



The detention in Switzerland of the former Russian energy minister was lawful

In today's Chamber judgment in the case [Adamov v. Switzerland](#) (application no. 3052/06), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights

The case concerned the detention in Switzerland of a former Russian energy minister, who was arrested while he was in Bern visiting his daughter and on business.

Principal facts

The applicant, Yevgeni Adamov, is a Russian national who was born in 1939 and lives in Moscow.

In 2004 criminal proceedings were opened against him in the United States on a charge of misappropriating funds that had been provided to Russia by the USA when he was the Russian Minister for Nuclear Energy.

On 11 February 2005 he obtained a four-month Swiss visa that he had applied for expressly in order to visit his daughter, who was living in Bern.

On 21 February 2002 criminal proceedings were opened in Switzerland against Mr Adamov's daughter for money laundering. The suspicions mainly concerned sums of money that she had allegedly received from her father. Through his daughter's lawyer Mr Adamov had said that he was prepared to be questioned in Switzerland by the investigating judge and indicated the period in which he intended, in any event, to be in Switzerland. The investigating judge informed the representative of Mr Adamov's daughter that there were two possible dates for the interview in that period: 1 or 2 May 2005. After arriving in Switzerland on 20 April 2005 Mr Adamov expressed a preference for 2 May and asked the investigating judge to confirm the date. The judge immediately issued a summons that was served at the private home of Mr Adamov's daughter in Bern, with a copy addressed to her lawyer.

On 28 April 2005 the Swiss investigating judge contacted a public prosecutor in Pennsylvania to find out any information that might be useful in the proceedings against Mr Adamov's daughter. On 29 April 2005 the US Department of Justice sent the Swiss Federal Office of Justice a request for the provisional arrest of Mr Adamov pursuant to the extradition treaty of 14 November 1990 between Switzerland and the USA. On the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

same day the Federal Office of Justice issued an urgent order for Mr Adamov's arrest that was sent to the investigating judge.

On 2 May 2005 Mr Adamov appeared before the investigating judge to give evidence in the proceedings against his daughter. In response to a question he stated that he was visiting Switzerland for both private and business reasons. After the hearing the investigating judge notified him that he was under arrest and he was immediately taken by the police to Bern prison. On 3 May 2005 the Federal Office of Justice issued an order of provisional detention for purposes of extradition, and it was served on Mr Adamov the next day.

On 17 May 2005 Russia also applied for his extradition.

On the same day Mr Adamov lodged an appeal with the Federal Criminal Court.

In an article written in prison and published on 6 June 2005 in the Russian newspaper *Izvestija*, Mr Adamov said that he had gone to Switzerland to follow up two business projects, one concerning the export of energy from Russia, the other technological cooperation.

The US authorities drafted a formal extradition request dated 2 June, but not filed with the Swiss authorities until 24 and 27 June 2005.

On 9 June 2005 the Federal Criminal Court upheld Mr Adamov's appeal and lifted the extradition arrest order against him. It took the view that he had gone to Switzerland to give evidence as a witness in criminal proceedings and that it was therefore legally prohibited to restrict his liberty by virtue of the "safe-conduct" clause. According to that rule, any person habitually living abroad and entering any State accepting the rule, in this case Switzerland, in order to appear on summons in a criminal case, for example as a witness like Mr Adamov, cannot be prosecuted or detained in respect of acts committed before their arrival in the country².

On 17 June the Federal Office of Justice appealed against this decision in the Federal Court. On 14 July 2005 that court overturned the decision of the Federal Criminal Court. Taking the view that Mr Adamov had been visiting Switzerland for private purposes (to see his daughter) and for business, and not to give evidence as a witness in criminal proceedings, it held that it was not appropriate to apply the "safe conduct" clause and that he could thus be detained.

Mr Adamov was held in custody until 30 December 2005 and then finally extradited to Russia pursuant to an administrative decision of the Federal Court, which found that priority had to be given to the Russian extradition request, as the applicant was a Russian national and stood accused of committing criminal acts in that country.

On 6 December 2007 the Federal Criminal Court dismissed a request for compensation for the alleged unlawfulness of Mr Adamov's detention.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 § 1, Mr Adamov complained that his detention with a view to his extradition had been unlawful, as the Swiss authorities had wrongly refused to grant him the benefit of the "safe conduct" clause. He added that even if the clause in

² This clause is included in international instruments (see Article 12 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959) and national legislation (see section 73 of the Swiss Federal Law on International Assistance in Criminal Matters of 20 March 1981) in order to avoid disguised extraditions.

question had not been regarded as applicable to his situation, the Swiss authorities' trickery had in itself been contrary to the principle of good faith.

The application was lodged with the European Court of Human Rights on 16 January 2006.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
David Thór **Björgvinsson** (Iceland),
Dragoljub **Popović** (Serbia),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Court noted that Mr Adamov had been taken into custody for extradition purposes, this being covered by Article 5 § 1 (f). The fact that he had been detained with a view to extradition to the United States but was finally extradited to Russia did not make any difference (this not being related to a finding as to whether the detention was lawful).

As to the question whether Mr Adamov could rely on the "safe conduct" clause, the Court observed that he had not travelled to Switzerland specially to testify in the criminal proceedings against his daughter. On the contrary, he had clearly indicated in his statement of 2 May 2005 to the investigating judge of the Canton of Bern that he had freely chosen to go to Switzerland to visit his daughter and for business. That version had been corroborated by his article that was published in the newspaper *Izvestija*. In addition, no summons to appear before the Swiss authorities had been served on him in his State of residence, as required by the relevant national and international provisions for the safe conduct clause to be engaged. The summons to appear on 2 May 2005 had been served on him by the investigating judge at the private home of his daughter, at a time when Mr Adamov was already in Switzerland. The Court thus accepted the Swiss Government's argument that Mr Adamov, who frequently travelled outside Russia and had access to lawyers, must have been aware of the risks he was taking by going abroad, especially as criminal proceedings had been brought against him in the United States. It did not appear that, when he had agreed to give evidence to the investigating judge, he had himself raised the question of safe-conduct protection. By agreeing to go to Switzerland without relying on the safeguards provided for in the relevant international mutual assistance instruments, he had knowingly renounced the benefit of the immunity that arose from the safe-conduct clause.

As regards Mr Adamov's argument that the Swiss authorities had resorted to trickery with the aim of depriving him of immunity, the Court observed that it was on the basis of the information that Mr Adamov was travelling to Switzerland for private and business reasons and that he was prepared to give evidence in the case concerning his daughter that the investigating judge had summoned him for 2 May 2005, one of the days originally proposed by the applicant himself. The judge had not therefore tricked him into coming to Switzerland. In addition, the Court took the view that by informing the US authorities – in connection with the proceedings concerning his daughter – that Mr Adamov was in Switzerland, the Swiss authorities had not shown any bad faith against him: they had simply acted in compliance with the cooperation agreements that the two States had entered into to combat cross-border crime.

In conclusion, Mr Adamov's detention, which had been based on a valid arrest order issued for the purposes of inter-State cooperation to combat cross-border crime, had not infringed the safe-conduct clause or contravened the principle of good faith. The Court thus held, by four votes to three, that Article 5 § 1 had not been breached.

Separate opinion

Judges Tulkens, Sajó and Pinto de Albuquerque expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.