



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KREYDICH v. UKRAINE

(Application no. 48495/07)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/03/2010

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

In the case of Kreydich v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 48495/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Belarusian national, Mr Viktor Anatoliyevich Kreydich (“the applicant”), on 8 November 2007.

2. The applicant was represented by Mr A.P. Bushchenko, a lawyer practising in Kharkiv, Ukraine. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev, of the Ministry of Justice of Ukraine.

3. The applicant alleged that in the event of his extradition to Belarus he would face the risk of torture and of an unfair trial, and that his detention pending extradition had been unlawful. He further alleged that he was not able to challenge his arrest, subsequent detention and the decision on his extradition before the national courts, and that he had no right to compensation for his detention.

4. On 11 September 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The case was given priority under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Kyiv, Ukraine.

6. In the middle of 2006 the applicant left Belarus as he had been invited to work as a coach for the national free-style wrestling team of Ukraine.

7. On 15 June 2007 the General Prosecutor's Office of Belarus instituted criminal proceedings against the applicant for aiding and abetting bribery (maximum sentence of six years' imprisonment). Since his whereabouts were unknown, a warrant for his arrest was issued.

8. On 2 July 2007 the Kyiv Organised Crime Department received a request from the Main Organised Crime Department of Belarus to assist in arresting the applicant.

9. On 18 July 2007 the General Prosecutor's Office of Belarus charged the applicant with participation in organised crime, abuse of authority, aiding and abetting bribery and other offences (maximum penalty of fifteen years' imprisonment).

10. On the same day the applicant was arrested in Kyiv, Ukraine.

11. On 20 July 2007 the Pechersky District Court of Kyiv authorised the applicant's detention pending a decision on his extradition.

12. On 25 July 2007 the General Prosecutor's Office of Belarus requested the applicant's extradition to Belarus.

13. On 31 July 2007 the Kyiv City Court of Appeal changed the decision of 20 July 2007 further to an appeal by the applicant and authorised his detention for a maximum of forty days pending receipt of the request for his extradition.

14. On 20 August 2007 the Pechersky District Court of Kyiv authorised the applicant's continued detention. This decision was upheld on 30 August 2007 by the Kyiv City Court of Appeal.

15. By letter of 25 October 2007 the General Prosecutor's Office of Belarus stated that, if extradited, the applicant would not be subjected to the death penalty or to any treatment contrary to Article 3 of the Convention; that he would be provided with the necessary medical treatment; that he would be given a fair trial; and that he would not be persecuted for his political beliefs.

16. On 5 November 2007 the General Prosecutor's Office of Ukraine ("the GPO") authorised the applicant's extradition to Belarus. On the same date the decision was sent to the applicant. The applicant was also informed that this decision could be contested by him in court within ten days of its receipt.

17. On 13 November 2007, under Rule 39 of the Rules of Court, the President of the Fifth Section of the Court invited the Government of Ukraine not to extradite the applicant to Belarus.

18. The applicant received the decision of 5 November 2007 on 16 November 2007, but did not challenge before in the Kyiv Regional Administrative Court until 19 February 2008.

19. On 7 April 2008 the applicant was granted refugee status in Ukraine by the State Migration Committee.

20. On 21 April 2008 the Pecherskyy District Court rejected an appeal by the applicant's lawyer against the court decisions of 20 July and 20 August 2007 since they had already been appealed against under the ordinary appeal procedure and the first-instance court was not competent to quash them. This decision was upheld on 5 May 2008 by the Kyiv City Court of Appeal.

21. On 25 April 2008 the GPO filed an objection with the State Migration Committee against the decision granting the applicant refugee status. According to the applicant, execution of the relevant decision was suspended pending the Committee's reply.

22. On 7 May 2008 the Kyiv Regional Administrative Court rejected a complaint by the applicant against the decision to extradite him. In particular, the court indicated that the applicant had not yet been granted refugee status when the contested decision had been taken on 5 November 2007. The applicant did not appeal.

23. By letter of 14 May 2008 the State Migration Committee informed the GPO that its objection to the decision of 7 April 2008 had been rejected.

24. On 23 May 2008 the GPO challenged the decision of 7 April 2008 in court.

25. On 21 July 2008 the Kyiv Regional Administrative Court rejected the GPO's request to quash the decision of 7 April 2008.

26. On 25 November 2008 the Kyiv Administrative Court of Appeal upheld the decision of 21 July 2008.

27. On 28 November 2008 the GPO refused to extradite the applicant to Belarus. On the same day the applicant was released.

II. RELEVANT LAW AND PRACTICE

28. The relevant international and domestic law and practice are summarised in the judgments *Soldatenko v. Ukraine* (no. 2440/07, §§ 21-29 and 31, 23 October 2008) and *Svetlorusov v. Ukraine* (no. 2929/05, §§ 32-34, 12 March 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 6 § 1 AND 13 OF THE CONVENTION

29. The applicant complained that, if extradited, he would face a risk of being subjected to ill-treatment and an unfair trial by the Belarus authorities, which would constitute a violation of Articles 3 and 6 § 1 of the Convention. He further complained, under Article 13 of the Convention, about the absence of effective remedies in respect of his complaints under Article 3 of the Convention. The invoked provisions, in so far as relevant, read as follows:

Article 3

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

Article 6 § 1

“In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

30. The Court notes that the applicant's extradition to Belarus was refused by the Ukrainian authorities and that the extradition proceedings against him were discontinued. There is nothing in the case file to suggest that he still faces a risk of being extradited to Belarus.

31. Accordingly, the applicant cannot claim to be a victim of a violation of his rights under Articles 3, 6 § 1 and 13 of the Convention as required by Article 34 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

32. In this connection, the Court also notes that there is no need to continue the interim measure applied on 13 November 2007. It therefore lifts the measure.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 4 AND 5 OF THE CONVENTION

33. The applicant complained under Article 5 § 1 (f) of the Convention that his arrest and detention were unlawful. He further complained that since the date when he had received refugee status his detention could not be considered to be with a view to extradition and that none of the grounds listed in Article 5 § 1 of the Convention was applicable to his detention, as the domestic law prohibited the removal of refugees from the territory of Ukraine. The applicant also complained under Article 5 § 4 of the Convention that he had had no possibility to challenge his arrest and detention. The applicant finally complained of a violation of Article 5 § 5 of the Convention because he had not been able to receive any compensation for the allegedly unlawful detention.

34. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

35. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

36. The Government submitted that the matter of extradition to Belarus was covered by the Constitution of Ukraine, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993,

the Code of Criminal Procedure and Resolution no. 16 of the Plenary Supreme Court of 8 October 2004 on certain issues relating to the application of legislation governing the procedure and length of detention (arrest) of persons awaiting extradition. The relevant provisions of these texts were clear, understandable, foreseeable and accessible to the person concerned. Moreover, according to the Government, the applicant could have challenged his arrest in court. The Government further argued that at the material time the applicant had not acquired refugee status because the relevant decision of the State Migration Committee had been challenged by the GPO in court. The Government finally noted that since the applicant's arrest and detention were lawful, he did not have a right to any compensation.

37. The applicant submitted that his detention from 18 July 2007 until 7 April 2008, and from 25 April 2008 until 8 May 2008 (which, according to the applicant, was the date when the State Migration Committee rejected the GPO's objection to the decision of 7 April 2008) was in violation of Article 5 § 1 (f) of the Convention (*Soldatenko v. Ukraine*, cited above, and *Novik v. Ukraine*, no. 48068/06, 18 December 2008). Moreover, his detention from 7 April 2008 until 25 April 2008, and from 8 May 2008 until 28 November 2008 could not have been, from the applicant's standpoint, "with a view" to his extradition because during those periods the decision granting him refugee status had not been suspended and domestic law prohibited the removal of refugees from the territory of Ukraine. Consequently, his detention had not pursued any of the aims listed in Article 5 § 1 of the Convention and had thus been contrary to that Article.

38. The parties further submitted arguments similar to those made in the cases of *Soldatenko v. Ukraine* (cited above, §§ 104-07 and 116-20) and *Svetlorusov v. Ukraine* (cited above, §§ 43-46 and 52-56).

39. The Court has previously found violations of Article 5 §§ 1, 4 and 5 of the Convention in cases raising issues similar to those in the present case (see *Soldatenko v. Ukraine*, cited above, §§ 109-14 and 125-27, and *Svetlorusov v. Ukraine*, cited above, §§ 47-49, 57-59 and 66-70). These findings were primarily based on the lack of sufficient legal basis for the applicants' detention pending extradition proceedings and of a procedure through which the lawfulness of that detention could be examined by a court. The Court also found that Ukrainian law did not afford the applicant an enforceable right to compensation, as required by Article 5 § 5 of the Convention.

40. 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 different conclusion in respect of any of the detention in the present case. As for the applicant's complaint related to specific periods of his detention after he had been granted refugee status on 7 April 2008, the Court notes, as the applicant claims and the Government

do not contest, that domestic law provides a certain protection from expulsion of those with refugee status. Further, the Government have not explained how the applicant's continued detention was compatible with that status, in particular after his refugee status had been finally confirmed. However, even assuming that during those periods the applicant was detained "with a view to" his extradition on the ground that General Prosecutor's Office still intended to extradite the applicant, the finding that there was no adequate legal basis for the applicant's extradition detention covers the whole of the period, and it is not necessary for the Court to consider separately the period subsequent to the grant of refugee status.

There has accordingly been a violation of Article 5 §§ 1, 4 and 5 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He argued that his detention for one and a half years had caused him severe physical and mental suffering.

43. The Government were of the opinion that there was no causal link between the alleged violations and the non-pecuniary damage alleged by the applicant.

44. The Court considers that the applicant suffered non-pecuniary damage on account of his unlawful detention, damage which cannot be compensated by the mere finding of a violation of his Convention rights. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, it awards him EUR 3,500 under this head.

B. Costs and expenses

45. The applicant did not claim any costs and expenses incurred before the Court.

C. Default interest

46. 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 complaints concerning Article 5 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Ukrainian hryvnias at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President