



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

FIRST SECTION

CASE OF GALEYEV v. RUSSIA

(Application no. 19316/09)

JUDGMENT

STRASBOURG

3 June 2010

FINAL

03/09/2010

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

In the case of Galeyev v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 19316/09) 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 Belarus, Mr Dmitriy Ravilyevich Galeyev (“the applicant”), on 10 December 2008.

2. The applicant was represented by Bug & Partner, lawyers practising in Wiesbaden, Germany. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that his extradition to Belarus would put him in danger of inhuman treatment and that his detention in Russia pending extradition was unlawful. He invoked Articles 3 and 5 of the Convention.

4. The President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to extradite the applicant pending the Court's decision. At the same time the case was granted priority under Rule 41 of the Rules of Court.

5. On 8 July 2009 the President of the First Section decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

6. The applicant submitted his observations after the expiry of the prescribed time-limit. On 5 February 2010 he was informed that, pursuant to Rule 38 § 1 of the Rules of Court, the President of the Chamber had decided that his observations should not be included in the case file for consideration by the Court.

7. On 11 May 2010 the Court decided to lift the interim measure imposed on 23 April 2009.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1974 and lives in Novokuybyshevsk, the Samara Region.

A. Proceedings for acquisition of Russian citizenship

9. The applicant was born in the Minsk Region, Belarus. In 1992 he moved to live with his father in Tatarstan, Russia. He had a Soviet passport issued by the USSR in 1990.

10. From 1993 to 1996 the applicant served a prison sentence in Belarus. Upon his release in June 1996 he moved to the Kursk Region, Russia.

11. From 1998 to 2004 the applicant served another prison sentence in Belarus. Upon his release he went to Orel, Russia.

12. On 9 March 2004, in Orel, the applicant was issued with a Russian passport.

13. Later in 2004 he moved to Novokuybyshevsk, Russia.

14. In a decision of 21 September 2005 an officer of the Samara Region Department of the Interior recognised the applicant as a Russian citizen. The decision was upheld by the Russian Federal Migration Service ("the FMS").

15. On 14 March 2007 the Department for Citizenship and Migration of the Belarus Ministry of the Interior informed the FMS that, according to the Belarusian Law on Citizenship of 18 October 1991, the applicant was a citizen of Belarus.

16. On 23 August 2007 the Samara District Court found that the applicant had been unlawfully granted Russian citizenship since he had concealed the fact that he was a national of another State and ordered the FMS to revoke its decision to that effect. The applicant appealed.

17. On 1 October 2007 the Samara Regional Court upheld the decision.

18. On 28 November 2007 the FMS revoked its decision to recognise the applicant as a Russian citizen.

19. On 17 and 20 December 2007 respectively, the Ministry of the Interior of Belarus and the Embassy of Belarus in Moscow informed the applicant's counsel that the applicant was not a citizen of Belarus.

20. The applicant's requests for supervisory review of the decisions of 23 August and 1 October 2007 were refused by the Samara Regional Court

on 23 January and 1 December 2008, and by the Supreme Court on 10 July 2008. The applicant also submitted a request for the proceedings to be reopened on the grounds of newly discovered evidence. The request was refused by the Samara District Court on 23 October 2008.

B. Criminal proceedings against the applicant and extradition decisions

21. On 15 August 2005 the Belarus prosecuting authorities instituted criminal proceedings against the applicant and Z. They were suspected of extorting 18,000 United States dollars from a private person in Belarus in 2003. The Belarus prosecuting authorities put the applicant's name on a wanted list and ordered his arrest.

22. On 16 December 2006 the applicant was arrested in Moscow.

23. On 18 December 2006 the Russian General Prosecutor's Office refused his extradition to Belarus as, according to the decision of the FMS of 21 September 2005, he was a Russian citizen.

24. On 30 March 2007 Russian prosecuting authorities took over responsibility for the investigation.

25. On 8 July 2008 the applicant was arrested in Novokuybyshevsk and placed in custody.

26. On 9 September 2008, after the decision to recognise the applicant as a Russian citizen had been revoked, the Belarus Prosecutor's Office requested his extradition.

27. On 16 December 2008 the Russian General Prosecutor's Office authorised his extradition.

28. On 4 March 2009 the Samara Regional Court upheld the extradition decision. The applicant's counsel appealed to the Supreme Court, contending, in particular: "at present it is impossible to assess the reasons why [the applicant] considers that he might be subjected to ill-treatment in the territory of Belarus, it is impossible either to find them well-substantiated or to refute them". This appears to be the first time that allegations of possible ill-treatment were raised before the Russian courts.

29. On 28 April 2009 the Supreme Court quashed and remitted that decision. The Supreme Court reasoned that the Regional Court had failed to obtain and examine a number of procedural documents related to the applicant's extradition.

30. On 22 May 2009 the Samara Regional Court again found the decision of the Prosecutor General's Office to extradite the applicant to be lawful.

31. On 28 July 2009, upon the applicant's appeal, the Supreme Court reviewed the decision of 22 May 2009 and quashed it. It instructed the Regional Court to review the applicant's complaint under Article 3 of the European Convention and to assess the applicant's claim that he had applied for territorial asylum in Russia.

32. On 30 July 2009 the applicant submitted a request to the Samara Department of the FMS for refugee status.

33. On 13 August 2009 the General Prosecutor of Belarus sent a letter to his counterpart in Russia, guaranteeing that, in the event of the applicant's extradition, he would not be subjected to treatment in breach of Article 3 of the Convention, he would be ensured a fair trial and he would be provided with the necessary medical assistance.

34. On 3 August 2009 the Samara Department of the FMS declined the applicant's request for refugee status. The Department found that the applicant's real reason for going to Russia and claiming asylum was his fear of criminal prosecution in connection with the charges pending against him in Belarus.

35. On 26 August 2009 the Samara Regional Court found the decision of the General Prosecutor's Office of 16 December 2008 to be lawful. It considered the applicant's claims under Article 3 of the Convention to be unsubstantiated and unsupported by any evidence. It relied on the assurances issued by the General Prosecutor of Belarus in respect of the applicant. The court further noted that the applicant had not been granted asylum in Russia.

C. The applicant's detention pending extradition

36. On 8 July 2008 the applicant was arrested in Novokuybyshevsk as a suspect in the criminal case instituted against him in Belarus but which was, at that time, being handled by the Russian prosecuting authorities.

37. On 9 July 2008 the applicant was charged with extortion. The investigating authorities applied to the Novokuybyshevsk Town Court with a request to remand the applicant in custody on the grounds that he had a criminal record, had been charged with a serious offence, had no legal source of income, did not live at his permanent place of residence in Novokuybyshevsk but in Moscow without having registered properly and, if released, could abscond from the investigating authorities and the court and continue his criminal activities. On the same day the Novokuybyshevsk Town Court granted the request and decided to remand the applicant in custody until 9 September 2008. The applicant appealed.

38. On 28 July 2008 the Samara Regional Court dismissed the appeal and upheld the decision.

39. On 5 August 2008 the Novokuybyshevsk Town Court extended the term of his detention until 23 October 2008 on the grounds that he had been charged with a serious offence and the application of a different preventive measure was impossible due to the applicant's personality and the danger that, if released, he would abscond and get involved in criminal activity.

40. On 8 September 2008 an investigator of the Novokuybyshevsk Department of the Interior decided to terminate the applicant's detention ordered in the decisions of 9 July and 5 August 2008 on the ground that it

had been decided to transfer the criminal case back to the Belarusian prosecuting authorities. However, on the same date the applicant was arrested under Article 61 of the Minsk Convention.

41. On 10 September 2008 the Novokuybyshevsk Town Court ordered the applicant's detention pending extradition proceedings under Article 466 of the Code of Criminal Procedure, without indicating the term of detention. The applicant appealed.

42. On 24 September 2008 the Samara Regional Court dismissed the appeal and upheld the decision.

43. On 28 April 2009 the Supreme Court, deciding on the applicant's complaint about the lawfulness of his extradition, ordered his detention to be extended by one month, until 28 May 2009, in order to ensure his extradition to Belarus.

44. On 25 May 2009 the Novokuybyshevsk District Court ordered the applicant's detention to be extended to a period of twelve months, that is to say, until 8 September 2009.

45. On 28 July 2009 the Supreme Court again reviewed the applicant's claim about the lawfulness of his extradition. It ordered the applicant's release from detention on bail of 3,000,000 Russian roubles (RUB). The applicant did not deposit the bail and remained in custody.

46. On 4 September 2009 the Samara Regional Court refused the prosecutor's request to extend the applicant's custody until 8 March 2010, that is to say, an increase to eighteen months.

47. On 8 September 2009 the applicant was released from detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. For a summary of the relevant Russian law and practice on issues of the detention, extradition and expulsion of foreign nationals, see *Muminov v. Russia*, no. 42502/06, §§ 45-62, 11 December 2008.

49. For a review of the situation in Belarus at the relevant time, see *Puzan v. Ukraine*, no. 51243/08, §§ 20-24, 18 February 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained that his extradition to Belarus would be in violation of Article 3 of the Convention, which reads as follows:

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

A. Compatibility *ratione personae*

51. The Government argued that the applicant could not claim to be a victim of a violation of the Convention since the decision of the Prosecutor General's Office of 16 December 2009 had remained unenforced and would remain such until the Court considered the case.

52. The Court notes the exceptional nature of the application of the “victim” notion in Article 3 cases involving extradition, namely, “by reason of foreseeable consequences” (see *Soering v. the United Kingdom*, 7 July 1989, § 90 Series A no. 161). The Court further notes that the decision of the Prosecutor General's Office of 16 December 2008 to extradite the applicant was upheld on appeal by the Supreme Court and remains in force. The Court accordingly dismisses this objection.

B. Otherwise as to admissibility

53. The Government maintained that the applicant had failed to substantiate his complaints under Article 3 of the Convention. They noted that the applicant had stated his concerns of ill-treatment after the decision on extradition had already been taken. These allegations had been examined by appeal courts at two levels of jurisdiction and dismissed. The Government further relied on the decision of the FMS by which the applicant's request for refugee status had been found unsubstantiated. Lastly, the Government relied on the assurances provided by the Belarusian authorities covering the applicant's concerns.

54. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court 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*, 30 October 1991, § 108 *in fine*, Series A no. 215). 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).

55. Turning to the circumstances of the present case, the Court notes that while international reports support concerns as to the human-rights situation in Belarus, these concerns are primarily related to political opposition

activities and the exercise of political freedoms. In the applicant's case there is no claim that his fears of ill-treatment are based on his political views. In fact, his claims in this respect are generally very vague and not supported by any available evidence. In so far as the Court can conclude from the materials available, the applicant did not refer to any relevant circumstances which could substantiate his fears of ill-treatment before the domestic authorities. Nor did he make such evidence available to the Court. The Court also notes that the applicant, who had already been tried and convicted in Belarus on two occasions, did not allege that his previous experience of criminal prosecution in Belarus had involved any circumstances that might substantiate a serious risk of ill-treatment or unfair trial in the future.

56. 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.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

57. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition was unlawful. The relevant parts of Article 5 § 1 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.”

58. The Government conceded that the applicant's detention pending extradition between 11 November 2008 and 27 April 2009 had not been lawful since there had been no judicial decision governing his stay in custody during that period. They submitted that the applicant's detention during the remaining time was lawful and was based on the relevant national legislation as applied by the competent courts. The Government relied, in particular, on Decision no. 333-O-P of the Constitutional Court of 1 March 2007. In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that the detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

A. Admissibility

59. 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

60. In view of the Government's admission of lack of lawfulness during the period between 11 November 2008 and 27 April 2009, the Court finds that there has been a violation of Article 5 § 1 of the Convention

61. In view of the above finding and in the absence of the applicant's observations, the Court does not find it necessary to consider the rest of the applicant's claim under this head.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicant also complained that the proceedings related to the determination of his nationality had been unfair. He invoked Article 6 of the Convention. The applicant also complained about the conditions of his detention in Russia pending extradition, relying on Article 3. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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.”

64. The applicant did not submit a claim for just satisfaction within the time-limit set by the Court. 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 under Article 5 § 1 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.

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

Søren Nielsen
Registrar

Christos Rozakis
President