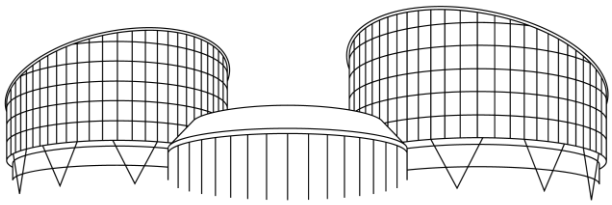

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALEKSANDR NOVIKOV v. RUSSIA

(Application no. 7087/04)

JUDGMENT

STRASBOURG

11 July 2013

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 Aleksandr Novikov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 7087/04) 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 Aleksandr Aleksandrovich Novikov ("the applicant"), on 21 January 2004.

2. The applicant was represented by Mr P. Finogenov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, about the insufficient justification for the length of his detention pending investigation and trial, as well as about the length of the criminal proceedings against him.

4. On 11 October 2007 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963. It appears that he is serving a prison sentence in Russia.

A. Criminal proceedings against the applicant

6. In early 2002 the national authorities received information to suggest that the applicant and another person were involved in drug trafficking, in particular the supply of large quantities of heroin. The authorities decided to carry out various investigative measures in respect of them under the Operational-Search Activities Act, including a test purchase of drugs and a video recording of the operation. On 12 April 2002 the applicant was arrested after having handed over parcels containing drugs to undercover officers K. and G. The preparation and carrying out of the operation were witnessed by Ko. and D., who had been asked by the authorities to take part in the operation as "members of the public".

7. The applicant was interviewed and placed in a temporary detention centre. On 15 April 2002 criminal charges were brought against him. The applicant and his accomplice were accused of fraud (as one of the parcels did not contain heroin), the illegal acquisition, possession of drugs for the purpose of sale, transport and the illegal sale of drugs.

8. Between April and June 2002 officers K. and G., as well as the attesting witnesses Ko. and D., were interviewed by the investigating authority.

9. On 27 June 2002 the criminal case was sent for trial before the Zarechenskiy District Court of Tula ("the District Court"). A hearing scheduled for September 2002 was adjourned owing to the absence of seven witnesses. Hearings were held on 3, 4, 5 and 23 December 2002. By a judgment of 12 February 2003 the District Court acquitted the applicant of fraud but convicted him of the illegal acquisition, possession and transport of drugs on a large scale for the purpose of sale, and the illegal sale of drugs. The applicant was sentenced to eight years' imprisonment. The trial court ordered that the convicted defendants be kept in detention until the judgment became enforceable.

10. Both the applicant and the prosecution appealed against the judgment to the Tula Regional Court. Having heard the parties' submissions, the appellate court decided on 19 November 2003 to set aside the judgment of 12 February 2003 and ordered the District Court to re-examine the case.

11. A hearing was held by the District Court on 26 January 2004. Having noted the absence of the co-defendant's lawyer and witnesses, the presiding judge adjourned the proceedings until 11 March 2004.

12. At a hearing on that date the applicant sought the withdrawal of the judge and dismissed his lawyer. The applicant's lay representative was afforded time to study the case file. As a result, the proceedings were adjourned until 13 May 2004. On an unspecified date a new lawyer was appointed to assist the applicant during the trial.

13. On 13 May 2004, having noted the absence of undercover officers K. and G. and some other witnesses, the presiding judge adjourned the hearing. A further hearing was held on 17 May 2004, during which witnesses were cross-examined. The defence asked for more witnesses to be called.

14. On an unspecified date, the applicant's lawyer informed the trial court that she would be on annual leave from 10 June to 5 July 2004. Nevertheless, a hearing was held on 28 June 2004. It was adjourned until 18 August 2004 and the judge ordered that the presence of the witnesses should in the meantime be secured.

15. Witnesses, including officer G., were examined at the hearing on 18 August 2004. On 23 August 2004 the judge ordered that witness Ko. be compelled to attend the trial.

16. At the hearing on 25 October 2004 the applicant's lawyer was absent attending an unrelated jury trial. The judge adjourned the hearing until 22 November 2004.

17. On 30 November 2004 the presiding judge's term of office expired. On 20 January 2005 the case was assigned to another judge.

18. On 15 February 2005 a short hearing was held during which certain procedural issues were clarified.

19. In April 2005 the case was assigned to another judge who scheduled a hearing for 11 April 2005. On that date, noting the absence of the defendants and witnesses, the judge adjourned the hearing until 21 April 2005. On that latter date, the proceedings were again adjourned until 4 May 2005 because the defence lawyers and witnesses were absent. On 4 and 19 May 2005 the judge ordered the bailiffs to enforce summonses in respect of some of the witnesses.

20. The applicant's lawyer took annual leave between 27 May and 20 June 2005. Accordingly, the hearings scheduled for 30 May and 14 June 2005 were adjourned.

21. On 5 July and 4 August 2005 the judge again ordered the enforcement of summonses in respect of several witnesses.

22. On 5 September 2005, noting the absence of witnesses Ko. and D., as well as of the co-defendant's counsel, who was on sick leave and annual leave until 21 September 2005, the judge adjourned the hearing until 28 September 2005.

23. On that latter date, the judge ordered that D. and Ko. be compelled by bailiffs to attend the trial.

24. On 31 October 2005 the final hearing was held.

25. By a judgment of 9 November 2005 the District Court convicted the applicant of selling drugs and sentenced him to eight years' imprisonment. The District Court relied, *inter alia*, on the witness statements made in 2002 and 2004 by D., Ko. and officers K. and G. The applicant did not appeal against the conviction and it became final.

B. The applicant's arrest and detention

26. The applicant and his accomplice were arrested on 12 April 2002. On 15 April 2002 a prosecutor ordered that the applicant remain in continued detention on the grounds that he "had committed" a criminal offence and would abscond or obstruct the proceedings if at liberty. No further decisions were taken by the prosecuting authority prior to the applicant's trial before the District Court.

27. On 12 February 2003 the District Court convicted the applicant of drug trafficking. On 19 November 2003 the Regional Court set aside the trial judgment and ordered a retrial (see paragraphs 9 and 10 above). It does not appear that the appellate court determined that any preventive measure be taken against the applicant.

28. On 15 December 2003 the District Court held that "the preventive measure should remain unchanged".

29. On 13 May 2004, having heard the applicant and the prosecutor, the District Court extended the applicant's detention until 19 August 2004, referring to the gravity of the charges and the risk of absconding. It does not appear from the transcript of the hearing that the court examined any evidence in relation to the prosecutor's request for the applicant to remain in detention.

30. On 18 August 2004 the District Court extended the applicant's detention until 19 November 2004, referring to the gravity of the charges and the risks of absconding and reoffending. The court also refused to deal with an application for release, noting that such an application "would be examined during the pronouncement of the trial judgment in the criminal proceedings". The applicant appealed against the decision to the Regional Court. On 6 October 2004 that court upheld the extension order.

31. At a remand hearing on 15 November 2004 the applicant argued that the prosecution had not adduced any documents in support of their request for extending detention pending retrial. The District Court rejected this argument in the following terms:

> "The relevant documents were submitted to the district prosecutor on 15 April 2002 when detention pending investigation was first ordered ... These documents were admitted to the case file, to which the defence were able to have access. There are no reasons to justify releasing the defendants, bearing in mind that the trial should be proceeding in November".

The District Court dismissed the defendants' applications for release and extended their detention pending retrial.

32. On 15 February 2005 the District Court extended the defendants' detention, referring to the gravity of the charges. Further extensions were ordered on 19 May and 4 August 2005, when the court also referred to the "organised nature of the crime", the character of the defendants and the

risks of their absconding and reoffending. The applicant was convicted on 9 November 2005 (see paragraph 25 above).

II. RELEVANT DOMESTIC LAW

33. For a summary of the relevant domestic law provisions governing detention pending investigation and trial, see the cases of *Khudoyorov v. Russia*, no. 6847/02, §§ 78-93, ECHR 2005-X (extracts); and *Romanova v. Russia*, no. 23215/02, §§ 69-78, 11 October 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

34. The applicant complained that the length of his detention pending trial had been excessive and that the reasons to justify it had not been relevant and sufficient, in breach of Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. The parties' submissions

35. The Government argued that the applicant's arrest and detention had been justified, referring to various risks. They argued that the particular dangerousness of drug trafficking, the organised nature of the crime and the applicant's leading role in the group should also be taken into consideration. The authorities had regularly delved into the possibility of a less intrusive preventive measure but had dismissed it, justifying the continuing need for detention. The applicant had not substantiated the plausibility of any such alternative measure.

36. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

(a) Periods to be taken into consideration

37. The Court observes that the applicant was arrested on 12 April 2002 and was detained within the meaning of Article 5 §§ 1 (c) and 3 of the

Convention until his conviction on 12 February 2003. From that date until 19 November 2003, when the appellate court set aside the conviction, he was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a), and therefore that period of his detention falls outside the scope of Article 5 § 3. From 19 November 2003 to 9 November 2005, when he was convicted following the retrial, the applicant was again detained within the meaning of Article 5 §§ 1 (c) and 3 of the Convention.

38. The applicant continued to be in detention following his conviction by the trial court and following the quashing of his conviction by the appellate court. In these circumstances, the Court considers that the periods of the applicant's detention from 12 April 2002 to 12 February 2003 and from 19 November 2003 to 9 November 2005 should be assessed cumulatively for the purpose of a complaint under Article 5 § 3 of the Convention (see *Solmaz v. Turkey*, no. 27561/02, §§ 35-37, 16 January 2007). The Court thus concludes that the length of detention to be taken into consideration in the instant case is two years, nine months and twenty days.

(b) Conclusion

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

2. Merits

40. It was not in dispute between the parties, and the Court does not doubt, that the applicant was arrested on the strength of a reasonable suspicion. It was based on specific elements suggesting that the applicant could have committed the offences relating to drug trafficking (see paragraph 6 above).

41. Having said that, the Court also reiterates that, while the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the assessment of the continued detention, with the passing of time this no longer suffices. Thus, it should be established whether the other grounds given by the authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). The national authorities must establish the existence of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, §§ 62-63, 10 March 2009). Where such grounds were relevant and sufficient, the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings.

42. The Court will examine the reasons and grounds adduced at the domestic level for the applicant's detention pending the trial and, then, the retrial.

(a) Reasons for detention pending the investigation and trial

43. The Court notes at the outset that the applicant's arrest on 12 April 2002 and his subsequent detention pending the investigation and trial were not subjected to any judicial assessment (see paragraphs 26-27 above). In this connection, it is noted that Russia made a reservation in respect of certain aspects of Article 5 §§ 3 and 4 of the Convention. The Court examined the validity of the reservation and found it to be compatible with the requirements of Article 57 of the Convention (see *Labzov v. Russia* (dec.), no. 62208/00, 28 February 2002).

44. On 15 April 2002 the prosecutor ordered that the applicant remain in detention on the grounds that he "had committed" a criminal offence and would abscond or obstruct the proceedings if at liberty. Subsequently, during the investigation and the trial the investigating and prosecuting authorities adduced no reasons for the applicant's continued detention.

45. The Court observes that the prosecutor did not specify any form in which the above risk could materialise. Nor did the prosecutor have regard to pertinent factors such as the advancement of the investigation or judicial proceedings and their resumption or any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed, for instance, at the falsification or destruction of evidence (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A). Thus, the Court is not satisfied that the risk was established that the applicant would pervert the course of proceedings.

46. As to the risk of flight, the Court reiterates that this risk should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). The prosecutor furnished no factual basis for his conclusion relating to the risk of flight. Thus, the Court is not satisfied that such risk justified the applicant's detention pending the investigation and trial.

(b) Reasons for detention pending the retrial

47. Having set aside the trial judgment, the appellate court did not deal with the issue of detention on remand in its decision of 19 November 2003. The Court observes that no reasons were adduced to justify the applicant's subsequent detention until the hearing in May 2004, as the District Court on 15 December 2003 only held that the "preventive measure should remain unchanged" (see paragraph 28 above).

48. During the retrial, the District Court made detention orders and referred, without any specific reasoning, to the gravity of the charges and the risks of the defendants absconding, obstructing the proceedings, intimidating witnesses or reoffending (see paragraphs 29-32 above).

49. The Court has already, on a large number of occasions, examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention in respect of the Russian authorities' failure to provide relevant and sufficient reasons for the detention of applicants (see *Dirdizov v. Russia*, no. 41461/10, §§ 108-111, 27 November 2012, with numerous further references, and *Khudoyorov v. Russia*, no. 6847/02, §§ 179-89, ECHR 2005-X). Each time, having found a violation of Article 5 § 3 of the Convention, the Court noted the fragility of the reasoning employed by the Russian authorities to justify keeping an applicant in detention. Similarly, the Court considers that the courts in the present case failed to substantiate to a sufficient extent the reasons for the applicant's continued deprivation of liberty.

50. The Court observes in this connection that in extending the applicant's detention in May 2004 the court did not examine any evidence in support of the prosecutor's request for his detention. In November 2004 the District Court stated that the factual and legal basis for the continued detention had not been reviewed and had merely been established using the grounds and supporting evidence which had given rise to the initial detention order in April 2002, more than two years previously.

51. Lastly, the Court notes that in 2005 the court mentioned, *inter alia*, the "organised nature of the crime". However, it does not appear from the available material that the concerted nature of the alleged criminal activities formed the significant part of the reasoning for substantiating, for instance, the risks of obstructing the proceedings (see *Valeriy Samoylov v. Russia*, no. 57541/09, §§ 110 and 117-19, 24 January 2012).

(c) Conclusion

52. The Court concludes that the domestic authorities, including the courts, in the present case failed to substantiate to a sufficient extent the reasons for the applicant's continued deprivation of liberty for a period of almost three years. It is hence not necessary to examine, in the context of Article 5 § 3 of the Convention, whether the proceedings against the applicant were conducted with due diligence (see *Pekov v. Bulgaria*, no. 50358/99, § 85, 30 March 2006).

53. There has therefore been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant complained of a violation of the "reasonable time" requirement in the criminal proceedings against him. He relied on Article 6 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. The parties' submissions

55. The Government argued that the investigation had been comprehensive and had required a variety of measures to be taken. During the trial some of the hearings had been adjourned at the defendants' request or owing to the absence of counsel, at times for valid reasons. The State should not be held responsible for those delays. The aim of the retrial was to ensure the rights of the defence. The various adjournments had been meant to ensure that the trial was fair and that the rights of the defence remained protected; for instance measures had been taken in respect of the absent witnesses. The Government argued that the defence had objected to the continuation of the trial in the absence of certain participants and had lodged no appeal against the adjournment decisions. Nor had they sought to proceed with the examination of the witnesses or evidence available at that time, instead awaiting the enforcement of summonses which had required the determination of the whereabouts of several people.

56. The applicant argued that the case was neither voluminous nor complex. Significant delays had been caused by numerous adjournments for substantial periods of time. These delays were related to the authorities' repeated failure to enforce the summonses in respect of witnesses, the failure to take the defendants to the courthouse from the detention facility, the reassignment of the case to a new trial judge and also the involvement of the same judge in other unrelated proceedings. The State should be held responsible for the additional delays that had been caused by the decision to retry the case. The delays attributable to the defence, which had been for valid reasons, had not justified adjournments exceeding one or two weeks.

B. The Court's assessment

1. Admissibility

57. The Court observes at the outset that before his arrest on 12 April 2002 the applicant had been subject to various investigative measures under the Operational-Search Activities Act. However, in the absence of submissions from the parties on the matter, the Court does not have sufficient details and thus cannot but accept that the period to be taken into

consideration started, in so far as the length of proceedings is concerned, on 12 April 2002, when the applicant became substantially affected by the proceedings (see *Barry v. Ireland*, no. 18273/04, §§ 33-35, 15 December 2005, and *Romanova*, cited above, § 138). It is accepted by the parties that the proceedings ended on 9 November 2005. Thus, the investigative stage, the trial and the retrial at one level of jurisdiction took nearly three years and seven months in total.

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

2. Merits

59. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). Only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

60. An accused in criminal proceedings, especially when he remains in detention pending investigation or trial, should be entitled to have his case conducted with special diligence and Article 6, in criminal matters, is designed to ensure that a person who has been detained is not kept in a state of uncertainty about his fate for a prolonged period (see *Oblov v. Russia*, no. 22674/02, § 24, 15 January 2009).

61. It has not been alleged, and the Court does not consider, that there were any significant periods of inactivity attributable to the State during the preliminary investigation (see *Shenoyev v. Russia*, no. 2563/06, § 63, 10 June 2010). Thus, the Court has examined the applicant's complaint, bearing in mind that it essentially concerned the court proceedings in his case, in particular the appeal proceedings in 2003 and the retrial.

62. The Court observes that the applicant's appeal was lodged and examined in February and November 2003 respectively. In the Court's view, the length of the appeal proceedings was attributable to the State.

63. The applicant's retrial lasted from January 2004 to November 2005. Having examined the available material, the Court considers that the case did not disclose any particular complexity. It concerned two defendants charged with a drug offence in the context of an official police operation, a test purchase of drugs.

64. The Court reiterates that an applicant cannot be required to cooperate actively with the judicial authorities, nor can he or she be criticised for having made full use of the remedies available under the domestic law in

the defence of his or her interests (see, among other authorities, *Oblov*, cited above, § 27). Article 6 requires that judicial proceedings should be expeditious, but it also lays down the more general principle of the proper administration of justice (see *Boddaert v. Belgium*, 12 October 1992, § 39, Series A no. 235-D). In this connection, the Court observes that the defence's insistence on ensuring the possibility for prosecution witnesses to be examined in open court, as well as on calling and ensuring the attendance of witnesses on behalf of the defence, cannot be regarded in the present case as being frivolous, vexatious or an abuse of process in any other way.

65. Having said that, the Court notes that the pace of the proceedings was slowed down on account of the absence of prosecution witnesses at certain trial hearings. The Government submitted no satisfactory explanation as to what action had been taken by the bailiffs to enforce the judge's orders for compelling witnesses to attend the retrial. No evidence was received as to whether any measures available under national law were taken to discipline those who failed to appear in court (see *Salmanov v. Russia*, no. 3522/04, § 87, 31 July 2008). It appears that in the absence of the main witnesses the District Court found it possible to rely on evidence they had given during the investigation, the trial and the period between the appeal decision and the final reassignment of the case to a new trial judge.

66. The reassignment of the case between judges also adversely affected the length of the proceedings since this procedural measure, the necessity of which could have been envisaged in due time, entailed conducting the trial proceedings *de novo*.

67. Importantly, it should not be overlooked that in the present case the applicant was kept in detention throughout the proceedings, in breach of the requirements of Article 5 § 3 of the Convention (see paragraphs 52-53 above).

68. In view of the above considerations, while it is accepted that some delays were attributable both to the State and to the defence, the Court concludes that the major delays which were attributable to the State were such as to prolong the proceedings in question beyond what can be considered to be a reasonable time for the examination of the case.

69. In view of the foregoing, the Court concludes that the "reasonable time" requirement of Article 6 § 1 of the Convention was not complied with in the circumstances of the present case.

70. There has accordingly been a violation of that provision.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained that the police had used psychological and physical coercion against him during the preliminary investigation, that he had been unlawfully detained in November and December 2003 and that the retrial had been unfair.

72. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

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

75. The Government contested the claim.

76. The Court awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

77. Since no claim was made the Court does not make any award under this head.

C. Default interest

78. 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 length of the applicant's detention pending investigation, trial and retrial, and the length of the criminal proceedings in his case admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *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 2,400 (two thousand four hundred euros), plus any tax that may be chargeable on this amount, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President