JUDGMENT

STRASBOURG

27 September 2011

FINAL

27/12/2011

In the case of Alim v. Russia,

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

Nina Vajić, President,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos, judges,
and Søren Nielsen, Section Registrar,

Having deliberated in private on 6 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 39417/07) 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 Cameroon, Mr Mustafa Alim ("the applicant"), on 10 July 2007.

2. The applicant was represented by Mr V. Yeremenko, a lawyer practising in Krasnodar. 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. On 11 October 2007 the President of the First Section decided to give priority treatment to the application and to give notice of it 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

4. The applicant was born in 1981 and lives in the Krasnodar region.

A. The applicant's residence in Russia and first arrest

5. According to the applicant, in 1995 he signed a contract with a Russian football club as a football player, obtained a Russian visa and settled in Russia. Later on, he gave up football because of an injury and entered (some time between 1998 and 2002) a higher educational institution in Krasnodar.

6. It appears that since 2003 or 2004 the applicant has been living in the Krasnodar region with a Russian national, Ms A., as common-law husband and wife. The applicant has been lawfully resident in Russia at least since 20 October 2004. In April 2005 Ms A. gave birth to a son. The applicant formally acknowledged paternity. The boy was given the applicant's last name and patronymic.

7. On 20 June 2006 the applicant was expelled from the University because of his failure to attend classes. It appears that on 9 September 2006 the document authorising his stay in Russia (apparently a student visa) was revoked.

8. According to the applicant, he applied to a private firm for assistance in obtaining or renewing his visa. It is alleged that an employee of this firm handed over the applicant's passport to the local Federal Security Office.

9. On 25 October 2006 Ms A. gave birth to a daughter. Although for unspecified reasons the applicant did not formally register paternity, he never contested it and the girl has his first name as a patronymic.

10. On 3 November 2006 the applicant was arrested by officers of the Russian Federal Migration Service ("FMS"). On the same day the Oktyabrskiy District Court of Krasnodar found the applicant guilty of the administrative offence of violating the residence regulations for foreign nationals (see paragraph 26 below) and imposed on him a fine of 1,500 Russian roubles (RUB). The applicant was then released. He did not appeal against this court decision and paid the fine.

11. As the applicant had no valid authorisation to remain in the country he was provided with a transit visa valid from 7 to 16 November 2006, to enable him to leave Russia. However, he did not leave the country, because, as he explained, his wife had recently given birth to their second child and he had to take care of their first child.

12. The applicant stated that between 1 and 10 January 2007 he could not make any arrangements to regularise his residence status due to the closure of public offices during the public holidays in Russia.

B. The applicant's second arrest and removal proceedings

13. On 11 January 2007 the applicant was subjected to an identity check by FMS officers. As he had no valid document, the officers arrested him and took him to the FMS premises, where they drew up an administrative offence report concerning a violation of residence regulations for foreigners (see paragraphs 26 and 33 below). The report reads as follows:

"[The applicant] was subjected to an identity check and could not provide evidence of his compliance with the requirement of temporary registration for a period longer than three days of residence...

I have been informed of my procedural rights, including the right to have access to the record and other materials, the right to legal assistance...Court proceedings, which may result in an administrative arrest or administrative removal from Russia, should be carried out in the presence of the person concerned...[the applicant's signature]

The person's explanations: {in handwriting in the Russian language} I did not have enough time to renew my registration status."

14. According to the applicant, after his arrest he asked in vain to see a lawyer and an interpreter. Having drawn up the report, the FMS officers told the applicant where he should sign it, which he did. One of them wrote down the applicant's oral explanations (see above). In the applicant's submission, his language skills were at the time limited: although he could speak and understand some Russian, he had no writing skills.

15. Later the same day the applicant was taken to the Leninskiy District Court of Krasnodar. The court held a hearing, at which, however, no lawyer or interpreter was designated to assist the applicant. According to the applicant, he was unable to make oral submissions to the court concerning his family status. The District Court judgment reads as follows:

"[The applicant] had arrived in Krasnodar in November 2004, for educational purposes. During an identity check on 11 January 2007 at his place of his residence it emerged that he had had no registration since 9 September 2006. Having examined the materials, the circumstances of the case, the administrative offence report, the court considers that [the applicant] violated the residence regulations for foreign nationals and thus committed an offence under Article 18.8 of the Code of Administrative Offences."

The court sentenced the applicant to a fine in the amount of twenty times the minimum wage (RUB 2,000). The court also ordered the administrative

removal of the applicant from Russia, and that he be detained until removal in a special detention facility situated in the village of Kopanskoy.

16. On 22 January 2007 a lawyer appealed on behalf of the applicant against the first-instance judgment, requesting that the administrative removal be annulled. He argued that the administrative offence report was unlawful, as the applicant had not been provided with an interpreter at the FMS. He also mentioned that the removal would affect his client's family life, arguing as follows:

"The court failed to examine the entirety of the relevant circumstances...Since 2003 [the applicant] has been living with a Russian national, A., and has two children, born in 2005 and 2006...These circumstances show that he has a family life...The court did not provide reasons for applying a subsidiary penalty of administrative removal in respect of [the applicant] and did not take account of the matters relating to his family life in Russia. Nor did the court assess the fact that administrative removal would prevent [the applicant] for five years from obtaining permission for temporary residence in Russia. The court should have provided reasons for considering that removal was the only way of striking a fair balance between the private and public interests at stake."

17. On 24 January 2007 the Krasnodar Regional Court dismissed the appeal and upheld the first-instance judgment. Apparently, no oral hearing had been held. The appeal court stated as follows:

"The argument relating to the existence of a relationship with A. cannot be considered as a ground for residence in Russia without valid permission issued by the competent authority. In addition, [the applicant] had already been fined for a similar offence, whilst no administrative removal had been ordered. Taking account of all circumstances, including [the applicant's] personality and both mitigating and aggravating circumstances, it should be concluded that the first-instance court issued a lawful decision."

The appeal court further stated that, according to the administrative report, the applicant had been informed of his rights but had not asked for an interpreter and had made a handwritten note in Russian on the report.

18. The applicant's lawyer continued to complain about the measure of administrative removal against his client. On 2 March 2007 the Regional Prosecutor's Office informed the lawyer that the removal was lawful. On or around 14 March 2007 the applicant lodged an application for supervisory review in respect of the court decisions of 11 and 24 January 2007. On 2 April 2007 the Regional Court informed the lawyer that his complaint had been examined by way of supervisory review and that no violations had been found.

19. On an unspecified date, the applicant lodged an application for supervisory review before the Supreme Court of Russia. On 4 May 2007 a

judge of the Supreme Court rejected it. He stated that the absence of an interpreter could not serve as a reason for quashing the decision, that the applicant had not registered a marriage with Ms A. and that the defence had not provided the district court or the supervisory-review court with evidence confirming that the applicant was the father of the two children.

20. According to the applicant, the FMS officers repeatedly told him that the State authorities had no funds to pay for his expulsion and told him to return to Cameroon at his own expense. According to the Government, since the applicant's national passport had expired on 6 June 2007 it was necessary to make arrangements to renew it.

21. By a letter of 6 July 2007 the Regional Prosecutor's Office informed Ms A. that the removal order could not be enforced because no funds had been allocated for this purpose in the federal budget and the applicant's passport had expired. It was noted that arrangements were being made by the Embassy of Cameroon to issue a departure certificate and travel documents to the applicant. On 9 July 2007 the Embassy issued a travel document. Apparently, Ms A. purchased for the applicant a train ticket to Moscow.

22. The applicant was released on 16 July 2007. In March 2011 the applicant's lawyer submitted to the Court a letter from the applicant. In that letter the applicant stated that after his release he had been living with his family in the Krasnodar Region; he had to be discreet because he did not want to be arrested and because the order of administrative removal against him remained enforceable; he could no longer regularise his stay in Russia; he could not work or initiate any administrative procedures concerning marriage or paternity. By April 2011 the removal measure had not been enforced in respect of the applicant.

C. Conditions of detention

23. From 11 January to 16 July 2007 the applicant was detained in Kopanskoy detention facility.

24. According to the applicant, during his detention he was kept in a metal trailer. In winter the temperature in the trailer was at times as low as 5 degrees Celsius, while in summer it was very hot inside. The applicant was provided with food once a day. He was obliged to do unpaid physical work. His state of health deteriorated significantly, to the extent that an ambulance was called for him on several occasions.

25. According to the Government, in the living quarters of the detention centre each detainee was provided with an individual bed, bedding and bedside table. The living quarters provided access to water and electricity. A shower room was made available to detainees. Each detainee was afforded three square metres of floor space. Each unit had its own heating system. The applicant was provided with the requisite medical assistance. For instance, on 24 April 2007 he was admitted to hospital because of an

abdominal contusion. The applicant received visits from his lawyer, Ms A. and other persons, who supplied him with food and clothes. No detainee was required to work in the detention facility.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences (CAO)

26. Article 18.8 (1) of the Code, in its version in force in January 2007, concerned the following violations of residence regulations by foreign nationals: absence of documents confirming the right to reside in Russia and non-observance of the registration procedure or residence procedure. The above violations were punishable by a fine with or without administrative removal from Russia.

27. A deportation order is enforced by transferring the person concerned to the authorities of a foreign State or by the voluntary departure of this person under the supervision of the deporting authority (Article 32.10 § 1). A court is empowered to detain the person concerned until his actual deportation (Article 32.10 § 5). The detainee should be kept at the place assigned for this purpose or in specialised detention facilities, which should have appropriate sanitary conditions and prevent voluntary departure (Articles 27.3 and 27.6 of the Code). The detainee should be fed and given medical assistance in compliance with the rules adopted by the Government.

28. In ruling no. 6-П of 17 February 1998 the Constitutional Court held, with reference to Article 22 of the Russian Constitution, that detention of a person to be removed from Russia for more than forty-eight hours required a court decision, which should establish that detention is indispensable for enforcing the removal; the court should assess the lawfulness and reasons for detention; detention for an indefinite period of time would be unacceptable since it would be capable of amounting to a separate form of punishment, which is not prescribed by the Constitution.

29. Article 31.9 of the CAO provided, at the time, that a decision imposing an administrative penalty could not be enforced after the expiry of a one-year period since the date on which this decision had become final. This period could be suspended if the defendant had impeded or was impeding enforcement proceedings.

B. Foreigners Act (Federal Law no. 115-FZ of 25 July 2002)

30. Section 5 of the Act provides that a foreigner should leave Russia after the expiry of the authorised period, except when on the date of expiry he has already obtained an authorisation for extension or renewal, or when his application for extension and the relevant documents have been accepted for processing. A deportee should bear the cost of his or her deportation unless he has no means (section 31 § 5 of the Act). The deportee should be

detained under a court order in a specialised detention facility until deportation (section 31 § 9).

31. Section 7 § 1 (3) of the Act provides that a temporary residence permit could not be issued to a foreigner who had been deported from Russia within the previous five years.

32. In decision no. 86-АД05-2 of 7 December 2005, the Supreme Court of Russia considered that it was incumbent on a national court to examine whether enforcement of a deportation order was compatible with Article 8 of the Convention. Given that section 7 of the Foreigners Act prevented a deportee from claiming a temporary residence permit for five years, "a serious issue [could] arise as to an interference with [the persons'] right for respect of their family life". In another decision, the Supreme Court varied its reasoning, stating that enforcement of a deportation order "results in the violation of fundamental family ties and impedes the family's reunification" (decision no. 18-АД05-13 of 24 January 2006). The Supreme Court subsequently considered that a deportation order should be based on considerations which confirm the necessity of such a measure "as the only possible way of ensuring a fair balance between public and private interests" (decision no. 86-АД06-1 of 29 March 2006).

33. Until 15 January 2007 the Foreigners Act contained provisions concerning registration of foreigners. Foreigners had to apply for "registration" within three days of arrival in Russia (sections 20 and 21).

C. Entry and Leave Procedures Act (Federal Law no. 114-FZ of 15 August 1996)

34. Under section 27 of the Act re-entry should be refused to a foreign national for five years of the date on which he or she has been previously subject to administrative removal from Russia.

D. Family Code

35. Article 47 of the Family Code provides that the rights and obligations of parents and their children are based on their descent/parentage, which has been lawfully established. Paternity of a person who is not married to the child's mother should be established by a joint declaration to a competent authority or in court proceedings (Articles 48 and 49).

36. As confirmed by the Constitutional Court (decision no. 26-O of 17 May 1995), Russian law does not recognise "unregistered marriage", which does not entail any legal consequences.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. The applicant complained about the conditions of his detention in Kopanskoy detention facility from 11 January to 16 July 2007. The Court will examine this complaint under Article 3 of the Convention, which reads as follows:

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

38. The Government argued that the applicant had not provided prima facie evidence in support of his allegations and failed to bring any proceedings at the national level. For instance, he could have brought a civil court action, if he had considered that the conditions of detention had been in breach of Russian legislation. During the period of his detention, he could have complained to a prosecutor. The Government considered that he had been detained in appropriate conditions.

39. The applicant maintained his complaint.

40. As the Court has held on many occasions, legitimate measures depriving a person of his liberty may often involve an element of suffering and humiliation. Yet it cannot be said that lawful detention in itself raises an issue under Article 3 of the Convention. However, the Court reiterates that Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see, among others, Kudła v. Poland [GC], no. 30210/96, § 94, ECHR 2000-XI).

41. The Court reiterates that to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention treatment must attain a minimum level of severity (see Price v. the United Kingdom, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of detention, account has to be taken of the specific allegations made by the applicant and the cumulative effects of those conditions (see Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II). Allegations of ill-treatment must be supported by appropriate evidence.

42. The Court has held that confining an asylum seeker to a prefabricated cabin for two months without allowing him outdoors or to make a telephone call, and with no clean sheets and insufficient hygiene products, amounted to degrading treatment within the meaning of Article 3 of the Convention (see S.D. v. Greece, no. 53541/07, §§ 49-54, 11 June 2009). Similarly, a period of detention of six days, in a confined space, with no possibility of taking a walk, no leisure area, sleeping on dirty mattresses and with no free access to a toilet is unacceptable with respect to Article 3 (ibid.). The detention of an asylum seeker for three months on police premises pending the application of an administrative measure, with no access to any

recreational activities and without proper meals has also been considered as degrading treatment (see Tabesh v. Greece, no. 8256/07, §§ 38-44, 26 November 2009). Lastly, the Court has found that the detention of an applicant, who was also an asylum seeker, for three months in an overcrowded place in appalling conditions of hygiene and cleanliness, with no leisure or catering facilities, where the dilapidated state of repair of the sanitary facilities rendered them virtually unusable and where the detainees slept in extremely filthy and crowded conditions amounted to degrading treatment prohibited by Article 3 (see A.A. v. Greece, no. 12186/08, §§ 57-65, 22 July 2010).

43. In the present case the Court observes at the outset that the applicant did not raise his grievances before any national authority, at least for the purpose of establishing the relevant facts. However, the Court does not need to examine the Government's argument concerning exhaustion of domestic remedies for the following reasons.

44. The Court considers that in practice it may be difficult for a detainee to collect evidence about the material conditions of his detention, and the Court has already observed the difficulties experienced by applicants in substantiating their grievances in respect of the conditions of detention in Russian remand centres pending criminal proceedings (see Shcherbakov v. Russia, no. 23939/02, § 81, 17 June 2010). It may be that a detainee cannot question witnesses, take photos of his cell or measure the levels of humidity or temperature. Such inspections are usually made either by the prison authorities themselves or by special bodies supervising the prisons. Ideally, the material conditions of detention should be assessed by independent observers.

45. The Court reiterates that it is permissible, under certain circumstances, to shift the burden of proof from the applicant to the Government (see, among others, Zakharkin v. Russia, no. 1555/04, § 123, 10 June 2010; Kokoshkina v. Russia, no. 2052/08, § 59, 28 May 2009, and Ahmet Özkan and Others v. Turkey, no. 21689/93, § 426, 6 April 2004). A failure on the part of a Government to submit convincing evidence on conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see Gubin v. Russia, no. 8217/04, § 56, 17 June 2010, and Timurtaş v. Turkey, no. 23531/94, § 66, ECHR 2000-VI).

46. In the Court's view, no such circumstances obtained in the present case. It is noted that the applicant, who was assisted by a lawyer at the domestic level and before the Court, did not adduce any evidence in support of his allegations, for instance testimonies from his common-law wife or his lawyer who visited him in the detention facility. Nor did he produce any similar testimonies from co-detainees or any publicly accessible documents or reports in support of his allegations (see, for comparison, Tabesh, §§ 39 and 40; S.D., §§ 49 and 50; A.A., §§ 57-60, all cited above, and Payet v. France, no. 19606/08, §§ 82 and 83, 20 January 2011).

47. Furthermore, there is no indication that there were any problems arising out of any overcrowding problem in the facility or shortage of individual beds, as it could be observed by the Court in cases concerning Russian remand centres. Lastly, it appears that the applicant was provided with medical care when needed.

48. Thus, in the circumstances of the present case, the applicant has not substantiated that he was detained in conditions which were incompatible with respect for his human dignity, that he was subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention or that, given the practical demands of imprisonment, his health and well-being were not adequately secured.

49. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ARTICLE 5 § 1 OF THE CONVENTION

50. The Court has also raised proprio motu the question as to whether the applicant's detention from 11 January to 16 July 2007 in Kopanskoy detention facility had been unlawful, in breach of Article 5 § 1 of the Convention. This provision reads in the relevant parts 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..."

A. The parties' submissions

51. The Government submitted that the applicant had been detained with a view to enforcement of the court order for his administrative removal from the country, under Article 32.10 of the Code of Administrative Offences. The applicant's detention was ordered by a court and was upheld on appeal within two days. The subsequent period of detention between late January and June 2007 had been justified with reference to the need to make arrangements for the applicant's return to Cameroon. These proceedings had been carried out with the requisite diligence; some time had been required to make arrangements with Cameroon to receive the applicant, in particular because his passport had expired.

52. The applicant argued that no measures had been taken between January and July 2007 "with a view to" his removal from the country. The delay had been due to the authorities' inability to pay for the execution of the removal order and because he had not been able to pay for his travel to Cameroon.

B. The Court's assessment

1. Admissibility

53. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

2. Merits

54. The Court notes that the applicant was detained with a view to administrative removal from Russia to Cameroon. This administrative removal amounted to a form of "deportation" in terms of Article 5 § 1 (f) of the Convention.

55. The Court will first examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1, including whether it complied with "a procedure prescribed by law". A period of detention will in principle be lawful if carried out under a court order. The applicant's detention with a view to administrative removal was ordered on 11 January 2007 by a court under Article 32.10 § 5 of the Russian Code of Administrative Offences.

56. The Court also reiterates that according to the Russian Constitutional Court a court decision concerning detention of a person to be removed from Russia should establish that detention is indispensable for enforcing the removal; the court should assess the lawfulness and reasons for detention; detention for an indefinite period of time being unacceptable (see paragraph 28 above).

57. While the Court cannot but observe that the decision of 11 January 2007 contained no reasoning concerning the detention matter, this flaw did not amount to a gross and obvious irregularity (see Mooren v. Germany [GC], no. 11364/03, § 84, ECHR 2009-..., and Liu v. Russia, no. 42086/05, § 81, 6 December 2007). As compared to the applicable national legislation, Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to deportation or extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see, among others, Liu, cited above, § 78).

58. With due regard to the considerations below pertaining to the length of detention, the Court does not find that the national court acted in bad faith or that it neglected to attempt to apply the relevant legislation correctly. Therefore, it has not been established that the detention order or the ensuing detention was not "lawful" within the meaning of Article 5 § 1.

59. Having made the above observations, the Court also reiterates that any deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as deportation proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see Chahal v. the United Kingdom, 15 November 1996, § 113, Reports of Judgments and Decisions 1996-V). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see Saadi v. the United Kingdom [GC], no. 13229/03, § 74, ECHR 2008-...).

60. The Court observes that the applicant spent some six months in detention awaiting administrative removal. It should be noted that from 12 to 24 January 2007 review proceedings were pending. As to the subsequent period of time, it is noted that between mid-March and early May 2007 the applicant lodged applications for supervisory review of the earlier court decisions, in which his administrative removal had been ordered. It has not been alleged that these proceedings were not a part of a genuine deportation process. Thus, they should be taken into account when assessing whether deportation proceedings were "in progress" (see Chahal, cited above, §§ 113-117). Lastly, it is undisputed that certain arrangements had to be made because of the expiry of the applicant's national passport. It has not been alleged or shown that there was any unjustified delay in releasing the applicant after it had become clear that the authorities were unable to enforce the removal order despite the fact that the relevant travel document had been made available. The Court accepts that the requirement of due diligence was complied with in the present case (see, for comparison, Dolinskiy v. Estonia (dec.), no. 14160/08, 2 February 2010, and Agnissan v. Denmark (dec.), no. 39964/98, 4 October 2001).

61. There has therefore been no violation of Article 5 § 1 (f) of the Convention as regards the applicant's detention from 11 January to 16 July 2007.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicant complained under Article 8 of the Convention that administrative removal from Russia would adversely affect his family life. He also complained that the expulsion would have a negative impact on his two minor children. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life...

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. The parties' submissions

1. The Government

63. The Government argued that Article 8 of the Convention was inapplicable in the absence of a registered marriage between the applicant and Ms A. An unregistered partnership ("common-law marriage") is not recognised and does not confer any specific rights under Russian law, in particular as regards mutual pecuniary obligations of spouses, succession or benefits. The applicant failed to display the requisite diligence in seeking to obtain permission to stay in Russia, to formalise his relationship with Ms A. and to establish his paternity in respect of her daughter. He was found liable for violations of residence regulations for foreign nationals. Thus, it does not appear that the applicant was particularly concerned with the normal exercise of his "family life" in Russia. Despite this, the national courts had given a thorough examination to the related grievances.

64. Even assuming the existence of the "family life" protected by Article 8 of the Convention, the applicant's removal from Russia was imposed in compliance with the Code of Administrative Offences for repeated violation of residence regulations. This decision was aimed at protecting public safety and prevention of disorder and was not disproportionate, given that the applicant had made no effort to take any of several avenues to obtain permission to reside in Russia.

65. Lastly, the Government submitted that in the administrative proceedings the applicant had been informed of his rights under the Code of Administrative Offences, including the right to legal representation and to the services of an interpreter. The applicant had not made any specific request in that connection. Given that the applicant had lived in Russia for some twelve years, there were not sufficient grounds to believe that the applicant's skills in Russian were so limited that he would be incapable of presenting his case to the court. The applicant was assisted by a lawyer in the domestic proceedings, including appeal proceedings against the deportation order.

2. The applicant

66. The applicant argued that the administrative removal order and its possible enforcement constituted an interference with his "family life". The applicant was living with his common-law wife Ms A. and had fathered two of her children; both had his patronymic; the son also had his family name on his birth certificate. The national courts did not examine the matter relating to Article 8 of the Convention.

B. The Court's assessment

1. Admissibility

67. The Court will first examine the Government's argument concerning applicability of Article 8 of the Convention in the absence of a registered marriage between the applicant and Ms A.

68. The Court reiterates at the outset that Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity. The totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for "private life". It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see Üner v. the Netherlands [GC], no. 46410/99, § 59, ECHR 2006-XII).

69. As to the notion of "family life", the Court first reiterates its well-established case-law, according to which the notion of family under Article 8 of the Convention is not confined to marriage-based relationships and may encompass other de facto "family" ties where the parties are living together out of wedlock (see, among others, Schalk and Kopf v. Austria, no. 30141/04, § 94, ECHR 2010-..., and Keegan v. Ireland, 26 May 1994, § 44, Series A no. 290).

70. Second, as regards minor children, the Court also reiterates that a child born of a marital relationship is ipso jure part of that "family" unit from the moment and by the very fact of his or her birth (see Berrehab v. the Netherlands, 21 June 1988, § 21, Series A no. 138). Thus, there exists between the child and its parents a bond amounting to family life. The existence or non-existence of "family life" within the meaning of Article 8 is also a question of fact depending upon the real existence in practice of close personal ties, for instance the demonstrable interest and commitment by the father to the child both before and after birth (see L. v. the Netherlands, no. 45582/99, § 36, ECHR 2004-IV).

71. Turning to the present case, the Court observes that the question concerning the existence of a private and/or family life was not examined at the national level in the light of the above principles (see paragraphs 17 and 19 above). Thus, the Court will have to make its own assessment, in the light of the parties' submissions.

72. The Court notes the applicant's submission, which was not contested by the respondent Government, that he had arrived in Russia in 1995, that is at or around the age of fourteen. It is common ground that by 2004 the applicant was living in a common-law marriage with a Russian national, Ms A. It is uncontested that at least between October 2004 and September 2006 the applicant was residing lawfully in Russia.

73. It is also noted that Ms A. gave birth to two children, in 2005 and 2006. The boy was given the applicant's last name and was formally recognised by him as his son. While the girl was not formally recognised as his daughter, for unspecified reasons, she has the applicant's name as her patronymic. Importantly, it is common ground that the applicant and Ms A. lived together in a relationship, including when the two children were born. Equally, it appears that the applicant assumed from the beginning the role of the children's father.

74. Making the above findings, the Court reiterates that the question whether the applicant had a private and/or family life within the meaning of Article 8 § 1 should be determined in the light of the position at the time when the impugned measure became final (see Maslov v. Austria [GC], no. 1638/03, § 61, 23 June 2008, and Boujlifa v. France, 21 October 1997, § 36, Reports of Judgments and Decisions 1997-VI). In any event, the Court observes that the relevant factual and legal circumstances had not changed significantly since January 2007. At the same time, the Court cannot be oblivious to the fact that at least by April 2011 the removal measure had not been enforced in respect of the applicant. It follows that the applicant's family life with Ms A. continued in Russia between 2007 and 2011, and that inter alia the children have approached or reached the age of five.

75. In the light of the foregoing, the Court considers that the applicant's relationship with Ms A. and two children constituted "family life". The Court therefore finds that the facts of the instant case fall within the ambit of Article 8 § 1 of the Convention.

76. Furthermore, the Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus it should be declared admissible.

2. Merits

(a) General principles

77. The Court reiterates that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among other authorities, Maslov, cited above, § 68). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see Slivenko v. Latvia [GC], no. 48321/99, ECHR 2003-X, § 113).

78. The relevant criteria that the Court uses to assess whether an expulsion or equivalent measure is necessary in a democratic society have been summarised as follows in the Üner case (cited above, §§ 57-58):

"57. Even if Article 8 of the Convention does not ... contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision...In the case of Boultif the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria...are the following:

- the nature and seriousness of the offence committed by the applicant;

- the length of the applicant's stay in the country from which he or she is to be expelled;

- the time elapsed since the offence was committed and the applicant's conduct during that period;

- the nationalities of the various persons concerned;

- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled."

79. The Court takes into account the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination.

80. While the above criteria are meant to facilitate the application of Article 8 in expulsion cases by domestic courts, the weight to be attached to the respective criteria will inevitably vary according to the specific circumstances of each case.

81. The State must strike a fair balance between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation. Moreover, Article 8 does not entail a general obligation for a State to respect immigrants' choice of the

country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (see Rodrigues da Silva and Hoogkamer v. the Netherlands, no. 50435/99, § 39, ECHR 2006-I).

82. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (ibid.). Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (see, among others, Darren Omoregie and Others v. Norway, no. 265/07, § 57, 31 July 2008).

(b) Application of the principles in the present case

83. The Court considers that the administrative removal from the country constituted an "interference" with the applicant's right to respect for his family life. The interference at issue will be in violation of Article 8 unless it is justified under the second paragraph of that provision.

84. The Court finds that the interference in the present case was in accordance with the law, namely Article 18.8 of the Code of Administrative Offences. Administrative removal from the country was a subsidiary penalty for a violation of residence regulations for foreigners. The applicant was found liable due to the absence of "registration" (see paragraphs 26 and 33 above).

85. It was argued by the respondent Government that this interference pursued a legitimate aim of protecting public safety or order. However, the key question for the Court is whether the measure was necessary in a democratic society and proportionate to the legitimate aim pursued.

86. The Court reiterates that it was not contested that the applicant arrived in Russia in 1995 at the age of fourteen as a football player and then was admitted to a higher educational institution. As from 2003 or 2004 the applicant was lawfully living in the Krasnodar region with a Russian national, Ms A., as common-law husband and wife. In September 2006 the document authorising his stay in Russia was revoked.

87. Furthermore, the Court observes that the offence for which on 11 January 2007 the applicant was ordered to leave Russia consisted of non-observance of the "registration" procedure for foreigners, which could be

classified as a minor administrative offence (see paragraph 26 above). It is noted that until 15 January 2007 the Foreigners Act contained provisions concerning registration of foreigners. Foreigners had to apply for "registration" within three days of arrival in Russia (see paragraph 33 above). The Court does not overlook the Government's argument that in November 2006 the applicant had already been fined on the same grounds.

88. However, the Court is not convinced that after his visa had been revoked in September 2006 the applicant, who was no longer "lawfully" resident in the country, had any reasonable opportunity to regularise his presence in Russia, having regard to the applicable provisions and procedures of Russian law. Under the Foreigners Act a foreigner should leave Russia after the expiry of the authorised period, except when on the date of expiry he has already obtained an authorisation for extension or renewal, or when his application for extension and the relevant documents have been accepted for processing (see paragraph 30 above).

89. Thus, it appears that in the circumstances of the case the applicant had to leave Russia in order to have a legal possibility to seek a new authorisation to re-enter the territory of Russia. Indeed, as the applicant had no valid authorisation to remain in the country he was provided with a transit visa valid from 7 to 16 November 2006, to enable him to leave Russia. However, he did not leave the country, as he explained, because his wife had recently given birth to their second child and he had to take care of their first child. In so far as the applicant's behaviour and eventual efforts to regularise his presence in Russia may be relevant for its assessment, the Court considers that the applicant acted in the way lacking diligence and thus contributing to reaching a "deadlock" situation concerning his immigration status in Russia. At the same time, it should be noted that the applicant was found liable because of non-observance of the registration procedure rather than because of staying in the country without a valid document such as a visa or a residence permit.

90. As can be seen from the administrative offence record, the applicant limited his arguments before the arresting officer to stating that he had not had enough time to renew his residence status. While unassisted by a lawyer the applicant did not raise matters pertaining to his family life at the hearing before the first-instance court dealing with the administrative offence. The Court agrees with the Government that it could be reasonably assumed that having resided in Russia for a considerable period of time the applicant could have acquired some knowledge of the Russian language, which would suffice for the purpose of raising his grievances before national authorities or understanding the procedural rights notified to him (see, mutatis mutandis, Lagerblom v. Sweden, no. 26891/95, §§ 61 and 62, 14 January 2003).

91. However, given the nature of the proceedings which concerned a possible breach of registration or residence regulations for foreigners, the Court accepts that the pertinence of the matters relating to or affecting

family life might not be immediately clear for the applicant at that point in the proceedings. It should be noted that the relevant argument was aired before the appeal court, as well as in the applications for supervisory review, when the applicant challenged the order of administrative removal against him.

92. Thus, while the applicant's behaviour is not entirely beyond reproach, the attitude of the national authorities in the present case also raises serious questions in terms of Article 8 of the Convention.

93. In the Court's view, the possibility for the authorities to react with expulsion may constitute an important means of general deterrence against gross or repeated violations of immigration regulations. A scheme of implementation of national immigration law which, as here, is based on administrative sanctions in the form of expulsion does not as such raise an issue of failure to comply with Article 8 of the Convention. In any event, it is not for the Court to rule in abstracto on the compatibility of the immigration procedures with the Convention, but to ascertain in concreto what effect the application in this case of the relevant procedures had on the applicant's right under Article 8 of the Convention.

94. The Court reiterates in that connection that whenever discretion capable of interfering with the enjoyment of a Convention right such as the one in issue in the present case is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see Chapman v. the United Kingdom [GC], no. 27238/95, § 92, ECHR 2001-I, and Buckley v. the United Kingdom, 25 September 1996, § 76, Reports 1996-IV).

95. It has not been alleged that the national courts in the administrative offence procedure, as in the present case, were unable to assess the penalty to be imposed, taking into account the relevant principles under Article 8 of the Convention (see, for comparison, McCann v. the United Kingdom, no. 19009/04, §§ 49-55, 13 May 2008). To the contrary, the domestic judicial practice required that matters relating to family life be taken into consideration when deciding on an administrative removal (see paragraph 32 above).

96. Having said that, the Court is not satisfied with the appeal court's reasoning concerning factual and legal matters pertaining to the applicant's family life when a decision concerning the penalty of administrative removal from Russia was upheld. As already noted, the court did not rely on the applicable principles under the Convention concerning the existence of a private and/or family life (see also paragraphs 19 and 36 above). Moreover, it has to be borne in mind that where, as in the present case, the interference

with the applicant's rights under Article 8 was meant to pursue, as a legitimate aim, the protection of public safety or order, the national authorities should have evaluated the extent to which the applicant endangered public safety or order.

97. The Court also notes that, despite the pertinence of the personal testimony, the appeal court did not hold a hearing. Nor did it find necessary to hear Ms A. It has been emphasised by the applicant that under the applicable legislation deportation precluded his subsequent re-entry into Russia for five years and the issue of a temporary residence permit for the same period of time (see paragraphs 31 and 34 above). In such circumstances, as required under Russian law (see paragraph 32 above), the national authorities should have given consideration to this question, as well as to the matters pertaining to the best interests and well-being of the children, as well as the solidity of social, cultural and family ties with Cameroon and Russia (see also Üner, cited above, § 58).

98. To sum up, the absence of the authorities' assessment of the impact of their decisions on the applicant's family life must be seen as falling outside any acceptable margin of appreciation of the State.

99. In these circumstances, the Court considers that it has not been convincingly established that the applicant's non-compliance with the registration requirement of the residence regulations effectively outweighed the fact that the applicant has been living in Russia for a considerable period of time in a household with a Russian national, with whom he has two children.

100. Accordingly, the Court finds that the applicant's removal from Russia would constitute a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 7 TO THE CONVENTION

101. The applicant further complained that he had not been properly represented in the proceedings before Russian authorities. This matter falls to be examined under Article 1 of Protocol No. 7, which reads in the relevant part as follows:

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority...."

102. The Government submitted that the applicant had no longer been "lawfully" resident in Russian after 9 September 2006. This was established as fact by a court decision of 3 November 2006. He had been given a transit visa valid from 7 to 16 November 2006 to allow him to leave Russia. Instead, he continued his unlawful residence in the country. Thus, he had not been lawfully resident in Russia during the proceedings against him in 2007.

103. The applicant maintained his complaint.

104. The Court observes that at the time of the administrative offence proceedings in 2007 the applicant was no longer "lawfully" resident in Russia. It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government contested this claim.

108. The Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant also claimed EUR 1,050 for costs and expenses incurred before the domestic courts and this Court.

110. The Government contested this claim.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the above criteria, the Court awards EUR 800 under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

112. 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. Declares the complaint concerning the applicant's detention with a view to his administrative removal from Russia and the complaint concerning his family life admissible and the remainder of the application inadmissible;

2. Holds that there has been no violation of Article 5 § 1 (f) of the Convention;

3. Holds that the applicant's removal from Russia would constitute a violation of Article 8 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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 27 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Nina Vajić
Registrar President