



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KOKTYSH v. UKRAINE

(Application no. 43707/07)

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 Koktysh 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,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *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. 43707/07) 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 Igor Gennadievich Koktysh (“the applicant”), on 8 October 2007.

2. The applicant, who had been granted legal aid, was represented by Ms A. Mukanova, a Kazakh lawyer. 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, the outcome of which was likely to be the death penalty. He further alleged that his detention pending extradition had been unlawful. The applicant lastly 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. Questions were put under Articles 2 and 3 (risk on extradition to Belarus), 3 and 13 (conditions of detention and transport), 6 (risk of unfair trial in Belarus if the applicant were extradited) and 5 (compatibility of the detention with the provision, and related procedural issues) of the Convention. 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, who was born in 1980, is a Belarusian youth activist and musician. He is currently detained in the Pre-Trial Detention Centre no. 15 (hereinafter, “the SIZO”) in Simferopol (*Сімферопольський слідчий ізолятор*), Ukraine.

A. Background to the case and the extradition proceedings

6. In 2001 the applicant and R. were charged with the murder (under Article 139 § 2 of the Belarusian Criminal Code) and robbery of M. According to the above Article, the death penalty is foreseen, *inter alia*, as a sanction for murder.

7. On 7 December 2001 the Brestskiy Regional Court of Belarus acquitted the applicant and R. In particular, the court emphasised that during their interrogations the applicant and R. had been subjected to physical and psychological pressure and had been forced to confess, and therefore their confessions during the pre-trial investigation could not be taken into consideration.

8. On 1 February 2002 the Supreme Court of Belarus upheld this decision.

9. On 18 May 2002 these decisions were quashed by the Presidium of the Supreme Court of Belarus under the extraordinary review procedure upon an application (“protest”) lodged by a prosecutor, and the criminal proceedings were resumed.

10. In June 2002 the applicant moved to Ukraine, where he was registered by the Zhytomyr passport service. He travelled several times to Poland and married in 2003. Therefore, according to the applicant, he has not been hiding from justice.

11. On 28 June 2002 the Brestskiy Regional Court stayed the criminal proceedings since the applicant’s whereabouts were unknown.

12. On 9 July 2002 the Brestskiy Regional Prosecutor decided to search for the applicant.

13. On an unspecified date an international search warrant for the applicant was issued.

14. On 25 June 2007 the applicant was arrested in Sevastopol, Ukraine. The applicant stated that during his arrest the policemen had fired several shots in order to intimidate him and that he had been subjected to physical and psychological pressure.

15. On 27 June 2007 the Balaklava District Court of Sevastopol ordered the applicant's detention for forty days with a view to his extradition to Belarus.

16. On 9 July 2007 the General Prosecutor's Office of Belarus requested the General Prosecutor's Office of Ukraine (hereinafter, "the GPO") to extradite the applicant. In its request the General Prosecutor's Office of Belarus indicated that "Koktysh I.G. would be tried only for the crimes he was extradited for, and he would not be sentenced to the death penalty".

17. On 3 August 2007 the Balaklava Local Court decided that the applicant should remain in detention pending extradition.

18. On 10 October 2007, under Rule 39 of the Rules of Court, the President of the Court's Fifth Section indicated to the Government of Ukraine that the applicant should not be extradited to Belarus.

19. On 15 October 2007 the General Prosecutor's Office of Belarus informed the GPO that in the event of the applicant's extradition he would not be tortured, ill-treated or discriminated against and would be given a fair trial. If necessary, he would be provided with medical assistance and treatment.

20. On 19 May 2008 the Balaklava District Court informed the applicant that his request for release could not be considered as the current legislation did not foresee the possibility of challenging detention pending extradition.

21. On 3 June and 7 July 2009 the Balaklava District Court rejected the applicant's further requests for release since the law in force did not foresee the possibility of replacing his detention pending extradition by another non-custodial preventive measure.

B. Conditions of the applicant's detention as presented by the applicant

22. From 26 June to 5 July 2007 the applicant was detained in the Sevastopol Temporary Detention Centre in cell no. 1 (*Севастопольський ізолятор тимчасового утримання*) (hereinafter, "the ITT"). He submitted that in his cell, which measured 4 x 8 metres, around 20 persons had been detained, while it had been equipped with only two sleeping places. There were no sheets, pillows or blankets but only a couple of dirty mattresses. The cell was very dirty, without ventilation or proper lighting, and infested with different insects. Nearly all of the detainees smoked and this caused the applicant intense suffering since he has bronchial asthma. The ITT did not contain a shower and the detainees could not go for a walk. The applicant stated that the daily food had been limited to a piece of bread, a plate of poor-quality soup and water. The applicant was not provided with any medical assistance in spite of suffering from asthma. On 2-5 August 2007 the applicant was detained in cell no. 2 with similar conditions of detention.

23. From 6 July 2007 to date the applicant has been detained in the SIZO. The applicant submitted that during his transportation from the ITT to the SIZO he had been placed in a special van together with 12 other people while there had been space available for only 6. The temperature in the van reached 60°C and there was neither drinking water nor ventilation.

24. In the SIZO, according to the applicant, he is detained in a 2 x 4 metre cell together with 9 other detainees. The cell has no ventilation or sufficient lighting and all of the detainees smoke apart from the applicant. The detainees can shower only once a week. The applicant stated that the medical assistance he received in the SIZO was inadequate.

C. Conditions of the applicant's detention as presented by the Government

1. The ITT

25. On 25 June 2007 the applicant arrived at the ITT. He was questioned about his state of health by the officer on duty but the applicant did not complain about his health problems. During his stay in the ITT (25 June-5 July 2007 and 2-5 August 2007) the applicant did not complain about his health problems either.

26. From 26 June 2007 until 5 July 2007 the applicant was detained in cell no. 1. The cell measured 19.3 sq. m. At the material time from 16 to 21 persons were detained there.

27. From 2 August 2007 until 5 August 2007 the applicant was detained in cell no. 2, which measured 17.4 sq. m. 11 other persons were detained at that time together with the applicant.

28. Every cell was equipped with a WC and a wash-basin. The detainees were provided with bed sheets and were served hot food three times a day. The cells are regularly cleaned and disinfected. The detainees take a hot shower at the week-end or during the week if they so wish.

29. The ITT has a ventilation system which functions non-stop. The detainees also have a daily one-hour walk in two specially equipped yards.

30. The cells are equipped with two electric light-bulbs and the detainees also have access to daylight.

2. The SIZO

31. During the applicant's stay in the SIZO, since 5 July 2007, he has been detained in three different cells (nos. 57, 60 and 68), which measure between 12.4 sq. m and 13.2 sq. m. Together with him, from 4 to 9 persons have been detained during different periods of time.

32. The cells are equipped with the necessary number of sleeping places, sufficient electric and natural light, separated WCs, wash basins, tables and

chairs. There is ventilation and the conditions of the applicant's detention have complied with the sanitary standards. The applicant has been able to take a shower once a week.

33. On the day of his arrival the applicant was examined in the SIZO hospital wing and diagnosed with asthma. During his stay in the SIZO the applicant has been further examined and treated on numerous occasions.

3. Conditions of transportation

34. On 5 July the applicant was transported from the ITT to the SIZO and on 2 August 2007 he was returned to the ITT. On 5 August 2007 he was again taken to the SIZO.

35. Specially equipped vehicles and railway carriages were used for the transportation. Every vehicle can carry up to 22 persons and every railway carriage up to 80. The special police forces in charge of the transportation of prisoners transported the applicant in compliance with the requirements of the national legislation.

II. RELEVANT LAW AND PRACTICE

A. Relevant international and domestic law and practice concerning extradition

36. The relevant international and domestic law and practice in respect of the applicant's extradition are summarised in the *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) judgments.

B. Relevant domestic law concerning conditions of detention and transportation

Pre-Trial Detention Act 1993 ("the Act")

37. Under Article 11, detainees must be provided with everyday conditions that meet sanitary and hygiene requirements. The cell area for one person may not be less than 2.5 sq. m.

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

1. Resolution 1606 (2008) of the Parliamentary Assembly of the Council of Europe on abuse of the criminal justice system in Belarus

“... 2. Such abuses take different forms, including:

2.4. the continued use of the death penalty and the particularly cruel, secretive method of execution by gunshot, without informing the condemned persons themselves or their families until the last moment. Belarus is the last country on the European continent that still implements the death penalty. The existence of the death penalty excludes the extradition to Belarus of any person accused of a capital offence by member states of the Council of Europe...”

2. Resolution 1671 (2009) of the Parliamentary Assembly of the Council of Europe on the situation in Belarus

“...17. The Assembly regrets that capital executions can still be carried out in Belarus, despite the reduction of the categories of crimes for which they can be inflicted, a decrease in the number of death sentences handed down in such cases and the fact that no executions have been carried out since October 2008 according to official statements. The Assembly recalls that, in the current Constitution, the death penalty is considered as a transitional measure and that no legal impediment prevents either the President or the Parliament from introducing a moratorium on executions...”

3. UN Human Rights Council: Report of the Special Rapporteur on the Situation of Human Rights in Belarus, 15 January 2007, A/HRC/4/16

“...The Special Rapporteur regrets that the Government of Belarus, in 2006 as in 2004 and 2005, has not responded favourably to his request to visit the country and has in general not cooperated with him in the fulfilment of his mandate...”

...13. Since his last report, the Special Rapporteur has remained concerned that Belarus is the last country in Europe to apply the death penalty. The situation in the country is still characterized by harsh conditions of pre-trial detention, the practice of torture and other inhuman treatment, and excessive use of force by the police...”

4. UN General Assembly, Situation of human rights in Belarus : resolution / adopted by the General Assembly, 20 March 2008, A/RES/62/169

“...The situation of human rights in Belarus in 2007 continued to significantly deteriorate, as documented in the reports of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the

report of the Special Rapporteur on the situation of human rights in Belarus, which found that systematic violations of human rights continue to take place in Belarus...

...1. *[The Assembly] expresses deep concern:*

(a) About the continued use of the criminal justice system to silence political opposition and human rights defenders, including through arbitrary detention, lack of due process and closed political trials of leading opposition figures and human rights defenders;

(b) About the failure of the Government of Belarus to cooperate fully with all the mechanisms of the Human Rights Council, in particular with the Special Rapporteurs on the situation of human rights in Belarus, while noting the serious concern relating to the continued and systematic violations of human rights in Belarus..."

5. The Country Report on Human Rights Practices by the US Department of State

38. The Country Report on Human Rights Practices of the US Department of State (hereafter "the Reports") for 2008, released on 25 February 2009, noted with respect to Belarus:

"The government's human rights record remained very poor as government authorities continued to commit frequent serious abuses...

...Prison conditions remained extremely poor, and reports of abuse of prisoners and detainees continued. Arbitrary arrests, detentions, and imprisonment of citizens for political reasons, criticizing officials, or for participating in demonstrations also continued...

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices; however, the Belarusian Committee for State Security (BKGB), the Special Purpose Detachment riot police (OMON), and other special forces continued to beat detainees and demonstrators...

...Police also beat individuals during arrests and in detention for organizing or participating in demonstrations or other opposition activities...

...On September 2, 2008, the International Federation of Human Rights (FIDH) in cooperation with the domestic human rights NGO "Vyasna" released a joint report, Conditions of Detention in Belarus, based on interviews with more than 30 persons. The report noted "substantial evidence" of the use of torture and mistreatment of suspects during criminal and administrative investigations...

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary; however, the government did not respect judicial independence in practice. Corruption, inefficiency, and political interference were prevalent in the judiciary.

There was evidence that prosecutors and courts convicted individuals on false and politically motivated charges, and that executive and local authorities dictated the outcomes of trials...”

6. Amnesty International Report on Human Rights 2009

“...Death penalty

...According to media reports, four people were executed during the year...

...In December, Belarus abstained on a UN General Assembly resolution calling for a worldwide moratorium on executions...”

D. Relevant international and domestic materials concerning conditions of detention and transportation

1. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

39. The relevant extracts from the European Prison Rules read as follows:

“4. Prison conditions that infringe prisoners’ human rights are not justified by lack of resources.

...

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

...

18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

...

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4 National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

...

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

...

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.

22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

22.3 Food shall be prepared and served hygienically.

22.4 There shall be three meals a day with reasonable intervals between them.

...

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

...

32.2 The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.”

2. European Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (“the CPT”)

40. Relevant extracts from the reports of the Committee for the Prevention of Torture following the Committee’s visits to Ukraine in 1998 – 2002 can be found in the judgment in the case of *Yakovenko v. Ukraine*, (no. 15825/06, §§ 56-61).

3. The Ukrainian Parliament Commissioner for Human Rights

41. On 14 January 2004 the Ukrainian Parliament Commissioner for Human Rights, after her visit to the penitentiary institutions of the Autonomous Republic of Crimea (hereinafter, “the ARC”), in her address to the members of the Verkhovna Rada of the ARC, published on the Ukrainian Parliament Commissioner’s Internet site, mentioned the overcrowding in the Simferopol SIZO, lack of daylight in the cells, the absence of outside walks and insufficient nutrition. In the majority of the ITTs visited by her, the detainees were provided with food only once a day. In the Sevastopol ITT there were 206 persons detained while there were only 82 places.

42. On 11 August 2008 the press service of the Ukrainian Parliament Commissioner for Human Rights published a press release on the Commissioner’s further visit to the penitentiary institutions of the ARC. The Sevastopol ITT was described as the worst. The cells were dirty, without sufficient daylight and ventilation, and outside walks were not regular. The detainees were not provided with mattresses, covers or bed linen. The cells were overcrowded and the detainees slept in turns. The conditions of transportation between the Sevastopol ITT and the Simferopol SIZO were unbearable. In particular, on 9 June 2008, 34 detainees were taken to the Sevastopol ITT but after spending 6 hours locked in the vehicle were sent back to the Simferopol SIZO because of overcrowding in the ITT. The trip lasted 14 hours and the detainees were practically not allowed to use the toilet and were not provided with water or food.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2, 3 AND 6 OF THE CONVENTION IN RESPECT OF THE APPLICANT’S EXTRADITION TO BELARUS

43. The applicant complained that if extradited to Belarus he could be subjected to capital punishment contrary to Article 2 of the Convention. He further complained under Article 3 of the Convention that there was a risk of his being subjected to torture and inhuman and degrading treatment by the Belarusian law-enforcement authorities. In particular, the applicant complained that the prospect of possible capital punishment caused him intense moral suffering. The applicant also complained under Article 6 of the Convention that if extradited to Belarus he would face an unfair trial.

The invoked Articles, in so far as relevant, read as follows:

Article 2

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”

Article 3

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

Article 6

“ In the determination of his civil rights and obligations or 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 ...”

A. Admissibility

44. The Government noted that as there had been no decision to extradite the applicant he could not claim to be a victim of the alleged violations. The Government further indicated that no decision on extradition would be taken until this Court took further decision concerning the application of interim measures or decided on the merits of the applicant’s complaint.

45. The applicant submitted that, although there had been no formal decision on his extradition, his prolonged detention could not be explained by any other reason than by an intention to extradite him. Therefore, even in the absence of any formal decision taken by the Ukrainian authorities, he could still be regarded as a victim of the alleged violations.

46. The Court notes that the applicant was arrested in June 2007 on the basis of an international warrant. Subsequently, the Prosecutor General’s Office of Belarus requested the applicant’s extradition. The applicant’s detention pending extradition was authorised by the Balaklava Local Court on 3 August 2007, without setting a time-limit for that detention and in circumstances under which domestic law does not impose a time-limit. In the absence of any other domestic decision authorising the applicant’s continuing detention, which is still continuing two years and nearly five months after it began, the Court is of the opinion that the applicant’s detention is still “pending extradition”, even though no decision on extradition has been adopted. The Court would note that its indication under Rule 39 of the Rules of Court related to the applicant’s extradition and not to his detention. The Court is of the opinion that the applicant is still under a threat of extradition and has not lost his victim status.

47. The Court notes that the applicant’s 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

1. The parties' submissions

(a) The Government

48. The Government argued that the application of Rule 39 of the Rules of Court had prevented the GPO from taking any decision on the applicant's extradition and thus from assessing the potential risks the applicant would face in Belarus. Therefore, in the absence of any decision, the Court was not in a position to decide whether there had been any violation of the applicant's rights, since the State's actions had so far been of a "preparatory" nature and did not indicate their "official" position.

49. The Government further pointed out that the Prosecutor General of Belarus had provided sufficient assurances against any treatment contrary to Articles 2 and 3 of the Convention and against an unfair trial in the applicant's criminal case. The Government stated that the applicant's allegations about his possible ill-treatment were unsubstantiated since he had been wanted because of the criminal case pending against him and not because of his involvement in opposition activities such as the foundation of a youth organisation or a rock music group. The Government further indicated that there was no evidence in support of the applicant's allegations that these activities had been regarded as subversive or had been banned.

50. The Government lastly submitted that although in the past the Court had not excluded that an issue might exceptionally be raised under Article 6 of the Convention by an extradition decision in circumstances where the fugitive had suffered or risked suffering a flagrant denial of a fair trial in the requesting country, the facts of the present case did not disclose such a risk. In particular, there were no grounds to question the reasonableness and lawfulness of the decision of the Supreme Court of Belarus of 18 May 2002 and the applicant's statements about the risk of an unfair trial were explained by his unwillingness to stand trial. The Government further referred to the provisions of the Code of Criminal Procedure of Belarus on the presumption of innocence and indicated that this provision was a sufficient guarantee against an unfair trial in the applicant's criminal case.

(b) The applicant

51. The applicant believed that the application of Rule 39 of the Rules of Court did not prevent the Government from taking decisions within their jurisdiction but had been aimed at stopping the execution of such decisions. The applicant further referred to the *Soldatenko v. Ukraine* case (cited above) and indicated that the General Prosecutor's Office of Belarus was not empowered to give diplomatic assurances and, moreover, that the Government of Ukraine were not in a position to review compliance by the

Government of Belarus with the assurances provided. In particular, the Prosecutor General of Belarus could not sufficiently guarantee that the death penalty would not be imposed in the applicant's case since it was the court alone which decided on the punishment and the prosecutor being a party to the proceedings could not influence it.

52. Furthermore, the Republic of Belarus had failed to cooperate with international organisations on different levels, did not submit regular reports under the International Covenant on Civil and Political Rights and the Convention against Torture, and ignored recommendations of the relevant UN Committees. Moreover, in 2005-2007 on a number of occasions the Belarusian authorities had refused entry to the country to a number of representatives of the relevant international organisations; among others, the Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe and the UN Special Rapporteur. The applicant further pointed out that the reliability of the information provided by the Belarusian authorities was very low and that the Government of Ukraine should have demonstrated the special means at their disposal by which they were intending to obtain reliable information about the implementation of the assurances provided.

53. The applicant believed that in the event of extradition he would run a real risk of being ill-treated and tortured in order to extort his confession. In particular, the applicant stated that he had already been ill-treated by the police during the pre-trial investigation into his criminal case in 2001. Moreover, significant evidence collected by the international bodies confirmed that the practice of torture and ill-treatment in order to extract a confession or to intimidate political opponents and activists was widespread in Belarus.

2. *The Court's assessment*

(a) **The relevant principles**

54. The Court observes at the outset that the Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the Court has not in earlier cases excluded the possibility that a Contracting State's responsibility might be engaged under Article 2 of the Convention or Article 1 of Protocol No. 6 where an alien is deported to a country where he or she is seriously at risk of being executed, as a result of the imposition of the death penalty or otherwise (see, *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161). The Court also notes that there had to be a "near-certainty" of loss of life to make expulsion an "intentional deprivation of life" prohibited by Article 2 (see *Dougoz v. Greece* (dec.), no. 40907/98, 8 February 2000).

55. In *Öcalan v. Turkey* ([GC], no. 46221/99, ECHR 2005-IV), the Grand Chamber of the Court noted that the territories encompassed by the member States of the Council of Europe had become a zone free of capital punishment and that it could be said that capital punishment in peacetime, having regard, *inter alia*, to the fact that all member States had signed Protocol No. 6 and almost all had ratified it, had come to be regarded as an unacceptable form of punishment which was no longer permissible under Article 2 of the Convention (*ibid.*, § 163; for a survey on the Council of Europe's stance regarding capital punishment, see *Öcalan*, §§ 58 and 59). The Court, however, abstained from reaching any firm conclusion as to whether Article 2 of the Convention could be considered to have been amended so as to prohibit the death penalty in all circumstances (*ibid.*, § 165) but concluded that it would be contrary to the Convention, even if Article 2 were to be construed as still permitting the death penalty, to implement a death sentence following an unfair trial, as an arbitrary deprivation of life was prohibited (*Öcalan v. Turkey* [GC], no. 46221/99, § 166, ECHR 2005-IV). The Court also found that to impose a death sentence on a person after an unfair trial would generate, in circumstances where there existed a real possibility that the sentence would be enforced, a significant degree of human anguish and fear, bringing the treatment within the scope of Article 3 of the Convention (*ibid.*, §§ 168-169).

56. Consequently, an issue may arise under Articles 2 and 3 of the Convention if a Contracting State deports an alien who has suffered or risks suffering a flagrant denial of a fair trial in the receiving State, the outcome of which was or is likely to be the death penalty (see *Bader and Kanbor v. Sweden*, no. 13284/04, § 42, ECHR 2005-XI).

57. Furthermore, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...). The establishment of such responsibility inevitably involves an assessment of conditions in the receiving country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the Contracting State which deports or, as in the present case, extradites an individual, by reason of its having taken action which has as a direct consequence the exposure of that individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, 7 July 1989, §§ 89-91, Series

A no. 161, and *Garabayev v. Russia*, no. 38411/02, § 73, 7 June 2007, ECHR 2007-VII (extracts)).

58. In determining whether it has been shown that the applicant runs a real risk, if deported or 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). 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*, 15 November 1996, §§ 99-100, *Reports* 1996-V; *Muslim 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], cited above, §§ 143-146).

59. Furthermore, even if diplomatic assurances have been given, the Court is not absolved from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see *Chahal*, cited above, § 105, and *Saadi v. Italy* [GC], cited above, § 148).

(b) Application of the above principles to the present case

60. Referring to its findings above, the Court reiterates that, given the Ukrainian court's decision to detain the applicant pending his extradition, his lengthy detention and the refusals to release him, and in the absence of any formal refusal to extradite the applicant, he can still be regarded at present as running a risk of extradition in view of a criminal case pending against him in Belarus.

61. The Court notes that in 2001 the applicant was charged with murder and robbery but acquitted by the courts at two instances. In less than four months these decisions were quashed under the extraordinary review procedure by the Presidium of the Supreme Court of Belarus and the case was remitted for fresh consideration. Without pre-judging the merits of the applicant's complaint under Article 6 of the Convention, the Court notes that in a number of cases a similar procedure has been found not to be in compliance with the guarantees of a fair trial (see, for example, concerning civil proceedings, *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII). At present, the criminal proceedings against the applicant are

pending anew and one of the charges against him carries the death penalty as a possible punishment.

62. The Court cannot speculate on the possible outcome of the applicant's criminal case. However, the mere possibility of the imposition of capital punishment together with the prospect of an unfair trial, given the quashing of a final decision in the applicant's case, is sufficient in the Court's view to conclude that such situation generates for the applicant a sufficient anguish and mental suffering to fall within the ambit of Article 3 of the Convention.

63. The Court further notes that despite the assurances provided by the Belarusian authorities, the international human rights reports show serious problems as regards the international cooperation of the Belarusian authorities in the field of human rights and particularly with respect to the abolition of the death penalty and the Ukrainian Government did not specify how in view of these difficulties they intended to monitor the implementation of the provided assurances.

64. The Court also notes that both reports of the international and nongovernmental bodies refer to violations of human rights in Belarus and, in particular, to ill-treatment and torture. Although the reference to a general situation concerning human rights observance in a particular country cannot on its own serve a basis for refusal of extradition, there is an evidence in the present case, confirmed by the findings of the Belarusian courts, that the applicant has been already ill-treated by the Belarusian authorities. The Government did not show that the situation in respect to the applicant had changed to the extent which enables any possibility of ill-treatment in the future. Therefore, the Court cannot agree with the Government that the assurances given in the present case would suffice to guarantee against the serious risk of ill-treatment in the event of the applicant's extradition (see *Soldatenko v. Ukraine*, cited above, §§ 73-74).

65. There would be accordingly a violation of Article 3 of the Convention in the event of the applicant's extradition to Belarus.

66. The Court finds that it is not necessary in the circumstances of the case to consider separately the applicant's complaints under Articles 2 and 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 5 AND 13 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S DETENTION PENDING EXTRADITION

67. The applicant complained that his arrest and detention in Ukraine were contrary to Article 5 of the Convention since his criminal prosecution in Belarus was unlawful. Moreover, the applicant's detention in Ukraine was not regulated by any law and he could not challenge it. The applicant

further complained under Article 13 of the Convention about the absence of effective remedies in this respect.

68. The Court is of the opinion that these complaints should be considered under Article 5 §§ 1 (f), 4 and 5 of the Convention, which are the appropriate provisions, the relevant parts of which 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

69. In their observations of 7 November 2008 the Government submitted that the applicant had failed to exhaust effective domestic remedies as he had failed to challenge the decisions on his detention before the higher courts. Moreover, the applicant had never lodged a request for re-examination of the grounds of his detention. The Government stated that if the domestic courts had found that the applicant’s detention was unlawful or that the grounds for his detention had ceased to exist they would have decided to release him. In support of their statements the Government submitted a copy of the decision of 5 May 2008 of the Kakhovskiy Local Court, by which S., who had been detained pending his extradition to Turkmenistan, was released upon an undertaking not to abscond.

70. The applicant believed that he had not had any effective procedure by which he could have challenged his detention pending extradition.

71. The Court notes that after the receipt of the Government’s observations the domestic courts on two occasions (see paragraph 21 above) had expressly denied any possibility for the applicant to be released while the decision on his extradition was still pending. Therefore, in spite of the copy of a decision submitted by the Government, the Court is not convinced that this remedy could be considered an effective one. The Court therefore dismisses the Government’s objection.

72. 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

73. 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 “Minsk Convention”), 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 instruments were clear, understandable, foreseeable and accessible to the person concerned. They further noted that under the Minsk Convention, a Contracting State had to recognise official documents issued by another Contracting State. Therefore, the Ukrainian Government could not call into question the official documents issued by the relevant Belorussian authorities in the applicant’s case. The Government maintained that by detaining the applicant, the Ukrainian authorities had acted in accordance with their international obligations under the Minsk Convention and that his detention was for the purpose of extradition. Moreover, according to the Government, the applicant could have challenged his arrest before a court. The Government lastly noted that since the applicant’s arrest and detention were lawful, he did not have a right to any compensation.

74. The applicant referred to the Court’s finding in the cases of *Svetlorusov v. Ukraine* and *Soldatenko v. Ukraine* (cited above) and indicated that on numerous occasions he had requested the courts to release him but to no avail.

75. 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, §§ 109-114 and 125-127, and *Svetlorusov v. Ukraine*, cited above, §§ 47-49, 57-59 and 66-70). Those findings were primarily based on the lack of legal provisions both for the applicants’ detention pending extradition and for regular review of the lawfulness of such detention. 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.

76. 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.

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

III. ALLEGED VIOLATIONS OF ARTICLES 2, 3 AND 13 OF THE CONVENTION IN RESPECT OF THE CIRCUMSTANCES OF THE APPLICANT'S ARREST AND CONDITIONS OF DETENTION AND TRANSPORTATION

78. The applicant complained under Articles 2 and 3 of the Convention that he had been subjected to physical and psychological pressure during his arrest, and that the conditions of detention in the Sevastopol Temporary Detention Centre, in the SIZO and during his transportation had been inhuman and degrading. The applicant further complained under Article 13 of the Convention about the absence of effective remedies in this connection.

79. The Court finds that in the circumstances of the case it is more appropriate to consider the applicant's complaints under Articles 3 and 13 of the Convention since there is no *prima facie* evidence that the applicant's life has been seriously endangered.

80. These Articles, 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 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."

A. Admissibility

1. Alleged ill-treatment at the time of the applicant's arrest

81. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The Court notes that in the present case there is no evidence that the applicant has ever raised before the relevant domestic authorities the issue of the use of force or his ill-treatment at the moment of his arrest (see, *mutatis mutandis*, *Aliiev v. Ukraine no. 2* (dec.), no. 33617/02, 14 October 2008). In particular, one avenue open to the applicant would have been to complain to a prosecutor, and in the *Naumenko* case (*Naumenko v. Ukraine*, no. 42023/98, § 136, 10 February 2004) such a remedy was found to be effective. The prosecutor is bound to consider the applicant's complaint and to adopt a relevant

decision to institute or not the criminal proceedings. The applicant can further appeal against the refusal to the court, which has a power to examine all necessary evidence and to order further investigation if necessary.

82. The Court finds, therefore, that these complaints must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention.

2. Conditions of detention

83. The Government accepted that the applicant had complained to a prosecutor about “improper medical conditions” in the SIZO but submitted that he had failed to raise before the relevant domestic authorities his other complaints (general conditions of his detention, absence of medical treatment in the ITT and the conditions of his transportation). In particular, the applicant could have raised his complaints before the courts or a prosecutor. Moreover, the applicant had failed to raise his complaints before the administration of the relevant detention facilities.

84. The applicant believed that the Ukrainian legislation did not provide for any effective remedies concerning complaints about conditions of detention, lack of medical assistance and conditions of transportation of detainees. In particular, there were no remedies capable of providing redress and changing the applicant’s situation. He also submitted that the administration of the detention facilities had been aware of his health problems.

85. The Court reiterates that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, inter alia, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government has in fact been exercised, or is for some reason inadequate and ineffective in the particular circumstances of the case, or that there exist special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

86. In the present case the Government proposed recourse to a court and a prosecutor as effective remedies against the conditions of detention and transportation which were allegedly inhuman and degrading. The Court notes that on a number of occasions it has already dismissed similar objections by the Government, referring, amongst other things, to the structural nature of matters complained of (see *Melnik v. Ukraine*,

no. 72286/01, § 69-71, 28 March 2006). It can see no reason to hold otherwise in the present case.

87. Concerning the applicant's failure to raise his complaints before the administration of the relevant detention facilities, which the Government contended would have been an effective remedy, the Court notes that the applicant's complaints about the conditions of his detention in the ITT and the SIZO, as well as about the conditions of his transportation, concern problems that have been experienced by the Ukrainian penitentiary system for quite a long time. In particular, since 2000, both international and domestic human rights institutions have repeatedly indicated that the conditions of detention in the Sevastopol ITT and the Simferopol SIZO did not comply with the human rights standards. In such circumstances and given that the Government have failed to provide any detailed explanation as to how the applicant's complaint to the Heads of the ITT and the SIZO would have improved his situation, the Court considers that this remedy would have been inadequate and ineffective in the case

This part of the applicant's complaints cannot be declared inadmissible for non-exhaustion of domestic remedies. Nor can it be rejected as being manifestly ill-founded or declared inadmissible on any other grounds. It should therefore be declared admissible.

B. Merits

1. Article 3 of the Convention

(a) General principles

88. The Court observes that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it has adversely affected his or her personality in a manner incompatible with Article 3. Even the absence of such a purpose cannot conclusively rule out a finding of a violation of this provision (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

89. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

90. The Court also reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

(b) Application in the present case

i. Material conditions of the applicant’s detention in the ITT

91. The Government explained the overcrowding in the cells by the fact that at that time the courts of Sevastopol had been considering an extensive number of criminal cases and all persons detained in the ITT had been taking part in their respective criminal proceedings in the courts. The Government further noted that as for other conditions of the applicant’s detention, they did not reach the minimum threshold of severity required by Article 3 of the Convention, as the applicant had been detained in the ITT for the short periods of 10 and 4 days, respectively. The applicant’s situation was not different from the situation of any other person suffering from limitations related to the deprivation of liberty.

92. The applicant disagreed and pointed out that the conditions of detention in the ITT were found to be appalling by numerous international and domestic observers. He referred to the findings of the CPT and the Ukrainian Commissioner for Human Rights.

93. The Court notes that it has already found a violation in respect of the conditions of detention in the Sevastopol ITT experienced by the applicant in 2003-2006 in the case of *Yakovenko v. Ukraine* (no. 15825/06, 25 October 2007). In the present case the applicant stayed in the ITT for 10 and 4 days, respectively, in July-August 2007. Although the applicant and the Government submitted two contradictory descriptions of the material conditions of detention in the ITT, the applicant’s version is corroborated by

the subsequent findings of the Ukrainian Commissioner for Human Rights. The Commissioner visited the ITT one year after the applicant had been detained there, and the press release issued after her visit refers to the same conditions of detention as those complained of by the applicant. Furthermore, the Government have failed to adduce any evidence in support of their description of the conditions of detention in the ITT. They also refrained from commenting on the applicant's allegations that he had suffered from his co-detainees' constant smoking.

94. The Court further notes that the problem of overcrowding in the Sevastopol ITT was indicated by the CPT as early as in 2000. It was further confirmed by the findings of this Court in the *Yakovenko* case, and, according to the press release issued by the Ukrainian Commissioner for Human Rights, the overcrowding remained a problem in mid-2008. The Government have also failed to comment on the applicant's allegations that the detainees had to sleep in turns and, given the size of the cell and the number of persons detained, the Court has no reason to doubt the applicant's submissions. In such circumstances the lack of sleeping places makes the effect of overcrowding in the applicant's case even more harmful.

95. Therefore, the Court finds that the overall conditions of the applicant's detention in the ITT, even during relatively short periods of time, amount to inhuman and degrading treatment and are in violation of Article 3 of the Convention.

ii. Material conditions of the applicant's detention in the SIZO

96. The Government submitted that the conditions of the applicant's detention in the SIZO were adequate and did not reach the threshold required by Article 3 of the Convention. In support of their statements, the Government submitted a document, certified by the SIZO Governor, which contained a description of the cells in which the applicant had been detained. In particular, the document says that in every cell there was a 120x40 centimetre window, with natural and artificial lighting and ventilation.

97. The applicant contested these submissions. He repeated his previous complaints that he had been able to wash only once a week and sometimes even more rarely. The applicant further indicated that the Government had provided only general information about the conditions of detention but had not shown that the ventilation had been functioning and that the lighting had been sufficient.

98. The Court notes that the Government's observations did not provide much substantiation in support of their statement that the ventilation and lighting in the applicant's cells were sufficient. Moreover, the Government failed to comment on the applicant's allegation that all of the detainees had constantly smoked, which had caused the applicant additional suffering as he had bronchial asthma. Given that, in the case of allegations about

inadequate conditions of detention, the Government are in a better position to obtain evidence in support of their views (see *Yakovenko v. Ukraine*, cited above, § 106), the Court is of the opinion that in the circumstances of the present case the Government have failed to substantiate their statements.

99. In respect of the applicant's allegations about overcrowding in the Simferopol SIZO, the Court notes that, according to the information submitted by the Government, at any given time there was from 1.47 to 3.25 sq. m of space per inmate in the applicant's cell. The Court recalls that the CPT has set 7 sq.m. per prisoner as an approximate, desirable guideline for a detention cell (see the 2nd General Report - CPT/Inf (92) 3, § 43).

100. The Court refers to its findings in the *Kalashnikov v. Russia* case (no. 47095/99, ECHR 2002-VI...) and finds that there has been a violation in respect of the conditions of the applicant's detention in the Simferopol SIZO.

iii. Medical assistance to the applicant

101. The Government stated that the applicant had not complained about his health problems while staying in the ITT and had been provided with adequate treatment in the SIZO.

102. The applicant disagreed and submitted that all necessary medication had been provided to him by his wife.

103. The Court notes that the applicant's submissions in this respect are limited to a general statement that he is suffering from bronchial asthma. He did not submit any particular details as to the severity and frequency of the symptoms. It follows from the medical file submitted by the Government that the applicant was regularly checked in the SIZO and provided with some treatment, which the Court is not in a position to question, given the absence of any indication that the applicant's health significantly deteriorated either while staying in the ITT or in the SIZO. In such circumstances, the Court finds that there has been no violation of Article 3 of the Convention in respect of the applicant's medical treatment during his detention.

iv. Conditions of transportation

104. For the Government, in the absence of any complaints on the national level about the conditions of transportation from and to the SIZO, the burden of proof in respect of these complaints lay with the applicant. The Government further stated that the conditions of the applicant's transportation complied with the national law requirements and did not reach the level of severity required for Article 3 of the Convention to apply.

105. The applicant reiterated his previous submissions and referred to the findings of the CPT in support of his complaints.

106. The Court reiterates its position that it is for the respondent Government to substantiate their allegations as in the particular

circumstances of a given case they are in a better position to furnish all necessary evidence (see paragraph 98 above). The Court notes that the Government's submissions in this respect are quite vague and refer only to the number of places available in the vehicles or railway carriages without proving any further details about the available space per person and other conditions of transportation (available facilities, lighting, ventilation, etc.).

107. The Court notes that the applicant was transported on three occasions a distance of 70 kilometres. The Court further notes that the applicant's allegations are confirmed by the findings of the CPT, the Ukrainian Commissioner for Human Rights and by the Court's own findings in the *Yakovenko* case (cited above).

108. Therefore, the Court finds that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicant's transportation.

2. Article 13 of the Convention

109. The Government referred to their observations on the admissibility of the applicant's complaints under Article 3 of the Convention.

110. The Court points out that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

111. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

112. Taking into account its earlier considerations as to the exhaustion of domestic remedies (paragraphs 85-87 above) as well as its previous case-law on the matter (see *Melnik*, cited above, § 115, and *Dvoynykh v. Ukraine*, no. 72277/01, § 72, 12 October 2006), the Court finds that there was no effective or accessible remedy in respect of the applicant's complaints about the conditions of his detention. There has therefore been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. 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

114. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

115. The Government submitted that there was no causal link between the alleged violations and the non-pecuniary damage claimed and, therefore, this claim was to be rejected.

116. The Court considers that the applicant suffered non-pecuniary damage which cannot be compensated for 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 7,000 under this head.

B. Costs and expenses

117. The applicant did not claim any costs and expenses; the Court, therefore, makes no award in this respect.

C. Default interest

118. 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 applicant’s complaint under Article 3 of the Convention about the alleged ill-treatment at the time of the applicant’s arrest inadmissible and the remainder of the application admissible;
2. *Holds* that there would be a violation of Article 3 of the Convention in the event of the applicant’s extradition to Belarus;

3. *Holds* that there is no need to examine the complaints concerning the applicant's extradition under Articles 2 and 6 of the Convention;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention in the ITT and the SIZO;
5. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicant's medical treatment in detention;
6. *Holds* that there has been a violation of Article 3 of the Convention in respect of the conditions of the applicant's transportation;
7. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
8. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
9. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
10. *Holds* that there has been a violation of Article 13 of the Convention in respect of the applicant's complaints under Article 3 of the Convention about his conditions of detention;
11. *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 7,000 (seven thousands 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;
12. *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