Surveillance Database had not been published because they were confidential. They refused to submit copies of those orders or describe the procedure for the operation of the database. They affirmed, however, that those orders were compatible with domestic law, in particular with the Police Act, the Operational-Search Activities Act and the Suppression of Extremism Act. Those Acts gave the police powers to check identity documents and ask questions. The measures taken against the applicant had therefore been lawful.

63. Finally, the Government argued that the maintenance of confidential police databases pursed the legitimate aim of protecting national security. As to the proportionality of the interference, they submitted that the applicant had been one of the founders of the Russian-Chechen Friendship Society, which had been declared an extremist organisation. He was also the head of the Nizhniy Novgorod Human Rights Union, which had earlier published an extremist article in its newspaper. He had been travelling to Samara to investigate hindrances to the right to peaceful assembly in that town. The domestic authorities had stopped and questioned him to make sure that his investigation would not breach the rights and freedoms of others and would not endanger national security. The measures taken against the applicant had thus been "necessary in a democratic society".

2. The Court's assessment

(a) Whether there was an interference with private life

64. The Court reiterates that private life is a broad term not susceptible to exhaustive definition. Article 8 is not limited to the protection of an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. It also protects the right to establish and develop relationships with other human beings and the outside world. Private life may even include activities of a professional or business nature (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B,

and *Halford v. the United Kingdom*, 25 June 1997, § 42-46, *Reports* 1997-III). There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see *Perry v. the United Kingdom*, no. 63737/00, § 36, ECHR 2003-IX (extracts); *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I, and *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 56, ECHR 2001-IX).

65. The Court has earlier found that the systematic collection and storing of data by security services on particular individuals constituted an interference with these persons' private lives, even if that data was collected in a public place (see *Peck*, cited above, § 59, and *P.G. and J.H.*, cited above, §§ 57-59) or concerned exclusively the person's professional or public activities (see *Amann v. Switzerland* ([GC], no. 27798/95, §§ 65-67, ECHR 2000-II, and *Rotaru v. Romania* [GC], no. 28341/95, §§ 43-44, ECHR 2000-V). Collection, through a GPS device attached to a person's car, and storage of data concerning that person's whereabouts and movements in the public sphere was also found to constitute an interference with private life (see *Uzun v. Germany*, no. 35623/05, §§ 51-53, ECHR 2010-... (extracts)).

66. Turning to the circumstances of the present case, the Court observes that the applicant's name was registered in the Surveillance Database which collected information about his movements, by train or air, within Russia. Having regard to its case-law cited in paragraphs 64 and 65 above, the Court finds that the collection and storing of that data amounted to an interference with his private life as protected by Article 8 § 1 of the Convention.

(b) Whether the interference was "in accordance with the law"

67. Under the Court's case-law, the expression "in accordance with the law" within the meaning of Article 8 § 2 requires, firstly, that the measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring it to be accessible to the person concerned, who must, moreover, be able to foresee its consequences for him (see, among other authorities, *Kruslin v. France*, 24 April 1990, § 27, Series A no. 176-A; *Lambert v. France*, 24 August 1998, § 23, *Reports* 1998-V, and *Perry*, cited above, § 45).

68. The Court reiterates in this connection that in the special context of secret measures of surveillance the above requirements cannot mean that an individual should be able to foresee when the authorities are likely to resort to secret surveillance so that he can adapt his conduct accordingly. However, especially where a power vested in the executive is exercised in secret, the risks of arbitrariness are evident. It is therefore essential to have clear, detailed rules on the application of secret measures of surveillance, especially as the technology available for use is continually becoming more sophisticated. The law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the

authorities are empowered to resort to any measures of secret surveillance and collection of data. In addition, because of the lack of public scrutiny and the risk of abuse intrinsic to any system of secret surveillance, the following minimum safeguards should be set out in statute law to avoid abuses: the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law (see *Uzun*, cited above, §§ 61-63; *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, §§ 71-77, 28 June 2007, *Liberty and Others v. the United Kingdom*, no. 58243/00, § 62, 1 July 2008, and, *mutatis mutandis, S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 95 and 96, 4 December 2008).

69. Turning to the present case, the Court observes that the creation and maintenance of the Surveillance Database and the procedure for its operation are governed by ministerial order no. 47 (see paragraph 42 above). That order is not published and is not accessible to the public. The grounds for registration of a person's name in the database, the authorities competent to order such registration, the duration of the measure, the precise nature of the data collected, the procedures for storing and using the collected data and the existing controls and guarantees against abuse are thus not open to public scrutiny and knowledge.

70. For the above reasons, the Court does not consider that the domestic law indicates with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store in the Surveillance Database information on persons' private lives. In particular, it does not, as required by the Court's case-law, set out in a form accessible to the public any indication of the minimum safeguards against abuse. The interference with the applicant's rights under Article 8 was not, therefore, "in accordance with the law".

71. It follows that there has been a violation of Article 8 in this case.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 4

72. The Court decided, of its own motion, to communicate to the Government the issue of whether the registration of the applicant's name in the Surveillance Database violated his rights under Article 2 of Protocol No. 4, which provides:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the

prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

73. Having regard to the conclusion above under Article 8 of the Convention, the Court considers that, although the complaint is admissible, no separate issue arises under Article 2 of Protocol No. 4.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

74. The applicant also invoked Article 14 of the Convention taken in conjunction with Article 8 in relation to the registration of his name in the Surveillance Database. Article 14 reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

75. Having regard to the conclusion above under Article 8 of the Convention, the Court considers that, although the complaint is admissible, no separate issue arises under Article 14 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. 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 these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set forth in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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."

78. The applicant did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the registration of the applicant's name in the Surveillance Database and his arrest admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds* that no separate issue arises under Article 2 of Protocol No. 4;

5. *Holds* that there is no need to examine the complaint under Article 14 of the Convention taken in conjunction with Article 8;

6. *Decides* not to make an award under Article 41 of the Convention.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Nina Vajić President