



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

FIFTH SECTION

CASE OF KAMYSHEV v. UKRAINE

(Application no. 3990/06)

JUDGMENT

STRASBOURG

20 May 2010

FINAL

20/08/2010

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

In the case of Kamyshev v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 3990/06) 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 Oleg Leonidovich Kamyshev (“the applicant”), on 26 January 2006.

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

3. On 13 December 2006 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).

4. Written submissions were received from the Helsinki Foundation for Human Rights in Warsaw and from the International Federation for Human Rights which had been granted leave by the President to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960.

6. In March 2003 the State authorities of Belarus arrested Mr D., a former Deputy President of the Belarus Customs Committee for neglect of his official duties. The applicant was involved in the case as a witness. The arrest of Mr D. was part of the campaign organised by the Republic of Belarus on “combating corruption and offences committed by public officials.”

7. According to the applicant, in the autumn of 2004 the investigating authorities put pressure on him to testify against Mr D., stating that if he refused he would also be prosecuted.

8. In December 2004 the applicant went to Zhytomyr, Ukraine, to visit his grandmother. While he was there he had a heart attack, underwent in-hospital treatment for four months and was eventually declared “second category disabled” by the local medical commission. According to the applicant, his wife informed the investigating authorities of Belarus where he was staying in Ukraine and about his illness.

9. In the beginning of 2005 the applicant obtained a residence permit from the Ukrainian authorities.

10. On 8 June 2005 criminal proceedings were initiated against the applicant in Belarus for abuse of power during his employment in 2002-2003 as a customs officer under the third paragraph of Article 424 of the Criminal Code of Belarus, for which the maximum punishment was ten years' imprisonment. The same day the investigating authorities of Belarus decided that the applicant had absconded and should be detained

11. On 7 July 2005 the Belarusian authorities issued an international arrest warrant.

12. On 29 July 2005 police officers from the Department of Combating Organised Crime of the Ministry of the Interior apprehended the applicant in Zhytomyr. He was detained in Zhytomyr's Temporary Detention Centre (“the ITU”).

13. On 1 August 2005 the applicant was brought before the Korolyovsky District Court of Zhytomyr (“the Korolyovsky Court”), which ordered the his provisional detention for ten days.

14. On 3 August 2005 the General Prosecutor's Office of Ukraine (“the GPO”) received a request by fax from the General Prosecutor's Office of Belarus for the applicant's extradition. The original version of the request and the accompanying documents were received on 12 August 2005.

15. On 4 August 2005 the applicant complained of a headache and dizziness and an ambulance was called for him. He was diagnosed with hypertension and given medicaments to lower his blood pressure. The ambulance team concluded that the applicant's condition did not preclude his staying in the ITU.

16. On 8 August 2005 the Korolyovsky Court decided that the applicant should be further detained for a period of one month to ensure his extradition to Belarus.

17. On 16 August 2005 the GPO decided that the applicant should be extradited to Belarus. It gave orders to the State Department on Enforcement of Sentences to proceed with the applicant's extradition.

18. On 19 August 2005 the applicant's representatives appealed to the Pechersky District Court of Kyiv ("the Pechersky Court") against the decision on the applicant's extradition. They maintained that the prosecution of the applicant was part of a politically motivated campaign against some senior custom officers in order to demonstrate to the people of Belarus that there was an ongoing "fight against corruption". They also noted that the applicant had previously been questioned as a witness in the case against Mr D., a former Deputy President of the Belarus Customs' Committee, and that his refusal to testify against him was another reason for his criminal prosecution. They further maintained that the decision on extradition had been taken by the Deputy Prosecutor General, and not the Prosecutor General as required by law.

19. On 22 August 2005, due to refurbishment of the Zhytomyr ITU, the applicant was transferred to the Chernyakhivsky ITU

20. On 23 August 2005 the GPO suspended the extradition, in view of the proceedings pending before the Pechersky District Court.

21. On 26 August 2005 the Zhytomyr Regional Court of Appeal upheld the resolution of 8 August 2005. On the same date, the applicant had a second heart attack and was transferred to the Central City Hospital of Zhytomyr, where he stayed, under police supervision, until 8 September 2005.

22. On 2 September 2005 the Pechersky Court allowed the applicant's appeal against the GPO's decision to extradite him and prohibited the applicant's extradition to Belarus. In particular, it stated that the decision to extradite the applicant had been given by the Deputy Prosecutor General, and not the Prosecutor General himself as required by Ukrainian law. It also stated that there was a risk of unlawful prosecution of the applicant by the State authorities of Belarus in order to obtain testimonies from him against the customs officials and that the applicant's extradition would significantly worsen his state of health.

23. By 8 September 2005 the applicant was released. He remained in hospital until 13 October 2005 but was no longer guarded by the police.

24. On 16 September 2005 the GPO appealed against the decision of 2 September 2005. They noted that there was no evidence that the criminal proceedings against the applicant in Belarus were politically motivated or related to the applicant's political views. Furthermore, they maintained that they could not have taken the applicant's state of health into account since his health had deteriorated on 26 August 2005 while the decision on his extradition had been taken on 16 August 2005. They also noted that in their original complaint to the Pechersky Court the applicant's representatives had not referred to the applicant's state of health either. They contended that the

GPO had acted within their competence in deciding on the applicant's extradition while the court had no competence to review their decision on the applicant's extradition. They also noted that the applicant and the first instance court referred to the European Convention on Extradition 1957 while the applicant's extradition was governed by the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 ("the Minsk Convention").

25. On 13 October 2005 the applicant was referred to a specialised neurosurgery hospital in Kyiv for medical treatment. However, he failed to keep his appointment. According to the Government, since that date the applicant has been in hiding and his whereabouts are not known to them.

26. On 10 November 2005 the Kyiv City Court of Appeal quashed the resolution of the Pechersky Court of 2 September 2005. It noted that the applicant's extradition was governed by the Minsk Convention and not by the European Convention on Extradition, since Ukraine and Belarus are both parties to the former agreement but not to the latter. It further noted that the first-instance court had totally ignored the arguments of the GPO about the lack of any political motivation behind the criminal prosecution against the applicant and had not substantiated its conclusion on "a risk of unlawful prosecution of the applicant by the State authorities of Belarus in order to obtain testimonies from him against the customs officials". It considered that the above conclusion, as well as some other information (on the applicant's illness, for instance), had led the first-instance court to commit a serious legal error. The appellate court finally noted that the Pechersky Court had had no jurisdiction to review the decision on the applicant's extradition, given that decisions on extradition were exclusively within competence of the GPO.

II. RELEVANT LAW AND PRACTICE

A. Relevant international and domestic law

1. *European Convention on Extradition 1957*

27. Ukraine is party to the Convention, which entered into force in respect of Ukraine on 9 June 1998. Ukraine made the following reservation contained in the instrument of ratification, deposited on 11 March 1998:

"Ukraine reserves the right to refuse extradition if the person whose extradition is requested cannot, on account of his/her state of health, be extradited without damage to his/her health."

28. The explanatory report to the Convention provides in so far as relevant:

“An expert proposed the adoption of an Article 6 (a), worded as follows:

"If the arrest and surrender of the person claimed are likely to cause him consequences of an exceptional gravity and thereby cause concern on humanitarian grounds particularly by reason of his age or state of health, extradition may be refused."

This proposal was inspired by humanitarian considerations, but was not adopted by the committee. It was decided that a reservation could be made on this subject under the terms of Article 26; this reservation, being somewhat general in nature, could perhaps be made with reference to Article 1 of the Convention."

2. *The CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 ("the Minsk Convention")*

29. The Convention was ratified by the Ukrainian Parliament on 10 November 1994. It entered into force in respect of Ukraine on 14 April 1995 and in respect of Belarus on 19 May 1994. Both countries also ratified the Protocol to the Minsk Convention 1997, which entered into force in their respect on 17 September 1997. In ratifying the Convention and its Protocol Ukraine did not make a reservation similar to its reservation to the European Convention on Extradition (see paragraph 27 above).

30. Other relevant international and domestic law and practice is summarised in the case of *Soldatenko* (*Soldatenko v. Ukraine*, 2440/07, §§ 21-29 and 31, 23 October 2008).

B. Relevant international materials concerning the situation of human rights in Belarus

31. The relevant international materials are summarised in the case of *Puzan* (*Puzan v. Ukraine*, 51243/08, §§ 20-24, 18 February 2010).

THE LAW

I. GOVERNMENT'S PRELIMINARY OBJECTION

32. The Government maintained that the application contained no documents signed by the applicant himself, except the form granting his lawyer authority to act on his behalf (an "authority form") dated 26 January 2005. In their opinion, the authority form was not valid as it had been signed prior to the events of July-August 2005 of which the applicant complained. They further noted that the applicant had not given authority for his representation in this particular case and that there was no indication

that the applicant had ever communicated with the Court directly or had otherwise demonstrated his awareness and interest in the present application.

33. The applicant's representative furnished the document dated 27 April 2007 which was signed by the applicant confirming his interest in pursuing the present application and stated that the authority form had been erroneously dated 26 January 2005 instead of 26 January 2006. Later, the applicant supplemented the observations of his representative in reply to those of the Government by his own submissions of 20 September 2007. The applicant further furnished a new authority form to Mr Bushchenko dated 30 July 2008.

34. The Court notes that despite the erroneous date of the authority form and the possible difficulties in maintaining regular communication between the applicant and his representative, which could be explained by the unsettled situation of the applicant (see paragraph 25 above), the case file contains sufficient evidence of the applicant's interest in pursuing this application and that he had authorised Mr Bushchenko to represent him before this Court.

35. The Court finds no circumstances in the present case to conclude that the applicant has lost interest in his case or that his lawyer has not been authorised or is no longer authorised to act on his behalf. The Court accordingly dismisses this objection of the Government.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that if extradited to Belarus he would face the risk of being subjected to ill-treatment by the Belarus authorities. He further contended that the conditions of his detention were inhuman and degrading. He relied on Article 3, which reads as follows:

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

A. Risk of ill-treatment in the event of extradition to Belarus

1. The parties' submissions

37. The Government maintained that the applicant had failed to substantiate his complaint under Article 3 of the Convention. He had never made any such allegations before the domestic authorities. They considered that his reference to the reports describing the general human rights situation in Belarus were insufficient and that evidence was needed that the applicant himself ran a personal risk of facing ill-treatment in Belarus. They

noted that the applicant had not challenged the decision on his extradition before the administrative courts under the Code of Administrative Justice.

38. The applicant considered that the general human rights situation in Belarus was serious enough to justify his fears. He further maintained that being a criminal suspect in Belarus was a sufficient ground to fear ill-treatment. He asserted that there were no special circumstances that would protect him from the use of torture, which threatened any person detained by the police in Belarus. He noted that the legal system in Belarus did not provide for sufficient guarantees against torture but on the contrary created fertile soil for the widespread use of the practice.

39. The applicant also contended that he belonged to a particular group of persons “involved in the investigation concerning Mr D., former Deputy President of the Belarus Customs Committee”. He maintained that the investigators in Belarus had put pressure on him to testify against Mr D. and threatened him with criminal prosecution if he refused to cooperate. The applicant considered that the Belarusian investigating authorities did not have enough evidence against him, which suggested that they might try to extract a confession from him.

40. The third parties noted the lack of effective domestic remedies to investigate allegations of ill-treatment, lack of independence of the judiciary and the poor human-rights record in Belarus. They referred to international reports prepared by international governmental and non-governmental organisations and foreign States with regard to the human-rights situation in Belarus. They also noted the lack of cooperation by the Belarus authorities with international organisations in the field of human rights.

41. They concluded that the issue of the applicant's extradition should be decided not automatically, but after careful examination of all the relevant factors and his individual case. In their opinion, the lack of an individual approach and the failure to take into account the human-rights situation in Belarus in deciding on the applicant's extradition would be contrary to Article 3 of the Convention.

2. The Court's assessment

42. As to the Government's objection concerning exhaustion of domestic remedies, the Court notes that it dismissed a similar objection by the Government based on the same domestic law provisions in the case of *Soldatenko* (cited above, § 49). It sees no reason to depart from its findings in that case and accordingly dismisses the objection as to the necessity for the applicant to exhaust the remedies indicated by the Government.

43. The Court further reiterates that in determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, it will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu*. In cases such as the present the Court must examine the foreseeable consequences of

sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108 *in fine*). To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, for example, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005; *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007; and *Saadi v. Italy* [GC], no. 37201/06, §§ 143-146, 28 February 2008). At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001) and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I).

44. In the circumstances of the present case, the Court notes that the international documents available demonstrate serious concerns as to the human rights situation in Belarus, in particular with regard to political rights and freedoms. However, reference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. In this regard, the Court notes that the applicant does not claim to belong to the political opposition, which is widely recognised as a particularly vulnerable group in Belarus, or to any other similar group. The applicant's allegations that any criminal suspect in Belarus runs a risk of ill-treatment are too general and there is no indication that the human rights situation in Belarus is serious enough to call for total ban on extradition to that country. The applicant's allegations that the customs officers under suspicion of corruption constitute a separate vulnerable group is not supported by any evidence either. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment.

45. In the Court's opinion therefore, the applicant has failed to substantiate his allegations that his extradition to Belarus would be in violation of Article 3 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.

B. Conditions of the applicant's detention in Ukraine

46. The parties made no observations as to the admissibility of this complaint. In particular, the Government did not submit any observations on the question of the six-month rule. In this respect the Court reiterates that the six-month rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. It is therefore not open to the Court to set aside the application of the six-month rule solely because a Government have not made a preliminary objection based on it (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

47. The Court reiterates that it has previously found that there is a lack of effective domestic remedies in Ukraine with respect to conditions of detention and that this constituted a structural problem (see *Koktysh v. Ukraine*, no. 43707/07, §§ 85-87, 10 December 2009; *Kucheruk v. Ukraine*, no. 2570/04, §§ 116-118, ECHR 2007-X). Where no effective remedy is available to an applicant, the six-month period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (*Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Therefore, the examination of the applicant's complaint under Article 3 must be limited to the periods of detention which fall within the six-month period prior to the date on which the application was lodged (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004, and *Mikhaniv v. Ukraine* (dec.), no. 75522/01, 20 May 2008).

48. In the present case, the applicant's detention terminated on 26 August 2005 when he was hospitalised. Even if the period of the applicant's stay in the civilian hospital under police surveillance, which lasted until 8 September 2005, is taken into account, none of the above periods of the applicant's detention in three different institutions (see paragraphs 12, 19, 21 and 23 above) falls within the six-month limit, given that his complaint about the conditions of his detention was first formulated in his application form dated 11 March 2006. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

49. In reply to the Government's observations the applicant made a new complaint alleging the risk of flagrant denial of justice by the Belarus

authorities. He relied on Article 6 § 1 of the Convention, which provides in so far as relevant as follows:

Article 6 § 1

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

50. The Court observes that in *Soering* (see *Soering v. the United Kingdom*, 7 July 1989, § 113, Series A no. 161) it held:

“The right to a fair trial in criminal proceedings, as embodied in Article 6, holds a prominent place in a democratic society ... The Court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial ...”

51. Similar to the applicant's allegations under Article 3, this complaint under Article 6 also refers to the general human rights situation in Belarus and does not refer to any individual circumstances which could substantiate the applicant's fears of receiving an unfair trial.

52. In the Court's opinion, therefore, the applicant has failed to substantiate his allegations that his extradition to Belarus would be in violation of Article 6 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.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

53. The applicant also complained that he had had no effective remedy to challenge his extradition to Belarus. He relied on Article 13 of the Convention, which provides as follows:

“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.”

54. The Court, having found the applicant's complaints under Article 3 of the Convention inadmissible, concludes that he has no arguable claim for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 18 April 1988, Series A no. 131, p. 23, § 52).

55. It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

56. The applicant complained that he had been discriminated against by the Ukrainian authorities, who did not take into account his state of health

because he was a Belarusian national and his extradition was conducted under the Minsk Convention. He considered that had he been a national of a country which is party to the European Convention on Extradition, the Ukrainian authorities would have been obliged to take his state of health into account. He referred to Article 14 of the Convention in conjunction with Article 3 of the Convention. Article 14 provides as follows:

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

57. The Court reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of those provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV).

58. In the present case the Court is not called upon to decide on the applicability of the above provisions in the applicant's case, because even assuming such applicability this complaint is inadmissible for the following reasons.

59. The Court reiterates that Article 14 protects against a discriminatory difference in treatment of persons in analogous positions in the exercise of the rights and freedoms recognised by the Convention and its Protocols. Whether or not an individual can assert a right derived from legislation may depend on the geographical reach of the legislation at issue and the individual's location at the time (see *Magee v. the United Kingdom*, no. 28135/95, § 50, ECHR 2000-VI). The Court notes that the fact that the proceedings concerning the applicant's extradition were governed by the Minsk Convention had no connection to the applicant's nationality. It was the participation of Ukraine, as the requested State, and Belarus, as the requesting State, in that particular international treaty on legal assistance in matters of extradition that made it the instrument of choice. That choice was not related in any way to the personal status of the applicant.

60. It concludes that the difference in treatment alleged by the applicant does not fall within any of the grounds specified in Article 14 of the Convention. It follows that this part of the application is manifestly ill-founded.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

61. The applicant complained that he had been unlawfully detained by the Ukrainian authorities and that there had been no effective judicial review of the lawfulness of his detention and no possibility to claim damages for this unlawful detention. He relied on Article 5 §§ 1 (c) and (f), 4 and 5 of the Convention, which read, in so far as relevant, as follows:

Article 5 (right to liberty and security)

“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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(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

62. The applicant maintained that his detention between 29 July 2005 and 3 August 2005 fell within the ambit of Article 5 § 1 (c) of the Convention. He considered that once the request for his extradition had been received by the Ukrainian authorities on 3 August 2005, his detention fell within the ambit of Article 5 § 1 (f). For the Government, the whole period of detention fell within Article 5 § 1 (f).

63. The Court examined similar contentions in *Soldatenko* (cited above, §§ 98-99). It refers to its findings there and notes that from the facts of the present case it appears that the Ukrainian authorities arrested and detained the applicant in order to take action with a view to his extradition. There

were no criminal proceedings against the applicant in Ukraine. Moreover, no other reason, except the one of extradition, has ever been advanced by the authorities for the applicant's detention and there is no evidence in the case-file to suggest that any such other reason has ever existed. Therefore, notwithstanding the applicant's submissions to the contrary, his detention has always been with a view to extradition and his above complaint falls to be considered under Article 5 § 1 (f) of the Convention (see *Novik*, cited above). Therefore, Article 5 § 1 (c) is not applicable in the present case (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, § 53).

64. The Court further notes that the applicant's complaint under Article 5 § 5 of the Convention of a lack of effective compensatory remedies for his unlawful detention was first formulated in his application form of 11 March 2006, while his detention and the judicial proceedings challenging the lawfulness of the detention took place more than six months prior to that date: the applicant's detention ended on 8 September 2005 and his appeal against the detention order was rejected on 26 August 2005. Therefore, there was no factual element that would justify admission of this belated complaint. Despite the fact that the Government made no objection as to the admissibility of this complaint, the Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection based on it (see paragraph 46 above). Accordingly the applicant's complaint under Article 5 § 5 must be rejected as lodged out of time.

65. The Court therefore notes that the complaints under Article 5 §§ 1 (f) and 4 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. The applicant's complaints under Article 5 §§ 1 (c) and 5 of the Convention are manifestly ill-founded and out of time respectively and must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

B. Merits

66. The parties submitted arguments similar to those made in the cases of *Soldatenko* (cited above, §§ 104-107 and 116-120), and *Svetlorusov v. Ukraine* (no. 2929/05, §§ 43-46 and 52-56, 12 March 2009).

67. The Court has previously found violations of Article 5 §§ 1 and 4 of the Convention in cases raising issues similar to those in the present case (see *Soldatenko*, cited above, §§ 109-114 and 125-127, and *Svetlorusov*, cited above, §§ 47-49 and 57-59). These findings were primarily based on the lack of a sufficient legal basis both for the applicants' detention pending extradition proceedings and for regular review of the lawfulness of their detention.

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

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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.”

70. 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. *Dismisses* the Government's objections;
2. *Declares* the complaints under Article 5 §§ 1 (f) and 4 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President