



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

FIFTH SECTION

CASE OF MOKALLAL v. UKRAINE

(Application no. 19246/10)

JUDGMENT

STRASBOURG

10 November 2011

FINAL

10/02/2012

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

In the case of Mokallal v. Ukraine,

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

Dean Spielmann, *President*,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power-Forde,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 19246/10) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Iranian national, Mr Far Abolfazl Abbas Mokallal (“the applicant”), on 8 April 2010.

2. The applicant was represented by Mr Y. Sivologa, a lawyer practising in Odessa. The Ukrainian Government (“the Government”) were represented by their Agent, Mrs V. Lutkovska, from the Ministry of Justice.

3. The applicant alleged, in particular, that his detention with a view to extradition was unlawful.

4. On 8 April 2010 the applicant requested the European Court of Human Rights to prohibit the Ukrainian Government from extraditing him to Iran, alleging that there was a risk of political persecution. On 12 April 2010 the President of the Chamber indicated to the Ukrainian Government, under Rule 39 of the Rules of Court, that the applicant should not be removed to Iran unless and until the Court had had the opportunity to consider the case further. The application of Rule 39 was discontinued on 27 September 2010 following information that the extradition proceedings against the applicant had been terminated and that he had been released.

5. On 27 September 2010 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1971 and lives in Odessa.

7. The applicant has been living and working in Ukraine since 1995. He has a partner and five minor children. All his family are Ukrainian nationals.

8. In 2007, following media coverage of the applicant's successful business, he was approached by representatives of the Iranian Embassy. They invited him to meet the President of Iran to receive an award for his business success. The applicant refused, as he disagreed with the domestic and foreign policies of the President.

9. In 2009 the applicant financially supported one of the opposition candidates in the Presidential elections. He submits that supporters of opposition candidates were prosecuted in Iran.

10. On an unknown date criminal proceedings for embezzlement were instituted against the applicant in Iran.

11. On 31 June 2009 the applicant was placed on the list of wanted persons by the Tehran Prosecutors' Office. An international arrest warrant was issued.

12. On 11 February 2010 the applicant applied for refugee status in Ukraine.

13. On 2 March 2010 the UNHCR Regional Representation for Ukraine, Belarus and Moldova wrote a letter to the General Prosecutor's Office of Ukraine ("the GPO"). They noted that the applicant was officially an asylum-seeker in Ukraine and therefore his status should be taken into account if the GPO examined any request for his extradition to Iran.

14. On 3 April 2010 the applicant was arrested by the Tairovskiy Police Department with a view to his extradition.

15. On 6 April 2010 Odessa Kyivskiy District Court remanded the applicant in custody pending the extradition procedure.

16. On 14 April 2010 the Odessa Regional Court of Appeal upheld the decision of the first-instance court.

17. On 19 April 2010 the GPO replied to the UNHCR letter of 2 March 2010, assuring them that the applicant would not be extradited until his application for refugee status had been examined on the merits.

18. On 17 June 2010 amendments to the Code of Criminal Procedure entered into force. They supplemented the Code with a new chapter, which set forth the extradition procedure to be followed and established a special procedure for detention with a view to extradition. They provided, in particular, that a person could be temporarily detained for forty days or another term envisaged in international treaties while awaiting formal request for extradition. Once a formal extradition request has been received,

the court may order the detention of the person for a maximum of eighteen months with the possibility of further detention (see paragraph 28 below).

19. On 22 June 2010 the Odessa Malinovskiy District Prosecutor requested the Odessa Malinovskiy District Court to extend the extradition detention of the applicant.

20. On 23 June 2010 the applicant requested the Odessa Malinovskiy District Prosecutor to order his release due to lack of grounds to keep him in detention any longer.

21. On 29 June 2010 Odessa Malinovskiy District Court extended the applicant's detention until a decision had been taken on his extradition.

22. On 12 July 2010 the GPO received a note from the Iranian Embassy, informing that the applicant's detention was no longer required, due to a friendly settlement which had been reached between the applicant and one of the aggrieved parties in the case.

23. The next day the GPO ordered the Odessa Regional Prosecutor's Office to take the necessary measures to have the applicant released from detention.

24. On 14 July 2010 the Deputy Prosecutor of the Odessa Region ordered the termination of the applicant's detention. The applicant was released the same day and the GPO terminated the examination of the request for the applicant's extradition to Iran.

25. On 16 July 2010 the Odessa Regional Court of Appeal discontinued examination of the applicant's appeal against the decision of 29 June 2010, given that the applicant had been released.

26. On 9 December 2010 the State Committee for Nationalities and Migration rejected the applicant's request for granting him the refugee status. The applicant was notified about this decision on 1 July 2011. He challenged it before the Odessa Regional Administrative Court on 10 July 2011.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The domestic law and practice concerning detention with a view to extradition as it stood prior to 17 June 2010 is summarised in the judgment *Soldatenko v. Ukraine* (2440/07, §§ 21-29 and 31, 23 October 2008),

A. Code of Criminal Procedure

28. The Code of Criminal Procedure (Amendment) Act, which came into force on 17 June 2010, introduced a new chapter into the Code of Criminal Procedure regulating proceedings for extradition to and from Ukraine. The Act contained no transitional provisions. Relevant articles of this new chapter provide, among other things, as follows:

Article 450
Definitions

“... Extradition detention - taking a person into custody to ensure his extradition.

Provisional detention - taking a person, who has been detained on suspicion of committing crime outside Ukraine, into custody for a period determined by this Code or the international treaty of Ukraine until receipt of extradition request ...”

Article 461
Features of taking into detention of a person who has committed a crime outside Ukraine

“Taking into detention on the territory of Ukraine of a person who is wanted by a foreign State in connection with the commission of a crime, shall be carried out by a body of inquiry.

The body of inquiry that carries out the detention shall immediately inform the prosecutor who supervises the observance of laws that it has been done. The notification of the prosecutor, accompanied by the record of the arrest, shall contain detailed information on the reasons and motives for the taking into detention.

Upon receipt of notification, the prosecutor shall check the legality of the detention of the person who is wanted by the competent authorities of foreign States, and immediately inform the regional prosecutor.

Within seventy-two hours of the arrest, the regional prosecutor’s office shall inform the central authority, which shall inform the competent authority of the foreign State within three days.

Every case of detention of a foreign national who has committed crimes outside Ukraine shall also be reported by the regional prosecutor’s office to the Ministry of Foreign Affairs of Ukraine.

The person detained shall be released immediately if:

- 1) Within seventy-two hours of the arrest he or she has not been served with a substantiated decision of the court on application of extradition detention or provisional detention;
- 2) it has been established that there are circumstances applying to the case under which extradition may not be carried out.

The procedure of detention of such persons and examination of complaints about their detention shall be performed in accordance with Article 106 of the Code, taking into account the peculiarities established by this Chapter.”

Article 462
Provisional arrest

“A detained person who has committed a crime outside Ukraine shall be subject to provisional detention for forty days, or another period of time set out in the relevant international treaty of Ukraine, until an extradition request has been received.

If the maximum period of provisional detention envisaged by paragraph 1 of this Article has expired, and no extradition request has been received in respect of this person, the person shall be released from custody immediately.

The body of inquiry which arrested the person shall lodge, with the prosecutor’s approval, with the court local to the place of detention a warrant for provisional detention. The prosecutor shall be also entitled to lodge such a warrant.

The warrant shall be accompanied by:

- 1) the record of the arrest of the person;
- 2) documents containing information about the crime or crimes committed by the person on the territory of a foreign State and the preventive measures used in respect of that person by the competent authority of the foreign State;
- 3) the detained person’s identity documents.

The warrant shall be examined within seventy-two hours of the detention of the person.

When examining the warrant, a judge shall establish the identity of the detained person, shall invite him or her to make a statement, shall check the presence of the documents envisaged by subparagraph 2 of paragraph 3 of this Article, shall hear the opinion of the prosecutor and of other participants and shall make a ruling on:

- 1) application of provisional detention;
- 2) refusal to apply provisional detention if there are no grounds for its application.

The judge’s ruling can be appealed against to the court of appeal by the prosecutor, the person placed under provisional detention, or his or her counsel or legal representative, within three days of the date of the ruling. The lodging of an appeal against the judge’s ruling shall not suspend its entry into force or its execution. The ruling of the court of appeal shall not be subject to appeal, nor may the prosecutor appeal on points of law.

The release of a person from provisional detention due to the belated arrival of an extradition request at the central authority shall not prevent the imposition of extradition detention if such a request is received later.

If an extradition request is received prior to the expiry of the period of provisional detention fixed by the court, the judge’s ruling on the application of provisional detention becomes void from the date of the court ruling on the application of extradition detention to the person concerned.”

Article 463
Extradition arrest

“Upon receipt of an extradition request from the competent authority of a foreign State, the prosecutor, on the instruction (at the request) of the central authority, shall deposit a warrant for the extradition arrest of the person with the court at the place of the person’s detention.

The warrant shall be submitted for examination by the court, with the following attachments:

- 1) a copy of the extradition request from the competent authority of the foreign State, certified by the central authority;
- 2) documents confirming the person’s nationality;
- 3) available materials from the extradition inquiry.

Materials submitted to the court shall be translated into the official language, or another language as provided by an international treaty of Ukraine.

On receipt of the warrant, the judge shall establish the identity of the person concerned, shall offer him or her the opportunity to make a statement, shall check the extradition request and the available materials from the extradition inquiry, shall hear the opinion of the prosecutor and of other participants, and shall make a ruling which will:

- 1) order extradition detention;
- 2) refuse to apply extradition detention if there are no grounds for its application.

When examining the warrant, the judge does not examine the issue of guilt and does not review the lawfulness of procedural decisions taken by the competent authorities of the foreign State in the proceedings against the person whose extradition is requested.

The judge’s ruling can be appealed against to the court of appeal by the prosecutor, the person placed under extradition detention, or his or her counsel or legal representative, within three days of the date on which the ruling was made. The lodging of an appeal against the judge’s ruling shall not suspend its entry into force or its execution. A ruling of the court of appeal shall not be subject to appeal, nor may the prosecutor appeal on points of law.

Extradition detention shall be applied until the decision on the extradition of the person concerned and his actual surrender (extradition), but shall not last more than eighteen months.

Within this period, and not less than once every two months , the judge at the place of the person’s detention shall examine, at the instigation of the prosecutor, what grounds there may be for further detention of the person or for his or her release.

If the person placed under extradition detention, or his or her counsel or legal representative, makes a complaint, the judge at the place of the person's detention shall check, but not more often than once a month, what grounds there may be for the person's release.

If the maximum period of extradition detention provided in paragraph 7 of this article has expired, and the issue of the person's extradition and actual surrender has not been resolved by the central authority, the person shall be released immediately.

The fact that the person has been released from extradition detention by the court does not preclude a new order for the detention of the person, for the purpose of actual surrendering that person to a foreign State in execution of the decision on extradition, unless otherwise stipulated by an international treaty of Ukraine.

If person has been released from custody by the court, the regional prosecutor or his deputy, in agreement with the competent central authority, makes an order to apply other necessary measures to prevent the person from absconding and to ensure he is surrendered later.

Such measures shall be sufficient to ensure that the decision to extradite can be put into effect, and can, in particular, include bail, restrictions on the person's movement and control over his or her movements. Application of bail and of restrictions on the person's movements shall be carried out in accordance with the procedure envisaged by Articles 98-1, 151 and 154-1 of this Code, taking into account the special aspects of this Chapter.

The regional prosecutor or his deputy shall notify the person concerned and his or her counsel or legal representative of the order issued in respect of the person.

The regional prosecutor or his deputy may entrust the body of inquiry with the execution of the order."

Article 464

Termination of provisional detention or extradition detention

"A Provisional detention or extradition detention shall be terminated if:

- 1) the central authority, within the time-limits provided for by an international treaty of Ukraine, has not received a request for the person's extradition;
- 2) an extradition inquiry reveals circumstances which preclude the person's extradition;
- 3) The competent authority of a foreign State has refused to seek the person's extradition;
- 4) the central authority decides to refuse the person's extradition.

The person's release shall be carried out by the regional prosecutor or his deputy on the instruction at the (request) of the central authority and in the circumstances provided for in paragraph 2 of this Article, in agreement with the relevant central authority. A copy of the release decision shall be sent to the head of the pre-trial

detention institution and to the court which decided on the application of provisional detention or extradition detention.”

Article 466
Refusal of extradition

“... A person who has been granted refugee status may not be extradited to a foreign state where his health, life, or freedom is endangered for reasons of race, faith (religion), ethnicity, citizenship (nationality), membership of a particular social group or political opinion, unless otherwise provided by an international treaty to which Ukraine is a party.

In the event of refusal of extradition on grounds of nationality, refugee status or other grounds that do not exclude proceedings in the case, at the request of the competent authority of a foreign state the General Prosecutor’s Office of Ukraine instructs a pre-trial investigation body to carry out an investigation of the criminal case against that person in accordance with the procedure prescribed by this Code.”

B. Refugees Act of 21 June 2001

29. Section 3 of the Act reads:

Section 3
Prohibition of expulsion or forced return of a refugee to the country from which he came and where his life or freedom is endangered

“No refugee may be expelled or forcibly returned to a country where his or her life or freedom is threatened for reasons of race, religion, ethnicity, nationality, membership of a particular social group or political opinion.

No refugee may be expelled or forcibly returned to a country where he or she may suffer torture and other severe, inhuman or degrading treatment or punishment, or to a country from where the refugee may be expelled or forcibly returned to a country where his or her life or freedom is threatened for reasons of race, religion, ethnicity, nationality, membership of a particular social group or political opinion.

This Article shall not apply to refugees convicted of a serious crime in Ukraine.”

THE LAW

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

30. The applicant complained that his detention was not lawful, because there was no legislation governing detention with a view to extradition, and because the law should not have permitted his extradition while his

application for refugee status was pending. He relied on Article 5 § 1 (f) of the Convention, which reads 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 ... against whom action is being taken with a view to ... extradition.”

A. Admissibility

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

B. Merits

1. The parties' submissions

32. In his application of 3 June 2010 the applicant maintained that his detention was unlawful, given that it had no basis in the domestic law. Furthermore, he considered his detention was contrary to Article 5, given that he had applied for refugee status and therefore could not be extradited prior to determination of his application for that status. He made no further submissions thereafter.

33. The Government submitted that on 17 June 2010 the Code of Criminal Procedure had been amended, to introduce not only a specific procedure of examination of extradition requests, but also a procedure for the taking into, and subsequent keeping in, detention of persons whose extradition had been requested. They maintained that the above law was clear, precise and foreseeable, and prevented a risk of arbitrary behaviour on the part of State authorities. They further contended that the applicant's detention had been justified by the pending proceedings on his extradition. The examination of the request, in their opinion, had been conducted with due diligence and without delays.

34. The Government also submitted that during his detention the applicant had not had refugee status, as no decision had been taken on his request for that status. The lodging of such a request, however, could not be a reason to terminate the examination and adoption of the decision on extradition. If the applicant was granted refugee status, the authorities would have to stop his extradition detention and refuse request for his extradition.

The Government maintained that the actual extradition of a person would not be carried out in such cases until a final decision had been taken on a request for refugee status.

2. *The Court's assessment*

(a) **General principles**

35. Paragraph 1 of Article 5 of the Convention limits the circumstances in which individuals may lawfully be deprived of their liberty. Seeing that these circumstances constitute exceptions to a most basic guarantee of individual freedom, only a narrow interpretation is consistent with the aim of this provision (see *Čonka v. Belgium*, no. 51564/99, § 42 *in limine*, ECHR 2002-I, and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 396, ECHR 2005-III). The Court notes that the applicant was detained with a view to extradition from Ukraine to Iran. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require the detention of a person against whom action is being taken with a view to extradition to 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” (see *Čonka*, cited above, § 38, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112). However, any deprivation of liberty under Article 5 § 1 (f) will be justified only for as long as extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (*ibid.*, p. 1863, § 113).

36. The Court further reiterates that it falls to it to examine whether the applicant's detention was “lawful” for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 50). Thus, the notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from, and be executed by, an appropriate authority and should not be arbitrary (see *C. v. Germany*, no. 0893/84, Commission decision of 2 December 1985). The words “in accordance with a procedure prescribed by law” do not merely refer back to domestic law;

they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II, citing *Amuur v. France*, cited above, pp. 850-51, § 50).

37. The Court observes that as the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 refer back to national law, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with the domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41, *Reports of Judgments and Decisions* 1996-III, and *Shukhardin v. Russia*, no. 65734/01, § 74, 28 June 2007).

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

38. The Court considers that the applicant’s detention can be divided into four distinctive periods, and will examine the lawfulness of his detention during those periods consecutively.

(i) Lawfulness of the applicant’s detention between 3 April and 17 June 2010

39. The Court has previously found a violation of Article 5 § 1 of the Convention in cases concerning the detention pending extradition proceedings within the legal framework that existed prior to 17 June 2010 (see *Soldatenko v. Ukraine*, no. 2440/07, §§ 109-114, 23 October 2008, and *Svetlorusov v. Ukraine*, no. 2929/05, §§ 47-49, 12 March 2009). These findings were primarily based on the lack of a sufficient legal basis for such detention. Having examined all the materials submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a conclusion that in the present case there had been a sufficient legal basis for the applicants’ detention pending extradition proceedings during the period in question. There has accordingly been a violation of Article 5 § 1 of the Convention.

(ii) Lawfulness of the applicant’s detention between 17 and 29 June 2010

40. The Court notes that on 17 June 2010 the Code of Criminal Procedure was amended to provide a legal basis for extradition proceedings; however, the parties did not comment on its relevance to the present part of the application and these legislative changes did not affect the applicant during the period in question, as he continued to be detained under the court decision given on 6 April 2010, that is, prior to the Amendment Act of 17 June 2010. In the absence of any transitional arrangements in the above

Act and also in the absence of a legal basis for detention pending extradition proceedings at the time that detention was ordered by the domestic court, the Court considers that the applicant was deprived of his liberty in violation of Article 5 § 1 of the Convention also during this period.

(iii) Lawfulness of the applicant's detention between 29 June and 12 July 2010

41. On 29 June 2010 the domestic court reviewed the applicant's detention and authorised his further detention pending the examination of the request for his extradition to Iran under the new procedure established by the Amendment Act of 17 June 2010. The new legislation provides a regulatory framework for extradition proceeding in which the deprivation of liberty with a view to extradition is envisaged and the persons detained therefor are entitled to judicial review of the lawfulness of their arrest and detention. The applicant makes no specific complaints about particular matters arising in this context, but it cannot be said that the extradition proceedings from 29 June to 12 July lacked any legal basis.

42. As to the applicant's argument that his detention served no purpose, as he could not be extradited prior to examination of his application for refugee status, the Court notes that it has consistently held that the existence of circumstances that under domestic law exclude extradition of a person render any detention for the purpose of extradition unlawful and arbitrary. The Ukrainian legislation establishes a total ban on extradition or expulsion of Ukrainian nationals. In addition to this, under the Refugee Act refugees may not be expelled or forcibly returned to particular countries (see paragraph 29 above). The Court has previously found a violation of Article 5 § 1 of the Convention when the authorities applied detention for the purpose of extradition to a Ukrainian national (see *Garkavyi v. Ukraine*, no. 25978/07, §§ 70 and 75, 18 February 2010) and to a refugee (see *Dubovik v. Ukraine*, nos. 33210/07 and 41866/08, §§ 61 and 62, 15 October 2009). In the former case, however, extradition had been excluded from the outset due to the applicant's nationality, while in the latter it became arbitrary from the moment the decision on granting the applicant refugee status became final and binding.

43. In contrast with the cases mentioned, in the instant case no decision on granting the applicant refugee status had been taken either prior to or during his detention. The ongoing examination of the applicant's request for refugee status did not exclude the possibility that he might later be extradited. The Court notes that the examination of any risks and objections linked to the person's possible removal from the territory of the State is intrinsic to actions "taken with a view to deportation or extradition". Even if such an examination establishes that such risks and objections are well-founded and capable of preventing the person's removal, such a possible future outcome cannot in itself retroactively affect the lawfulness of the detention pending examination of a request for extradition. The Court

reiterates that all that is required under 5 § 1 (f) is that “action is being taken with a view to deportation or extradition” (see *Čonka*, cited above, § 38). Given that throughout this period of detention it was the authorities’ intention to extradite the applicant, and that there was no legal or factual impediment to ultimate extradition, the detention cannot be considered unlawful or arbitrary within the meaning of Article 5 § 1. It follows that there was no violation of the above provision during the period in question.

(iv) *Lawfulness of the applicant’s detention between 12 and 14 July 2010*

44. The Court notes that on 12 July 2010 the Iranian Embassy in Kyiv informed the General Prosecutor’s Office that the applicant’s extradition was no longer required. It was not until 14 July 2010 however that the Deputy Prosecutor of the Odessa Region authorised the applicant’s release. The Court reiterates that some delay in implementing a decision to release a detainee is understandable, and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep this to a minimum (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42; *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25 *in fine*; *K.-F. v. Germany*, judgment of 27 November 1997, *Reports* 1997-VII, p. 2675, § 71; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). Administrative formalities connected with release cannot justify a delay of more than a few hours (see *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003). It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the obligation to avoid unjustified deprivation of liberty. In the present case it took the domestic authorities two days to arrange for the applicant’s release after they had received notification that the applicant’s extradition was no longer required. Having regard to the prominent place which the right to liberty holds in a democratic society, the respondent State should have deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant, as required by the relevant case-law (see, *mutatis mutandis*, *Eminbeyli v. Russia*, no. 42443/02, § 49, 26 February 2009). The Court is not satisfied that the Ukraine officials complied with that requirement in the present case. It follows that there has been a violation of Article 5 § 1 in respect of this period of his detention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant further complained that if extradited he would risk a violation of his rights guaranteed by Articles 2, 3, 6 and 8 of the Convention and Article 1 of Protocol No. 6.

46. The Court notes that the extradition proceedings were discontinued without any decision to extradite having been taken by the Ukrainian GPO. Accordingly, given that these complaints of the applicant concerned Ukraine's responsibility under the Convention for events which might happen in Iran if he were extradited or otherwise removed and that there is now no risk of removal, the applicant cannot claim to be a victim of a violation of his above Convention rights as required by Article 34 of the Convention (see, *mutatis mutandis*, *Dubovik v. Ukraine*, nos. 33210/07 and 41866/08, §§ 40-41, 15 October 2009). It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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."

48. The applicant did not submit a claim for just satisfaction. 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 complaint concerning unlawfulness of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention between 3 April and 29 June 2010 and 12 and 14 July 2010;
3. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the applicant's detention between 29 June and 12 July 2010.

Done in English, and notified in writing on 10 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President