

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

FIFTH SECTION

CASE OF DZHANDZHGAVA v. CYPRUS

(Application no. 19274/20)

JUDGMENT

STRASBOURG

27 February 2025

This judgment is final but it may be subject to editorial revision.



In the case of Dzhandzhgava v. Cyprus,

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

Stéphanie Mourou-Vikström*, President*,
Gilberto Felici,
Kateřina Šimáčková*, judges*,
and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 19274/20) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 May 2020 by a Hungarian and Russian national, Mr Iraklii Dzhandzhgava ("the applicant"), who was born in 1961, lives in Limassol and was represented by Mr Y.L. Boychenko, a lawyer practising in Strasbourg;

the decision to give notice of the complaints concerning Articles 5 § 1 (f) and 5 § 4 of the Convention to the Cypriot Government ("the Government"), represented by their Agent, Mr G.L. Savvides, Attorney General of the Republic of Cyprus, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 28 November 2024 and 30 January 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's detention between 8 September 2017, when the Limassol District Court issued an order for his extradition, and 26 August 2020 when he was eventually surrendered to the Russian authorities.

2. On 22 September 2017 the applicant filed a habeas corpus application (no. 137/2017) challenging his detention. It was dismissed on 17 November 2017 by the Supreme Court (acting as a first instance court).

3. On 19 December 2017 the applicant appealed (no. 427/2017) before the Supreme Court (acting as a second instance court). In the frame of the appeal proceedings the applicant filed seven interim applications out of which he withdrew three; three were rejected by the Supreme Court and one was successful. During the appeal proceedings the Supreme Court expressed dissatisfaction with the consecutive filing of interim applications on the part of the applicant and warned him of causing delays to the procedure. The court suggested to the applicant the prioritisation of the hearing of the merits of the case instead of the various interim applications. The applicant's representative disagreed and argued that the interim applications had been

necessary to safeguard the applicant's interests. The proceedings evolved as follows.

4. After the lodging of the appeal on 19 December 2017, the first hearing of the case was set for 6 February 2018. On that date instructions were given to the parties on filing their pleadings and written arguments. No new date was fixed for the case. After the applicant lodged the first interim application on 13 March 2018 a hearing of the case was set for 16 April 2018. Between 16 April 2018 and 14 September 2019, the first three interim applications were heard and finalised. The first one was withdrawn by the applicant, the second one was dismissed by the Supreme Court and the third one was allowed by the latter. After the hearing of 14 September 2018, no new date was fixed for a hearing of the case. Meanwhile, the applicant filed his fourth interim application on 24 January 2019 and a hearing for instructions on that application was set for 6 February 2019. A hearing for the fourth interim application was set for 3 April 2019, however this date was adjourned because two of the judges of the bench were busy drafting the new Civil Procedure Rules and the rest of the judges were busy in other appeal cases. No new date was fixed for a hearing of the fourth interim application. The case was heard again on 4 June 2019 after the applicant had filed a fifth interim application on 13 May 2019. During the first hearing of the fifth application on 4 June 2019 instructions were given, and the application was set for a hearing on 2 July 2019. A day before that hearing the applicant filed a sixth interim application, therefore on 2 July 2019 it was decided to first deal with the sixth application, since it had to precede the examination of the fifth, and it was set for a hearing on 16 September 2019. While awaiting an interim decision of the Supreme Court on the sixth application, the applicant withdrew it and filed a seventh interim application on 22 October 2019. Instructions were given on 1 November 2019 and a hearing was fixed for 3 December 2019. On that date the Supreme Court rejected the seventh interim application due to a failure on the part of the applicant's representative to file his written argument in time. On 14 January 2020 during the final hearing of the case, the applicant withdrew the pending fourth interim application and an oral hearing was conducted on the merits of the case and the pending fifth interim application.

5. On 4 March 2020 the Supreme Court dismissed the interim application and the appeal.

6. After the dismissal of the habeas corpus appeal the applicant remained in detention until he was extradited. By letter of the Minister of Justice on 22 April 2020 the applicant was informed, *inter alia,* that due to the emergency created by the Covid-19 pandemic and the applicable Ministerial Orders at the time, his surrender to Russia was suspended pursuant to the provisions of Article 18 § 5 of the European Convention on Extradition. On 27 April 2020 the Ministry of Justice communicated their above-mentioned decision to the Office of the Prosecutor General of the Russian Federation

and informed them that they would revert once the restrictive measures had been lifted in order to begin deliberations for a new surrender date. On 12 June 2020 the Interpol National Central Bureau ('NCB') in Nicosia contacted the Interpol NCB in Moscow providing information regarding travel between the two countries and requesting a proposed travel plan. A follow up to that email marked as 'urgent' was sent on 19 June 2020. On 25 June 2020 the NCB in Moscow responded requesting, *inter alia,* information on the applicant's travel documents. The Cypriot authorities replied on the same day supplying a copy of the applicant's passport. The agreement of a surrender date does not transpire from the documents submitted before the Court. The applicant was eventually surrendered to the Russian authorities on 26 August 2020.

7. The applicant complained under Article 5 § 1 of the Convention that he had been unlawfully and arbitrarily deprived of his liberty for an excessively long time beyond the time-limits provided for by the domestic law and for reasons not allowed under the exception of Article 5 § 1 (f) of the Convention, such as the Covid-19 pandemic. He further complained under Article 5 § 4 of the Convention that the appeal proceedings, had not met the "speediness" requirement.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

8. The applicant contended that his detention had been in violation of Article 5 § 1 of the Convention on account of its excessive length and the failure of the domestic authorities to pursue the extradition proceedings diligently. He further alleged that after 22 April 2020 his detention had not been lawful since it had been extended in contravention of the time limits foreseen by domestic law.

9. The Government contended that the applicant had failed to exhaust the remedy foreseen in section 12(1)(a) of the Extradition Law of 1970 (92/70) which provides that a person being held for the purpose of his extradition may lodge an application for his release with the Supreme Court when two months have elapsed from the first day it would have been possible to effect his surrender, taking into account section 10(2) and (5) of the same Law. These provisions of the Extradition Law guarantee the suspensive effect of a pending habeas corpus application at both instances (see *Khokhlov v. Cyprus*, no. 53114/20, § 71, 13 June 2023 for the relevant legal provisions).

10. The Court notes that the issue of non-exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 1, therefore they will be examined jointly. The Court considers that this complaint is neither manifestly ill-founded nor inadmissible on any other

ground listed in Article 35 of the Convention. It must therefore be declared admissible.

11. The general principles concerning detention pending deportation or extradition under Article 5 § 1 (f) of the Convention are set out in *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 88-92, 15 December 2016 and in *Khokhlov*, cited above, §§ 88-90.

12. The applicant's view in relation to his complaint under this head is twofold. First, he contended that his detention during the habeas corpus appeal proceedings had been arbitrary because of its excessive length. To this effect, he argued that the appeal proceedings had not been pursued diligently by the respondent State. Second, he claimed that his detention between 22 April 2020 when his surrender had been suspended, and 26 August 2020 when he had been eventually surrendered, had not been justified since it had been unlawful. The applicant further mentioned in passing that he had been held in unsatisfactory conditions of detention. This complaint remained, however, unsubstantiated. In any event, the Court does not consider it necessary to examine this matter further on account of the finding of a violation of Article 5 § 1 (f) of the Convention on other grounds.

13. The applicant's overall detention in view of his extradition lasted two years, eleven months and eighteen days, from 8 September 2017 (the date the Limassol District Court ordered his extradition and his detention pending his extradition) until 26 August 2020 (the date of his extradition). For the greater part of the applicant's detention – namely from 8 September 2017 until 4 March 2020 (two years, five months, and twenty-six days) – he was detained in connection with judicial proceedings through which he contested his extradition. The Court notes that the scope of the applicant's complaint concerning the non-diligent pursuing of the proceedings relating to his extradition is limited to the habeas corpus appeal proceedings. The Court will therefore limit its assessment under this head to those proceedings (see *mutatis mutandis* in relation to the speediness requirement of Article 5(4), *Khokhlov*, cited above, § 76 and *K.A. v. Cyprus*, no. 63076/19, § 41, 2 July 2024).

14. The habeas corpus appeal proceedings lasted two years, two months and fifteen days. Despite the applicant contributing to the delays caused in the habeas corpus appeal proceedings, through the lodging of consecutive interim applications in a borderline abusive manner, the Court cannot ignore lengthy periods of inactivity for which the Government did not adduce any evidence capable of justifying (see paragraph 4 above). Some notable examples are the passing of one month and eighteen days between 19 December 2017, when the appeal was lodged, and 6 February 2018, when the first hearing for instructions took place. The next appearance was on 16 April 2018, that is two months and ten days after the previous hearing and only after the applicant had lodged the first interim application on 13 March 2018, since no new date had been fixed after 6 February 2018. Similarly, after

the hearing of 14 September 2018 no new date had been fixed for the case and only after the filing of the fourth interim application of the applicant on 24 January 2019 had a hearing been set for 6 February 2019, which means there had been an inactivity of four months and twenty-three days on the part of the judicial authorities in pursuing the extradition proceedings. Lastly, the final hearing of the case was conducted on 14 January 2020, and it took the Supreme Court one month and nineteen days to issue its judgment on 4 March 2020. The Government have not provided any reasons for such delays. Such unaccounted-for delays are not in line with the duty of the State's authorities to pursue the extradition with due diligence (see *Khokhlov*, cited above, § 98 and *Quinn v. France*, 22 March 1995, § 48, Series A no. 311).

15. Moreover, the Court notes that after the dismissal of the applicant's appeal on 4 March 2020, his detention continued for a further five months and twenty-three days. For the majority of that period the domestic authorities had been inactive in relation to the pursuing of the applicant's extradition. On 22 April 2020 the Cypriot authorities suspended the applicant's extradition proceedings without a clear understanding as to when the surrender of the applicant to Russia would be possible. They informed the Russian authorities about this decision on 27 April 2020, and it is evident from that letter that the two countries had no date in sight for conducting the applicant's extradition. The only exchanges between the Cypriot and Russian authorities during that period had been between 12 and 25 June 2020. Between 27 April and 12 June 2020 (one month and fifteen days) as well as between 25 June and 26 August 2020 (two months), as it transpires from the material submitted to the Court by the Government, there seems to have been no activity in relation to the applicant's extradition. During these periods neither State had a concrete idea as to when the pandemic would end and there is no information before the Court as to what steps, if any, the respondent State was taking to assess the evolving situation of Covid-19 restrictions to determine whether the applicant could have been surrendered earlier.

16. In this connection, the Court reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention continues to be justified (see *Khokhlov*, cited above, § 101; *Amie and Others v. Bulgaria,* no. 58149/08, §77, 12 February 2013, and *Louled Massoud v. Malta,* no. 24340/08, §§ 68-69, 27 July 2010). In such circumstances the necessity of procedural safeguards becomes decisive. As similarly decided in *Khokhlov,* cited above, §101, the Court takes issue with the Government's decision to suspend the extradition until further notice, in the absence of an agreed surrender date to begin with – as required by Article 18 § 3 of the Extradition Convention. This decision deprived the applicant of the procedural guarantees that were available to him under Article 18 § 4 of the European Convention on Extradition (Ratification) Law (95/1970) (see *mutatis mutandis, Kim v. Russia,* no. 44260/13, § 53, 17 July 2014 and *Khokhlov*, cited above, § 70 for the relevant legal provisions).

17. Concerning the non-exhaustion plea, the Government argued that the applicant should have made use of the remedy foreseen in section 12(1)(a) of the Extradition Law (see paragraph 9 above). According to the Government, the applicant should have filed another habeas corpus application seeking his release after 4 May 2020, which was the day of the expiry of the sixty-day deadline foreseen in the same section within which the respondent State should have effectuated his surrender. In support of their contention, the Government relied on the domestic judgment in habeas corpus application no. 140/22, *Koretska v. the Republic,* 6 October 2022. The petitioner in that case lost the first habeas corpus application at both instances and remained in detention after the sixty-day deadline of the Extradition Law had expired. She successfully lodged a second habeas corpus application leading to her release.

18. The Court notes first that *Koretska* is the only successful example of domestic case-law provided by the Government and most notably, that it was delivered after the present application was lodged with the Court (see, for example, *Sürmeli v. Germany* [GC], no. 75529/01, § 110, ECHR 2006-VII; *Norbert Sikorski v. Poland*, no. 17599/05, § 115, 22 October 2009; and *Dimitar Yanakiev v. Bulgaria (no. 2)*, no. 50346/07, § 53, 31 March 2016). The said judgment therefore post-dates the material facts of the present case. Second, the Court notes that the habeas corpus proceedings already pursued by the applicant and the remedy of section 12(1)(a) have essentially the same objective, that is, they both seek the release of the applicant from detention because of legal or practical obstacles to the execution of his extradition (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §§ 84-85, 24 January 2008). As such, the Court considers that requiring the applicant to file yet another habeas corpus application to secure his release would, in the circumstances of the present case, place an excessive burden on him, especially when it is first incumbent on the Government to respect their obligations emanating from domestic law (see *mutatis mutandis, İlhan v. Turkey* [GC], cited above, § 63). Therefore, the Government's preliminary objection is dismissed.

19. In view of this and the above-commented (see paragraphs 13-16 above) the applicant's detention pending his extradition cannot be considered to have been in line with Article 5 § 1 (f) of the Convention. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

20. The applicant also raised a complaint under Article 5 § 4 of the Convention which is covered by the well case-law of the Court (*Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 251-256, 4 December 2018; *Khlaifia and Others*, cited above, §§ 128- 131; *Khokhlov*, cited above, §§ 74-82; *B.A. v. Cyprus*, no. 24607/20, §§ 72-76, 2 July 2024; and

K.A. v. Cyprus, cited above §§ 41-44). This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible.

21. The Court considers that the Government's argument that the applicant bears a share of the responsibility as regards the delays in the habeas corpus appeal proceedings, is not without merit. In this respect, it notes that the Supreme Court had warned the applicant about delays being caused to the proceedings by the repeated filings of interim applications and that three of the seven interim applications had been withdrawn (see paragraph 14 above). It further notes that the Supreme Court had suggested to the applicant the prioritisation of the hearing of the merits of the case instead of the various interim applications and that the applicant's representative had insisted on carrying out the procedure as he considered best. However, the applicant's behaviour during the proceedings is only one factor to be taken into consideration by the Court (see *Khokhlov*, cited above, § 81). While it is true that the Court is prepared to tolerate longer periods of review in proceedings at second instance, it nevertheless remains incumbent on the State to ensure that proceedings are conducted as quickly as possible, especially when an individual's liberty is at stake (see, among other authorities, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003; and *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII).

22. In this connection, the Court cannot ignore the various lengthy periods of inactivity during the appeal proceedings before the Supreme Court which have not been justified by the Government and cannot be attributed to the applicant (see paragraphs 4 and 14 above). Specifically, the one month and eighteen days to begin the examination of the appeal by giving instructions to the parties regarding the filing of their pleadings and written arguments; the two months and twelve days to conduct the second hearing of the case and to give instructions on the very first interim application; the four months and twenty-three days between 14 September 2018 and 6 February 2019 and the one month and fifty days it took the Supreme Court to issue its judgment after the case had been finalised. The Court also notes the fact that at various moments of the proceedings, no dates had been fixed at all for the continuation of the case and it was only after the applicant had filed an interim application that a date was given (for example, after 6 February 2018, 14 September 2018, and 3 April 2019).

23. Accordingly, given the above-noted delays and the Court's findings in its well-established case-law (*Ilnseher*, cited above, §§ 257-256, 4 December 2018; *Khlaifia and Others*, cited above, §§ 132-134; *Khokhlov*, cited above, § 81; *K.A.*, cited above, §§ 42-43, 2 July 2024; and *B.A.*, cited above, § 73), the Court concludes that the habeas corpus appeal proceedings

were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention. There has accordingly been a violation of that provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed EUR 70,000 in respect of non-pecuniary damage.

25. He further claimed EUR 380,000 in respect of costs and expenses incurred before the domestic courts and EUR 5,400 for those incurred before the Court. He provided various agreements, invoices, and receipts in this regard.

26. The Government contested the applicant's claims for non-pecuniary damage as lacking a direct causal link to the alleged violations. As to the costs and expenses, they considered these claims excessive, not reasonable as to quantum and unsubstantiated.

27. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations of Articles 5 § 1 and 5 § 4. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage in relation to both violations, plus any tax that may be chargeable to the applicant.

28. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In this respect, regard being had to the documents in its possession, the Court considers it reasonable to award EUR 3,800 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits of Article 5 § 1 the Government's preliminary objection concerning non-exhaustion of domestic remedies in relation to that complaint and *dismisses* it;

2. *Declares* the complaints concerning Article 5 § 1 and 5 § 4 admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts at the rate applicable at the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,800 (three thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President